Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

Presidential Documents

Title 3—

The President

Memorandum of May 12, 1987

Memorandum for the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for submitting the first report and certifications required by Section 2013 of the Anti-Drug Abuse Act of 1986 (P.L. 99–570).

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, May 12, 1987.

[FR Doc. 87–12364
Filed 5–27–87; 12:17 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. 292]

Food Stamp Program: Eligible Alien Status

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Immigration Reform and Control Act of 1986, Pub. L. 99–603, enacted on November 6, 1986, establishes a number of new categories of legal aliens. In accordance with the Food Stamp Act of 1977, as amended, some of these categories of legal aliens are eligible to participate in the Food Stamp Program (FSP). This rulemaking amends the current FSP regulations to specify those categories of legalized aliens who gain alien status as a result of the Immigration Reform and Control Act of 1986, and thereby may become eligible to participate in the Food Stamp Program.

DATES: The provisions of this rulemaking are effective retroactive to November 6, 1986, the date of enactment of the Immigration Reform and Control Act of 1986. Under the terms of the amendments made by that Act, and incorporated in this rulemaking, certain categories of aliens will not actually become eligible for food stamp benefits until specified dates in the future as reflected in this rulemaking. Comments must be received on or before July 28, 1987, to be assured of consideration.

ADDRESS: Comments should be addressed to Judith M. Seymour, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Va 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 708, Alexandria, Va.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address or by telephone at (703) 756–3429. Copies of the Regulatory Impact Analysis summarized in this preamble are available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519–1. It has been determined that this rulemaking is a major action because it is anticipated that the Food Stamp Program's cost will increase by more than $100 million. However, this action will not result in an increase in costs or prices for consumers, individuals, or State and local governments. Additionally, this action will not have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and the State and local agencies which administer the Food Stamp Program.

Memorandum of Law

Pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and is consistent with Congressional intent.

Paperwork Reduction Act

This rulemaking does not contain any reporting and/or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Regulatory Impact Analysis

Need for Action

This action is required as a result of the Immigration Reform and Control Act of 1986 which establishes new categories of legal aliens. As a result, certain categories of aliens will gain eligible alien status to participate in the Food Stamp Program in accordance with section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)).

Benefits

This action increases the number of potentially eligible food stamp recipients. This action will not affect the food purchasing power of current program participants.

Costs

The Department estimates that this action will increase the cost of the Program by approximately $17 million in Fiscal Year 1987, $148 million in Fiscal Year 1988, $180 million in 1989 and $106 million in 1990.

Public Participation

This rule implements certain amendments to the Immigration and Nationality Act made by the Immigration Reform and Control Act of 1986 related to the eligibility of specified categories of aliens to receive food stamps. It is nondiscretionary in that the provisions are specifically prescribed by law and cannot be affected in substance by public comment. Since this rulemaking merely implements the cited statutory provisions, it constitutes an interpretive rule for which public comment and publication 30 days prior to effective date are not required under 5 U.S.C. 553.

However, since the Department believes that an opportunity for public

comment could result in improved and simplified administration of the rule, it is being published as an interim rule and a 60-day comment period is being provided. All comments received during the comment period will be evaluated and considered when a final rule is published.

Background

Alien Status

Current Food Stamp Program (FSP) rules at 7 CFR 273.4, which are based on section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)), provide that, in addition to other eligibility requirements specified in Part 273, a person must: (a) reside in the United States; and (b) be either a United States citizen or an alien who meets one of the criteria identified at 7 CFR 273.4(a)(2) through 273.4(a)(7) in order to participate in the Food Stamp Program. The criteria specified in section 6(f) of the Food Stamp Act and current program rules are that a person must be: (1) Lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA); (2) a continuous resident since entering the United States prior to June 30, 1948 and lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the INA; (3) qualified for entry pursuant to sections 207 and 208 of the INA; (4) granted asylum pursuant to section 208 of the INA; (5) lawfully present through an exercise of discretion by the Attorney General pursuant to section 212(d)(5) of the INA, or as a result of a grant of parole by the Attorney General; or (6) residing within the United States as a result of the Attorney General's judgment to withhold deportation on the grounds that the alien would otherwise be subject to persecution on account of race, religion or political opinion.

The Immigration Reform and Control Act of 1986 (Pub. L. 99–603), enacted on November 6, 1986, includes numerous provisions which expand the categories of aliens eligible for lawful resident status. Under operation of the Food Stamp Act and Pub. L. 99–603, these modifications to the categories of aliens eligible for lawful status also has a marked effect on alien applicants for FSP benefits. The categories of aliens who may now be eligible for FSP benefits include: (1) Those who have resided continuously in the United States since before January 1, 1972, in accordance with section 249 of the INA; (2) those who have been granted lawful permanent resident status by the Immigration and Naturalization Service (INS) and are aged, blind, or disabled as defined in section 1614(a)(1) of the Social Security Act; (3) those who were granted temporary resident status pursuant to section 245A(a) of the INA at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA; (4) those who have resided in the United States and performed agricultural work for specified periods of time prior to May 1, 1986; and (5) additional agricultural workers who may be admitted in fiscal years 1990 through 1993. Each of these categories is discussed in further detail below.

Continuous Residency Date—7 CFR 273.4(a)(3)

As previously noted, pursuant to section 6(f) of the Food Stamp Act, current regulations at 7 CFR 273.4(a)(3) allow an alien to participate in the program if the alien has resided continuously in the United States since prior to June 30, 1948 and is considered to be lawfully admitted for permanent residence by the Attorney General pursuant to section 249 of the INA. Section 203 of Pub. L. 99–603 changes the continuous residency date of June 30, 1948 to January 1, 1972.

Accordingly, this rulemaking amends 7 CFR 273.4(a)(3) effective with the date of enactment of Pub. L. 99–603 to reflect the continuous residency date of January 1, 1972.

Newly Legalized Aliens—7 CFR 273.4(a)

In accordance with section 201 of Pub. L. 99–603, which amends section 245 of the INA, those aliens who do not qualify for permanent residence as described above, and all other illegal aliens who entered the United States before January 1, 1982 and subsequently resided continuously in the United States, may apply to INS to have their alien status adjusted to that of an alien lawfully admitted for temporary residence. Applications for such an adjustment must be submitted to INS within a 12-month period beginning on May 5, 1987. Aliens lawfully admitted for temporary residence under section 201 of Pub. L. 99–603, known as newly legalized aliens, may apply to INS for an adjustment to permanent resident status beginning with the nineteenth month after the month in which lawful temporary resident status was granted.

Section 245A(h)(1)(A)(iii) of the INA as added by section 201 of Pub. L. 99–603 further specifies that, with certain exceptions, newly legalized aliens who are granted a temporary or subsequent permanent resident status by INS under that section are prohibited from participating in the FSP and certain other types of public assistance programs for a five-year period following the date the alien is granted lawful temporary resident status. Thus, the majority of aliens who gain a lawful resident status under section 201 of Pub. L. 99–603 will not be eligible to participate in the FSP until at least May, 1992.

However, the law provides for two exceptions to the five-year prohibition on participating in the Food Stamp Program or certain other types of public assistance. These exceptions are: (1) Cuban and Haitian entrants (as defined in paragraph (1) or (2)(A) of section 501(c) of Pub. L. 96–422); or (2) an individual who is aged, blind or disabled as defined in section 1614(a)(1) of the Social Security Act (SSA).

In regard to the first exception to the five-year prohibition, Cuban and Haitian entrants are already eligible to participate in the Food Stamp Program in accordance with the Food Stamp Act and current regulations at 7 CFR 273.4(a)(6). Therefore, the eligibility of Cuban and Haitian entrants to participate in the FSP is not affected by the Immigration Reform and Control Act of 1986.

In regard to the second exception, section 201 of Pub. L. 99–603 amends the INA to allow newly legalized aliens who are aged, blind or disabled as defined in section 1614(a)(1) of the SSA to participate in the FSP without reference to the five-year prohibition. However, in accordance with section 6(f) of the Food Stamp Act, these aged, blind, or disabled aliens must be in permanent resident status in order to participate in the FSP. Since section 245A(b)(1) of the INA, as added by Pub. L. 99–603, prohibits newly legalized aliens from gaining permanent resident status before November 7, 1988, such aliens will not be eligible to participate in the FSP before that date.

Accordingly, 7 CFR 273.4 is amended to reflect the circumstances in which aliens who are newly legalized in accordance with Pub. L. 99–603 may participate in the FSP.

Special Agricultural Workers—7 CFR 273.4(a)

Section 210(a) of the INA, as added by section 302 of the Immigration Reform and Control Act of 1986, provides that aliens who can prove that they have lived in the United States and performed seasonal agricultural services for the required period of time may be granted lawful temporary resident status. These individuals are known as special

agricultural workers (SAWs) and are further categorized into two groups. The first group, SAW 1, must prove to INS that they have lived in the United States and performed agricultural work for at least 90 days in each of the three (3) twelve month periods preceding May 1, 1986. Aliens in the SAW 1 category may be lawfully admitted for permanent residence by INS after remaining in lawful temporary resident status for one year. The second group, SAW 2, must prove to INS that they have lived in the United States and performed seasonal agricultural work for at least 90 days in the 12 months prior to May 1, 1986. Aliens in the SAW 2 category may be lawfully admitted for permanent residence after remaining in a lawful temporary resident status for two years. Special agricultural workers may begin to submit applications to INS for adjustment to lawful temporary resident status on June 1, 1987. Such applications will be received by INS for 18 months beginning on June 1, 1987.

Although aliens who fall into a SAW category must remain in lawful temporary resident status for one or two years, section 210(a)(5) of the INA specifies that an alien lawfully admitted for temporary residence as a SAW is to be considered to be an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, persons who are lawfully admitted in either a temporary or permanent resident status as a SAW are eligible to participate in the FSP, if otherwise eligible.

Accordingly, this rulemaking amends 7 CFR 273.4(a) to identify the eligible alien status of aliens who are lawfully admitted for temporary or permanent residence as special agricultural workers.

Additional Special Agricultural Workers—7 CFR 273.4(a)

In accordance with section 303 of Pub. L. 99–603, which amends newly added section 210 to the INA, additional special agricultural workers (ASAWs), also referred to as replenishment agricultural workers, may be granted a lawful temporary resident status by INS in fiscal years 1990 to 1993 after the Secretaries of Agriculture and Labor make a joint determination that a shortage of SAW workers exists. Aliens granted lawful temporary resident status as an ASAW must remain in temporary resident status for three years before an adjustment to lawful permanent resident status can be made. As with the SAW 1 and SAW 2 categories, Section 303 of Pub. L. 99–603 specifies that an ASAW worker admitted for temporary residence is to be considered an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, ASAWs are eligible to participate in the FSP once they are granted lawful temporary resident status if they are otherwise eligible for program benefits.

Therefore, this rulemaking amends 7 CFR 273.4(a) to specify the eligible alien status of aliens categorized as additional special agricultural workers.

Verification—7 CFR 273.2(f)(1)(ii)

Current rules at 7 CFR 273.2(f)(1)(ii) specify that prior to certification, the State agency must verify the legal status of each applicant who identifies him or herself as an alien. The current procedures further identify the required INS documentation the alien must present in order to verify his or her alien status (e.g., Form I–151 of Form I–94 with appropriate annotation).

This interim rule requires that FSP applicant aliens legalized under the Immigration Reform and Control Act of 1986 provide verification to the eligibility worker which establishes their alien status. This rule specifies that acceptable verification may consist of documents, such as a notice, letter, or identification card that establishes that the alien has been admitted as a legal alien in one of the categories enumerated in the *Alien Status* section above.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii) of the regulations to specify the verification requirements of applicant aliens. For all other eligibility criteria, a State will follow current verification requirements at 7 CFR 273.2(f). However, the Department is concerned that its current verification procedures may not fully address obtaining verification from groups such as alien special agricultural workers who may have resources available to them in their home country. The Department will be publishing a proposed rulemaking next Fall regarding use of the INS Systematic Alien Verification for Entitlements (SAVE) system for verification of alien status. The Department requests that commenters on this interim rule provide the Department with suggestions regarding the adequacy of current verification procedures for this group and how the procedures might be improved through the future rulemaking.

Technical Revisions

Current verification procedures specified in 7 CFR 273.2(f)(1)(ii) of the Food Stamp Program regulations require that aliens who are lawfully admitted under 7 CFR 273.4(a)(2) and (3) present either: (1) An INS Form I–151; (2) a "Re-entry Permit" or passport booklet for lawful permanent aliens; or (3) Form I–181–B with the stamped annotation, "Processed for I–551, Temporary Evidence of Lawful Admission for Permanent Residence." We have been advised by INS officials that the Form I–181–B is no longer stamped with this annotation and should no longer be used as acceptable verification. Passport booklets, however, are stamped with this annotation and continue to be acceptable verification of eligible alien status.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii)(B) by omitting references to the Form 1–181–B.

Current rules at 7 CFR 273.4(a)(4) and (5) incorrectly refer to the Immigration and Nationality Act as the Immigration and Nationalization Act. Therefore, §§ 273.4(a)(4) and 273.4(a)(5) are amended to correct these references to the Immigration and Nationality Act.

Implementation

For aliens who became eligible for food stamps as the result of the change of the continuous residence date, as reflected in § 273.4(a)(3), this rule must be implemented retroactive to November 6, 1986. On December 16, 1986, the Department advised the Regional Administrators of the Food and Nutrition Service to advise their States of the provision and its effective date of November 6, 1986. The dates upon which aliens may become eligible under other provisions of these rules are: November 7, 1988 under § 273.4(a)(8); May 5, 1992 under § 273.4(a)(9); June 1, 1987 under § 273.4(a)(10); and October 1, 1989 through September 30, 1993 under § 273.4(a)(11).

Because these dates vary widely over several years, this rule requires State agencies to advise appropriate staff of the eligibility or ineligibility of applicant aliens who are affected by the enactment of Pub. L. 99–603.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(88) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(88) *Amendment No. 292.* (i) The effective date of the provisions of this amendment is retroactive to November 6, 1986.

(ii) The actual dates upon which aliens may become eligible under § 273.4(a) (8), (9), (10), and (11) are specified in those paragraphs. State agencies must inform their staff of the respective dates as they pertain to the eligibility or ineligibility of applicant aliens.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2:

a. Paragraph (f)(1)(ii)(A) is amended by removing the reference to "(a)(7)" and adding the reference to "(a)(11)" in its place.

b. Paragraph (f)(1)(ii)(B) is amended by removing the second, third, and fourth sentences.

c. Paragraphs (f)(1)(ii)(D), (f)(1)(ii)(E), (f)(1)(ii)(F) are redesignated as paragraphs (f)(1)(ii)(E), (f)(1)(ii)(F), (f)(1)(ii)(G), respectively, and a new paragraph (f)(1)(ii)(D) is added which reads as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(D) Aliens in the categories specified in § 273.4(a) (8) through (11) shall present documentation such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies the alien has been granted legal status in one of those categories.

* * * * *

4. In § 273.4:

a. Paragraph (a)(2) is amended by adding a new sentence at the end of the paragraph which reads, "However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraphs (a)(8) or (a)(9) of this section.".

b. Paragraph (a)(3) is amended by replacing the date June 30, 1948 with January 1, 1972.

c. Paragraph (a)(4) is amended by replacing the word "Nationalization" with "Nationality".

d. Paragraph (a)(5) is amended by replacing the word "Nationalization" with "Nationality".

e. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added.

The additions read as follows:

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* * * *

(8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988.

(9) An alien who is granted lawful temporary resident pursuant to section 245A of the Immigration and Nationality Act at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A of the Immigration and Nationality Act. Such aliens may obtain temporary residence status no earlier than May 5, 1987.

(10) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(11) An alien who is lawfully admitted for temporary residence as an additional special agricultural worker as of October 1, 1989 through September 30, 1993 in accordance with section 210A(a) of the Immigration and Nationality Act.

* * * * *

Dated: May 26, 1987.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 87–12307 Filed 5–28–87; 8:45 am]

BILLING CODE 3410–30–M

FEDERAL TRADE COMMISSION

16 CFR Part 801

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: This action promulgates amendments to 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 might violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. During the eight 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 in order to improve the program's effectiveness and to lessen the burden of complying with the rules. These revisions are intended to improve the program's effectiveness by amending the definition of the term "control" as it applies to partnerships and other entities that do not have outstanding voting securities.

EFFECTIVE DATE: July 3, 1987.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

These amendments to the Hart-Scott-Rodino premerger notification rules are designed to improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments expands the coverage of the premerger notification rules in a way that would 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 some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518. Prior to promulgation, these requirements were reviewed and approved by the Office of Management and Budget. The amendments contained in this Notice were approved by OMB on April 29, 1987, for use through March 31, 1990 (OMB Control No. 3084–0005).

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 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 section 7A. This amendment to the Clayton Act does 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 clearly 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 significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these 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 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 (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

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 five occasions since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the **Federal Register** of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the **Federal Register** of March 26, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rule changes in the **Federal Register** of September 24, 1985, 50 FR 38742. Those thirteen

proposed revisions were designed to reduce the cost to the public of complying with the rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one proposal and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the **Federal Register** of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR Part 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

These amendments to the premerger notification rules grow out of the comments on Proposal 1 of the September 24, 1985, **Federal Register** notice, the proposed "acquisition vehicle" rules. The underreporting problem that the "acquisition vehicle" approach was designed to solve is extensively discussed in that notice of proposed rulemaking. It explains both how in some circumstances an acquisition made by a partnership is not subject to the reporting and waiting obligations of the act, and how in similar circumstances an acquisition made by a newly-formed corporation that has no controlling owner is not subject to the obligations of the act. The proposed rules would have required both types of transactions to be reported.

Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission concluded that that approach appeared likely to require filings in connection with numerous competitively insignificant transactions and that a less inclusive approach could accomplish the primary objective of the proposal: Covering acquisitions by partnerships that really are controlled by another entity. In addition, it appears that there have been no problems associated with acquisitions by newly-formed corporations. The Commission therefore reconsidered its proposal and developed a new approach that applies only to partnerships and other entities that do not have outstanding voting securities. On March 6, 1987, the Commission proposed in the **Federal Register**, 52 FR 7095, amendments to its premerger notification rules to implement this approach.

Four comments were received.

Comments

1. Unocal Corporation
2. Latham & Watkins
3. American Bar Association Section on Antitrust Law
4. Sullivan & Cromwell.

Authority: The Federal Trade Commission, with the concurrence of the Assistant Attorney General, promulgates these amendments to the premerger notification rules pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

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

Section 801.1(b) Control

Under previous staff interpretations, acquisitions made by certain partnerships were not reportable under the act although acquisitions by similarly structured corporations were reportable. No report was required even if an acquisition was by a partnership that was owned and operated principally by one person, and even if that person was a competitor of the acquired person. Because that result is inconsistent with the treatment of corporations that are dominated by one person and with the objectives of the act and the rules, the Commission proposed amendments to its rules to alter that special treatment of partnerships. Having considered public comments on its proposals, the Commission now amends the definition of control in § 801.1(b) to provide that persons owning 50 percent or more of partnerships or other entities that do not have outstanding voting securities will control such entities. Those persons will now be required to report acquisitions by the entities they own, just as persons must report acquisitions by corporations if they own 50 percent or more of the outstanding voting securities of those corporations. This proposal imposes no reporting obligation on owners of minority interests.

The Commission is also amending the alternative definition of control, which is based on the contractual power to designate members of an entity's board of directors or analogous body. The change—from the power to designate a majority to the power to designate 50 percent—results in a uniform 50 percent criterion for all three definitions of control in the rules.

The Purpose of the New Control Definition

Previously, acquisitions by partnerships and other entities that have no outstanding voting securities were frequently not subject to premerger review as a result of two principles of premerger reporting: One, a formal rule for calculating assets of an entity, 16 CFR 801.11(e), and the other, a Premerger Notification Office informal interpretation that a partnership is its own "ultimate parent entity" (that is, a partnership is not controlled by its partners). Section 801.11(e) directs that an entity without a balance sheet not include, in determining its size, any assets that are contributed to the entity for the purpose of making an acquisition. Thus, for example, assume that a partnership is formed to buy a $1 billion company and the partners contribute $1 billion in cash for the purpose of making the acquisition. If the partnership has no other assets (and no sales), the subsequent acquisition of the $1 billion company by the partnership is not reportable. The partnership does not meet the $10 million minimum asset criterion of section 7A(a)(2) of the act because § 801.11(e) directs the partnership not to count the $1 billion that will be used to pay for the acquisition. The informal interpretation deems the acquisition to have been made by the partnership itself, which has no other assets, rather than by its partners, who may well have other assets. Consequently, the size of the partnership is determined by valuing only the partnership's assets.

Of course, if the partnership were employed in the acquisition "for the purpose of avoiding the obligations to comply with the requirements of the act," its existence would be disregarded and the obligations of the act would be determined by applying the act and the rules to the substance of the transaction. 16 CFR 801.90. For example, some persons might be tempted to make an acquisition through a partnership for the purpose of avoiding reporting or delaying their premerger notifications to the antitrust agencies until they were required by the federal securities laws to announce their acquisition publicly. If a partnership were formed for the purpose of avoiding or delaying reporting, § 801.90 would base the reporting requirement on the substance of the transaction. If, for example, the substance is an acquisition by a single person, notwithstanding the structuring of the transaction in the form of a partnership, that person would be required to comply with the obligations of the act prior to consummating the transaction.

These amendments require controlling partners, rather than partnerships, to report transactions in certain other circumstances. Section 801.1(b)(1)(ii) provides that a partnership or other unincorporated entity is deemed to be controlled by any person who owns 50 percent or more of the entity. Thus, a partner who meets the statutory $10 million minimum size criteria and owns

50 percent or more of the partnership would be required to file the notification for an otherwise reportable acquisition by the partnership. The amendments abolish the overly general presumption that partnerships are always independent entities.

These amendments mean, in the example of the acquisition of the $1 billion company discussed above, that the transaction would be reportable if one of the partners were entitled to fifty percent or more of the partnership's profits (or, upon dissolution, of its assets), and that partner's total assets or annual net sales were $10 million or more. That controlling partner, or its parent, would be the "ultimate parent entity" pursuant to § 801.1(a)(3). It would therefore be deemed to be the person making the acquisition.

This attribution of control to persons owning such large economic interests is appropriate, because, as a general rule, they control these entities in the common sense of that word. The antitrust review should therefore include a comparison of the business holdings of the acquired entity with the business holdings of both the partnership and the controlling partner. By requiring the controlling partner to file, the premerger antitrust review will automatically consider both. While not perfect, this concept, which relies on the entitlement to profits or to assets in the event of dissolution, seems an adequate indicator of control where one person has a right to 50 percent or more of the profits or is entitled to 50 percent or more of the assets upon dissolution. At the very least, it seems unlikely that such an entity would be permitted to continue its existence if it operated in any way that was adverse to the wishes of the 50 percent owner. Consequently, the Commission considers this proposal to be an appropriate supplement to its existing definition of control.

The 50 percent ownership requirement parallels in important respects the treatment of corporations under the existing control rule. Although effective or working control of a corporation can exist as a practical matter with a smaller percentage of shares, § 801.1(b) deems a corporation to be a controlled entity only if one person owns "50 percent or more of the outstanding voting securities" or has a right "presently to designate a majority of the board of directors." While this 50 percent requirement understates actual control of many corporations, the rule is clear and easily determinable.

The rule is arguably overinclusive because one corporation with two 50 percent owners is deemed to have two ultimate parent entities. Nevertheless, this rule correctly reflects the joint control that generally exists in such circumstances. In the Commission's experience, this requirement that both controlling entities file has neither prevented persons from fulfilling the premerger notification requirements nor had a negative impact on business decisions.

The 50 percent ownership criterion serves similar functions for determining control of unincorporated entities. It is an objective and predictable standard. Moreover, the degree of ownership is sufficient to assure in almost all instances that the entities and those deemed to be controlling owners will act in concert to comply with the act's obligations.

In formulating the 50 percent ownership criterion, consideration was given to whether other indicators of control should be included. For example, the Commission might have proposed treating all general partners or the sole general partner of a limited partnership as controlling the partnership. While the Commission did not doubt its authority to attribute control on the basis of this and other criteria, the Commission declined to utilize that authority at this time because it might require many unnecessary filings. For example, limited partnerships with sole general partners are common entities whose investments often have little competitive significance. Moreover, if a rule required sole general partners to file notifications, it could easily be avoided by appointing a second or third general partner. At present, a rule requiring all general partners to file seems unnecessary and therefore unduly burdensome, but the Commission retains the option of promulgating such a rule should underreporting of significant acquisitions occur under the rule promulgated here.

Each of the four comments received addresses whether the amendments as proposed are adequate to remedy the underreporting problem caused by the interpretation that makes some acquisitions by partnerships and certain other entities not subject to reporting requirements. All four support "the concepts underlying these proposals" and consider them to be "a considerable improvement over the present Rules" (See Comment 3). The comments neither suggest that these amendments would not have required all the publicized unreported partnership transactions to have been reported, nor criticize the workability of the amendments. Three of the comments noted that partnerships could be set up in such a manner that no partner would control it under the amendments as proposed. Accordingly, these comments favor some action in addition to the proposed rule, but each makes a different suggestion.

The Commission welcomes the suggestions, which relate to abuses that may occur in the future. For the present, the Commission believes its proposed amendments are sufficient, and that the public interest will be served best by their immediate adoption. The amendments as proposed place acquisitions undertaken by partnerships on equal footing with acquisitions undertaken by corporations, and the Commission is not aware of any problem with the existing definition of control as it pertains to corporations. The Commission is not persuaded of the need to expand the reporting obligation to cover numerous competitively insignificant transactions in anticipation of avoidance devices that may never be used.

However, the Commission is considering whether, in light of its adoption of the "partnership control" rule, it should also revise its rules to require reporting the acquisition of control of a partnership. Currently, the staff interpretation makes acquisition of less than a 100 percent interest in a partnersnip not reportable, because a partnership interest is deemed to be neither a voting security nor an asset. The Commission is also considering the suggestion of Comment 3 from the American Bar Association Section of Antitrust Law that the economic incentive not to observe premerger reporting obligations might be eliminated by adopting a blanket exemption for all transactions in which an acquiring person would hold less than 5 percent of the voting securities of an issuer. That comment suggests that such acquisitions are unlikely to have antitrust implications.

Changing the Majority Control Criterion

Prior to these amendments, an entity was deemed controlled by a person that had the contractual power to designate a majority of the entity's board of directors. That rule reflects the Commission's belief that such a person should be deemed to control the entity whether or not that entity also is deemed to be controlled according to other criteria. Thus, under the existing rules, a single entity may be deemed controlled by one person that holds 50 percent of the outstanding voting securities of the entity and also by another person who has a contractual right to appoint a majority (i.e., more than 50 percent) of that entity's board of directors (or of individuals exercising similar functions). The Commission has

concluded, however, that no purpose was served and some confusion was generated by inferring control by virtue of ability to appoint directors only when one person may appoint *more than* 50 percent of the directors. It has therefore revised this criterion to parallel the other control concepts that are based on 50 percent ownership. Under this amendment, an entity is deemed to be controlled by a person with the right to appoint exactly 50 percent, as well as more than 50 percent, of the entity's directors.

The basis of this decision is illustrated by the following example. Consider a nonprofit joint venture corporation created by two persons that is not deemed to be controlled under § 801.1(b)(1) because it does not issue voting securities, it does not distribute profits and it would disburse assets widely in the event of dissolution. If the power to appoint directors of this venture is split evenly between the two persons that formed the entity, such an entity can be deemed controlled solely as a result of the contractual right to appoint directors. There is no reason to treat the control of this corporation differently from a corporation in which the voting shares are split evenly. Both rights are likely to result in an evenly divided board of directors. Accordingly, the amended rule deems an entity to be controlled by a person that has a contractual right to appoint 50 percent or more of the "directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions."

As noted in the discussion above, the Commission has experienced no problems administering its "50 percent or more of the outstanding voting securities" criterion. Even though that requires in appropriate circumstances more than one person to file as the ultimate parent entity of a single issuer, all persons required to file have been able to supply the information required. This experience appears to confirm the Commission's premise that if one person owns 50 percent of an entity it is at least in joint control of the entity. In the case of a person able to appoint 50 percent of a board of directors (or individuals exercising similar functions), it is even clearer that the entity cannot act without that person's assent. The Commission therefore has amended its rules so as to deem a person to control an entity if that person has the contractual right to appoint 50 percent or more of the board of directors (or of individuals exercising similar functions) of the entity.

This amendment similarly modifies a Commission staff informal interpretation of § 801.1(b). The Premerger Notification Office deems a corporation controlled if a person can designate a *majority* of the board as a result of both holding voting securities and having a contractual power to designate directors. In other words, in determining whether an entity is controlled pursuant to § 801.1(b)(2), the staff adds directors elected to the board as a result of holding voting securities to directors designated as a result of a contractual power. Under the amendment, the staff will deem the entity controlled by a person who, as a result of such combined rights, has the power to designate 50 percent or more of the directors.

Operation of the Control Rules

Amended § 801.1(b)(1)(ii) deems an entity to be controlled by a person entitled to 50 percent or more of the entity's profits, or by a person entitled, upon dissolution, to 50 percent or more of the entity's assets. This provision does not apply if the entity has outstanding voting securities. The amendment thus creates two systems for determining control: One for entities that have outstanding voting securities, and another for all other entities.

These non-overlapping rules for determining control are each supplemented by the alternative—contractual power to designate—control concept. In other words, § 801.1(b)(1)(i) and § 801.1(b)(1)(ii) are mutually exclusive; an entity cannot be controlled both under paragraph (b)(1)(i) by a person that holds 50 percent of the voting securities issued by the entity and under paragraph (b)(1)(ii) by another person that has a right to 50 percent of the entity's profits. Because the entity had outstanding voting securities, paragraph (b)(1)(ii) does not apply; thus the entity would not be controlled on the basis of a right to profits or to assets upon dissolution. In contrast, under proposed paragraph (b)(2) the entity deemed controlled under (b)(1)(i) as a result of voting securities held by one person would be deemed also controlled under proposed paragraph (b)(2) by another person that had a contractual right to appoint 50 percent or more of the entity's board of directors.

Similarly, an entity that was deemed controlled under paragraph (b)(1)(ii), because a person had a right to 50 percent of its profits or assets, would also be deemed controlled under (b)(2) if another person had the right to appoint at least 50 percent of that entity's board of directors (or analogous body). This overlap would be quite rare, however. As explained above, the Commission staff concluded that partnerships do not possess "individuals exercising similar functions" to directors; therefore, paragraph (b)(2) applies only to other entities that do not have outstanding voting securities.

In addition, the 50 percent or more criteria in paragraphs (b)(1)(i) and (b)(2) means that under each paragraph two persons can be deemed to control an entity; and under paragraph (b)(1)(ii), four persons could conceivably control an entity, as two persons could each be entitled to 50 percent of the entity's profits and two different persons each be entitled to 50 percent of the entity's assets upon dissolution. It is, thus, theoretically possible that as many as six persons could be deemed to control one entity (four under (b)(1)(ii) plus two under (b)(2)). However, as Comment 3 notes, it would be extraordinary for an entity to allocate those incidents of ownership in such different percentages.

As described above, paragraph (b)(1)(ii) is intended to apply only in circumstances in which paragraph (b)(1)(i) does not apply; that is, it applies only to entities that have no outstanding voting securities. Typically, this means paragraph (b)(1)(i) applies to corporations and paragraph (b)(1)(ii) applies to non-corporate entities. It should be noted, however, that some corporations (for example, entities incorporated under not-for-profit statutes that do not issue voting securities) are subject to paragraph (b)(1)(ii). Similarly, some unincorporated entities (for example, joint stock companies) may have outstanding voting securities. For them, control is determined by paragraph (b)(1)(i).

For purposes of these rules, the fact that an entity issues securities that have some voting rights is not sufficient to deem them voting securities. Limited partnerships commonly issue certificates subject to the Securities Act of 1933 to limited partners. These partnership shares may be transferable and may entitle their holders to vote on a variety of matters, but typically the entities would not be subject to paragraph (b)(1)(i). The definition of "voting security" in § 801.1(f)(1) states that the holder of the security must be entitled "to vote for the election of directors of the issuer, or with respect to unincorporated entities, individuals exercising similar functions." Because most unincorporated entities do not have bodies analogous to boards of directors or do not elect the membership of such bodies, the securities are not "voting securities" within the meaning of the rules.

The rights to profits and to assets, upon dissolution, described in paragraph (b)(1)(ii) are ownership rights and not creditor rights. Thus, the right to assets, upon dissolution, means after all debt obligations have been satisfied. The right to profits is calculated after payment of any royalty, franchise fee or other expense based on income. Also, as Comment 3 notes, there may be instances in which profits are shared with employees in lieu of compensation, rather than as a return on investment. These compensation distributions should not be included in calculating the right to profits under paragraph (b)(1)(ii). Where parties are in doubt as to the manner in which they should calculate percentage rights to profits or to assets, upon dissolution, they should seek the advice of the Premerger Notification Office.

As is the case with other control provisions, a person deemed to control an entity under paragraph (b)(1)(ii) has attributed to it all the assets of the controlled entity. See § 801.1(c)(8). Thus if "A" controls pursuant to paragraph (b)(1)(ii) a partnership B (because "A" is entitled to 50 percent of B's profits, or 50 percent of B's assets upon dissolution), "A" must include the value of all of B's assets in determining the total assets of "A." "A" must include all of B's assets to determine whether it meets the minimum size criteria of section 7A(a)(2) of the act, even though "A" does not have a right to the other 50 percent of B's profits or assets. Furthermore, if B is entitled to 50 percent of the profits of partnership C, "A" will be deemed to control C also and also must include all the assets of C in determining the size of "A."

Finally, Comment 3 from the ABA Section of Antitrust Law raises three additional questions about these amendments: First, it asks whether the following transaction is exempt from reporting obligations: A person that controls a partnership acquires assets from the partnership. As a general matter, the Commission agrees it would be logical to exempt such transactions if acquisition of control of the partnership were a reportable event. However, as noted above, under current staff interpretations, acquisition of control is not normally a reportable event. Consequently, the Commission is not prepared now to exempt the asset acquisition. It will consider such an exemption as it considers making the acquisition of control of a partnership a reportable event.

Second, Comment 3 asks how to resolve the apparent conflict between the amended definition of control and the definition in § 801.1(c)(5), which states that the beneficiary of a trust (regardless of the percentage of its profits to which he is entitled) does not hold the assets of the trust. It is the Commission's intention that the control amendments, although adopted more recently, do not supersede the more specific treatment of trust assets mandated by § 801.1(c).

The Section of Antitrust Law also raises concerns that rapid implementation of the amendments might disrupt transactions that are nearing completion. For these reasons the section suggests the effective date of the amendments should be delayed for 60 or even 90 days after promulgation of the amendments. The Commission believes that its 35 day period is adequate to prevent disruption and that a longer period might invite the very abuses these amendments are intended to eliminate.

List of Subjects in 16 CFR Part 801

Antitrust.

Accordingly 16 CFR Part 801 is amended as set out below.

PART 801—COVERAGE RULES

1. *Authority.* The authority for Part 801 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. 94–435, 90 Stat. 1390.

2. Section 801.1 is amended by revising the introductory text of paragraph (b), paragraphs (b) (1) and (2), and by designating the existing example as example (1), and adding new examples (2) through (4), as set forth below.

§ 801.1 Definitions.

* * * * *

(b) *Control.* The term "control" (as used in the terms "control(s)," "controlling," "controlled by" and "under common control with") means:

(1) *Either.* (i) Holding 50 percent or more of the outstanding voting securities of an issuer or

(ii) In the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Examples 1. * * *

2. A statutory limited partnership agreement provides as follows: The general partner "A" is entitled to 50 percent of the partnership profits, "B" is entitled to 40 percent of the profits and "C" is entitled to 10 percent of the profits. Upon dissolution, "B" is entitled to 75 percent of the partnership assets and "C" is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by subparagraph (1)(ii) of this paragraph. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions" as required by § 801.1(f)(1) below. Thus control of a partnership is not determined on the basis of either subparagraph (1)(i) or (2) of this paragraph. Consequently, "A" is deemed to control the partnership because of its right to 50 percent of the partnership's profits. "B" is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

3. "A" is a nonprofit charitable foundation that has formed a partnership joint venture with "B," a nonprofit university, to establish C, a nonprofit hospital corporation that does not issue voting securities. Pursuant to its charter all surplus revenue from the hospital in excess of expenses and necessary capital investments is to be disbursed evenly to "A" and "B." In the event of dissolution of the hospital corporation, the assets of the hospital are to be contributed to a local charitable medical facility then in need of financial assistance. Notwithstanding the hospital's designation of its disbursement funds as surplus rather than profits to maintain its charitable image, "A" and "B" would each be deemed to control C, pursuant to § 801.1(b)(1)(ii), because each is entitled to 50 percent of the excess of the hospital's revenues over expenditures.

4. "A" is entitled to 50 percent of the profits of partnership B and 50 percent of the profits of partnership C. B and C form a partnership E with "D" in which each entity has a right to one-third of the profits. When E acquires company X, "A" must report the transaction (assuming it is otherwise reportable). Pursuant to § 801.1(b)(1)(ii), E is deemed to be controlled by "A," even though "A" ultimately will receive only one-third of the profits of E. Because B and C are considered as part of "A," the rules attribute all profits to which B and C are entitled (two-thirds of the profits of E in this example) to "A."

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87–12256 Filed 5–28–87; 8:45 am]

BILLING CODE 6750–01–M