(2) The affidavit required by this paragraph must also state the good faith intention of the person filing notification to make the acquisition, and, in the case of a tender offer, that the intention to make the tender offer has been publicly announced.

Example: 1. This paragraph permits the tender offeror to file notification at any time after the intention to make the tender offer has been publicly announced.

In examples 2–5 assume that one percent of B's shares are valued at $15 million.

2. ''A'' holds 100,000 shares of the voting securities of Company B. ''A'' has a good faith intention to acquire an additional 900,000 shares of Company B's voting securities. ''A'' states in its notice to B, inter alia, that as a result of the acquisition it will hold 1,000,000 shares. If 1,000,000 shares of Company B represent 20 percent of Company B's outstanding voting securities, the statement will be deemed by the enforcement agencies a notification for the $100 million threshold.

3. Company A intends to acquire voting securities of Company B. ''A'' does not know exactly how many shares it will acquire, but it knows it will definitely acquire $51 million worth and may acquire 50 percent of Company B's shares. ''A''s notice to the acquired person would meet the requirements of § 803.5(a)(1)(iii) if it states, inter alia, either: ''Company A has a present good faith intention to acquire $51 million of the outstanding voting securities of Company B, and depending on market conditions, may acquire more of the voting securities of Company B and thus designates the 50 percent threshold,'' or ''Company A has a present good faith intention to acquire $51 million of the outstanding voting securities of Company B, and depending on market conditions may acquire 50 percent or more of the voting securities of Company B.'' The Commission would deem either of these statements as intending to give notice for the 50 percent threshold.

4. ''A'' states, inter alia, that, ''depending on market conditions, it may acquire 100 percent of the shares of B.'' ''A'''s notice does not comply with § 803.5 because it does not state an intent to meet or exceed any notification threshold. ''A'' 's filing will be considered deficient within the meaning of § 803.10(c)(2).

5. ''A'' states, inter alia, that it has commenced a tender offer for ''up to 55 percent of the outstanding voting securities of Company B.'' ''A'' 's notice does not comply with § 803.5 because use of the term ''up to'' does not state an intent to meet or exceed any notification threshold. The filing will therefore be considered deficient within the meaning of § 803.10 (c)(2).

(3) The affidavit required by this paragraph must have attached to it a copy of the written notice received by the acquired person pursuant to paragraph (a)(1) of this section.

(b) *Non-section 801.30 acquisitions.* For acquisitions to which § 801.30 does not apply, the notification required by the act shall contain an affidavit, attached to the front of the notification, attesting that a contract, agreement in principle or letter of intent to merge or acquire has been executed, and further attesting to the good faith intention of the person filing notification to complete the transaction.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34439, July 29, 1983; 52 FR 7082, Mar. 6, 1987; 66 FR 8695, Feb. 1, 2001]

§ 803.6 Certification.

(a) The notification required by the act shall be certified:

(1) In the case of a partnership, by any general partner thereof;

(2) In the case of a corporation, by any officer or director thereof;

(3) In the case of a person lacking officers, directors, or partners, by any individual exercising similar functions;

(4) In the case of a natural person, by such natural person or his or her legal representative;

(5) In the case of the estate of a deceased natural person, by any duly authorized legal representative of such estate.

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(e) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form, completed in accordance with paragraph (a) of this section by the person or individual to whom it was directed.

(c) In all cases, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

[43 FR 33548, July 31, 1978, as amended at 48 FR 34429, July 29, 1983]

§ 803.7 Expiration of notification.

Notification with respect to an acquisition shall expire 1 year following the expiration of the waiting period. If the acquiring person's holdings do not,

within such time period, meet or exceed the notification threshold with respect to which the notification was filed, the requirements of the act must thereafter be observed with respect to any notification threshold not met or exceeded.

Example: A files notification that $125 million of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, A has acquired only $95 million of B's voting securities. Although § 802.21 will permit ''A'' to purchase any amount of B's voting securities short of $100 million within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the $100 million notification threshold without ''A'' and ''B'' again filing notification and observing a waiting period.

[43 FR 33548, July 31, 1978, as amended at 66 FR 8695, Feb. 1, 2001]

§ 803.8 Foreign language documents.

(a) Whenever at the time of filing a Notification and Report Form there is an English language outline, summary, extract or verbatim translation of any information or of all or portions of any documentary materials in a foreign language required to be submitted by the act or these rules, all such English language versions shall be filed along with the foreign language information or materials.

(b) Documentary materials or information in a foreign language required to be submitted in responses to a request for additional information or documentary material shall be submitted with verbatim English language translations, or all existing English language versions, or both, as specified in such request.

[48 FR 34440, July 29, 1983]

§ 803.9 Filing fee.

(a) Each acquiring person shall pay the filing fee required by the act to the Federal Trade Commission, except as provided in paragraphs (b) and (c) of this section. No additional fee is to be submitted to the Antitrust Division of the Department of Justice.

Examples: 1. ''A'' wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is $64 million, pursuant to § 801.10. When ''A'' files notification for the transaction, it must indicate the $50 million threshold and pay a filing fee of $45,000 because the aggregate total amount of the acquisition is less than $100 million, but greater than $50 million.

2. ''A'' acquires $40 million of assets from ''B.'' The parties meet the size of person criteria of Section 7A(a)(2)(B), but the transaction is not reportable because it does not exceed the $50 million size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at $90 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii), the aggregate total amount of ''B's'' assets that ''A'' will hold as a result of the second acquisition is $130 million. Accordingly, when ''A'' files notification for the second transaction, ''A'' must indicate the $100 million threshold and pay a filing fee of $125,000 because the aggregate total amount of the acquisition is less than $500 million, but not less than $100 million.

3. ''A'' acquires $60 million of voting securities issued by B after submitting its notification and $45,000 filing fee and indicates the $50 million threshold. Two years later, ''A'' files to acquire additional voting securities issued by B valued at $50 million because it will exceed the next higher reporting threshold (see § 801.1(h)). Assuming the second transaction is reportable and the value of its initial holdings is unchanged (see § 801.13(a)(2) and 801.10(c)), the provisions of § 801.13(a)(1) require that ''A'' report that the value of the second transaction is $110 million because ''A'' must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. ''A'' should pay a filing fee of $125,000.

4. ''A'' signs a contract with a stated purchase price of $110 million, subject to adjustments, to acquire all of the assets of ''B.'' If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegee must also determine in good faith the fair market value. (§ 801.10(b) states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) ''A'' files notification and submits a $45,000 filing fee. ''A''s decision to pay that fee may be justified on either of two bases, and ''A'' should submit an attachment to the Notification and Report Form explaining the valuation. First, ''A'' may have concluded that the acquisition price can be reasonably estimated to be $98 million, because of anticipated adjustments—e.g., based on due diligence by ''A's'' accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be