

HIGHLIGHTS OF PROPOSED RULE CHANGES

Rule No.	The Current Rule	The Proposed Rule	Purpose of Change
801.1(b) Definition of Control	Provides for two tests of control for unincorporated entities.	Would remove the second test of control for unincorporated entities by deleting the reference to unincorporated entities in subpart 2.	Would insure that an acquisition involving an unincorporated entity is reportable only when control is acquired through an acquisition of non-corporate interests which confer the right to profits or assets upon dissolution of the entity, not when obtaining the right to designate individuals exercising functions similar to those of directors of a corporation, such as the management committee of an LLC.
801.1(f) Definition of Non-Corporate Interest	N/A - New Rule	Would Define the new term "non-corporate interest".	Would formalizes the definition of an interest in an entity other than a corporation. Used throughout the proposed rules.
801.2(d) Consolidation	Covers only consolidations of corporations.	Would cover all combinations of existing entities into a new parent.	Would codify existing staff informal interpretations by extending coverage to non-corporate entities. Would also formalize the position that entities combining into a new parent need not lose their pre-consolidation identities if they become wholly-owned subsidiaries of the new parent. Would extend coverage to dual-listing arrangements.
801.2(f)(1) Acquiring and Acquired Person in Acquisitions of Non-Corporate Interests	N/A - New Rule	Would define when a potentially reportable acquisition of non-corporate interests has occurred and identifies who the acquiring and acquired persons are.	801.2(f)(1) would provide that an acquisition occurs at the time non-corporate interests which confer control of an unincorporated entity are acquired. At this point the person who controls the entity is deemed to hold all of the assets of the entity. Thus the proposed rules would shift reporting from when 100% of the interest in an unincorporated entity is received to the more significant point when control is obtained.

Rule No.	The Current Rule	The Proposed Rule	Purpose of Change
801.2(f)(2) Acquiring and Acquired Person in Acquisitions of Non- Corporate Interests	N/A - New Rule	Would define when a potentially reportable acquisition of non-corporate interests has occurred and identifies who the acquiring and acquired persons are.	801.2(f)(2) would clarify that a contribution of assets or voting securities to an existing unincorporated entity is an acquisition by that entity and that such a transaction would not be governed by new Section 801.50, even if all or part of the consideration is interests in the entity. This would reverse the current position with regard to LLCs.
801.2(f)(3) Acquiring and Acquired Person in Acquisition of Not-For- Profit Corporation	N/A - New Rule	Would formalize that acquiring control of a not-for-profit corporation is an acquisition.	801.2(f)(3) would codify a longstanding informal position that acquiring the right to designate 50 percent or more of the board of directors of a not-for-profit corporation is an acquisition of all of the underlying assets of such an entity.
801.4 Secondary Acquisitions	Covers only secondary acquisitions that result from acquisitions of a controlling interest in a corporation.	Would expand coverage to secondary acquisitions that result from acquisition of a controlling interest in any entity.	Would elevate substance over form by conforming the rule to cover any type of legal entity.
801.10 (d) Valuation of Interests in Non- Corporate Entities	N/A - New Rule	Would define how to value an acquisition of a controlling interest in an unincorporated entity.	Would conform the valuation of an acquisition of non-corporate interests to the valuation of an acquisition of voting securities in a non-publicly traded corporation rather than treating such a transaction as a stand-alone acquisition of assets.
801.13(b) Aggregation of Assets	Only requires aggregation if the earlier transaction has closed.	Would require aggregation if the earlier transaction has been closed or is still pending.	Would amend 801.13(b) to correct a 1978 drafting oversight which conditions aggregation on the earlier transaction having been consummated. The proposed rule would aggregate assets under an earlier agreement with assets in a new agreement, whether the earlier transaction has closed or is still pending.
801.13(c) Aggregation of Non-Corporate Interests	N/A - New Rule	New rule would define aggregation of non-corporate interests.	Proposed 801.13(c) would require aggregation of any non-corporate interests already held with non-corporate interests to be acquired in the same entity.

Rule No.	The Current Rule	The Proposed Rule	Purpose of Change
801.15(d) Aggregation of Previously Exempt Assets and Voting Securities	N/A - New Rule	Would require aggregation of sales in or into the U.S. when foreign assets and voting securities of foreign issuers are acquired from the same UPE.	Would correct a drafting error resulting from the 2001 reorganization of the foreign exemptions. As a result of changing organization of the rules from who the acquiring person is (foreign or U.S.) to type of acquisition (assets or voting securities), the existing rule does not require aggregation of sales attributable to foreign assets with sales attributable to foreign issuers being acquired in the same transaction to determine whether the nexus with U.S. commerce test is satisfied.
801.50 Formation of Unincorporated Entities	N/A - New Rule	Would make the formation of a non-corporate entity reportable if there is an acquisition of a controlling interest by one or more of the forming parties.	<p>Under the current rules, the formation of any non-corporate entity is non-reportable with the exception of the formation of certain LLCs where two existing businesses are combined and at least one person controls the new LLC.</p> <p>The proposed rule would conform with the existing rule covering formations of new corporations with one exception - the requirement that at least one person acquires a controlling interest in the formation. This is consistent with any potentially reportable acquisition of non-corporate interests.</p>
802.2 (g) Exemption of Agricultural Real Property	Includes timberland in the exemption.	Would exclude timberland from the exemption.	Would correct an unintentional expansion of the exemption as a result of introducing NAICS codes to replace SIC codes. Agricultural SIC group 08 did not include timberlands. New NAICS sector 11 does include timberlands in the agricultural sector.
802.4 Acquisitions of voting securities of issuers or non-corporate interests in unincorporated entities holding certain assets the acquisition of which is exempt.	Exempts acquisitions of voting securities of issuers which only hold assets exempted under certain real property and ordinary course of business exemptions.	Would exempt acquisitions of voting securities or non-corporate interests in entities which hold assets exempted under any of the exemptions in Part 802 of the rules or Section (c) of the Act.	Would expand coverage of the exemption to cover any acquisition of either voting securities or non-corporate entities that results in holding any assets which would be exempt if directly acquired.

Rule No.	The Current Rule	The Proposed Rule	Purpose of Change
802.10(b) Reorganizations	N/A New Rule	Would exempt the pro-rata conversion of one form of legal entity to another form.	Would codify longstanding informal interpretation that exempts pro-rata reorganization of corporations (for example, reincorporation in a new jurisdiction). Would also expand this exemption to include non-corporate entities.
802.30(a) Intraperson Transactions	Exempts transactions where the acquiring and acquired person are the same person through the holding of voting securities.	Would exempt transactions where the acquiring and acquired person are the same through any test of control except the contractual right to designate directors.	Would expand the exemption to cover intraperson transactions involving non-corporate entities. Currently the transfer of assets from a non-corporate entity to another entity under common control is not exempt. Also the transfer of assets from a non-corporate entity to a person which controls it is not exempt. The proposed change would exempt such transactions.
802.30 (c) Intraperson Transactions	N/A - New Rule	Would exempt assets contributed to the formation of a new entity with respect to the person contributing those assets.	Would insure that there is no filing requirement when the only assets contributed to the formation that are not exempt are contributed by the person who holds those assets prior to the formation. For example, A contributes a plant valued at \$200 MM to a new 50-50 entity. B contributes \$200 MM in cash. Under the current rules, A would be required to file, even though the only non-cash asset in the NEWCO is the plant which A held prior to the formation. Under this proposed amendment, only B would be required to file since it will now hold the plant through control of the NEWCO that was previously held by A.
802.40 Exempt Formation of Corporations or Unincorporated Entities	Exempts an acquisition of voting securities in the formation of a not-for-profit corporation.	Would exempt any acquisition of interests in the formation of a corporate or unincorporated not-for-profit entity.	The vast majority of not-for-profit corporations do not issue voting securities limiting the scope of the exemption. The proposed amendment would cover the formation of not-for-profit corporation which issue voting securities as well as those which do not. The exemption would also be expanded to cover the formation of unincorporated not-for-profit entities.
802.41 Corporations or Unincorporated Entities at the time of formation.	Eliminates the need for a to-be-formed corporation to report as the acquired person.	Would eliminate the need for a to-be-formed corporation or unincorporated entity to report as the acquired person.	Would conform the treatment of corporations and unincorporated entities.

Rule No.	The Current Rule	The Proposed Rule	Purpose of Change
802.65 Exempt Acquisition in Formation of Unincorporated Entity	N/A - New Rule	Would exempt the acquisition of a controlling interest in the formation of a new unincorporated entity which is being formed in connection with a financing transaction.	Unincorporated entities such as LLCs and partnerships are often formed to effect a financing transaction. In such an arrangement, the investor will often take a preferred return on the profits of the entity until it recoups its investment. During this period, the investor is deemed to control the entity under the HSR rules since it has a right to more than 50% of the profits. The proposed rule would exempt such a transaction if the investor is only contributing cash in the ordinary course of its business, will no longer control the entity after it recovers its investment, and is not a competitor of the new entity.