Program; 83.548, Hazard Mitigation Grant Program)

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1361–DR]

Washington; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1361–DR), dated March 1, 2001, and related determinations.

EFFECTIVE DATE: March 16, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 1, 2001:

Grays Harbor for Public Assistance (already designated for Individual Assistance).
Skagit County for Individual Assistance and Public Assistance.
Cowlitz, Island, Jefferson, Pacific, Skamania, Wahkiakum, and Yakima Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Robert J. Adamcik,

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FEDERAL RESERVE SYSTEM

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, March 28, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://

December 2, 1998, the effective date of this Interpretation was postponed until February 1, 1999, to give the PNO staff more time to analyze and respond to the comments. 63 Fed Reg 66546 (December 2, 1998).

Formal Interpretation 15 was modified in response to the comments and republished on February 5, 1999. 64 FR 5808 (February 5, 1999). Under the revised Interpretation, the formation of an LLC which combines under common control in the LLC two or more pre-existing businesses will be treated as subject to the requirements of the HSR act under § 801.2(d) of the HSR rules, 16 CFR 801.2(d), which governs mergers and consolidations. Because Formal Interpretation 15 had been modified substantially, the effective date of the Interpretation was postponed until March 1, 1999. Id.

Shortly after the Interpretation became effective, it became apparent that the Interpretation as it applies to transactions involving existing LLCs did not give clear guidance. The section of the Interpretation dealing with acquisitions of and by existing LLCs was therefore amended in a number of respects to explain how such transactions are to be analyzed. First, the first full paragraph in the third column at 64 FR 5809 (February 5, 1999) was deleted. Second, the four paragraphs in the notice which begin with the phrase ''The acquisition of a membership interest in an existing LLC will be potentially reportable event * * *.'' and end with the phrase ''* * * whether there is a change in any member's membership interest.'' was inserted between the carryover paragraph and the first full paragraph in the second column at 64 FR 5810. Third, Example 2, at 64 FR 5811, was revised in a number of respects. Fourth, a new Example 3 was added, and current Examples 3 and 4 at 64 FR 5811 were renumbered as Examples 4 and 5. Fifth, a new Example 6 was added, and current Examples 6–8 at 64 FR 5811 were renumbered as Examples 8–10. Finally, current Example 8 (now Example 10) was revised in a number of respects.

The most recent amendments to Formal Interpretation 15 merely reflect the changes in the statutory size-of-transaction test and size-of-person test, and the resultant repeal of 16 CFR 802.20

The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, prior to consummation. Under the rules, certain types of transactions, such as mergers, consolidations, and the formation of corporate joint ventures, are treated as acquisitions of voting securities potentially subject to the act, while other transactions, such as the formation of partnerships, are deemed non-reportable. See §§ 801.2(d) and 801.40 of the rules, 16 CFR 801.2(d) and 801.40.

The LLC [(1)] is a relatively new form of business organization that is neither a partnership nor a corporation but a hybrid legal entity that combines certain desirable features of both partnerships and corporations. Specifically, an LLC is taxed as a partnership but shields its members from liability as a corporation shields its shareholders. The first LLC statute was passed in 1977 by Wyoming [(2)] and a trickle of other states followed. The use of LLCs expanded significantly after 1988 when the Internal Revenue Service (''IRS'') concluded that an LLC organized under the Wyoming statute was taxable as a partnership.[(3)] By 1993 all 51 jurisdictions had LLC laws of one form or another.

When it first encountered these types of organizational structures, the PNO concluded that as ''companies'' LLCs are ''entities'' within the meaning of § 801.1(a)(2), 16 CFR 801.1(a)(2), and that, until it had more experience with them, the PNO would treat LLCs like corporations. Initially, therefore, § 801.40 of the rules, 16 CFR 801.40, ''Formation of joint venture or other corporations,'' governed the formation of LLCs and an interest in an LLC was treated as a voting security for HSR purposes.

On further analysis, the PNO concluded that this initial approach was too inclusive. LLCs at the time were primarily used as vehicles for the creation of start-up businesses. The PNO's treatment of LLCs resulted in requiring HSR filings in a large number of transactions that did not raise antitrust concerns. Furthermore, the PNO believed that in most LLCs the interest held by the members of the LLC was more like a partnership interest than a voting security interest. Consequently, in 1994, the PNO began to informally advise parties that the treatment of LLCs for reporting purposes would depend on a determination of whether the interest acquired in the LLC was more like a voting security interest or more like a partnership interest.[4]

This treatment of LLCs has not been completely satisfactory. The use of LLCs has evolved, and while LLCs continue to be used as vehicles for start-up enterprises, they are now often used to combine competing businesses under common control. Indeed, the Commission's litigation staff has investigated several transactions raising potential antitrust concerns involving the formation of LLCs. In these transactions, previously separate businesses were combined under common control when they were both contributed to a single, newly-formed LLC. Nevertheless, the creation of the LLC to combine competing businesses under common control was typically not treated as reportable under the PNO's then-current treatment. However, the union of competing businesses under common control is of obvious potential antitrust concern. Since the past treatments of LLCs have not been satisfactory at singling out those transactions that were the most likely to have anticompetitive effects, the PNO staff has decided to revise its approach to LLCs in order to better carry out the purposes of the act.

The formation of an LLC into which two or more businesses are contributed, like other unions of businesses under common control, is a kind of merger or consolidation.[5] Section 801.2(d)(1)(i) of the rules, 16 CFR 801.2(d)(1)(i), states that ''[m]ergers and consolidations are transactions subject to the act * * *'' [6]

[1] This Formal Interpretation applies only to the reportability of the formation of certain LLCs. The position of the FTC staff on the status and treatment under the act of other non-corporate entities such as partnerships remains unchanged.

[2] Wyo. Stat. section 17–15–101 to 135 (Supp. 1989).

[3] Rev. Rul. 88–76, 1988–2 C. B. 360 361.

[4] Specifically, the formation of an LLC was treated as potentially reportable only if the LLC had a group that functioned like a board of directors and the LLC ownership interest resulted in the holders appointing person(s) other than their employees, officers, or directors (or those of entities controlled by such holder or its ultimate parent entity to that group. In such cases, the LLC interest was treated as a voting security interest. In all other instances, LLC interests were treated as partnership interests and the acquisition of these interests was not reportable (unless the acquiring person would hold 100 percent of the interests as a result of the acquisition).

[5] While combining businesses in an LLC may not be a ''merger'' or ''consolidation'' in the strictest sense because they do not involve corporations, the rationale of this interpretation is similar to that used by the PNO under § 801.2(d) to require filing for acquisitions of non-profit corporations which, like LLCs, typically do not issue voting securities. (See ABA, The Premerger Notification Practice Manual, 1991 ed., Interp. #109.)

[6] In fact, as it was originally promulgated in 1978, § 801.2(d)(1)(i), 16 CFR 801.2(d)(1)(i), stated that ''[a] merger, consolidation, or other transaction combining all or any part of the business of two or more persons shall be an acquisition subject to the act * * *'' (emphasis added) 43 FR 33539, July 31, 1978. In 1983, this section was changed to clarify

only those businesses that they come to control as a result of the transaction.

[10] There is no evidence to suggest now that LLC formations where only one business is contributed are being used to accomplish a merger or consolidation of two businesses. However, the PNO will look carefully at these transactions in the future and, if they begin to be used to accomplish a merger or consolidation, will re-visit this issue.

b. ''A'' contributes a business, ''B'' contributes cash, and their interests change so that ''A'' has 61 percent and ''B'' has 39 percent. This is a new formation because of the changes in the membership interests but it is not reportable because two or more separately controlled businesses are not being contributed, as ''A'' controlled both businesses before the transaction.

c. ''B'' contributes a business, ''A'' contributes cash, and their interests change so that ''A'' has 59 percent and ''B'' has 41 percent. This is also a new formation. ''A'' will file to acquire the business being contributed by ''B.''

d. ''B'' contributes a business and the membership interests change so that ''B'' has 60 percent and ''A'' has 40 percent. This is a new formation, and ''B'' would file to acquire the business contributed by the LLC. ''A,'' as the ultimate parent entity of the existing LLC, would file as the acquired person.

e. ''C'' contributes assets not constituting a business and the percentage interests are adjusted so that ''A'' has 50 percent, ''B'' has 30 percent, and ''C'' has 20 percent. This is not a new formation because the assets being contributed are not a business. ''A,'' as ultimate parent entity of the LLC, will file to acquire these assets from ''C.''

4. ''A'' and ''B'' form a new LLC, to which ''A'' will contribute its widget business and ''B'' will contribute cash for operating capital. This formation would not be reportable because two previously separate businesses are not being contributed to the LLC.

5. ''A,'' ''B,'' and ''C'' form a 60–20–20 LLC to which ''A'' contributes cash and receives a 60 percent membership interest and ''B'' and ''C'' each contribute an operating unit for a 20 percent interest. This is a kind of a consolidation of ''B's'' and ''C's'' operating units into the new LLC and ''A'' will control the LLC. There are two reportable transactions (assuming the size criteria are met and no exemption applies): ''A'' acquiring the operating unit contributed by ''B,'' and ''A'' acquiring the operating unit contributed by ''C.''

6. In year 1, ''A,'' ''B,'' and ''C'' form a new LLC to which each contributes a business and takes back a one-third membership interest. In year 4, the LLC acquires all the voting securities of another business from ''D'' in exchange for certain assets not constituting a business. This acquisition would not be analyzed as the formation of a new LLC because no member's percentage interest changes as a result of the transaction. Rather, the LLC would be viewed as acquiring the voting securities of the new business from ''D.'' This transaction will be reportable if the size criteria are met and no exemption applies. ''/F5 1 Tf1.056 0 TD( )Tj/F11 1 Tf0.556 0 TD( )Tj/F5 1 Tf1.6961 6 0 TD( )Tj/F5 1 Tf1.69