

From: [REDACTED]
To: "Alice Villavicencio" <avillavicencio@ftc.gov>
Date: 3/28/02 10:48AM
Subject: RE: Divestitures

*Transmittal
Rules 803
Item 5 of FORM*

Thanks, Alice for confirming my interpretation.

[REDACTED]

-----Original Message-----

From: Alice Villavicencio [mailto:avillavicencio@ftc.gov]
Sent: Thursday, March 28, 2002 9:28 AM
To: [REDACTED]
Subject: Re: Divestitures

Dear Ms. [REDACTED]

I have been asked by Marian Bruno to respond to your E-Mail of 3/27/2002. You are correct in stating that the revenues and the NAICS codes of an entity that was divested in 2001 would not appear in any part of Item 5 of Form since that entity is not within the "Person" at the time of filing Notification. The same would hold true for the disposition of "substantially" all the assets of an entity.

Further, you would not complete Item 5(b)(ii) if you divested an entity or disposed of "substantially" all the assets since 1997 to the time of filing Notification. However, you would list the 10-digit NAICS code (or the usually method you use of describing the specific manufactured product) and provide the revenues for any product you deleted since 1997 if you only sold a portion of the assets of an entity and that portion would not constitute "substantially" all of the assets of that entity.

If the Company began making a new product since 1997, information for that new product would be given in Item 5(b)(ii) of the Form. If an entity has been acquired since 1997, the description of the products it makes or services, etc. it provides (NAICS codes), and the revenues it generated in 1997 would be given in Item 5(a), and if it is a manufactured product, information would be provided in Items 5(b)(i) and Item 5(b)(iii) of the Form. Also, if the entity is engaged in non-manufacturing activities those activities (NAICS codes) and the revenues generated by those activities would be listed in Items 5(a) and 5(c) of the Form.

If you want to discuss this issue further, please do not hesitate to call me at (202) 326-3155. You may also E-Mail me.
Thank you.

>>> [REDACTED] 3/27/02 3:20 PM >>>
Hi Marian,

I am preparing a database of 2001 revenues for item 5 to be used in any HSR filings (if any) that my company may do. The paragraph below is from the "tips for completing item 5" on your website. From my reading of it, if we divested an entity in 2001, both the 2001 revenues and the 1997 base year revenues for that divested entity should be excluded from item 5. Is that correct? The wording below (in bold) is somewhat confusing as it talks about item 5 (b) (ii), the adds and deletes, and then it talks about excluding "information" for the entity as opposed to excluding revenues. Could you please confirm or correct my interpretation. Thanks.

The instructions for item 5 require that persons filing notification include revenues for the base year derived by all entities included within the person filing notification at the time the filing is prepared (even if such entities have become included within the person since the base year). This is also true of the most recent year. If the entity acquired since the base year derived revenues from manufacturing, those manufacturing NAICS codes are not reflected in item 5(b)(ii) as products added. If an entity has been divested since the base year (either by loss of a controlling interest or sale of substantially all of the assets of that entity), notwithstanding the language to the contrary in the instructions for item 5 (b) (ii), no information is provided for that entity anywhere in item 5.

