

**Supporting Statement for  
Hart-Scott-Rodino (Premerger Notification) Rules and Report Form  
16 C.F.R. Parts 801-803  
(OMB Control No. 3084-0005)**

The Federal Trade Commission (“FTC” or “Commission”) is seeking a straight extension of the current PRA clearance for information collection requirements contained in its Antitrust Improvements Act Rules (“HSR Rules”) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”), 16 CFR. Parts 801-803. That clearance expires on May 31, 2007.

1. and 2.      Necessity for and Use of the Information Collection

Section 7A of the Clayton Act (“Act”), 15 U.S.C. § 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, requires parties of a certain size contemplating large acquisitions to file notification with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (“Assistant Attorney General”) and wait a specified time period before consummating the transaction. Section 7A(d) of the Act states that the Commission, with the concurrence of the Assistant Attorney General:

shall require that the notification required under subsection (a) [of the Act] be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws; and . . . prescribe such other rules as may be necessary and appropriate to carry out the purposes of . . . [the Act].

Pursuant to its rulemaking authority, the Commission promulgated § 803.1(a) of the HSR Rules, among other rules, designating the Antitrust Improvements Act Notification and Report Form together with all documentary attachments, as the notification required by the Act. The information and documentary material required by the Notification and Report Form provide the Commission and the Antitrust Division with the opportunity to review mergers and acquisitions and take appropriate enforcement action before consummation.

The premerger notification program has been in effect since September 5, 1978, when the implementing rules became final. The HSR Rules are divided into three parts, which appear at 16 C.F.R. Parts 801, 802, and 803. Part 801 defines a number of the terms used in the Act and the HSR 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 HSR Rules. Changes of a substantive nature have been made in the premerger notification rules or the

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Notification and Report Form on a number of occasions.

3. Information Technology.

Consistent with the Government Paperwork Elimination Act, Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749, the Notification and Report Form is available electronically and payment may be made by electronic funds transfer. Furthermore, electronic submission of the Notification and Report Form was introduced in 2006.<sup>1</sup>

4. Efforts to Identify Duplication

Most of the information required by the Notification and Report Form is not available from other government agencies or public sources. Prior to passage of the Act, efforts were made to obtain information that is necessary for a preliminary antitrust analysis from other sources but these sources proved to be inadequate for law enforcement purposes. The information that was available was not the type of information needed nor was it available on a timely basis. It was the lack of alternative sources or information and the need to receive information quickly that motivated Congress to enact Section 7A.

5. Efforts to Minimize Small Organization Burden

The premerger notification program does not affect small businesses or other small entities. The requirements of the Act do not apply to acquisitions valued at \$50 million (as adjusted)<sup>2</sup> or less. In addition, a firm must have sales or assets of at least \$10 million (as adjusted) to be subject to the requirements of the Act. A firm with assets of less than \$10 million (as adjusted) would also be subject to the requirements of the Act, but only if it intends to acquire assets valued at more than \$200 million (as adjusted) or if it is an acquisition target that has been valued at more than \$200 million (as adjusted).

6. Consequences to Program if Collection Done Less Frequently

The Act requires parties of a certain size who are contemplating proposed acquisitions of a specified minimum amount to file a notification report with the Commission and the Antitrust Division before consummating the transaction. Collection of information on a less frequent basis would be contrary to the Act since the enforcement agencies must review proposed acquisitions

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<sup>1</sup> 71 FR 35995 (June 23, 2006).

<sup>2</sup> The 2000 amendments to Section 7A require the Commission to revise the Act's jurisdictional and filing fee thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5) for each fiscal year beginning after September 30, 2004. ( See 15 U.S.C. 18a(a). See Pub. L. 106-553, 114 Stat. 2762). The current adjusted thresholds can be found at 72 FR 2692 (January 22, 2007). These thresholds were effective on February 21, 2007.

before they are consummated. Moreover, individual firms, not the enforcement agencies, control the frequency of filing.

7. Circumstances Requiring Collection Inconsistent with Guidelines

The collection of information in the HSR Rules and the Notification and Report Form is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

8. Public Comments/Consultation outside the Agency

The HSR Rules and the Notification and Report Form are a product of informal consultations with the affected public to develop a fuller understanding of the issues and methods of addressing them. In the instant context, in accordance with 5 C.F.R. 1320.8(d), the FTC sought public comment in order to extend the existing the PRA clearance for the HSR Rules and the Notification and Report Form. See 72 FR 1531 (Jan. 12, 2007). No comments were received. Consistent with 5 C.F.R. 1320.12(c), the FTC is seeking comment again contemporaneous with this submission.

9. Payments of Gifts to Respondents

Not applicable

10. and 11. Assurances of Confidentiality/Matters of a Sensitive Nature

The enforcement agencies are prohibited by Section 7A(h) of the Act from disclosing to the public information and documentary materials filed under the premerger notification program “except as may be relevant to an administrative or judicial action or proceeding.” The Commission has implemented procedures to assure the confidentiality of the submitted information.

The Notification and Report Form does not request any information of a sensitive, personal nature that is commonly considered private.

12. Estimated Annual Hours Burden: 156,000 hours (rounded to the nearest thousand).

There have been two amendments to the HSR Rules and one amendment to the Notification and Report Form since staff last obtained OMB approval in January 2005:

a. Revised treatment of unincorporated entities under the HSR Rules.<sup>3</sup> This amendment changed previously existing reporting requirements. However, based on filing statistics from the

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<sup>3</sup> 70 FR 11502 (March 8, 2005)

effective date of the rulemaking, the amendment appears to have had a *de minimis* effect on the number of filings received and thereby has not impacted PRA burden.

b. Electronic submission of premerger notification filings.<sup>4</sup> Since the effective date of this rulemaking only one electronic submission has been made. FTC staff anticipates that as the business community becomes more familiar with the new submission process more persons will choose to e-file and that such persons will experience a one hour reduction in burden (the estimated time to print or make copies of the documents when filing the traditional way). However, due to the low volume of electronic filings, the availability of the e-filing system currently has a *de minimis* effect on burden and the FTC conservatively declines to reduce its burden estimate at this time.

c. Allowing Internet links to be used for responses to Items 4(a) and (b) of the Notification and Report Form.<sup>5</sup> Staff projects that 50 percent of non-index filings will utilize this alternative method of providing financial data, resulting in a reduction in burden of one hour per non-index filing.

Finally, since staff last obtained OMB approval, the switch of the base year from 1997 to 2002 became effective.<sup>6</sup> Arguably there is some burden involved in changing the revenue numbers from 1997 to 2002 for the base year. However, this data is reported by large companies to the U.S. Census Bureau every five years in the ordinary course of business and, thus, the FTC is not required to account for such burden under the PRA.<sup>7</sup> Furthermore, based on staff's informal consultations with industry, staff anticipates that any increase in burden would be offset by a reduction in burden because recent revenue data is generally more easily retrievable by and readily available to reporting persons than older data. Nonetheless, although it appears a reduction in burden may be warranted, staff conservatively declines to make an adjustment to its previous burden estimate on this basis.

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<sup>4</sup> 71 FR 35995 (June 23, 2006)

<sup>5</sup> 70 FR 73369 (December 12, 2005)

<sup>6</sup> The switch of the base year from 1997 to 2002 became effective December 30, 2005. 70 FR 77312 (December 30, 2005).

<sup>7</sup> See 5 CFR 1320.3(b)(2). Staff recognizes that the HSR Rules require companies to report total revenues for a specific NAICS code (whereas, the Census Bureau collects data for a specific NAICS code for each establishment). Nonetheless, staff anticipates that the burden tied to the aggregation of such data as required by the HSR Rules is *de minimis*.

<b>Filing category</b>	<b>(a) # FY 2007 Transactions (based on FY 2006)</b>	<b>(b) # Filings per transaction<sup>2</sup></b>	<b>(c) # Filings [(a) x (b)]</b>	<b>(d) Hours per filing<sup>3</sup></b>	<b>Total hours [(c) x (d)]</b>
(c)(6)/(c)(8) <sup>1</sup> ("index filings")	32	1	32	2	64
Non-index filings reduced for Item 4 incorporation by reference to a web site,	1,983	2	3,966	- .5	- 1,983
Non-index filings that require a more precise valuation	91	1	91	40	3,640
Non-index filings, all other	1,983	2	3,966	39	154,674
<b>Totals</b>	--	--	--	--	156,395

<sup>1</sup> Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these filings, which are included in the totals shown, but completing the task, as detailed further in the table below, requires significantly less time than non-exempt transactions.

<sup>2</sup> Assumptions: (1) Only 1 filing per transaction for (c)(6)/(c)(8) concerns; (2) Of the remaining 1,983 transactions, 1,892 require 2 filings each with another 4.6% (91) representing certain transactions which require a more precise valuation. (2) The FTC retains its previous estimate that 4.6% of non-index filings for acquiring persons will require a more precise valuation. Using staff's projections for fiscal year 2007, 91 transactions will undergo a more precise valuation process [(3,966 non-index filings / 2) = 1,983 (number of non-index filings for acquiring persons) x 4.6%]. (3) As stated above, staff estimates that allowing Internet links to be used for responses to Items 4(a) and (b) of the Notification and Report Form, 70 FR 73369 (Dec. 12, 2005), will result in a burden reduction of one hour per non-index filing. Staff projects that 50 percent of non-index filings will utilize this alternative method of providing financial data.

<sup>3</sup> Staff has estimated that, depending on a number of different factors (e.g., scope of the filing person's United States operations, the number of different industries in which the filing person is engaged, the firm's prior experience and familiarity with the premerger notification program), it takes anywhere from 8 to 160 hours to complete and file the Notification and Report Form. The average, based on historical experience, is approximately 39 hours. However, staff estimates that completing index filings averages approximately 2 hours, rather than 39 hours.

There were 3,510 non-index filings and 48 index filings in fiscal year 2006. Based on an average increase of 13% in fiscal year 2004 - fiscal year 2006 in the number of non-index filings, staff projects a total of 3,966 non-index filings for fiscal year 2007. Likewise based on an average decrease of 34% in index filings over the same time period, staff projects a total of 32

index filings for fiscal year 2007. Retaining the FTC's previous assumptions, staff estimates that non-index filings require approximately 39 burden hours per filing and index filings require an average of 2 hours per filing. Finally, staff continues to estimate that approximately 91 transactions will require an additional 40 hours of burden due to the need for a more precise valuation of transactions that are near a filing fee threshold.<sup>8</sup> Thus, the total estimated hours burden before adjustment is 158,378 hours [(3,966 non-index filings x 39 hours) + (32 index filings x 2 hours) + (91 acquiring person non-index filings requiring more precise valuation x 40 hours)]. Adjusting for the reduced burden due to incorporating Item 4(a) and Item 4(b) documents by reference to an Internet link reduces the total burden by 1,983 hours (3,966 non-index filings x .5 = 1,983 x 1 hour = 1,983 hours), resulting in total burden for fiscal year 2007 of 156,395 hours.

Using the burden hours estimated above, the total labor cost associated with the HSR Rules and the Notification and Report Form, based on a conservative estimated average of \$470/hour<sup>9</sup> for executives' and attorneys' wages, would be approximately \$73,506,000 (156,395 hours x \$470/hour).

### 13. Estimated Capital/Other Non-Labor Costs Burden

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Furthermore, the premerger notification program became effective in September of 1978; thus, law firms and companies presumably have already incurred any necessary start-up costs associated with filing the Notification and Report Form. Finally, although the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, staff believes this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

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<sup>8</sup> The FTC retains its previous estimate that 4.6% of non-index filings for acquiring persons will require a more precise valuation. Using staff's projections for fiscal year 2007, 91 transactions will undergo a more precise valuation process [(3,966 non-index filings / 2) = 1,983 (number of non-index filings for acquiring persons) x 4.6%].

<sup>9</sup> The FTC's previous estimate of \$425 per hour has been increased by the Social Security COLA percentage for fiscal year 2004 - fiscal year 2006 (fiscal year 2004 (2.7%), fiscal year 2005 (4.1%), fiscal year 2006 (3.3%)).

14. Estimate of Cost to Federal Government

The total cost to the Commission for the premerger notification program for fiscal year 2006 was approximately \$3.8 million. This includes the cost of administering the overall program, a responsibility with which the Commission is charged under the Act. The costs cover professional and clerical salaries and expenses for the performance of an initial antitrust review of the filings submitted to the Commission.

In fiscal year 2006, the Antitrust Division of the U.S. Department of Justice expended \$330,000 in salary and overhead costs in support of the initial processing of premerger notifications by its Premerger Office. The Department of Justice does not allocate costs of initial substantive review to the program.

Thus, the total cost to the federal government is approximately \$4,130,000.

15. Program Changes or Adjustments

The 72,375 increase in burden hours (from approximately 84,020 hours to 156,395 hours) is an adjustment due to an increase in the number of non-index filings.

16. Statistical Use of Information

Collection of information under the Act is for law enforcement purposes. There are no plans to publish information collected as a result of the premerger notification program.

17. Requesting Permission Not to Display Expiration Date for OMB Approval

Not applicable; the OMB control number and expiration date appears in the upper right-hand corner of page 1 of the Notification and Report Form.

18. Exceptions to Certification

Not applicable.