

**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 renewed clearance for the current PRA clearance for information collection requirements contained its Antitrust Improvements Act Rules (“HSR Rules”) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”), 16 C.F.R.. Parts 801-803. That clearance expires on May 31, 2010.

**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 Notification and Report Form on several occasions.

### **3. Use of 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 \$63.4 million<sup>2</sup> or less. In addition, a firm must have sales or assets of at least \$12.7 million to be subject to the requirements of the Act. A firm with assets of less than \$12.7 million would also be subject to the requirements of the Act, but only if it intends to acquire assets valued at more than \$253.7 million or if it is an acquisition target that has been valued at more than \$253.7 million.

### **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 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

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<sup>1</sup> 71 Fed. Reg. 35,995 (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). The current adjusted thresholds appear at 75 Fed. Reg. 3468 (January 21, 2010). These thresholds became effective on February 22, 2010.

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 75 Fed. Reg. 8991 (Feb. 26, 2010). No comments were received. Consistent with 5 C.F.R. 1320.12, 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: 33,298 hours**

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and staff's informal consultations with leading HSR counsel.

In the FTC's 2007 PRA submission to OMB regarding the HSR Rules and the Notification and Report Form, FTC staff estimated that there were 32 “index filings” under Clayton Act Sections 7A(c)(6) and 7A(c)(8) that required 2 hours per filing, and 3,966 non-index filings that required, on average, approximately 39 hours per filing. Moreover, staff estimated that approximately 91 non-index transactions would 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.

In fiscal year 2009 there were 1,411 non-index filings and 24 index filings. Based on an average decrease of 40.4% in fiscal year 2007 - fiscal year 2009 in the number of non-index filings, staff projects a total of 841 non-index filings for fiscal year 2010. Likewise, based on an average decrease of 18.4% in index filings over the same time period, staff projects a total of 20 index filings for fiscal year 2010. Retaining the FTC's prior 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. Moreover, staff estimates that for fiscal year 2010 approximately 22 non-index transactions will require an additional 40 hours of burden due to the need for more precise valuation of transactions that are near a filing fee threshold. Thus, the total estimated hours burden before adjustments is 33,719 hours [(841 non-index filings x 39 hours) + (20 index filings x 2 hours) + (22 acquiring person non-index filings requiring more precise valuation x 40 hours)].

As in the past, however, staff further estimates that half of those submitting non-index filings will incorporate Item 4(a) and Item 4(b) documents by reference to an Internet link, and that doing so will reduce individual burden by one hour. Accordingly, the cumulative reduction to the above total would be 421 hours (841 non-index filings x ½ 421, multiplied by 1 hour), resulting in net estimated burden for fiscal year 2010 of 33,298 hours.

This estimate is conservative. In estimating PRA burden, staff considered “the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.” 5 CFR 1320.3(b)(1). This includes “developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information.” 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB definitions regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are customarily used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA “burden.” See 5 CFR 1320.3(b)(2).

Industry has been subject to the basic provisions of the HSR Rules since 1978. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Accordingly, most companies now maintain records and provide updated order information of the kind required by the HSR Rules in their ordinary course of business. Nevertheless, staff conservatively assumes that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

**Estimated labor costs: \$15,317,080**

Using the burden hours estimated above and applying an estimated average of \$460/hour for executive and attorney wages, staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately \$15,317,080 (33,298 hours x \$460/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. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that 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.

**14. Estimated Cost to Federal Government**

The total cost to the Commission for the premerger notification program for fiscal year 2009 was approximately \$3.1 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 2009, the Antitrust Division of the U.S. Department of Justice expended \$297,913 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 \$3,397,913.

**15. Program Changes or Adjustments**

Owing to the downward trend in filings between fiscal year 2007 (coinciding with the most recent prior clearance request and approved estimates) and fiscal year 2009, burden hours estimates, based on projected filings, are proportionately reduced. Thus, the prior cumulative burden estimate of 156,395 hours (based on 3,966 non-index filings, 91 non-index filings requiring more precise valuation, and 32 index filings) is reduced to 33,298 hours (based on fiscal year 2010 projected totals of 841 non-index filings, 22 non-index filings requiring more precise valuation, and 20 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.