

**Supporting Statement for the
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”) seeks OMB clearance for the reporting requirements under its Hart-Scott-Rodino Antitrust Improvements Act Rules (“HSR Rules”) and corresponding Premerger Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”).

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 contemplating acquisitions of a certain size to file notification with the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (“Assistant Attorney General”) (together, the “Agencies”) 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 how to determine 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, 44 U.S.C. § 3504 note, 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 2006.¹ Due to technical reasons, however, electronic submission has been suspended. The Notification and Report Form may, however, be submitted on DVD.

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 of information and the need to receive information quickly that motivated Congress to enact Section 7A.

5. Efforts to Minimize Small Organization Burden

The Act and HSR Rules are designed to have minimal impact on small entities. First, for a transaction to trigger a reporting requirement under the Act, the transaction must be valued at more than \$50 million (as adjusted).² Such a high transaction threshold will typically not catch most transactions involving small entities. In addition, the Act requires that in cases where the transaction is valued at greater than \$50 million (as adjusted) but \$200 million or less (as adjusted), one party to the transaction must have at least \$10 million (as adjusted) in sales or assets and the other party must have at least \$100 million (as adjusted) in sales or assets in order to trigger reporting requirements.³

6. Consequences to Program if Collection Done Less Frequently

The Act requires parties 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.

¹ 71 Fed. Reg. 35,995 (June 23, 2006).

² 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 81 Fed. Reg. 4299 (Jan. 26, 2016), and became effective on February 25, 2016. Under these thresholds, a transaction must be valued in excess of \$78.2 million to meet the minimum size of transaction threshold.

³ As of February 25, 2016, for transactions valued in excess of \$78.2 million but less than or equal to \$312.6 million, one party must have sales or assets of at least \$156.3 million and the other party must have sales or assets of at least \$15.6 million for the transaction to be reportable.

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 public comments received in the rulemaking process and informal consultations with the affected public. 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 81 Fed. Reg. 53,484 (Aug. 12, 2016). No relevant 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. Additionally, 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: 168,486 hours

In fiscal year 2015, there were 3,585 non-index filings and just one index filing.⁴ Based on an average annual increase of 27% in fiscal years 2013 – 2015, FTC staff projects a total of 4,553 non-index filings in fiscal year 2016. With index filings not having demonstrated a singular direction over the same span, however, staff instead bases its estimate on a rough average of the number of such filings over that same interval (fiscal years 2013 – 2015) to project a total of 10 index filings for fiscal year 2016.⁵ Retaining most of its prior assumptions,⁶

⁴ 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 Agencies. Thus, parties must submit copies of these “index” filings, but completing the task requires significantly less time than non-exempt transactions (which require “non-index” filings). They are mentioned here to distinguish them from and to further explain a “non-index” filing.

⁵ Based on the current rate of such filings this year, as well as the actual number of such filings, respectively, in fiscal years 2014 and 2015, the above estimate likely well exceeds the eventual actual results for fiscal year 2016.

⁶ Since 2001, FTC staff’s calculation of total annual hours burden has included a separate calculation for an extra 3 hours per transaction for those transactions that require a more precise valuation to determine the applicable filing fee. This separate calculation was added following amendments to the Act, and rules implementing those

FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of 2 hours per filing.

Calculating the burden for auto-withdrawal of filings pursuant to § 803.12(b) of the HSR Rules requires an analysis of two potential scenarios. In one scenario, a filing is automatically withdrawn and the acquiring person utilizes the two-day resubmission process under § 803.12(c). In that case, no additional transaction is generated as the acquiring person simply restarts the waiting period on the same transaction. In the second scenario, the parties to a terminated transaction for which the filing is automatically withdrawn do not utilize the two-day resubmission process under § 803.12(c) but later decide to move forward with the transaction. In that case, a new filing is required. Both of these scenarios are rare, as it is very unlikely that a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' SEC filing indicating that the transaction has been terminated) would be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, i.e., a historical frequency of .067 transactions per year. FTC staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a historical frequency of .067 and two filings per transaction, this amounts to an annual average of 5 hours, rounded up, for a withdrawn transaction later refiled.

Thus, the total estimated hours burden before adjustments is 168,486 hours [(4,553 non-index filings x 37 hours/each) + (10 index filings x 2 hours/each) + (1 withdrawn transaction later refiled x 5 hours)].

Associated Labor Costs: \$77,503,560

Using the burden hours (168,486) estimated above and applying an estimated average of \$460/hour for executive and/or attorney compensation, staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately \$77,503,560.

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

amendments, that created a graduated filing fee schedule based on the value of the transaction. At the time, staff estimated that some transactions the exact value of which is uncertain but close to a filing fee threshold might require a more precise valuation to determine the applicable filing fee. Based on staff's experience since those amendments went into effect, however, in only very few cases would the parties actually need to conduct a more precise valuation in order to determine the filing fee. Staff estimates that this added 3-hour burden affects no more than 1% of filings, if any. To simplify the overall burden calculation, staff has decided to remove the separate calculation for conducting a more precise transaction valuation for threshold transactions and to incorporate any such additional burden into the overall average per filing burden calculation, which already accounts for a wide variation in burden hours among different filers and transactions. Because the "more precise valuation" burden is small and affects very few transactions, the estimated average hourly burden per filing remains at 37 hours.

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 2016 was approximately \$3.36 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 2016, the Antitrust Division of the U.S. Department of Justice expended approximately \$474,700 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 \$3,834,700.

15. Program Changes or Adjustments

The large increase in estimated burden (an increase from 56,423 hours to 168,486 hours) is attributable to two factors: (1) a projected estimate of non-index filings tied to average annual increases of 27% in recent fiscal years; and (2) filing estimates based on the number of filings received, not the number of transactions reported. The second factor results in roughly a doubling of the estimated number of filings.⁷

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.

⁷ Per transaction, usually two filings are received, one from the acquiring person and one from the acquired person when a transaction is reported. Only one application is received when an acquiring party files for an exemption under Section 7A (c)(6) or (c)(8) of the Clayton Act.

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

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes forms supplied by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons the FTC requests authorization to omit printing the expiration date on the form(s) in this package.

18. Exceptions to Certification

Not applicable.