

**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. There is currently no mechanism for electronic submission of the Notification and Report Form. 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).¹ 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.²

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 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 84 Fed. Reg. 7,369 (March 4, 2019), and became effective on April 3, 2019. Under these thresholds, a transaction must be valued in excess of \$90 million to meet the minimum size of transaction threshold.

² As of April 3, 2019, for transactions valued in excess of \$90 million but less than or equal to \$359.9 million, one party must have sales or assets of at least \$180.0 million and the other party must have sales or assets of at least \$18 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

On September 11, 2019, the FTC sought public comment on the Rule's information collection requirements and on the associated estimates of PRA burden. 84 Fed. Reg. 47,951. The FTC received no comments that were germane to the issues that the agency sought comment on pursuant to the PRA renewal request. Pursuant to OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

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: 181,091 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 for outside parties.

In fiscal year 2018, there were 4,188 non-index filings. Based on an average annual increase in filings of 5.3% in fiscal years 2016-2018, FTC staff projects a total of 4,410 non-index filings in fiscal year 2019. For fiscal years 2020-2022, the time-period for which PRA clearance will be requested from OMB, the FTC projects an average of 4,894 non-index filings per year, assuming a 5.3% increase each year. For index filings, staff bases its estimate on a rough average of five filings per year over that same interval (fiscal years 2016-2018) to project a total of five index filings for fiscal year 2019, as well as for fiscal years 2020-2022. Retaining prior assumptions, FTC staff estimates that non-index filings require, on average, approximately 37 hours per filing and that index filings require an average of two hours per filing.³

On rare occasions, a transaction for which the HSR filing is automatically withdrawn

³ Index filings are incorporated into the FTC's currently cleared burden estimates, but the task of filing a copy of information provided to another agency requires significantly less time than "non-index" filings created for filing in compliance with the HSR rules.

during the merger review process (due to the parties' Securities and Exchange Commission filing indicating that the transaction has been terminated) could be subsequently restarted. Based on experience to date, this would occur approximately once every fifteen years, i.e., a historical frequency of 0.067 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 0.067, this amounts to an annual average of three hours, rounded up, for a withdrawn transaction later restarted. Thus, the total estimated hours burden is 181,091 hours [(4,894 non-index filings x 37 hours/each) + (five index filings x two hours/each) + (one withdrawn transaction later restarted x three hours)].

Estimated Annual Labor Cost: \$83,301,860.

Using the burden hours (181,091) 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 \$83,301,860.

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 such training would be subsumed within the ordinary training that employees receive.

14. Estimated Cost to Federal Government

The total cost to the Commission for the premerger notification program for fiscal year 2019 was approximately \$7.31 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 2019, the Antitrust Division of the U.S. Department of Justice expended approximately \$478,072 in salary 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 \$7.8 million.

15. Program Changes or Adjustments

The estimated annual burden hours is adjusted upward slightly from 168,486 hours in 2016 to 181,091 hours in 2019. This is based on non-index filings going from 4,564 annually in FY 2016 to an estimated 4,894 per year from FY 2020-2022.

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

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.