

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

On June 29, 2023, the Federal Trade Commission (“FTC” or “Commission”) submitted a Notice of Proposed Rulemaking (“NPRM”)¹ and an accompanying Supporting Statement to the Office of Management and Budget (“OMB”) for review under the Paperwork Reduction Act (“PRA”). On July 7, 2023, OMB directed the Commission to resubmit its request when the proposed rule was finalized. The Final Rule was promulgated on November 12, 2024, and will be effective on February 10, 2025.² The Commission is now submitting the Final Rule amendments and a Supplemental Supporting Statement to OMB.

The Commission seeks OMB clearance for the revised information collection requirements under the 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” or “Form”). After careful consideration of the comments it received, the Commission in its final rule substantially narrowed the information requirements proposed in the NPRM. The amendments are primarily changes to the information reported by entities for a proposed acquisition on the Notification and Report Form and do not change which acquisitions need to be reported. The amendments will ensure that the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (“the Agencies”) receive sufficient information with the Form to conduct a preliminary assessment within the initial waiting period (typically 30 days) to determine if the proposed transaction may, if consummated, violate the antitrust laws.

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

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), 15 U.S.C. § 18a (§ 7A of the Clayton Act), requires parties to file a Notification and Report Form when a proposed transaction is not subject to an exemption and meets the Size of Transaction test, subject to other provisions of the Rules, including a Size of Person test for some transactions. The HSR Act was intended to improve federal merger enforcement by requiring parties to notify the Agencies of their proposed acquisition and to wait a short period of time to permit the Agencies to seek a federal court injunction to stop an illegal merger prior to consummation.

Parties submit such Forms to the Agencies and must wait a specified time period before consummating the notified transaction. Section 7A(d) of the HSR 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

¹ 88 Fed. Reg. 42,178 (June 29, 2023).

² 89 Fed. Reg. 89,216 (Nov. 12, 2024).

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 may. . . prescribe such other rules as may be necessary and appropriate to carry out the purposes of . . . [the HSR Act].

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

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 HSR 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 HSR Act. The Notification and Report Form, which is completed by persons required to file notification, and Instructions are appendices 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 and Instructions on several prior occasions.

In this final rule, the Commission adopts certain amendments to the Rules, the Form, and the Instructions (Part 801 and Part 803 and its appendices), to reorganize the information currently required with an HSR Filing and to require additional information critical to the Agencies' initial antitrust review. The amendments outlined in the final rule will ensure that the Agencies receive sufficient information with the Form to conduct a preliminary assessment within the initial waiting period (typically 30 days) to determine if the proposed transaction may violate the antitrust laws. These changes will improve the efficiency and effectiveness of that initial review by providing the information the Agencies need to identify transactions that warrant an in-depth investigation, including through the issuance of Second Requests, properly narrow the scope of any additional investigation or eliminate the need to conduct a more in-depth investigation of the proposed transaction.³ These amendments also incorporate changes required to implement the collection of information mandated by the Merger Filing Fee Modernization

³ Section 7A(e) of the Clayton Act, 15 U.S.C. 18a(e), authorizes the Agencies to request additional information or documents from each party, which is referred to as a Second Request. Issuing Second Requests extends the waiting period under the HSR Act for another 30 days (ten days in the case of a cash tender offer or certain bankruptcy sales) after the parties have substantially complied with the Second Requests. During this second waiting period, if the reviewing agency believes that a proposed transaction may violate the antitrust laws, it may seek an injunction in federal district court to prohibit consummation of the transaction.

Act of 2022 contained within the Consolidated Appropriations Act, 2023 (Pub. L. 117-328, 136 Stat. 4459) to the HSR Act, 15 U.S.C. § 18b.

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.

4. Efforts to Identify Duplication

The information required by the amendments is not available from other government agencies or public sources. Prior to passage of the HSR Act, efforts were made to obtain information needed to conduct 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 the HSR Act. Since the HSR premerger notification program was instituted more than 45 years ago, the Commission has periodically updated the information collected on the Form to reflect changes in technology, the economy, and structures of transactions. Based upon the experience of the Agencies, there are categories of information known to filers that are not currently collected on the Form but are important to the Agencies' initial assessment of transactions.

5. Efforts to Minimize Small Organization Burden

The HSR Act, HSR Rules, and these amendments 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).⁴ Such a high transaction threshold will typically not catch most transactions involving small entities. In addition, the HSR Act requires that in cases where the transaction is valued at greater than \$50 million (as adjusted) but \$200 million (as adjusted) or less, one party to the transaction must have at least \$100 million (as adjusted) in sales or assets and the other party must have at least \$10 million (as adjusted) in assets (or in some instances, sales) in order to trigger reporting requirements.⁵ In response to concerns about the burden of complying with the proposed rule, the final rule was adjusted to minimize the overall cost of compliance, reducing costs for all businesses including small businesses that must file an HSR notification. Moreover, the costs of complying with the final rule are likely to be higher for those business with complex

⁴ The 2000 amendments to Section 7A require the Commission to revise the HSR 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)(note). The current adjusted thresholds appear at 89 Fed. Reg. 7,708 (Feb. 5, 2024), and became effective on March 6, 2024. Under these thresholds, a transaction must be valued in excess of \$119.5 million to meet the minimum size of transaction threshold.

⁵ Under the current adjusted thresholds, for transactions valued in excess of \$119.5 million but less than or equal to \$478 million, one party must have sales or assets of at least \$239 million and the other party must have assets (or in some instances, sales) of at least \$23.9 million for the transaction to be reportable.

corporate structures or investors, or with extensive business lines that intersect with the other merging party. By and large, small businesses have less complex structures and fewer business lines, resulting in incremental costs at the lower end of the expected burden associated with the final rule.

Finally, the FTC certified pursuant to the Regulatory Flexibility Act that the Final Rule will not have a significant economic impact on a substantial number of small entities.⁶ The FTC found that the final rule will not affect a substantial number of small entities, because small entities will be affected only when they are party to a transaction that exceeds the HSR Act thresholds, and less than 0.02% of the nation's small entities file premerger notifications in any given year. Furthermore, the economic impact on the very few small entities that are required to file is not significant, because smaller businesses generally have fewer employees, generate fewer documents related to a transaction, and are involved in less complex transactions, all of which will minimize their costs of complying with the final rule. Further, these costs will generally account for a small fraction (less than 0.5%) of the value of the transaction.

6. Consequences to Program if Collection Done Less Frequently

The HSR Act requires an HSR Filing when a transaction meets the Size of Transaction test, subject to other provisions of the Rules, if not exempted. Parties must file with the Commission and the Antitrust Division before consummating the transaction. Collection of the required information on a less frequent basis would be contrary to the HSR Act since the enforcement agencies must review proposed acquisitions before they are consummated. Moreover, individual firms and their acquisition plans, 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 have evolved over the last 45 years through informal and formal 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 on the proposed collections of information, as outlined in the NPRM. 88 Fed. Reg. 42,178 (June 29, 2023). After careful consideration of the comments it received, the Commission in its final rule substantially narrowed the information requirements proposed in the NPRM.

9. Payments of Gifts to Respondents

Not applicable.

⁶ See Section IX. Regulatory Flexibility Act Certification of the Final Rule.

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

The Agencies are prohibited by Section 7A(h) of the HSR 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. . . . [or] to either body of Congress or to any duly authorized committee or subcommittee of the Congress.” The Agencies have implemented procedures to assure the confidentiality of the submitted information. Additionally, the Notification and Report Form does not specifically require any information of a personal and sensitive nature.

12. Annual Hours Burden

Estimated Annual Hours Burden: 239,020.

The amendments outlined in the final rule affect the information reported on the Notification and Report Form but do not affect the reportability of a transaction. However, this Supporting Statement estimates burden using a different number of filings than was used in the Supporting Statement submitted to OMB for the NPRM. At the time, the Commission relied on the projected number of filings for fiscal year 2023 (7,096 non-index filings); this estimate was based on the fact that the FTC received 6,518 non-index filings in fiscal year 2022 and had experienced an average annual increase in filings of 4.3% in the pre-COVID fiscal years 2017-2019. Since then, the Commission has published the HSR Annual Report for fiscal year 2023, which states that actual non-index filings in fiscal year 2023 totaled 3,515.⁷ Thus, this is the number of filings that the Commission will use for the burden hour calculations detailed below.

Some of the changes contained in the final rule are intended to reduce the burden of filing as compared to current requirements. The Commission anticipates, for instance, that reporting revenue information in ranges rather than by specific dollar amount will reduce the burden on almost all filers. Additionally, by eliminating the requirement for filers that derive revenue from manufacturing operations to report NAPCS code revenues, the final rule is expected to reduce the burden for those filers. Finally, the Commission will only require author information for filings in which an overlap or supply relationship has been identified, which it also anticipates will reduce the burden on filing parties.

Some of the changes offer clarifications to the current rules and are unlikely to change the burden on filers. These include the changes to eliminate references to paper and DVD filings (§§ 803.2, 803.5, and 803.10) and to specifically discuss the commencement of the waiting period (§ 803.10).

Certain changes require the acquiring person to collect and report information that the Commission believes is held in its ordinary course of business records. These include requirements for the acquiring person to describe its own business(es); describe the ownership structure of the acquiring entities and provide organizational charts if they exist; and to report

⁷ See Fed. Trade Comm’n & Dep’t Just., Hart-Scott-Rodino Annual Report, Fiscal Year 2023 Appendix A (FY 2023).

minority investors in additional entities related to the transaction. Once collected, the Commission anticipates that the burden associated with some of these changes will be lower for subsequent filings by the same acquiring person, as the information would only need to be updated.

Many of the changes would increase the burden on all filers. These include new document collection requirements to produce transaction-related documents from the supervisory deal team lead, as well as business documents that relate to competition topics but were not produced specifically for the transaction. Also, the requirement to identify additional minority interest holders would be applicable to all filers, although acquired persons would only need to identify minority interest holders of the target that will remain invested after consummation. In addition, all filing persons that receive subsidies from foreign entities of concern will incur new costs.

Some of the changes are expected to significantly increase the burden on only certain filers. These include those filers whose businesses have existing overlap or supply relationships, with the largest burden falling on filers whose transaction involves many such relationships; transactions that involve a large number of foreign language documents; filing persons or transactions that have a complex structure; transactions that are filed on letters of intent or agreements in principle. These filings are the ones for which the current information gaps prevent the Agencies from conducting an effective premerger review and those most likely to raise potentially significant competitive issues that require close scrutiny to determine whether the proposed transaction is likely to violate the antitrust laws.

The Commission asked 15 current FTC and DOJ attorneys who have recent experience preparing HSR filings in private practice to estimate, based on their own experience with preparing HSR filings, the incremental change in hours that would be required to respond to each of the new and updated items in the final rule. They were also asked to estimate how much time would be saved by no longer having to provide information for current requirements that are not included in the final rule.

The survey participants provided estimates for the amount of time required to collect and submit information responsive to each of the new and updated items in the final rule, separately for acquiring and acquired persons, and separately for three types of HSR-reportable transactions that reflect varying levels of complexity and antitrust risk: (1) the new category of select 801.30 transactions, which the final rule defines; (2) transactions with no reportable competitive overlaps; and (3) transactions where the parties report at least one NAICS code overlap or have an existing overlap or supply relationship. The survey participants were asked to estimate the incremental change in costs of complying with each new and adjusted information requirement contained in the final rule in each of the categories and for each type of filer. Also, for each item, the survey participants were asked to indicate what percentage of the additional time required would be time spent by company personnel as compared to a law firm hired to prepare the HSR filing or any third parties that would need to be hired to complete the HSR Form (*e.g.*, data vendors).

In generating their estimates, the survey participants were asked to consider all time spent

to complete the HSR Form, including time spent reviewing the HSR Instructions; generating and compiling the materials necessary for collection; acquiring, installing, and utilizing any necessary technology or systems; and completing and reviewing the collected information, among other tasks. They were also asked to consider whether filers would need to incur additional costs not necessarily measured in hours, *e.g.*, the costs associated with new IT investments, long-lived facilities or equipment, related one-time expenditures, and other non-labor expenditures, such as attorney training or general HSR resources.

Based on the survey responses, the Commission finds that the average number of additional hours required to prepare an HSR filing with the changes outlined in the final rule is 68 hours, with an average low of 10 hours for select 801.30 transaction filings by the acquired person and an average high of 121 hours for filings from the acquiring person in a transaction with overlaps or supply relationships. Added to the estimate of 37 hours for the current HSR Form,⁸ the total estimated hours to complete an HSR Form once the final rule is in effect will be 105 hours per filing.

To calculate the average number of additional hours, the averages of the estimates provided by respondents were calculated separately for each change for both the acquiring and acquired person within each category of transaction. These averages were then summed by category of transaction and then divided by two to provide category-specific estimated averages for an individual filer to comply with all changes. The overall average estimate for an individual filer was calculated as a weighted average of these category-specific estimates for an average filer, using as weights the Agencies' estimate of the fraction of filings that fall into each of the three categories. Specifically, the Commission estimates that 8 percent of filings will meet the definition of a select 801.30 transaction,⁹ 47 percent of filings will have no overlaps or supply relationship, and 45 percent will have a NAICS code overlap and/or an overlap or supply relationship identified in the Competition Descriptions section.

Net Effect

The changes outlined in the final rule only affect non-index filings which, for FY 2023, totaled 3,515. As described above, the Commission estimates that the amendments to the HSR Rules and Notification and Report Form contained in the final rule will increase the time required to prepare responses for non-index filings, with an estimated average increase of 68 hours per filing. Thus, the annual estimated additional hours burden is 239,020 (3,515 non-index filings multiplied by 68 additional hours per filing).

Estimated Annual Labor Costs: \$139,300,000.

After carefully reviewing and considering the comments submitted regarding the hourly rate used in the NPRM, the Commission has determined to apply a blended rate of \$583 for the reasons discussed in Section VIII of the Commission's statement of basis and purpose. Applying the revised estimated hours, 239,020, to the updated hourly rate of \$583 for executive and attorney compensation yields approximately \$139.3 million in total additional costs annually.

⁸ 88 Fed. Reg. 3413, 3414 (Jan. 19, 2023).

⁹ Estimated based upon a review of HSR filings from fiscal years 2018 through 2022.

The additional per filing cost is estimated at \$39,644 (68 hours multiplied by \$583 per hour). The Commission believes that the final rule's 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 Instructions.

13. Estimated Capital/Other Non-Labor Costs Burden

The amendments are expected to impose either minimal or no additional capital or other non-labor costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes.

14. Estimated Cost to Federal Government

The amendments are expected to reduce overall costs to the federal government. Based on its own experience and in light of the significant reductions contained in the final rule as compared to the proposed rule, the Commission believes that the additional information required by the final rule would result in an overall reduction in the number of staff hours spent collecting additional information from all sources, including the parties, as well as a reduction in associated burdens of reviewing and processing that information. For example, while Agency staff may need to spend more time reviewing the transaction documents and additional information submitted with an HSR filing, they would spend less time on more costly and time-consuming tasks such as conducting independent research or outreach to third parties, preparing voluntary information requests, reviewing additional information submitted by the parties, drafting Second Requests, reviewing voluminous submissions from the parties in response to those requests, and preparing internal reports and memoranda for review by managers. The Commission also acknowledges that it may incur additional de minimis administrative and support system costs associated with the revised HSR Form, such as technology costs to process and host additional documents and filings. Overall, however, the work of Agency staff will be more efficient and effective as they will be able to more readily and accurately identify those transactions that pose a risk of violating the antitrust laws and that warrant the expenditure of substantial additional resources to conduct an in-depth investigation, including through the issuance of Second Requests.

15. Program Changes or Adjustments

The changes to the HSR Rules and Notification and Report Form are expected to increase the burden on the affected members of the public by 239,020 annual hours from the currently cleared amount of 262,579 annual hours. The currently cleared total annual labor costs (currently estimated at \$120,786,340) would increase by approximately \$139,300,000.

16. Statistical Use of Information

Collection of information under the Act is for law enforcement purposes. The Agencies

report to Congress on the program annually¹⁰ but there are no other 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.

18. Exceptions to Certification

Not applicable.

¹⁰ See Annual Reports to Congress Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, <https://www.ftc.gov/policy/reports/annual-competition-reports>.