



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC plans to ask the Office of Management and Budget (OMB) to extend for an additional three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the Antitrust Improvements Act Rules (“HSR Rules”) and corresponding Notification and Report Form for Certain Mergers and Acquisitions (“Notification and Report Form”). The current clearance expires on December 31, 2019.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY INFORMATION section below. Write “HSR Rules PRA Comment: FTC File No. P072108” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, Room CC-5301, 600 Pennsylvania Avenue NW, Washington, DC 20580, or by telephone to (202) 326-

2740.

SUPPLEMENTARY INFORMATION:

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the HSR Rules and Notification and Report Form, 16 CFR parts 801-803 (OMB Control Number 3084–0005).

Section 7A of the Clayton Act (“Act”), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94–435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require “that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate” to enable the agencies “to determine whether such acquisitions may, if consummated, violate the antitrust laws.” 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, *inter alia*, “prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.” *Id.*

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form. The following discussion presents the FTC’s PRA burden analysis regarding completion of the Notification and Report Form. Under the HSR Rules, two types of filings are made: non-index and index. “Index” filings pertain to banking transactions which Clayton Act Sections 7A(c)(6)

and (c)(8) exempt from the requirements of the premerger notification program because they 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. Non-exempt transactions which are filed in accordance with HSR Rules are referred to as “non-index” filings.

Burden Statement

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.

Estimated Total Annual Hours

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.¹

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

¹ 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.

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) + (three index filings x two hours/each) + (one withdrawn transaction later restarted x three hours)].

Estimated Total Annual Labor Cost

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.

Estimated Total Annual Non-Labor Cost

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.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “HSR Rules PRA Comment: FTC File No. P072108” on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on www.regulations.gov.

If you file your comment on paper, write “HSR Rules PRA Comment: FTC File No. P072108” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at www.regulations.gov, you are solely responsible for making sure that your comment does not

include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.² Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will

² See FTC Rule 4.9(c).

consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

Heather Hipsley,

Deputy General Counsel.

[FR Doc. 2019-19646 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]