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FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

RIN 3084–AB46

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') is amending the Hart-Scott-Rodino (''HSR'') Premerger Notification Rules (''Rules'') that require the parties to certain mergers and acquisitions to file reports with the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') (together the ''Antitrust Agencies'' or ''Agencies'') and to wait a specified period of time before consummating such transactions. In a separate document published elsewhere in this issue of the **Federal Register**, the Commission is announcing the annual adjustment of the filing fee thresholds and amounts required by the Merger Filing Fee Modernization Act of 2022 (''2022 Amendments''), contained within the Consolidated Appropriations Act, 2023. In this document, the Commission amends Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

DATES: Effective March 6, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC–5301, Washington, DC 20024, or by telephone at (202) 326–3100, Email: *rjones@ftc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

Section 7A of the Clayton Act (the ''Act'') requires the parties to certain mergers or acquisitions to file with the Commission and the Assistant Attorney General and wait a specified period before consummating the proposed transaction to allow the Antitrust Agencies to conduct their initial review of a proposed transaction's competitive impact. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A of the Act. Pursuant to that authority, the Commission, with the concurrence of the Assistant Attorney General, developed the Rules, codified in 16 CFR parts 801, 802 and 803, and the appendices to Part 803, the Notification and Report Form for Certain Mergers and Acquisitions (''HSR Form'') and Instructions to the Notification and Report Form for Certain Mergers and Acquisitions (''Instructions''), to govern the form of premerger notification to be provided by merging parties.

In this rulemaking, the Commission is amending Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

Affected in Part 801, Coverage Rules:
§ 801.1 Definitions.

Affected in Part 803, Transmittal Rules
- § 803.9 Filing fee.
- Appendix A to Part 803—Notification and Report Form for Certain Mergers and Acquisitions

Background

In 1989, section 605 of Public Law 101–162, 103 Stat. 1031 (15 U.S.C. 18a note), first required the Federal Trade Commission to assess and collect filing fees from persons acquiring voting securities or assets under the Act. The fee was originally $20,000 and was raised twice so that by 1994 it was $45,000. In 2000, fee tiers, rather than a single fee, were established by section 630(b) of Public Law 106–553, 114 Stat. 2762, 2762A–109 so that filers were required to pay $45,000, $125,000, or $280,000 per transaction, depending on the total value of the transaction. While these fees did not change after their adoption in 2000, the relevant jurisdictional thresholds began to adjust annually in 2005 to reflect changes in the gross national product (''GNP'').[1] This meant that the value of reportable transactions started to increase but the associated filing fees did not.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the 2022 Amendments. The 2022 Amendments, among other things, aimed to address the disparity between the value of a transaction and its associated filing fee by amending the fees and fee tiers in the Act. *See* Public Law 117–328, Div. GG, 136 Stat. 4459. The fee structure enacted by the 2022 Amendments codifies six, rather than three, filing fee tiers. In addition, the 2022 Amendments require that the filing fee tiers be adjusted annually to reflect changes in the GNP for the previous year[2] and that the filing fee amounts be increased annually, if the percentage increase in the consumer price index (''CPI'') for the prior year as compared to the CPI for the fiscal year ended on September 30, 2022, is greater than one percent.[3] The 2022 Amendments specify that such adjustments to the fees will be rounded to the nearest $5,000.

[1] *See* Public Law 106–553, 114 Stat. at 2762A–109 to –110, amending Section 605 of title VI of Public Law 101–162 (15 U.S.C. 18a note).

[2] Public Law 117–328, 136 Stat. 4459, Div. GG, Title I.

[3] *Id.*

In a separate document published elsewhere in this issue of the **Federal Register**, the Commission is announcing (1) the revised jurisdictional thresholds for the Hart Scott Rodino Antitrust Improvements Act of 1976 required by the 2000 amendment of Section 7A of the Clayton Act; and (2) the revised filing fee schedule for the same Act required by Division GG of the 2023 Consolidated Appropriations Act. In the instant document, the Commission, with the concurrence of the Assistant Attorney General, amends Parts 801 and 803 of the Rules to make the ministerial changes required to reflect the annual adjustment of the filing fee thresholds and amounts required by the 2022 Amendments.

I. Section 801.1 Definitions

Section 801.1(n), Definition of (as Adjusted)

The Commission is making a ministerial change to the definition of ''(as adjusted)'' to clarify that the fee thresholds and amounts are subject to annual adjustment under the 2022 Amendments. The Commission is not making any material changes to this section.

II. Section 803.9 Filing Fee

Section 803.9 describes how fees are determined and paid. The Commission is amending the eight examples in § 803.9 to conform with the changes to the fees and fee tiers required by the 2022 Amendments, to update dates and dollar values to reflect more recent adjusted jurisdictional thresholds, and to add clarity to the examples. Specifically, the Commission will amend the examples in § 803.9 as follows:

- Revising Example 1 to add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2022 Amendments.
- Revising Example 2 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 3 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 4 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion and improve the utility of the example.
- Revising Example 5 to provide real (and not adjusted) asset values to avoid confusion and improve the utility of the example, and to add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2024 Amendments.
- Revising Example 6 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion, improve the utility of the example, and eliminate a typographical error.
- Revising Example 7 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and adjust example dollar values to align with values in effect as of April 2024 to avoid confusion, improve the utility of the example, and eliminate a typographical error.
- Revising Example 8 to clarify that the tiers and amounts referenced are those in effect as of April 2024 and add ''(as adjusted)'' to reflect the annual adjustment of the fee amounts as codified in the 2022 Amendments.

III. Administrative Procedure Act

The Commission finds good cause to adopt these changes without prior public comment. Under the Administrative Procedure Act (''APA''), notice and comment are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B).

In this case, the Commission finds that public comment on these changes is unnecessary. The Commission is amending the HSR Rules to conform with the new fee tiers and fees enacted by Congress. These updates do not involve any substantive changes in the HSR Rules' requirements for entities subject to the Rules. Rather, they are conforming updates to the definition of the HSR Act and examples of how to calculate the appropriate fee. In addition, these amendments fall within the category of rules covering agency procedure and practice that are exempt from the notice-and-comment requirements of the APA. See 5 U.S.C. 553(b)(3)(A).

For these reasons, the Commission finds there is good cause for adopting this final rule as effective on March 6, 2024 without prior public comment.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small businesses. Indeed, amendments to the Act in 2001 were intended to reduce the burden of the premerger notification program further by exempting all transactions valued at less than $50 million (as adjusted annually).[4] Likewise, none of the rule amendments expand the coverage of the premerger notification rules in a way that would affect small business. In addition, the Regulatory Flexibility Act requirements apply only to rules or amendments that are subject to the notice-and-comment requirements of the APA. See 5 U.S.C. 603, 604. Because these amendments are exempt from those APA requirements, as noted earlier, they are also exempt from the Regulatory Flexibility Act requirements. In any event, to the extent, if any, that the Regulatory Flexibility Act applies, the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. This document serves as notice of this certification to the Small Business Administration.

V. Paperwork Reduction Act

The Commission has existing Paperwork Reduction Act clearance for the HSR Rules (OMB Control Number 3084–0005). The Commission has concluded that these technical amendments do not change the substance or frequency of the pre-existing information collection requirements and, therefore, do not require further OMB clearance.

VI. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

[4] By comparison, the dollar thresholds established for total annual receipts of a small business under the applicable small business size standards fall well under $50 million. *See* 13 CFR 121.201.

For the reasons stated in the preamble, the Federal Trade Commission is amending 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraph (n) to read as follows:

§ 801.1 Definitions

* * * * *

(n) *(as adjusted).* The parenthetical ''(as adjusted)'' refers to the adjusted values published in the **Federal Register** document titled ''Revised Jurisdictional Thresholds and Fee Amounts under Section 7A of the Clayton Act.'' This **Federal Register** document will be published in January of each year and the values contained therein will be effective as of the effective date published in the **Federal Register** document and will remain effective until superseded in the next calendar year. The document will also be available at *https://www.ftc.gov.* Such adjusted values will be calculated in accordance with Section 7A(a)(2)(A) and the statutory note to Section 7A.

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PART 803—TRANSMITTAL RULES

■ 3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 4. Revise § 803.9 (a)(1) through (8) as follows:

§ 803.9 Filing fee.

(a) * * * * *

(1) ''A'' wishes to acquire voting securities issued by B, where the greater of the acquisition price and the market price is in excess of $50 million (as adjusted) but less than $100 million (as adjusted) pursuant to § 801.10 of this chapter. When ''A'' files notification for the transaction, it must indicate the $50 million (as adjusted) threshold. If the value of the voting securities is less than $161.5 million (as adjusted), ''A'' must pay a filing fee of $30,000 (as adjusted) because the aggregate total amount of the acquisition is greater than $50 million (as adjusted) but less than $161.5 million (as adjusted). If the aggregate total value of the voting securities is at least $161.5 million (as adjusted), but less than $500 million (as adjusted), ''A'' must pay a filing fee of $100,000 (as adjusted).

(2) In April 2024, ''A'' acquires $75 million of assets from ''B.'' The parties meet the size of person criteria of section 7A(a)(2)(B) of the act, but the transaction is not reportable because it does not exceed the $50 million (as adjusted) size of transaction threshold of that provision. Two months later ''A'' acquires additional assets from ''B'' valued at $175 million. Pursuant to the aggregation requirements of § 801.13(b)(2)(ii) of this chapter, the aggregate total amount of ''B's'' assets that ''A'' will hold as a result of the second acquisition is $250 million. Accordingly, when ''A'' files notification for the second transaction, ''A'' must pay a filing fee of $100,000 (as adjusted) because the aggregate total amount of the acquisition is less than $500 million (as adjusted), but not less than $161.5 million (as adjusted).

(3) In April 2024, ''A'' acquires $120 million of voting securities issued by B after submitting its notification and $30,000 (as adjusted) filing fee and indicates the $50 million (as adjusted) threshold. Later in 2024, ''A'' files to acquire additional voting securities issued by B valued at $120 million because it will exceed the next higher reporting threshold (*see* § 801.1(h) of this chapter). Assuming the second transaction is reportable, and the value of its initial holdings is unchanged (*see* §§ 801.13(a)(2) and 801.10(c) of this chapter), the provisions of § 801.13(a)(1) of this chapter require that ''A'' report that the total value of the second transaction is $240 million, which is in excess of $100 million (as adjusted) notification threshold. This is because ''A'' must aggregate previously acquired securities in calculating the value of B's voting securities that it will hold as a result of the second acquisition. ''A'' should pay a filing fee of $100,000 (as adjusted) because the total value is greater than $161.5 million (as adjusted) but less than $500 million (as adjusted).

(4) In April 2024, ''A'' signs a contract with a stated purchase price of $174 million, subject to adjustments, to acquire all of the assets of ''B.'' If the amount of adjustments can be reasonably estimated, the acquisition price—as adjusted to reflect that estimate—is determined. If the amount of adjustments cannot be reasonably estimated, the acquisition price is undetermined. In either case the board or its delegee must also determine in good faith the fair market value. (§ 801.10(b) of this chapter states that the value of an asset acquisition is to be the fair market value or the acquisition price, if determined and greater than fair market value.) ''A'' files notification and submits a $30,000 (as adjusted) filing fee. ''A's'' decision to pay that fee may be justified on either of two bases. First, ''A'' may have concluded that the acquisition price can be reasonably estimated to be less than $173.3 million, because of anticipated adjustments—*e.g.,* based on due diligence by ''A's'' accounting firm indicating that one third of the inventory is not saleable. If fair market value is also determined in good faith to be less than $173.3 million, the $30,000 (as adjusted) fee is appropriate. Alternatively, ''A'' may conclude that because the adjustments cannot reasonably be estimated, the acquisition price is undetermined. If so, ''A'' would base the valuation on the good faith determination of fair market value. The acquiring party's execution of the Certification also attests to the good faith valuation of the value of the transaction.

(5) In April 2024, ''A'' contracts to acquire all of the assets of ''B'' for $550 million. The assets include hotels, office buildings, and rental retail property, all of which are exempted by § 802.2 of this chapter. Section 802.2 directs that these assets—which are valued at $300 million—are exempt from the requirements of the act and that reporting requirements for the transaction should be determined by analyzing the remainder of the acquisition as if it were a separate transaction. Furthermore, § 801.15(a)(2) of this chapter states that those exempt assets are never held as a result of the acquisition. Accordingly, the aggregate amount of the transaction is in excess of $161.5 million (as adjusted), but less than $500 million (as adjusted). ''A'' will be liable for a filing fee of $100,000 (as adjusted), rather than $250,000 (as adjusted), because the value of the transaction is not less than $161.5 million (adjusted) but is less than $500 million (as adjusted).

(6) In April 2024, ''A'' acquires coal reserves from ''B'' valued at $150 million. No notification or filing fee is required because the acquisition is exempted by § 802.3(b) of this chapter. Three months later, A proposes to acquire additional coal reserves from ''B'' valued at $500 million. This transaction is subject to the notification requirements of the act because the value of the acquisition exceeds the $200 million limitation on the exemption in § 802.3(b). As a result of § 801.13(b)(2)(ii) of this chapter, the prior $150 million acquisition must be added because the additional $500 million of coal reserves were acquired from the same person within 180 days of the initial acquisition. Because aggregating the two acquisitions exceeds the $200 million exemption limitation, § 801.15(b) of this chapter directs that ''A'' will also hold the previously

exempt $150 million acquisition; thus, the aggregate amount held as a result of the $500 million acquisition is $650 million. Accordingly, "A" must file notification to acquire the coal reserves valued in excess of $500 million (as adjusted) but less than $1 billion (as adjusted) and pay a filing fee of $250,000 (as adjusted).

(7) In April 2024, "A" intends to acquire 20 percent of the voting securities of B, a non-publicly traded issuer. The agreed upon acquisition price is $172.3 million subject to post-closing adjustments of up to plus or minus $2 million. "A" estimates that the adjustments will be minus $1 million. In this example, since "A" is able in good faith to reasonably estimate the adjustments to the agreed-on price, the acquisition price is deemed to be determined and the appropriate filing fee threshold is $50 million (as adjusted). Even if the post-closing adjustments cause the final price actually paid to exceed $172.3 million, "A" would be deemed to hold $171.3 million in B voting securities as a result of this acquisition. Note, that any additional acquisition by "A" of B voting may trigger another filing and require the appropriate fee.

(8) In April 2024, "A" intends to make a cash tender offer for a minimum of 50 percent plus one share of the voting securities of B, a non-publicly traded issuer, but will accept up to 100 percent of the shares if they are tendered. There are 12 million shares of B voting stock outstanding and the tender offer price is $100 per share. In this instance, since there is no cap on the number of shares that can be tendered, the value of the transaction will be the value of 100 percent of B's voting securities, and "A" must pay the $400,000 (as adjusted) fee for the $1 billion (as adjusted) filing fee threshold. Note that if the tender offer had been for a maximum of 50 percent plus one share the value of the transaction would be $600 million, and the appropriate fee would be $250,000 (as adjusted), based on the $500 million (as adjusted) filing fee threshold. This would be true even if the tender offer were to be followed by a merger which would be exempt under section 7A(c)(3) of the act.

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By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2024–02228 Filed 2–2–24; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5 and Chapter IX

[Docket No. FR–6438–N–01]

Regulatory Waivers and Administrative Flexibilities During a Presidentially Declared Disaster, for Public Housing Agencies During CY 2024 and CY 2025

AGENCY: Office of Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notification of waivers.

SUMMARY: This document advises Public Housing Agencies (PHAs) and the public that HUD is establishing an expedited waiver process for requests to waive HUD regulatory and/or administrative requirements ("HUD requirements") for PHAs during Presidentially Declared Disasters (PDDs). PHAs located in areas that are included in PDD areas (PDD PHAs) may request waivers of certain HUD Public Housing and section 8 requirements and receive expedited review of such requests to utilize the administrative flexibilities and expedited waiver process set forth in this document.

DATES: Waivers and administrative flexibilities set forth in this document are effective from January 1, 2024, until December 31, 2025.

FOR FURTHER INFORMATION CONTACT: Tesia Anyanaso, Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3180, Washington, DC 20410–5000, or email *PIH_Disaster_Relief@hud.gov* or call (202) 402–7026 during business hours. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD is exercising its discretionary authority from 24 CFR 5.110 (Waivers) and is providing regulatory flexibility to PDD PHAs described in this document. Upon receipt of a PDD PHA waiver or flexibility request, HUD will review and may approve the submission. The request must include documentation of good cause for each waiver or flexibility request. HUD may consider extensions subject to statutory limitations and pursuant to 24 CFR 5.110, to facilitate a PDD PHA's ability to participate in disaster relief and recovery efforts.

Waivers of essential program requirements, such as property inspection or income verification, will not be granted in their entirety, although modifications may be considered. HUD's ability to grant waivers or approve alternative requirements is limited, as HUD does not have the authority to waive statutory requirements.

I. Instructions for PDD PHAs—How To Request an Expedited Waiver or Administrative Flexibility

A PDD PHA seeking a waiver or flexibility of a HUD requirement listed within this document, or any other HUD requirement needed to assist in disaster relief and recovery efforts, must submit a written request. HUD will not approve a PDD PHA's request to waive or be granted a flexibility for fair housing, civil rights, labor standards, or HUD's environmental review requirements.

Waiver requests approved by HUD pursuant to this document will be published in the **Federal Register** and will identify the PDD PHAs receiving such approvals, pursuant to section 106 of the Department of Housing and Urban Development Reform Act of 1989. The process that HUD will use in assessing applications for waivers and administrative flexibilities is explained below.

HUD developed a checklist (Attachment A at the end of this document) that a PDD PHA must complete and submit to request expedited review of waivers identified in this document. Each request must include a good-cause justification explaining the need for the waiver related to the PHA's disaster relief and recovery efforts. The PDD PHA must await HUD's response affirming waiver approval before implementing any requested waiver. Waivers will be granted for a period of up to 12 months following approval, unless otherwise specified.

Waivers are divided into two tiers: tier 1, waivers that are estimated to be approved within 30 days; and tier 2, waivers that are estimated to be approved within 60 days. The Office of Public and Indian Housing (PIH) will prioritize waiver request(s) based upon the designated tier.

II. List of Waivers and Administrative Flexibilities

Tier 1: Immediate Need. This tier includes waivers and administrative flexibilities needed for crisis management operations during the immediate aftermath of a PDD. These requests will be prioritized by HUD and