

PENDING - NOT APPROVED FOR USE

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Request for Records Disposition Authority

Records Schedule: **DAA-0122-2020-0002**

Request for Records Disposition Authority

Records Schedule Number DAA-0122-2020-0002

Schedule Status Appraiser Working Version

Agency or Establishment Federal Trade Commission

Record Group / Scheduling Group Records of the Federal Trade Commission

Records Schedule applies to Major Subdivision

Major Subdivision Bureau of Competition (BC)

Minor Subdivision Premerger Notification Office (PNO)

Schedule Subject Hart-Scott-Rodino (HSR) files

Internal agency concurrences will be provided No

Background Information The Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, Pub. L. No. 94-435 ("HSR Act" or "the Act"), together with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables the Federal Trade Commission ("FTC" or "Commission") and the Antitrust Division of the Department of Justice ("DOJ") to obtain effective preliminary relief against anticompetitive mergers, and to prevent interim harm to competition and consumers. The Act requires that parties to mergers or acquisitions above a specific threshold notify the FTC and DOJ before initiating the proposed acquisition. Only one Agency, either DOJ or the FTC, will investigate a particular transaction.

Item Count

Number of Total Disposition Items	Number of Permanent Disposition Items	Number of Temporary Disposition Items	Number of Withdrawn Disposition Items
1	0	1	0

GAO Approval

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Records Schedule: **DAA-0122-2020-0002**

Outline of Records Schedule Items for DAA-0122-2020-0002

Sequence Number	
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1	Hart-Scott-Rodino (HSR) Files Disposition Authority Number: DAA-0122-2020-0002-0001
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Records Schedule Items

Sequence Number																	
1	<p>Hart-Scott-Rodino (HSR) Files</p> <p>Disposition Authority Number DAA-0122-2020-0002-0001</p> <p>The records received from filing entities include but are not limited to: the original FTC filing form (e.g., FTC Form C4 or its equivalent); cover letters; signed certifications and affidavits; agreements between the entities; covenants not to compete; corporate financials and annual reports; studies, surveys, analyses, and reports prepared by or for any officers or directors for the purpose of evaluating or analyzing the acquisition with respect to market shares and competition; offering memoranda or analyses prepared by investment bankers, consultants, or other third-party advisors; synergy or efficiency analyses; and HSR state and federal waiver letters. Records prepared by the PNO while processing the HSR filing include but are not limited to: a summary sheet for each transaction, correspondence, early termination notices, withdrawal correspondence, second request process documents, merger analyses, decision records by the PNO parent bureau (the Bureau of Competition (BC)) for the request of additional merger documentation, financial refund forms, and decision records by BC to implement a full-phase investigation.</p> <table><tr><td>Final Disposition</td><td>Temporary</td></tr><tr><td>Item Status</td><td>Pending</td></tr><tr><td>Is this item media neutral?</td><td>Yes</td></tr><tr><td>Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing?</td><td>No</td></tr><tr><td>GRS or Superseded Authority Citation</td><td>N1-122-92-001 / 1/1 N1-122-92-001 / 1/4 N1-122-92-001 / 1/6 N1-122-92-001 / 1/9 N1-122-92-001 / 1/10 N1-122-92-001 / 1/12 N1-122-92-001 / 2/2 N1-122-92-001 / 2/3</td></tr><tr><td>Disposition Instruction</td><td></td></tr><tr><td>Cutoff Instruction</td><td>Cut off file after approval, party withdrawal, denial of merger, or when the agency decides to enter into a full-phase investigation.</td></tr><tr><td>Retention Period</td><td>Destroy 10 year(s) after cutoff.</td></tr></table>	Final Disposition	Temporary	Item Status	Pending	Is this item media neutral?	Yes	Do any of the records covered by this item currently exist in electronic format(s) other than e-mail and word processing?	No	GRS or Superseded Authority Citation	N1-122-92-001 / 1/1 N1-122-92-001 / 1/4 N1-122-92-001 / 1/6 N1-122-92-001 / 1/9 N1-122-92-001 / 1/10 N1-122-92-001 / 1/12 N1-122-92-001 / 2/2 N1-122-92-001 / 2/3	Disposition Instruction		Cutoff Instruction	Cut off file after approval, party withdrawal, denial of merger, or when the agency decides to enter into a full-phase investigation.	Retention Period	Destroy 10 year(s) after cutoff.
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Additional Information

GAO Approval

Not Required

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Agency Certification

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal in this schedule are not now needed for the business of the agency or will not be needed after the retention periods specified.

Signatory Information

Date	Action	By	Title	Organization
10/05/2020	Certify	Yvonne Wilson	Records Officer	Federal Trade Commission - Federal Trade Commission

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Records Schedule: **DAA-0122-2020-0002**

Executive Summary

Summary

Permanent Item Numbers

Federal Register Notice

Publication Date

Copies Requested 0

Comments Received 0

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Office of the Chief
Records Officer for the
U.S. Government

Date: January 12, 2021
Appraiser: Galen R. Wilson, ACRS
Agency: Federal Trade Commission (FTC)
Subject: DAA-0122-2020-0002

INTRODUCTION

Schedule Subject

Hart-Scott-Rodino (HSR) files

Additional Background Information

As noted in the schedule background information, the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, in conjunction with Section 13(b) of the Federal Trade Commission Act and Section 15 of the Clayton Act, enables either the FTC or the Antitrust Division of the Department of Justice (DOJ) to examine potentially anticompetitive corporate mergers prior to their taking place, thereby preventing harm to competition and consumers. Under certain conditions, both acquiring and acquired entities are required to file notifications. Only one agency, either DOJ or the FTC, investigates a proposed merger.

Until spring, 2020, HSR filings were required to be submitted in hard copy or on DVD. However, in response to the COVID-19 crisis, FTC created an *ad hoc* e-filing portal. Filings are made electronically by submitting PDFs of the required documents through a third-party form and submission portal. Once submitted, the relevant files are downloaded by FTC's Premerger Notification Office (PNO) and stored on a secure, shared drive. It is anticipated that use of this portal will continue until transitioning to a new, custom-built, cloud-based e-filing system, after which hard copy and DVD submissions will no longer be accepted. The schedule is nevertheless proposed as media-neutral as records currently exist in both hard copy and electronic formats.

This schedule deals only with those HSR filings processed by FTC's PNO. It does not schedule records created by DOJ. Merger violations are handled by FTC's Bureau of Competition and are not covered by this schedule.

This schedule supersedes eight items of N1-122-92-001. FTC has identified 12 other items from that schedule which are no longer necessary because the records they describe are no longer being produced:

- Item 1.2, Master File—Violations (for which no investigation was opened) is no longer maintained as a discrete series.
- Item 1.3, Traveling File, was a paper file that ceased creation amidst the temporary suspension of in-office work in the wake of the Covid-19 pandemic, March 2020. PNO will no longer send a paper copy of the filing to the FTC Bureau of Competition (BC) merger divisions once in-office work has resumed.
- Item 1.5, Internal PMN Office Memoranda File, is no longer created. Violation records are handled as part of the matter/litigation process. Rulemaking/regulation management is managed by FTC's Office of General Counsel.
- Item 1.7, Informal Interpretation Report Form File, concerns requests received by telephone. Requests are no longer documented in this fashion.

Item 1.8, Bounce Form File, is no longer created because FTC continues to work with the other party until transaction file forms are correctly completed.

Item 1.11, Log Book File, a handwritten index of transactions, is no longer created.

Item 2.1, Exemption File—Copies of Documents Submitted to Other Government Agencies, is superseded by GRS 5.1, item 020, Non-recordkeeping copies of electronic records. The 1992 item addressed hardcopy records, but this process is now handled electronically.

Item 3.1, Merger Screening Committee Minutes. This committee no longer exists.

Items 4.1 and 4.2, Premerger Tracking System master file and security back-up and documentation. This system ceased existence in the 1990s.

Item 5.1, General Correspondence. Records are no longer kept in this fashion. The series as described does not exist.

Item 5.2, Compliance Correspondence, is no longer created. These notices are now published on PNO's webpage.

Item 5.3, Requests for Informal Interpretations, is the paper version of item 1.7 above. This process is no longer in existence.

FTC requests that NARA inactivate these items. The remaining N1-122-92-001 items are planned for eventual supersession by new schedules yet to be submitted to NARA.

Overall Recommendation

I recommend approval of this schedule.

APPRAISAL

Item 0001: Hart-Scott-Rodino (HSR) Files.

HSR filings are submitted on FTC Form C4.¹ In addition to the completed multi-page form, entities submit documents such as agreements between the parties; covenants not to compete; corporate financial and annual reports; studies, surveys, analyses, and reports prepared by or for any officers or directors for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, etc.; offering memoranda or analyses prepared by investment bankers, consultants, or other third-party advisors; and synergy or efficiency analyses.

PNO reviews and analyzes each transaction filing and prepares a summary sheet containing, among other things, information about the parties' businesses, the transaction's structure, whether parties have requested early termination of the waiting period, and a summary of the competitively significant information found in the submitted documents. The summary sheet is designed to allow for a quick initial determination about whether a transaction warrants further review by an FTC litigation division.

Proposed Disposition

Temporary

Appropriateness of Proposed Disposition

Appropriate

Appraisal Justification

*Previously approved as temporary:

N1-122-92-001, item 1.1, Master File

¹ Form is at https://www.ftc.gov/system/files/attachments/form-instructions/hsr_form_ver_102_-_01-02-17_0.pdf (retrieved January 4, 2021).

N1-122-92-001, item 1.4, Summary Sheet File

N1-122-92-001, item 1.6, PMN Memoranda to the Bureau Director File

N1-122-92-001, item 1.9, Non-Reportable Transaction Form File

N1-122-92-001, item 1.10, Fee Return Form File

N1-122-92-001, item 1.12, Filing Fee File

N1-122-92-001, item 2.2, Exemption File—Application Forms, Financial Data and Transaction Descriptions

N1-122-92-001, item 2.3, Exemption File—Summary Sheets

*Does not document significant actions of Federal officials. While this function is important, it is also fairly routine. The vast majority of filings produce no red flags and mergers proceed as proposed. Some are denied outright, and there the matter ends. Those that excite controversy are likely to move into a full-phase investigation whose documentation begins a new file under a different FTC office.

Adequacy of Proposed Transfer Instructions

Appropriate. The two most obvious potential needs for these records would be if an approved merger produced a significant negative impact on marketplace competition or if the case devolved into a full-phase investigation. Ten-year retention is adequate for the first. Negative fallout of an approved merger should become apparent in that time, in which case the records would still be available for review. In the case of the second, initiation of a full-phase investigation is what causes this file to close. Ten years is adequate for documentation relevant to the full-phase investigation to be transferred into the new case file processed by a different FTC function.

Media Neutrality

Approved

Galen R. Wilson

GALEN R. WILSON
Appraiser

Supervisor concurrence: *AMR 1/14/2021*