



contained in the legislative amendments, as well as several previously proposed administrative changes that enable the Premise Notification Form to be completed and processed more easily.

2. To eliminate unnecessary burden and undue delay arising from requests for additional information or documentary material (commonly referred to as "second requests")





(b) Second request procedures. (1) Notice. Every request for additional information or documentary material issued under 16 CFR 803.20 shall inform the recipient(s) of the request that the recipient has a right to discuss modifications or clarifications of the request with an authorized representative of the Commission. The request shall identify the name and telephone number of at least one such representative.

(2) Second request conference. An authorized representative of the Commission shall invite the recipient to discuss the request for additional information or documentary material soon after the request is issued. At the conference, the authorized representative shall discuss the competitive issues raised by the proposed transaction to the extent then known, and confer with the recipient about the most effective way to obtain information and documents relating to the competitive issues raised. The conference will ordinarily take place within 5 business days of issuance of the request, unless the recipient declines the invitation or requests a later date.

(3) Modification of requests. The authorized representative shall modify the request for additional information or documentary material, or recommend such modification to the Assistant Director of the Bureau of Competition, if he or she determines that a less burdensome request would be consistent with the needs of the investigation. A request for additional information or documentary material may be modified only in writing signed by the authorized representative.

(4) Review of request decisions. (i) If the recipient of a request for additional information or documentary material believes that compliance with portions of the request should not be required and the recipient has exhausted reasonable efforts to obtain clarifications or modifications of the request from an authorized representative, the recipient may petition the General Counsel to consider and rule on unresolved issues. Such petition shall be submitted by letter to the General Counsel with a copy to the authorized representative who participated in the second request conference held under paragraph (b)(3) of this section. The petition shall not, without leave of the General Counsel, exceed 500 words, excluding any cover, table of contents, table of authorities, glossaries, proposed form of relief and any appendices containing only sections of statutes or regulations, and shall address petitioner's efforts to obtain modification from the authorized representative.

(ii) Within 2 business days after receiving such a petition, the General Counsel shall schedule a date for a conference with the petitioner and the authorized representative.

(iii) Such conference shall take place within 7 business days after the General Counsel receives the petition, unless the request recipient agrees to a later date or declines to attend a conference.

(iv) Not later than 3 business days before the date of the conference, the petitioner and authorized representative may each submit memoranda regarding the issues presented in the petition. Such memoranda shall not, without leave of the General Counsel, exceed 1250 words, excluding any cover, table of contents, table of authorities, glossaries, proposed form of relief and appendices containing only sections of statutes or regulations.

Such memoranda shall be delivered to counsel for the other participants on the same day they are delivered to the General Counsel.

(v) The petitioner's memorandum shall include a concise statement of reasons why the request should be modified, together with proposed modifications, or a concise explanation why the recipient believes it has substantially complied with the request; additional information or documentary material.

(vi) The authorized representative's memorandum shall include a concise statement of reasons why the petitioner's proposed modifications are inappropriate or a concise statement of the reasons why the representative believes that the petitioner has not substantially complied with the request for additional information and documentary material.

(vii) The General Counsel shall advise the petitioner and the authorized representative of his or her decision within 3 business days following the conference.

Endnotes:

1. Section 7A of the Clayton Act was added by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435 (commonly known as the HSR Act); the implementing rules, 16 C.F.R. Parts 801, 802, 803, are commonly known as the HSR Rules or the Premerger Rules.

2. Public Law 106-533, section 630(c), 114 Stat. 2762 (2000).

3. 66 Fed. Reg. 8678-8721 (2001) (amending 16 C.F.R. Parts 801, 802, 803). The Commission solicited and received public comment on the interim rules, and will consider the comments before issuing final rules.

4. 66 Fed. Reg. 8728-8722 (adopting interim rule 16 C.F.R. Part 802, effective February 1, 2001).

5. The Bureau of Competition earlier adopted these procedures in a directive to staff in April, 2000. The Commission has now formally codified these procedures in its Rules of Practice.

6. 66 Fed. Reg. 8728-8722 (adopting interim rule 16 C.F.R. Part 802, effective February 1, 2001).

7. The period covered by the study experienced a particularly high level of merger activity, and Commission staff was hard-pressed to keep pace.

8. Some counsel stated that the model second request, which is drafted in generic terms to cover a range of industries, should be modified to reflect the specific characteristics of particular transaction industries. The staff endeavors to do that whenever appropriate. Other counsel suggested that second requests that are drafted to elicit industry-transaction-specific information tend to require the production of more information, and that the model should be modified to reflect this. Tw 9.96-