

HSR Rule Changes: HSR Threshold Raised to \$56.7 Million, NAICS Data Switch From 1997 to 2002, and Electronic Filing for Financial and SEC Statements

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A recent flurry of announcements by the Federal Trade Commission has introduced some important changes for 2006 in the thresholds and reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act).

HSR Thresholds Raised

Effective February 17, 2006, the well-known \$50 million HSR reporting threshold will undergo its annual adjustment for inflation, to \$56.7 million for 2006. At the same time, all of the notification and exemption dollar thresholds in the HSR statute, regulations and reporting instructions that are subject to annual adjustments^[1] will be raised by the same adjustment. The effective HSR dollar thresholds for 2006 are as follows:

Original Threshold	Adjusted Threshold
\$10 million	\$11.3 million
\$50 million	\$56.7 million
\$100 million	\$113.4 million
\$110 million	\$124.7 million
\$200 million	\$226.8 million
\$500 million	\$567.0 million
\$1 billion	\$1.134 billion

In a related development, the thresholds for Section 8 of the Clayton Act, which governs interlocking directorates, have already undergone their annual adjustments for inflation. Effective January 18, 2006, the threshold

for Section 8(a)(1) became \$22,761,000 and the threshold for Section 8(a)(2) (A) became \$2,276,100.

The FTC press release regarding this change, with links to the related Federal Register announcement, is available online at <http://www.ftc.gov/opa/2006/01/fyi0603.htm>.

NAICS Data Switch from 1997 to 2002

Parties filing HSR notification and report forms must provide their US revenue data, allocated according to the US Census' North American Industrial Classification System (NAICS) codes for the most recent fiscal year and for a specified base year.

Effective December 30, 2005, the base year for US revenue data reporting in HSR filings has been changed from 1997 to 2002. (In other words, each filing party must report the 2002 revenues for all of its current businesses' US operations, as well as its businesses' revenues for the last completed fiscal year.) The requirement that filing parties use the 1997 NAICS reporting system is also being updated; henceforward, parties making HSR filings must classify revenues according to the newer 2002 NAICS system.

There is a 30-day grace period before these new NAICS reporting rules become obligatory. During this grace period, it is possible to file using the old 1997 NAICS data as long as all parties to a filing report on the same basis. Use of the 2002 NAICS code system and 2002 revenue base year will become mandatory on January 30, 2006.

Companies that report many different NAICS codes or are anticipating a reportable transaction in the near future, would be well-served to consider updating their reporting systems now to avoid any last-minute rush or possible delay in connection with their next HSR notification.

The FTC press release regarding this change, with links to the related Federal Register announcement, is available online at <http://www.ftc.gov/opa/2005/12/fyi0588.htm>.

Electronic Filing for Some HSR Attachments

The promised move to electronic filing for HSR forms is still not a reality, but another recent FTC announcement at least offers the possibility of significantly reducing the bulk of many HSR filings. Effective January 11, 2006, parties may now meet the requirements to include annual reports, regularly-prepared balance sheets and SEC filings by referencing Internet web pages. That is, responses to Item 4(a) and Item 4(b) of the HSR notification and report form may now be given in the form of active web links. Filers will have one business day to supply paper copies of such documents to the FTC and DOJ upon being notified that the web links provided in the filing are inoperative or that the documents linked to are incomplete.

The FTC press release regarding this change, with links to the related Federal Register announcement, is available online at <http://www.ftc.gov/opa/2005/12/fyi0582.htm>.

Notes:

[1] The annual inflationary adjustments to the HSR thresholds were required by the 2000 amendments to the HSR Act.

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