

Attachment A

HSR REFORM PROPOSAL

1. The HSR Report Form will be modified to include a box labeled “Optional custodian limitation for potential additional request for information.” If the notifying party checks this box, the procedures set forth below will apply. If, however, the box is not checked, any additional request for information may proceed without the limitations set forth below, consistent with current practice.
2. A party electing the custodian limitation option must (a) provide or create, and submit with the form, complete and accurate organization charts (or equivalent materials that allow staff to identify the party’s employees and their positions), and (b) provide the name, and make available for interview, a responsible officer to explain the organization charts, the roles of the listed personnel, and the location of company records. The officer designated should be the senior person within the organization most familiar with these issues. If necessary, more than one such person should be made available.
3. If the notifying party has complied with paragraph 2 above, then, depending on the dollar size of the transaction, the reviewing agency will be limited to requiring a search of documents in the files of 15 employees (at the low end) to 35 employees (at the high end).
4. If the agency staff believe that the files of custodians in excess of the numbers set forth in paragraph 3 are required to pursue their investigation, staff should first notify the affected party of the total number custodians whose files it seeks and request the party’s consent. If consent is not provided within two business days, staff may seek materials from additional custodians only upon the personal approval and certification of the need for such materials by, as the case may be, the Chair (or Acting Chair) of the Federal Trade Commission or the Assistant Attorney General (or Acting Assistant Attorney General) in charge of the Antitrust Division of the Department of Justice. If such approval is granted, the filing party may obtain judicial review by petitioning a United States Magistrate Judge in the United States District Court for the District of Columbia, who will be designated by the chief judge of that court as the magistrate judge with primary responsibility for such reviews. During the pendency of any such review process, the applicable waiting period under the Hart-Scott-Rodino Act will be tolled. The objecting party will have the burden of persuading the United States Magistrate Judge that the certification that the additional information is needed is an abuse of agency discretion. No appeal from a decision of a United States Magistrate Judge may be taken.