

Insights

HSR IN FLUX: NEW FILING REQUIREMENTS COLLIDE WITH FEDERAL COURT RULING

Feb 23, 2026

SUMMARY

On February 12, 2026, a federal district court in the Eastern District of Texas vacated the Federal Trade Commission's new Hart-Scott-Rodino Act premerger notification form, concluding that in its 2025 comprehensive overhaul of the nearly 50-year old form, the agency exceeded its statutory authority and acted arbitrarily and capriciously under the Administrative Procedure Act. Although the court ordered the new form set aside, the Fifth Circuit has issued an administrative stay while it considers the FTC's emergency motion for a stay pending appeal. As a result, the new HSR form remains in effect at this time. Parties preparing HSR filings should be aware that filing requirements may shift quickly depending on the Fifth Circuit's forthcoming decision.

In late 2024, when the FTC and DOJ announced a [new rulemaking](#) associated with their Hart-Scott-Rodino Act premerger notification form (often called "the new HSR form"), the M&A and antitrust communities focused on the significant additional information the revised form would require. We previously covered both [the Agencies' proposed changes](#), and [the Final Rule](#). These revisions represented the most substantial update to the HSR form since its introduction in 1978. Among the most controversial aspects of the new form for the business community was the increased costs it would impose on filers, with the FTC estimating that the additional information required would cost on average nearly \$40,000 more per filing. The new form took effect on February 10, 2025.

One month before the effective date, the U.S. Chamber of Commerce—joined by Business Roundtable, American Investment Counsel, and Longview Chamber of Commerce—[filed suit](#) challenging the FTC's authority to issue the Final Rule. The plaintiffs argued that the rule violated the Administrative Procedure Act because it exceeded the FTC's statutory authority and was arbitrary and capricious. [1] On February 12, 2026, the district court [granted](#) summary judgment for the plaintiffs and vacated both the Final Rule and the new HSR form.

In accepting the plaintiffs' arguments that the FTC exceeded its authority and acted arbitrarily and capriciously, the court emphasized the substantial compliance costs imposed on all filers, despite

the fact that most transactions raise no antitrust concerns. The court also rejected the FTC's argument that the new form would materially improve merger screening, noting that the agency could not identify any past unlawful transactions that would have been detected under the new form but not the old one. The court further found that any potential agency cost savings did not outweigh the burden placed on filers.

The court ordered that the Final Rule and new HSR form be set aside but stayed its ruling for five days, to allow the FTC to seek emergency relief from the Fifth Circuit. Two days before the stay expired, the district court denied the FTC's request for a further stay pending appeal. That same day, the FTC filed an emergency motion with the Fifth Circuit, and the next day, the Fifth Circuit issued an administrative stay "until further order of our court" and set an expedited briefing schedule for the week of February 23.

If the Fifth Circuit ultimately rules against the FTC, the district court's order will take effect, the new HSR form will be invalidated, and the prior version of the form may come back into use. Regardless of how the Fifth Circuit rules, the issue may be appealed again (perhaps on an expedited basis) to the Supreme Court of the United States, meaning there will likely be continued uncertainty in this area for some time as the appeal progresses. This is significant for HSR Act filers because in many cases the new form requires much more information than the old form and is more burdensome and expensive to complete. Notably, the new form requires information about acquiring party ownership structures including with respect to overlapping officers and directors, supply or other vertical relationships, and overlapping minority holdings, as well as requiring parties to search for and submit certain ordinary course documents if they relate to competition between the parties.^[2]

Given these rapid developments, parties preparing for upcoming transactions that require HSR Act filings may be uncertain about which form to use. For now, the new HSR form remains in effect.^[3] The Fifth Circuit's ruling on the FTC's emergency motion is expected to provide additional clarity in the near term, but in the meantime, it is critical that filers coordinate closely with antitrust counsel during preparation of HSR Act filings given the substantial differences in the information that may be required to be gathered depending on which form will be used. The BCLP antitrust team will continue to monitor the case and provide updates.

^[1] The American Hospital Association and Federation of American Hospitals filed an amicus brief in support of the Chamber of Commerce.

^[2] See our summary of the Final Rule here ([the Final Rule](#)).

^[3] Because the DOJ and FTC share responsibility for reviewing HSR Act filings, all HSR Act filings are implicated by the court's ruling even though the case was only brought against the FTC.

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