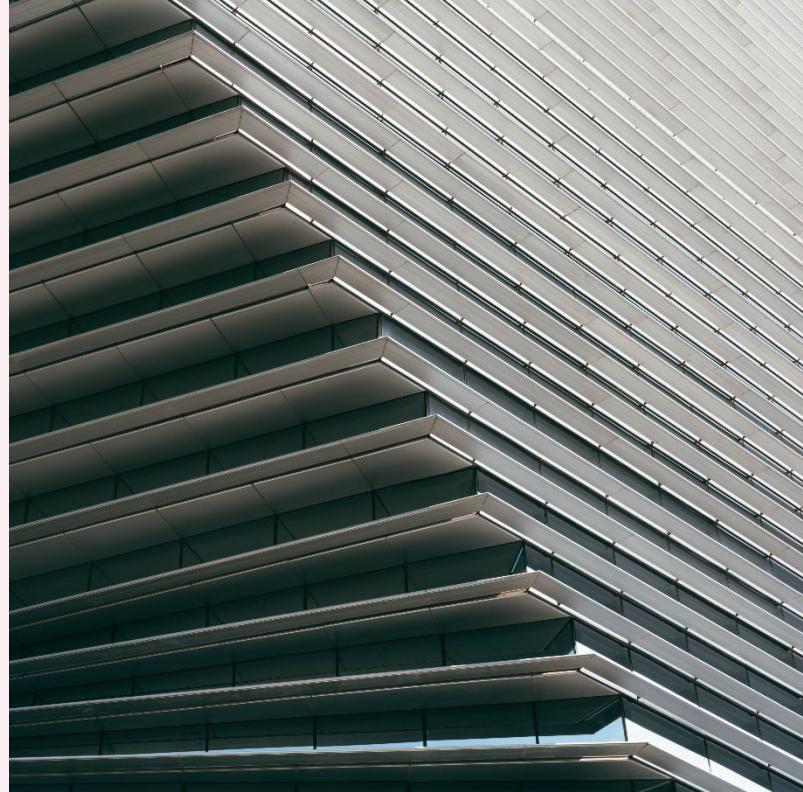


Fifth Circuit Temporarily Stays District Court Ruling that New HSR Form is Invalid: What Merging Parties Should Know

20 February 2026



Key Points

- The HSR form that has been in effect for the past year remains in effect for the time being.
- On February 12, 2026, the U.S District Court for the Eastern District of Texas vacated the new HSR rule and form, which has been in effect since February 10, 2025, but stayed its decision for seven days pending appeal.
- On February 19, the U.S. Court of Appeals for the Fifth Circuit issued a temporary stay of the district court's decision while it considers the FTC's request for a full stay pending appeal.
- The Fifth Circuit has ordered a briefing schedule on the motion to stay pending appeal that concludes on February 26 but did not indicate when it would rule on the motion.
- We expect the Fifth Circuit to provide some amount of lead time should it decide to lift the stay. If it lifts the stay, parties would likely need to revert to the previous form, which is less burdensome overall but requires certain information that is not called for under the New HSR Filing Form.
- For filings anticipated to be filed after February 26, parties may want to consider collecting the limited additional information required for the previous HSR premerger notification form to avoid delays in the event that the stay is lifted.

New HSR Development

On February 12, 2026, a federal judge in the U.S District Court for the Eastern District of Texas vacated the U.S. Federal Trade Commission ("FTC")'s final rule, titled "Premerger Notification; Reporting and Waiting Period Requirements" ("the HSR Rule")¹ in its entirety, concluding that the FTC's rulemaking violated the Administrative Procedure Act ("APA").² The HSR Rule—which was adopted unanimously by the FTC in 2024 and became effective in the first few weeks of the second Trump Administration—dramatically expanded the requirements of the HSR premerger notification filing form (the "New HSR Filing Form"). The FTC has acknowledged that the New HSR Filing Form would almost triple the time required for financial institutions to prepare when compared to the previous HSR premerger notification filing form.

Categories of new information called for in the New HSR Filing Form include, for example:

- Descriptions and details regarding competitive overlaps, or potential overlaps, between the parties;
- Descriptions and details regarding supply relationships between the parties, or their competitors;
- Broader document requirements, including certain deal-related documents sent to or created by the "supervisory deal team lead" and, if competitive overlaps exist, certain ordinary course documents sent to a CEO or board;
- Disclosures about officers or directors that hold similar roles on competitors of the target;
- Subsidies from foreign governments or entities of concern; and,
- Products subject to countervailing duties or investigations into countervailing duties.

Shortly after the HSR Rule was implemented, a group of plaintiffs, led by the U.S. Chamber of Commerce, challenged the rule as unlawful under the APA. In its Memorandum and Opinion, the District Court agreed with these plaintiffs and vacated the HSR Rule.

The Hart-Scott-Rodino ("HSR") Act directs the FTC to seek documents and information from merging parties "as is necessary and appropriate" to enable the FTC and U.S. Department of Justice ("DOJ") to determine whether the transaction "may, if consummated, violate the antitrust laws." The District Court found that the requirements of the New HSR Filing Form were not "necessary and appropriate" because the FTC failed to show that the benefits of the increased requirements "reasonably outweigh" the significant costs. The District Court described the FTC's claimed benefits—that the New HSR Filing

¹ Fed. Trade Comm'n, As Published Final Rule on Premerger Notification; Reporting and Waiting Period Requirements (Nov. 12, 2024), <https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements>.

² *Chamber of Commerce of the United States v. Fed. Trade Comm'n*, No. 6:25-cv-9 (E.D. Tex. Feb. 12, 2026) (memorandum opinion)

Form helped detect additional anticompetitive mergers and saved the FTC time and costs—"illusory or, at best, unsubstantiated." The District Court also pointed out that the previous HSR premerger notification filing form had only undergone minor changes for almost 50 years prior to the 2024 changes, yet the DOJ and FTC had historically described the form as "highly effective." For the same reasons, the District Court agreed with the plaintiffs that the HSR Rule was the result of arbitrary and capricious rulemaking.

As relief, the District Court vacated the HSR Rule and the accompanying New HSR Filing Form, but stayed its decision for seven days, until February 19, to allow the FTC time to appeal.

On February 19, the Fifth Circuit granted an administrative stay of the District Court's decision, pursuant to a motion from the FTC. The Fifth Circuit has stayed the decision "until further order of our court." The Fifth Circuit set a briefing schedule for the FTC's motion for a stay pending appeal through February 26 but did not indicate when it would rule on the motion.

The FTC's motion for stay pending appeal argues that the District Court's decision is wrong on both its analysis of the HSR Rule and the finding that plaintiffs have standing. As to the latter, the FTC claims the plaintiffs' standing is based on improper "hearsay" evidence of potential harms—namely, declarations from association members on their intent to engage in potential HSR-reportable transactions. On the substance, the FTC continues to argue that it had the statutory authority under the APA to promulgate the HSR Rule and argues that it "extensively documented" the need for the rule and the FTC's consideration of potentially less burdensome alternatives.

What Should Filing Parties Do?

Filing parties should continue preparing submissions using the New HSR Filing Form given the Fifth Circuit's order staying the District Court's decision is only "until further order of our court." The Fifth Circuit will likely keep the stay in place while it considers plaintiffs' response and the FTC's reply, due on February 23 and February 26, respectively.

Given the uncertainty as to when, or if, the Fifth Circuit may lift the stay, parties may wish to gather the limited additional information required under the previous form to quickly pivot to that form if necessary. In that case, parties should collect:

- NAICS code information using 2017 NAICS codes (rather than the 2022 NAICS codes required under the New HSR Filing Form);
- NAPCS codes information (not required under the New HSR Filing Form); and
- Revenues for each NAICS and NAPCS code identified, including sales of products manufactured outside the US and sold directly into the US, (which are not included in the New HSR Filing Form and require specific dollar amounts instead of revenue ranges).

What Happens Next?

The Fifth Circuit could rule on the FTC's request for a full stay pending appeal shortly after the briefing schedule currently ending February 26. A decision by the Fifth Circuit decision to deny a stay pending appeal, while not dispositive, may indicate that it is inclined to affirm the District Court's decision.

If the vacatur of the HSR Rule is ultimately upheld on appeal, the FTC may seek a middle ground between the New HSR Filing Form and its predecessor rather than reverting permanently to the pre-2025 status quo. For example, the FTC will still be required to update the HSR form to implement the Merger Filing Fee Modernization Act of 2022, which directs the FTC to request information about subsidies and countervailing duties in merger notifications. The process of achieving the compromises involved with a new rule may take well over a year, as it would likely require the FTC to commence a new notice and comment rulemaking process and conduct a new cost-benefit analysis. In the interim, the FTC will likely instruct parties to file under the previous HSR premerger notification filing form.

Whatever happens next, parties to merger transactions should prepare for the HSR process to undergo future modifications and should continue to maintain internal documents and data in a way that facilitates smoother compliance with expanded information requests, whether under the New HSR Filing Form or as part of a more substantive agency review.

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