

Key Takeaway

One year into the new, more complex filing regime under the Hart-Scott-Rodino (HSR) Act, the long-term viability of the changes remains in doubt, but for now, the updated rules will remain in force. On February 12, 2026, the US District Court for the Eastern District of Texas vacated the Federal Trade Commission's (FTC) recently revised HSR premerger notification rules, which had significantly expanded the scope of information required in connection with merger filings. The court concluded that the agencies had exceeded their statutory authority and had not adequately justified the expanded reporting requirements. Recognizing the immediate impact on ongoing transactions, the court temporarily stayed its own ruling to allow the FTC time to seek appellate relief (though only for a week).¹

The FTC appealed, and on February 19, 2026, the US Court of Appeals for the Fifth Circuit granted an administrative stay of the district court judgment pending further appellate proceedings. As a result, the expanded HSR filing requirements remain operative for now.

Background: The Revised HSR Rules and the Litigation

In 2024, the FTC and Department of Justice (DOJ) finalized sweeping revisions to the HSR premerger notification rules. These changes represented the most significant expansion of HSR filing requirements in decades and were intended to provide the antitrust agencies with more detailed information at the initial filing stage.

Among other things, the revised rules required many filers to provide:

- Substantially expanded narrative disclosures regarding competitive overlaps and transaction rationale
- Additional information concerning ownership structures, minority holdings and investment relationships
- Broader document production obligations at the time of filing
- More detailed reporting about prior acquisitions and internal analyses

For a more detailed discussion of the revised HSR reporting requirements and their practical implications for transaction parties, please [see our prior client alert](#) addressing the 2024 rule changes.

Business organizations challenged the revised rules shortly after they took effect in early 2025, arguing that the agencies exceeded their statutory authority under the HSR Act and imposed reporting burdens beyond what Congress authorized.

District Court Decision (February 12, 2026)

The district court vacated the revised HSR rules in their entirety. The court concluded that the agencies had not adequately demonstrated that the expanded reporting requirements were reasonably necessary for administering the HSR program and that certain aspects of the rules went beyond the authority granted by Congress.

Because the revised rules were already in operation, the decision created immediate uncertainty regarding whether transaction parties could revert to the prior HSR filing form and disclosure requirements. To avoid disruption while the FTC considered appellate options, the district court issued a short administrative stay of its own ruling.

Fifth Circuit Administrative Stay

Following the district court decision, the FTC filed an appeal and sought emergency relief from the Fifth Circuit. On February 19, 2026, the appellate court granted an administrative stay of the district court judgment and set an expedited briefing schedule regarding whether a longer stay should remain in place during the appeal. Administrative stays preserve the status quo during appellate consideration and do not reflect a decision on the merits.

What the Appeal Could Mean

The appeal introduces several possible outcomes, each with different implications for merger reporting obligations:

- **Affirmance of the district court decision** – If the Fifth Circuit ultimately affirms the district court:
 - The revised HSR rules would likely be vacated permanently.
 - The agencies would revert to the prior HSR form.
 - The FTC and DOJ might pursue revised rulemaking designed to address the court's concerns.

¹ *Chamber of Commerce of the United States v. FTC*, No. 6:25-cv-00009-JDK (E.D. Tex. Feb. 12, 2026).

- **Reversal and reinstatement of the revised rules** – If the Fifth Circuit reverses the district court:
 - The expanded HSR filing requirements would remain in place.
 - Transaction parties would continue to be required to provide detailed upfront disclosures consistent with the revised framework.
 - The agencies may view the decision as validation of broader premerger reporting authority.
- **Remand or partial relief** – The appellate court could also:
 - Uphold certain portions of the rules while invalidating others
 - Remand for further administrative justification
 - Require narrower disclosure requirements

Such an outcome could prolong uncertainty and potentially trigger further rulemaking.

Continued Agency Requests for Information if the Revised Rules Are Curtailed

If the revised rules are ultimately vacated or narrowed on appeal, the FTC and DOJ would still be able to seek much of the information contemplated by the expanded HSR framework through voluntary requests during the initial waiting period or any subsequent waiting period following a “pull-and-refile.” However, inevitably, such requests will be made in a narrower subset of transactions than would be required to provide expanded disclosures under the new rules (as was the case prior to the rule changes). As a practical matter, transactions that raise competitive concerns may continue to involve substantial upfront information exchanges even if the revised rules do not remain formally in effect.

Practical Implications for Clients

• Continue Preparing Filings Under the Revised Rules

Unless and until further court action or agency guidance indicates otherwise, parties should continue preparing HSR filings under the expanded requirements.

• Build Flexibility Into Deal Timelines

Given the possibility of regulatory shifts:

- Transaction agreements should allow for timing uncertainty.
- Filing preparation timelines may fluctuate.
- Regulatory risk allocation may warrant attention.

• Expect Continued Information Requests

Even if aspects of the revised rules are ultimately curtailed, agencies retain substantial authority to request additional information during merger review.

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