



HSR Process Reversion: FTC Reinstates Prior Premerger Notification Rules and Form

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FBT Gibbons' [Antitrust & Trade Regulation Team](#) previously wrote about changes to the rules and procedures governing premerger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) when the Federal Trade Commission (FTC) [announced the new final rule](#) in October 2024, which took effect on February 10, 2025.^[1] We also reported on a challenge to the new rules brought by the U.S. Chamber of Commerce and other pro-business groups in the U.S. District Court for the Eastern District of Texas in our Antitrust Developments Update for [March 2025](#) and [April 2025](#).

Now, the Texas federal court has invalidated the new HSR rules and revived the prior version of them. The new rules have been widely criticized for significantly increasing the information merging parties must submit to the FTC and the associated burden and expense. The prior version, by contrast, offers a more streamlined process that saves parties substantial time and resources when preparing their filings. This article summarizes what we know so far about legal proceedings and the return of the older premerger notification framework.

The Eastern District of Texas concluded that the FTC's final rule was not "necessary and appropriate" under the HSR Act.

The new rules were initially invalidated on February 12, 2026. The Eastern District's analysis turned on the language of 15 U.S.C. § 18a(d)(2) authorizing the FTC to "prescribe such other rules as may be **necessary and appropriate** to carry out the purposes of this section."^[2] (Emphasis added). The court concluded that the "necessary and appropriate" language bars expansive premerger filings that impose significant costs with no tangible benefits and further found that this limitation requires that new premerger notification rules "reasonably outweigh" their compliance costs.^[3]

Given the U.S. Office of Management and Budget's estimate that the new rules would add 239,020 hours and \$139.3 million in compliance costs, the Eastern District could not identify any benefit that would justify them.^[4] In the court's own words, "the agency has provided no evidence that any deficiencies in the prior form resulted in illegal mergers that the new form would prevent."^[5]

The Fifth Circuit denied the FTC's motion to stay, reviving the previous version of the premerger notification rules.

The FTC appealed to the U.S. Court of Appeals for the Fifth Circuit on February 18, 2026, and immediately filed a motion to stay the district court's decision pending the outcome of the appeal.^[6] On February 19, 2026, the Fifth Circuit granted a temporary administrative stay "until further order of our court . . ."^[7] The next day, the FTC updated its [Premerger Notification Program website](#) with the following notice:

IMPORTANT NOTICE: On February 19, 2026, the U.S. Court of Appeals for the Fifth Circuit granted an administrative stay of the district court's decision. The new form thus remains in place, and filers should continue to submit the new form until further notice. (02/20/2026)^[8]

On March 19, 2026, after the FTC's stay request was fully briefed, the Fifth Circuit entered an order lifting the administrative stay and denying a stay pending the outcome of the appeal.^[9] The FTC again updated its Premerger Notification Program website with the following notice:

IMPORTANT NOTICE: On March 19, 2026, the U.S. Court of Appeals denied the Commission's motion for a stay pending appeal. Therefore, the district court's judgment vacating the new form is effective immediately. The Commission is now accepting HSR filings using the Form and Instructions that were in place before the February 10, 2025, effective date of the new rule. The agency is in the process of updating its website to effectuate the court's order and will be making relevant HSR filing materials available for filers soon. The agency will continue to accept HSR filings made pursuant to

the February 10, 2025, Form and Instructions should filers voluntarily decide to submit them. (03/19/26)[10]

What are the practical effects of these developments?

The Fifth Circuit's denial of the FTC's stay motion *may* signal an inclination to affirm the district court and hold the new rules invalid when it enters its final judgment. Regardless, by reinstating the prior rules, the FTC has given merging parties at least a temporary window to file less burdensome and less costly premerger notifications. As noted, however, the FTC will continue to accept filings made under the new rules on the new forms.

Merging parties still need to consider whether they should file premerger notifications under the prior rules and form or under the new rules and forms. For smaller size-of-transaction deals with little to no competitive overlaps or other obvious competition concerns, it makes sense to file using the more streamlined prior rules and form. For more complex deals with greater competitive overlaps and greater overall competition concerns, merging parties should still consider filing under the new rules using the new forms.

One purpose of the new rules was to lessen the frequency of the FTC's dreaded Second Requests by requiring more detailed information on competitive overlaps and complex ownership structures at the time of filing. Parties to more complex deals with greater competitive impacts may still reduce the risk of a Second Request by using the new forms. Conversely, the FTC may be more inclined to issue Second Requests during this possibly temporary window to those who choose to file using the old form.

Regardless of which route they take, merging parties and their counsel should continue to monitor both the Fifth Circuit appeal and any updates to the FTC Premerger Notification Program website. For more information or assistance navigating FTC requirements in connection with M&A activity, please contact the authors or any attorney with the firm's [Antitrust & Trade Regulation Team](#).

[1] See article, ["FTC Announces Final Rule on HSR Premerger Notifications: Overview of Changes and Impact on M&A Costs and](#)

[Timelines](#)" (Oct. 29, 2024).

[2] *Chamber of Commerce of the United States of America v. Federal Trade Commission*, No. 6:25-cv-9-JDK, 2026 WL 402498, at *6 (E.D. Tex. Feb. 12, 2026).

[3] *Id.* at *7–8. (The Eastern District analyzed several federal cases interpreting "necessary and appropriate" language in reaching its conclusion).

[4] *Id.* at *8–9.

[5] *Id.* at *11.

[6] *Chamber of Commerce v. FTC*, Case 26–40094, DN 7 (Fifth Circuit Feb. 18, 2026).

[7] *Chamber of Commerce v. FTC*, Case 26–40094, DN 18 (Fifth Circuit Feb. 19, 2026).

[8] *Premerger Notification Program*, Federal Trade Commission ([Premerger Notification Program | Federal Trade Commission](#)) (last accessed March 20, 2026).

[9] *Chamber of Commerce v. FTC*, Case 26–40094, DN 44 (Fifth Circuit Mar. 19, 2026).

[10] *Premerger Notification Program*, Federal Trade Commission ([Premerger Notification Program | Federal Trade Commission](#)) (last accessed March 20, 2026).

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