

CLIENT ALERT

Fifth Circuit Denies FTC’s Stay Motion, Vacating Revised HSR Form and Rules, Effective Immediately

March 20, 2026

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On March 19, 2026, the U.S. Court of Appeals for the Fifth Circuit denied the Federal Trade Commission’s (the “FTC”) motion for a stay, pending appeal, of a district court order vacating the new Hart-Scott-Rodino (“HSR”) rules.¹ The denial rendered the district court’s judgment immediately effective. The FTC has confirmed that it will accept HSR filings using the “old” form and instructions in effect prior to February 10, 2025, but will also continue to process filings voluntarily submitted pursuant to the “new” form and instructions (the “new rules”).²

¹ Chamber of Commerce v. Federal Trade Commission, No. 26-40094, ECF 44-2 (5th Cir. Mar. 19, 2026).

² See <https://www.ftc.gov/enforcement/premerger-notification-program>.

Background

The new rules represented the most significant overhaul of HSR filing requirements since the original premerger notification form was published in 1978, and substantially expanded the scope of materials required in HSR filings.³

On February 12, 2026, Judge Jeremy D. Kernodle of the U.S. District Court for the Eastern District of Texas vacated the new rules as arbitrary and capricious.⁴ On February 19, 2026, the Fifth Circuit granted a temporary administrative stay keeping the new rules in place while it considered the stay motion on an expedited basis.⁵

Key Takeaways

As of March 19, 2026, parties have the right to prepare HSR filings using the significantly less burdensome form and instructions that were in effect before February 10, 2025, although they may opt to file under the new rules on a voluntary basis. Filers that had been preparing filings using the new rules in the near term may choose to proceed with those submissions rather than switch forms, though this is a fact-specific determination best made with antitrust counsel.

Importantly, both the FTC and the DOJ Antitrust Division may still request during the HSR waiting period the same categories of documents and information that the new rules would have required as a matter of course at the filing stage. Early engagement with antitrust counsel remains advisable to assess likely agency interest and prepare accordingly.

The Fifth Circuit's denial of the stay, and the district court's underlying vacatur, have no impact on the recently announced HSR jurisdictional thresholds and filing fees for 2026.⁶ Parties should continue to apply the 2026 thresholds when determining whether a transaction is subject to an HSR reporting obligation.

The Fifth Circuit's denial of the stay motion addresses only whether the new rules should remain in place *during* the appeal—it says nothing about the ultimate merits of the FTC's challenge to the district court's ruling. The FTC's merits brief is due April 20, 2026.

³ We discussed the overhaul in our October 14, 2024 Client Alert titled *FTC Finalizes Substantial Overhaul of HSR Pre-Merger Notification Requirements*, available at: <https://www.willkie.com/-/media/files/publications/2024/10/ftc-finalizes-substantial-overhaul-of-hsr-pre-merger-notification-requirements.pdf>.

⁴ We discussed this decision in our February 12, 2026 Client Alert titled *Texas District Court Vacates New HSR Rules*, available at: <https://www.willkie.com/-/media/files/publications/2026/02/texas-district-court-vacates-new-hsr-rules.pdf>.

⁵ We discuss this in our February 23, 2026 Client Alert titled *Fifth Circuit Stays District Court Decision Vacating New HSR Rules; New Rules Remain In Effect Pending Further Court Action*, available at: <https://www.willkie.com/-/media/files/publications/2026/02/fifthcircuitstaysdistrictcourtdecisionvacatingnewhsrulesnewrulesremainineffectpendingfurthercourtaction.pdf>.

⁶ We discuss the most recent revisions to the HSR thresholds in our January 15, 2026 Client Alert titled *FTC Revises HSR Thresholds, Filing Fees, and Section 8 Thresholds*, available at: <https://www.willkie.com/-/media/files/publications/2026/01/ftc-revises-hsr-thresholds-filing-fees-and-section-8-thresholds.pdf>.

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The members of our antitrust and merger control team will continue monitoring these developments and are available to provide additional guidance.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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