

# Memorandum

## Update: Fifth Circuit Issues Administrative Stay of Vacatur of New HSR Form

February 20, 2026

As we previously noted, on February 12, 2026, the district court for the Eastern District of Texas issued a decision<sup>1</sup> vacating the new HSR Form adopted in 2024 (“New HSR Form”)—which had substantially expanded requirements for filings under the HSR Act—in a lawsuit filed by the U.S. Chamber of Commerce. The District Court held that the Federal Trade Commission (“FTC”) exceeded its statutory authority and that the New HSR Form was arbitrary and capricious under the Administrative Procedure Act. The District Court’s order was stayed for seven days, through February 19, 2026. Following the District Court’s ruling, the FTC sought emergency relief from the U.S. Court of Appeals for the Fifth Circuit. The FTC requested that the stay remain in effect through midnight of March 2, 2026, and plaintiffs did not oppose that request. The Fifth Circuit, however, granted an administrative stay “*until further order of [the] court,*” preserving the New HSR Form pending further action by the court.

The District Court’s decision to vacate is based on the following grounds:

**The New HSR Form exceeds the FTC’s statutory authority:** The HSR Act requires the HSR form rules to be “necessary and appropriate” and the District Court interpreted that requirement to mean the benefits of the New HSR Form outweigh the costs. The District Court detailed that the old rule governed merger review effectively for nearly 50 years and that the New HSR Form—which the FTC was not able to show would detect illegal mergers any more efficiently than the old rule—would take about 3x longer for parties to complete. The FTC also purportedly failed to identify any illegal mergers that it had missed under the old HSR form that would be caught under the New HSR Form, leading the court to conclude the any proposed benefits could not be substantiated. As the District Court put it, “the overall additional burden to comply with the Final Rule would be 239,020 hours . . . and would cost approximately \$139.3 million . . . . And yet, the benefits of the Final Rule identified by the FTC are illusory or, at least, unsubstantiated.”

**The New HSR Form is arbitrary and capricious:** Under federal law, agency rules are reviewed under an “arbitrary and capricious” standard to determine legality. Here, the District Court held the New HSR Form to be arbitrary and capricious as the FTC purportedly lacks any evidence that the New HSR Form would detect illegal mergers more effectively than the old HSR form. Additionally, the District Court reiterated the cost/benefit

<sup>1</sup> *Chamber of Com. of the United States v. FTC*, No. 6:25-cv-9-JDK, 2026 U.S. Dist. LEXIS 29275 (E.D. Tex. Feb. 12, 2026).

analysis detailed above and held that the FTC did not reasonably consider less costly alternatives that could be used to achieve the FTC's goals (such as voluntary disclosures before a second request).

The District Court also dismissed the FTC's arguments that plaintiffs lack standing, holding that plaintiffs are associations whose members routinely enter into transactions that are notifiable under the HSR Act and that there is substantial risk of future harm.

**Practical implications for filing parties:** Under the current briefing schedule, plaintiff's response is due on February 23<sup>rd</sup>, and the FTC's reply brief is due on February 26<sup>th</sup>. Given the court's schedule and the Fifth Circuit's open-ended administrative stay, parties should expect to use the New HSR Form and expanded disclosure requirements at least through the next week, pending further court action.

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For further information regarding the issues raised above or any other aspects of the HSR Act and rules, please contact:

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