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District Court Vacates New HSR Rules, Fifth Circuit Denies Motion to Stay Order Pending Appeal, FTC Will Accept Either Form (For Now)

UPDATE: The U.S. Court of Appeals for the Fifth Circuit granted the FTC's motion to hold its appeal in abeyance on May 26, 2026, effectively pausing the proceedings until December 31, 2026. Additionally, the FTC is contemplating [another proposed rulemaking](#) and the public comment period closed May 26, 2026. The Kirkland Antitrust Group is monitoring comments and will continue to provide updates with respect to any proposed rulemakings.

BREAKING: On March 19, 2026, the Fifth Circuit **denied** the FTC's request to keep the new HSR rules in place pending the appeal of the FTC's loss at the district court. As a result, the FTC's Premerger Notification Office confirmed that it will accept **both** the old and new HSR Forms. It does not indicate for how long both Forms will be considered valid. As a reminder, this pending litigation or order does not change the analysis of whether a transaction is reportable, or the filing fee required; it only affects the amount of information required to be disclosed with a filing. Kirkland's HSR Team is working to ensure seamless compliance, is continually monitoring the situation and will provide additional information as it becomes available.

On Thursday, February 12, 2026, one year and two days to the date of the Federal Trade Commission's [new rules](#) under the Hart-Scott-Rodino Act (HSR Act) becoming effective, the U.S. District Court for the Eastern District of Texas issued an order **vacating** the new rules in their entirety. The new rules significantly expanded the documentary and informational disclosures required under the HSR Act. The court found that the FTC exceeded its statutory authority and engaged in "arbitrary and capricious" rulemaking by failing to demonstrate that the benefits of the new rules reasonably outweighed their substantial costs.

On February 19, 2026, the Fifth Circuit granted the FTC's emergency relief motion to stay the decision until further order and set short briefing deadlines, with both parties' briefs due this coming week: Appellees' response brief is due February 23, and Appellants' reply brief is due February 26.

Key Takeaways

1. The new HSR rules are technically vacated in their entirety. **However**, the order is stayed as the case proceeds through the appellate process.
2. The Premerger Notification Office confirmed on February 20, 2026, that the new HSR rules filings will remain in effect until further order from the Fifth Circuit, at a minimum through February 26, but likely longer.
3. The Kirkland HSR team will continue to monitor the situation closely and provide as much notice as possible in the event that any pivots are required.

Please visit the Kirkland [New HSR Rule Developments Page](#) for more information.

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