

Overhauled U.S. Merger Control Filing Process to Take Effect February 10, 2025

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Earlier this month, the final rule overhauling the U.S. merger control filing process was published in the Federal Register, making the effective date for the new process February 10, 2025. All filings made on or after that date must conform with the new requirements.

It has been a long road. In June 2023, the Federal Trade Commission (FTC) announced a proposed rule that would overhaul the U.S. merger control reporting process for the first time in 45 years. The proposed changes would have required parties to a proposed transaction to (among other things) submit many more documents (including drafts, certain documents created in the ordinary course of business, and deal timelines and organization charts). The FTC also proposed narrative submissions that would bring the U.S. process closer to the relatively more onerous requirement of European merger control regimes.

Following a public comment period and what one of the five FTC commissioners called “intense negotiations” between the commissioners, the FTC unanimously voted on October 10, 2024, to adopt a final rule that included many of the proposed changes—but not all of them. The changes incorporated in the final rule are substantial. The FTC itself estimates that the new rule will cause each filing to take an average of 68 hours of additional legal work (and as many as 121 additional hours for the acquiring party in a transaction with overlapping products or significant supply relationships in the target company’s industry).

The final rule incorporates the following key requirements:

- Submission of a narrative statement describing the rationale for the transaction and any existing diagrams regarding the transaction;
- Identification of a “supervisory deal team lead” and submission of additional documents from that person;
- For transactions involving overlapping products or services, submission of one year’s worth of annual, semi-annual, or quarterly plans or reports created in the ordinary

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- Antitrust & Competition Law
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course of business (*i.e.*, not only those created in connection with the proposed transaction) with information about relevant products and markets, if those documents were shared with either party's CEO, as well as all plans and reports (including those that were not prepared at regular intervals) that were shared with either party's Board of Directors;

- Disclosure of revenue numbers broken down by NAICS code for each separate operating entity under the filing party's control, and disclosure of more granular geographical overlap information;
- Disclosure of partner and minority shareholder information regarding all controlled entities;
- Submission of a narrative description of any competitive or supply relationships between the parties, with associated sales figures and lists of top customers;
- Disclosure of prior acquisitions by not only the acquirer in the proposed transaction but also now by the acquired entity;
- Additional requirements for filings based on non-definitive letters of intent; and
- Disclosure of certain foreign subsidies and pending or active defense or intelligence agency contracts.

The FTC's Premerger Notification Office (PNO) is charged with issuing guidance about the premerger notification program in general, and it has promised that it will help filing parties "navigate the transition from the current form to the new form to minimize disruption or delay in processing the new forms." The PNO has also pledged to "post a detailed overview of the changes," "invite practitioners to submit questions of broad applicability," "post answers on the [PNO] website," and provide updated "form-related guidance and tips," as well as "detailed instructions on how to submit required new materials along with the form."^[1]

Parties with transactions that have not been reported by year-end should consider whether they can report in January or early February (even if that means filing off a letter of intent instead of a definitive agreement). If not, then transaction parties should recognize that the process will require more time, effort, and expense—and should factor that into their schedules and their antitrust covenants.

^[1] FTC Bureau of Competition, *Planning for the new HSR Form* (Nov. 12, 2024), [Planning for the new HSR Form | Federal Trade Commission](#)