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# FTC Announces Final Changes to Premerger Notification Form

***The FTC recently announced extensive final changes to the Premerger Notification and Report form. Although less burdensome than the initial June 2023 overhaul proposal, the changes still require filers to provide significantly more information and documents than the current HSR framework. Filers will need to prepare for increased time and expense to ensure compliance.***

On October 10, 2024, the Federal Trade Commission (“FTC”) [announced](#) its final changes to the Premerger Notification Rules that implement the Hart-Scott-Rodino Antitrust Improvement Act (“HSR”), including the Premerger Notification and Report Form (“HSR form”). This [Final Rule](#) is aimed at addressing information gaps and enhancing the detection of antitrust risks, considering the dramatic changes that have taken place with respect to markets, investment strategies, and corporate structures over the past 45 years. The Department of Justice also [announced](#) its concurrence with the Final Rule.

The Final Rule, which represents the first such overhaul since the HSR rules commenced in September 1978, is set to take effect 90 days after publication in the Federal Register (so long as it is not stayed via a legal challenge). Until the Final Rule goes into effect (likely in January), parties must continue to utilize the current HSR form. The changes effected by the Final Rule are significantly less extensive than [the FTC’s June 2023 overhaul proposal](#)<sup>1</sup>, as careful review of over 700 responsive comments reportedly led to substantial edits to reduce the burden on merging parties. Nevertheless, the Final Rule still requires filers to provide significantly more information and documents than the current HSR framework, especially with respect to business line overlaps, and investors of the buying entity. The FTC estimates that the Final Rule will add an additional 68 hours to the HSR preparation process, bringing the requisite amount of time up to an average of 105 hours (with this estimate “including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information”). Consequently, parties contemplating mergers, acquisitions, and joint ventures covered under the HSR Act should prepare for increased time and expense.

The Final Rule adds key information and documentary requirements (listed below) to the HSR form. The FTC asserts that merging parties tend to have most of this information “readily available”, so the burden of its provision is relatively low when weighed against its probative value in the initial antitrust screening of a transaction.

## **Additional Information**

- Brief descriptions of overlaps, including descriptions of principal categories of products or services, as well as planned products or services that compete (or could compete) with those of the other party (based upon documents created in the ordinary course of business);

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<sup>1</sup> The FTC noted that it did not adopt its June 29, 2023 proposals related to the following items: “a timeline of key dates for closing the proposed transaction; creating organization charts for the purpose of filing a notification; information about other interest holders; drafts of submitted documents; information about employees; information about board observers; geolocation information; prior acquisitions involving entities with less than \$10 million in sales or revenues or consummated more than 5 years prior to filing; and information about steps taken to preserve documents or use of messaging systems.” Fed. Trade Comm’n, Final Rule, Premerger Notification: Reporting and Waiting Period Requirements at 6 (October 10, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p110014hsrfinalrule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf).

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- A list and brief description of any supply relationships among the parties<sup>2</sup>;
  - Certain sales data and top-10 customer information with respect to the product and supply overlaps/relationships described;
  - Information regarding any existing contracts between the buyer and the target in broad categories “such as leases, licensing agreements, master service agreements, operating agreements or supply agreements, or any non-compete or non-solicitation agreements”;
  - Description of the transaction rationale, as well as submission and explanation of any documents confirming or discussing that rationale;
  - Disclosure of certain information about the buyer’s officers, directors, and investors, including those with management rights with respect to the buyer;
  - Doing-business-as (“d/b/a”) names of the parties’ entities;
  - Information regarding certain prior acquisitions within the previous five years, including the target’s prior acquisitions as opposed to just the buyer’s (this requirement, which is limited to transactions valued at \$10 million or more, is designed to identify roll-ups and so-called serial acquisition strategies, and it is only required if there is a NAICS code overlap among the parties);
  - Additional overlapping geographic location information for certain industries;
  - Information regarding which other countries’ (ex-U.S.) merger control filing requirements are triggered by the transaction (on the current HSR form, this disclosure is voluntary rather than mandatory);
  - Identification of certain defense or intelligence contracts; and
  - Information about subsidies received from foreign governments or entities “of concern”.

### **Additional Documents**

- Documents showing any existing or future non-horizontal business relationships that could give rise to competitive risks, and, where such business relationships exist, parties must also furnish one year’s worth of plans and reports that were provided to a CEO or the Board that analyze markets and competition for any overlapping product or service, including products or services still in development;
- Certain transaction-related documents prepared by or for the “supervisory deal team lead” (defined as “the individual who has primary responsibility for supervising the strategic assessment of the deal, and who would not otherwise qualify as a director or officer”);
- A transaction diagram (if one exists);
- Ownership structure charts and descriptions (including organizational charts for funds and master limited partnerships, if such charts exist);
- Transaction-specific agreements among the parties, including all exhibits, schedules, side letters, non-compete agreements, and non-solicitation agreements negotiated in conjunction with the transaction, excluding clean team agreements (documents constituting the actual agreement must be executed, but

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<sup>2</sup> The Final HSR Form Instructions explain that the supply relationships described must include “each product, service, or asset (including data) that the [target] has sold, licensed, or otherwise supplied, and which represented at least \$10 million in revenue in the most recent year to the [buyer]—or to any other business that, to the [target’s] knowledge or belief, uses the [target’s] product, service, or asset to compete with the [buyer’s] products or services, or as an input for a product or service that competes or is intended to compete with the [buyer’s] products or services.” Fed. Trade Comm’n, Final Rule, Premerger Notification: Reporting and Waiting Period Requirements at 437 (October 10, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p110014hsrfinalrule.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p110014hsrfinalrule.pdf).

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employment agreements and non-compete agreements may be provided in draft form, if the draft is the most recent version); and

- Verbatim English translations of any documents that are submitted in a language other than English (currently parties are only required to provide an English translation if one is already available).

The seller is excused from certain of the requests that would be duplicative of information received from the buyer (most notably the ownership structure, organization chart, transaction diagram, identification of certain officers and directors, and disclosure of international antitrust notification requirements). The buyer is also excused from certain requests where there is no overlap among the parties (most notably the description of supply relationships, certain plans and reports, geographic information, and defense or intelligence contracts information).

Quite notably, the Final Rule requires that if the parties are filing on a Letter of Intent or similar document that is not the definitive agreement, they must also submit “a dated document that provides sufficient detail about the scope of the entire transaction that the parties intend to consummate, such as an agreement in principle, or term sheet, or the most recent draft agreement.” The filer’s affidavit must also attest that this other detailed document has been included with the filing.

Also, under the Final Rule, the requirement to provide NAPCS codes for manufactured products is eliminated, so parties will only need to report NAICS codes (as opposed to both NAICS codes and NAPCS codes).

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### Special Exemptions - “Select 801.30 Transactions”

The Final Rule exempts “select 801.30 transactions” from many of the HSR form’s new requirements due to the low antitrust risk such transactions pose. These filers will not have to provide the transaction rationale, a transaction diagram, d/b/a names, plans and reports, transaction agreements, product overlap descriptions, supply relationship descriptions, or information about defense and intelligence contracts.

To qualify for this category, a transaction must fall into one of the 801.30 classifications (i.e. tender offers, conversions, open market purchases, acquisitions through the exercise of warrants/options, etc.), *and* the acquisition must not confer control, there must be no transaction-related agreement (or contemplated agreement) between any buyer-controlled entity and any target-controlled entity, and the buyer must not have, and must not be obtaining, certain rights with respect to any target-controlled entity or its management.

Executive compensation transactions will also qualify as select 801.30 transactions.

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### Online Portal for Stakeholder and Public Comment

The FTC also unveiled a new [online portal](#) through which stakeholders and the public will be able to express concerns regarding proposed transactions. However, the FTC noted that confidential information should not be transmitted via this portal.

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### Reinstatement of Early Termination

Additionally, the FTC announced that early termination will be reinstated at the same time that the Final Rule goes into effect. This means that, where permitted, parties will once again be able to consummate their deals before the full 30-day waiting period has expired. (The FTC had initially suspended early termination due to a historic volume of filings during the COVID-19 pandemic, and has not yet reinstated it).



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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email author Tarica Chambliss (Counsel) at 202.862.8902 or [TChambliss@Cahill.com](mailto:TChambliss@Cahill.com); or email [publicationscommittee@cahill.com](mailto:publicationscommittee@cahill.com).

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