

Title: New 2026 Increased Thresholds and New Filing Fee Structure Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 Announced

Full Article: The Federal Trade Commission (FTC) announced new, increased threshold limits and filing fee schedule under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act). The changes will take effect 30 days after the thresholds and filing fee schedule are published in the Federal Register and will therefore apply to transactions that close or are anticipated to close in mid to late February.¹

Like last year, the thresholds have been increased. **Most importantly, the size of transaction threshold has been increased to \$133.9 million.** This means that an acquisition or merger where at least \$133.9 million of assets, voting securities, or non-corporate interests will be held as a result of a transaction that closes, or is anticipated to close, in February should be evaluated for a potential reporting obligation under the HSR Act. The size of person thresholds have also been increased.

Basic Filing Thresholds

The HSR Act requires parties that meet the HSR Act's size-of-person thresholds to submit premerger notification filings with the FTC and the Department of Justice, Antitrust Division before completing certain proposed stock, asset or non-corporate interest acquisitions exceeding the HSR Act's size of transaction threshold. The thresholds have been revised as follows:

- **Size of Person.** Either the acquiring or acquired person must have total assets or annual net sales of \$267.8 million or more, and the other party must have total assets or annual net sales of \$26.8 million or more. If the acquired person is the \$26.8 million entity and is not engaged in manufacturing, the test looks only to the total assets of the acquired person, not annual net sales. Annual net sales are determined by looking at the last regularly prepared annual statement of income and expense, and total assets are determined by looking at the last regularly prepared balance sheet. If the value of the assets, voting securities, or non-corporate interests to be held as a result of the acquisition exceeds \$535.5 million, this test is deemed to be automatically met, regardless of the actual size of the parties.
- **Size of Transaction.** This test is met if more than \$133.9 million of assets, voting securities, or non-corporate interests of the acquired person will be held as a result of the transaction.

Certain exemptions may apply and certain other aspects of the rules should be considered if it appears filings are required or the parties are close to meeting the above thresholds. There have been significant changes to the HSR Rules, which govern what information must be submitted with the HSR filing. Given the nuances of the HSR Act and the additional information required by the new Rules implemented in 2025, it is recommended that parties to a transaction consult counsel experienced in HSR filings.

Filing Fee Structure

A filing fee, determined based on the size of the transaction, must be submitted along with filings under the HSR Act. The 2023 Consolidated Appropriations Act requires that the filing fees be adjusted each year based on the consumer price index and the thresholds associated with those fees be increased based on gross national product. In other words, both the size of transaction categories and the filing fees will be adjusted each year. The FTC will publish the new fees no later than January 31 of each year. The filing fee is determined by the value of the transaction at the time of filing.

The filing fee thresholds and filing fees have been increased as follows and will also be effective 30 days after publication in the Federal Register:

Size of Transaction
less than \$189.6 million
not less than \$189.6 million but less than \$586.9 million

Size of Transaction

not less than \$586.9 million but less than \$1.174 billion

not less than \$1.174 billion but less than \$2.347 billion

not less than \$2.347 billion but less than \$5.869 billion

\$5.869 billion or more

1. The FTC is required to revise the thresholds annually based on the change in gross national product. The FTC is also required to revise the related HSR filing fee schedule annually based on changes in the gross national product and in the consumer price index.

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