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Antitrust Group

US HSR Filings and Antitrust Merger Review Update: Federal Shutdown, 2025 Year-End Calendaring, and Washington/Colorado “Mini HSR” Acts

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An abstract geometric pattern composed of various colored triangles and polygons. The colors include shades of red, orange, yellow, blue, and grey, arranged in a complex, overlapping design that fills the bottom half of the page.

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Why This Matters Now

Two events are worth keeping in mind regarding US antitrust merger reviews as we head into Q4: (1) the federal government shutdown, which is affecting Hart-Scott-Rodino (HSR) reviews at the Federal Trade Commission (FTC) and Department of Justice (DOJ), and (2) newly effective state “Mini-HSR” notice requirements in Washington and Colorado (with more states likely following). Below, we lead with the shutdown and then cover year-end filing calendars before turning to the new state-level rules.

Government Shutdown Impact on HSR Review

The FY2026 appropriations bills funding the federal government beyond September 30, 2025, have not been enacted. As such, the Antitrust Division of the DOJ (“Antitrust Division”) and FTC are currently shut down and their operations limited to certain core functions.

Below is the current guidance for HSR filings pending or made during the shutdown (i.e., until Congress passes appropriations bills to fund the Antitrust Division and FTC):

- The FTC’s shutdown plan indicates that HSR filings will continue to be accepted for the time being (the web portal appears to be functioning).
- The initial HSR waiting period will continue to run as usual (**30 days from filing**)¹.
- For **transactions that do not raise substantive concerns** (i.e., where no antitrust questions from the agencies are anticipated), expect the HSR waiting period to expire; **early termination will not be granted**.
- For transactions where the agencies have questions, the agencies **issue a broad Second Request** to enable their investigation to continue during and after the shutdown, with staffing for preliminary investigations potentially scaled back.
- If the FTC and DOJ staff are largely offline during the shutdown, merging parties and their counsel will not have the opportunity to discuss timing or Second Requests with the Staff. Absent the shutdown, if faced with a Second Request, parties might engage with the Staff and provide advocacy and offer to “pull-and-refile” to avoid a Second Request or otherwise narrow its scope. During the shutdown, however, parties anticipating or receiving a Second Request should engage with counsel on a plan to work towards compliance until the government re-opens.

In the meantime, we recommend the following next steps:

1. **Incorporate protective provisions** into draft agreements, e.g., timing covenants that expressly account for a shutdown (e.g., tolling applicable deadlines day for day with the shutdown), calibrated outside dates, and appropriate efforts standards to handle potential Second Requests or paused discussions with the antitrust agencies.
2. **Plan closing timelines accordingly**, including accommodating extended investigations and no likelihood of early termination.
3. **Continue to comply with HSR and Second Requests**. Of course, during the shutdown HSR requirements and the antitrust laws still apply, and as noted above engagement with DOJ and FTC staff will be limited. The appropriate approach to compliance during a shutdown uncertainty depends heavily on the circumstances. Accordingly, merging parties should discuss a plan for compliance with outside counsel.

¹ The initial waiting period is reduced to 15 days for cash tender offers and bankruptcy sales under 11 U.S.C. § 363(b).

Year-End 2025 HSR Filing Timeline (for Deals Targeting Closing by December)

A few upcoming dates are critical to closing a deal by year-end 2025. These may be impacted by a shutdown if still ongoing.

Merging parties should build in sufficient time to prepare HSR Act filings and complete the HSR review prior to the desired closing deadline, particularly considering the increased disclosure requirements under the new HSR rules that came into effect earlier this year. Five business days is generally no longer sufficient, with standard timing usually in the range of 20-30 business days after signing.

Last day to file for end of year closing for a deal where pull and refile is anticipated	October 27 (waiting period will expire on November 26, with refile within two business days, November 28)
Last day to file for end of year closing for deal with no pull and refile	November 28 (waiting period will expire on December 29 at 11:59 p.m.)

New State-Level HSR Requirements: Washington and Colorado “Mini-HSR”

State “Mini-HSR” notice laws are now in effect and mandate that parties submit certain HSR materials to the state if their M&A transaction triggers an HSR filing under federal law. Washington and Colorado were the first states to adopt these requirements, and bills that would implement similar requirements in other states are advancing elsewhere.

Today, parties to an M&A transaction that submit an HSR filing to the FTC and DOJ must also submit the same filing to the Washington and Colorado Attorney General’s offices if the conditions detailed below are met.

Colorado and Washington HSR Disclosure Thresholds and Requirements	
Who must file?	A party that, at the time of the federal HSR filing, either: - Has its principal place of business in the state (Washington or Colorado); or - Had annual in-state sales of the goods/services involved in the deal $\geq$ 20% of the HSR size-of-transaction threshold ($\approx$ \$25.3 million today). <i>(Note that revenue calculations are complex, nuanced, and may differ between the acquiring and acquired persons)</i>
What is the filing fee?	None
Are the filings confidential?	- HSR form and attachments are confidential and exempt from state and federal FOIA. - The Washington/Colorado Attorney General may share the HSR form and other materials with federal antitrust agencies or other states that have enacted their own “Mini-HSR” that provides equivalent confidentiality protections.
What must be filed?	Washington: - If the filer’s principal place of business is in WA, it must submit the HSR Form plus all HSR documentary attachments. - If the filer qualifies only under the 20% sales test, it submits the HSR Form and must provide attachments within seven days only upon AG request. Colorado: - The filer must submit the HSR Form plus all HSR documentary attachments.

What is the penalty for failure to file?	\$10,000 per day.
Is the transaction subject to a separate pre-close waiting period?	No. The only waiting period that applies is the federal-level HSR waiting period, which must expire or terminate prior to closing.

While Washington and Colorado are the only states with broad “Mini-HSR” Acts enacted as of today, there are a host of others in progress that could be enacted soon, including in California, the District of Columbia, Hawaii, Nevada, West Virginia and New York. We will continue to monitor and keep you apprised of additional developments.

Takeaways and Recommendations

- **Add Possible State Filing Requirements to the Deal Checklist.** Plan to check for state-level “Mini-HSR” filing requirements before signing and filing HSR. It is generally good practice to prepare the proper submissions with Washington or Colorado (if required) the same day as the federal-level HSR filing.
- **No Extra Waiting Period, But Real Exposure.** A missed notice can cost US \$10,000 per day, so it is good practice to verify the AG’s receipt of the notice.
- **Mind Confidentiality & Consistency.** Although filings stay nonpublic, AGs can share them with other state AGs if a similar “Mini-HSR” law has been enacted.
- **Plan for Future State Filing Requirements.** Bills in other states (including CA, DC, HI, NV, WV and NY) are working their way through legislatures. Adopting a repeatable “copy to AG” protocol now avoids last minute scrambles later.
- **Merger-Agreement Impact.** Ensure the regulatory filings and related “best efforts” covenants in the merger agreement or LOI cover state “Mini-HSR” notices and ensure the parties are committed to filing any such notices on time.

Merger Filing Update Checklist (Bringing it All Together)

1. **Shutdown Readiness**
 - a. Assume no chance of early termination in any deal and a higher Second Request likelihood in deals that raise substantive antitrust concerns.
 - b. Bake in shutdown-contingent timing, outside date flexibility, and efforts standards in the agreement.
 - c. Plan for compliance with HSR and antitrust laws during shutdown.
2. **Year-End Execution**
 - a. Allocate ~25 business days for HSR prep under the new rules.
 - b. Calendar October 27 (if pull-and-refile is anticipated) or November 28 (if not) as last-day filing milestones for a 2025 close.
 - c. Align signing/closing with both HSR and WA/CO “Mini-HSR” submissions; verify receipt.
3. **State “Mini-HSR” Compliance (WA/CO; others possible)**
 - a. Screen triggers for deals involving business in Washington or Colorado: principal place of business or ≥20% in state sales of deal-related goods/services (≈ \$25.3 million today).
 - b. Submit HSR forms/attachments as required and verify receipt.
 - c. Monitor developments in other states that might enact similar “Mini-HSR” disclosure requirements

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