

Antitrust & Trade Regulation

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2018 HSR Thresholds Announced by Federal Trade Commission

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The Federal Trade Commission (FTC) has announced new premerger notification thresholds that will take effect Feb. 28, and thus apply to transactions closing on or after that date. Under the 2001 amendments to the Hart-Scott-Rodino (HSR) Act, 15 U.S.C. 18a, the act's jurisdictional thresholds are adjusted annually to reflect changes in nominal (non-inflation-adjusted) gross national product. The newly announced adjustments will increase the HSR Act thresholds by approximately 4.5 percent.

The 2018 adjustments are the largest—both in percentage and in dollars—since 2014. As a result of annual adjustments, HSR thresholds have risen nearly 69 percent from those established by the 2001 HSR Act amendments.

Adjustments to size-of-transaction thresholds

Transactions that are never reportable: The new minimum size-of-transaction threshold will be \$84.4 million, an increase of \$3.6 million from the current \$80.8 million threshold. Thus, a transaction that results in holdings of \$84.4 million or less will not require HSR notification.

Transactions that are always reportable: At the other end of the size spectrum, a transaction that results in holdings of more than \$337.6 million will trigger HSR notification and waiting requirements, unless an exemption from filing applies.

Transactions that may be reportable: For transactions resulting in holdings falling between these two size-of-transaction thresholds (that is greater than \$84.4 million but no greater than \$337.6 million), whether HSR applies depends upon whether both parties meet the size-of-person thresholds.

Adjustments to size-of-person thresholds

The adjusted size-of-person thresholds are \$16.9 million and \$168.8 million, meaning that acquisitions resulting in holdings greater than \$84.4 million but no greater than \$337.6 million will not require HSR notification unless one person has total assets or annual net sales of \$16.9 million or more and the other person of \$168.8 million or more. (Note that additionally, if the acquired person is not engaged in manufacturing, it must have annual net sales of \$168.8 million or total assets of \$16.9 million.)

What else changes?

The HSR Rules (16 CFR parts 801-803) provide several exemptions that contain dollar value limitations described by the parenthetical "(as adjusted)." Those limitations (for example, the nexus with commerce limitations for the exemptions for acquisitions of foreign assets (16 CFR 802.50) and acquisitions of voting securities of a foreign issuer (16 CFR 802.51)) will be adjusted upward.

The HSR Rules also provide, for voting securities acquisitions, "notification thresholds" (see 16 CFR 801.1(h)) setting forth levels of holdings that would require another HSR notification. (Note, however, that once the 50 percent level is reached, no additional notification is required.) As the dollar values for these notification thresholds are set forth with the parenthetical "(as adjusted)," they will similarly be adjusted upward.

The 2001 amendments established a sliding scale for HSR filing fees, with fees of \$45,000, \$125,000 or \$280,000 based on the transaction value. While the filing fees themselves are not adjusted annually, the points at which the different fees apply are adjusted, so that the \$45,000 fee will apply to transactions valued in excess of \$84.4 million but less than \$168.8 million; the \$125,000 fee to transactions valued at \$168.8 million or greater but less than \$843.9 million; and the \$280,000 fee to transactions valued at \$843.9 million or greater.

HSR Thresholds

(in millions)

Base Threshold (HSR Act or Rules)	2017 Threshold	2018 Threshold (effective February 28, 2018)
\$10	\$16.2	\$16.9
\$50	\$80.8	\$84.4
\$100	\$161.5	\$168.8
\$110	\$177.7	\$185.7
\$200	\$323	\$337.6
\$500	\$807.5	\$843.9
\$1,000	\$1,615	\$1,687.8

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