

The Old HSR Form is Back (For Now)

March 20, 2026

On March 19, 2026, the U.S. Court of Appeals for the Fifth Circuit denied the Federal Trade Commission’s motion for a stay pending appeal of the U.S. District Court for the Eastern District of Texas’s decision vacating the FTC’s 2024 amendments to the Hart-Scott-Rodino (HSR) Form and Instructions. As a result, the district court’s vacatur remains in effect during the pendency of the appeal, and the revised HSR filing requirements that came into effect in February 2025, which imposed substantial new burdens on filers, are no longer operative.

Following the Fifth Circuit’s ruling, the FTC’s Premerger Notification Office (PNO) issued guidance confirming that the agency is accepting HSR filings under the Form and Instructions in place prior to the February 10, 2025 effective date of the revised rule. At the same time, the FTC indicated that it will continue to accept filings submitted under the revised 2025 form on a voluntary basis.

In the near term, the decision effectively restores the prior HSR filing regime, but allows filers to elect to use either the new form or the prior form.

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Background

As discussed in our prior alert, the U.S. District Court for the Eastern District of Texas vacated the FTC's 2024 rule expanding the scope of required disclosures in HSR filings.¹ The rule, which came into effect in February 2025, significantly increased the scope of information and documents required at the time of filing, including new narrative disclosures, broader document production obligations, and additional reporting relating to ownership structure, competitive overlaps, and supply relationships.

The district court held that the FTC exceeded its authority under the HSR Act and that the rule was arbitrary and capricious under the Administrative Procedure Act. The court stayed its ruling for seven days to allow the FTC to appeal.² The FTC subsequently appealed and moved for a stay pending appeal.

The Fifth Circuit's Order

The Fifth Circuit denied the FTC's motion for a stay pending appeal in a brief, unpublished order.³ Although the order does not provide substantive reasoning, its practical effect is that the district court's vacatur remains in force during the pendency of the FTC's appeal.

Accordingly, merging parties are not required to comply with the revised HSR Form and Instructions at this time.

FTC Premerger Notification Office Guidance

In response to the Fifth Circuit's decision, the FTC confirmed that:

- HSR filings may be submitted using the Form and Instructions that were in place prior to February 10, 2025; and
- The agency will continue to accept filings made pursuant to the revised 2025 form where parties voluntarily elect to use it.

For now there will therefore be a dual-track system under which filers may choose between the prior and revised forms.

What You Should Know

Parties that anticipate making HSR filings in the near term should consider several practical implications.

First, for most filers, using the prior HSR form will be materially less burdensome. The prior form does not require the expanded narrative disclosures, broader document collection, or additional ownership and overlap reporting introduced by the 2024 rule. The only respect in which the prior form is more burdensome is the North American Industry Classification System (NAICS) code revenue disclosure, which requires parties to report specific figures rather than the ranges permitted under the new form.

Second, the FTC will accept filings submitted under the revised form on a voluntary basis, which may be beneficial where the filing is already well advanced or where there are strategic advantages to disclosing overlaps and other narrative information upfront.

Third, the Fifth Circuit's order is procedural and does not resolve the merits of the appeal. The ultimate validity of the 2024 rule remains subject to appellate review, and the rule could be reinstated if the FTC prevails. As a result, parties should continue to monitor developments closely, particularly for transactions with longer timelines or anticipated filings later in the year.

Finally, although the new form is not currently in effect, the agencies may continue to seek similar information through other means, including voluntary requests during the initial waiting period or second request investigations. Parties should therefore remain mindful that the Fifth Circuit's decision does not impact the underlying enforcement priorities reflected in the 2024 rule.

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¹ See [U.S. District Court Vacates FTC's 2024 HSR Filing Rule, Cleary Gottlieb Steen & Hamilton LLP](#) (Feb. 13, 2026).

² *Id.*

³ *Chamber of Commerce of the United States v. FTC*, No. 26-40094, slip op. at 1 (5th Cir. Mar. 19, 2026) (per curiam) (denying motion for stay pending appeal).