

ALERT

# After Federal Court Vacates HSR Rule, DOJ and FTC Seek Public Comment on the Future of Premerger Notification

April 2, 2026

On March 25, 2026, the U.S. Department of Justice Antitrust Division and the Federal Trade Commission (together, the Agencies) issued a joint Request for Information (RFI) seeking public comment on potential improvements to the Hart-Scott-Rodino (HSR) Premerger Notification and Report Form and associated rules. The Agencies are soliciting feedback from businesses, investors, trade associations, and other stakeholders on whether recent revisions to the HSR Form effectively support efficient antitrust review without imposing unnecessary burdens on merging parties.

This request for public comment comes against an unusual procedural backdrop. Although the Agencies implemented a substantially revised HSR Form and rules in February 2025, a federal district court vacated those revisions in February 2026, and the U.S. Court of Appeals for the Fifth Circuit subsequently denied the FTC's request for a stay pending appeal. As a result, parties are once again filing under the longstanding pre-2025 HSR rules, which had remained largely unchanged for decades. While the Agencies continue to view the older HSR Form as "insufficient to review modern mergers and acquisitions" but are still considering whether to pursue a new rulemaking informed by their experience with the now-vacated revisions.

## Background: The Pre-2025 Form and the Vacated Updated Form

For nearly 50 years, the HSR Form required relatively limited information at the initial filing stage, with more detailed inquiry typically reserved for a small subset of deals that may raise

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## Practice Areas

Antitrust  
FTC and Consumer Protection  
Litigation

competitive concerns. In October 2024, the FTC voted to adopt an updated HSR Form and rules that significantly expanded the scope and detail of information required at the outset of the HSR process, including more extensive narrative descriptions of competitive overlaps, expanded document production obligations, and new disclosures relating to ownership, officers and directors, and certain supply relationships.

The updated HSR Form took effect in February 2025 and remained in place for more than a year, during which the Agencies reviewed thousands of filings and received substantial feedback from practitioners—including litigation challenges to the form and rules. In February 2026, however, a federal district court vacated the rule. Although the FTC has appealed that decision, the Agencies are currently accepting filings under the pre-2025 form, while allowing parties to submit filings under the vacated updated Form on a voluntary basis.

### What the Agencies Are Asking

Through the RFI, the Agencies are undertaking a “stocktaking” exercise to assess which elements of the updated HSR Form were useful, which were overly burdensome, and whether additional changes may be warranted in light of recent developments in merger review. The Agencies emphasize two overarching objectives: (1) identifying potentially anticompetitive transactions more efficiently and earlier in the process, and (2) avoiding compliance burdens that outweigh the value of the information provided, particularly for transactions unlikely to raise competitive concerns.

The RFI poses a wide-ranging set of questions, including requests for comment on:

- Which requirements of the updated HSR Form improved the Agencies’ ability to assess competitive risk and potentially reduced the need for Second Requests.
- Which requirements imposed disproportionate time, labor, or financial costs on filers relative to their probative value.
- Whether certain categories of transactions are less likely to raise antitrust concerns and could be subject to streamlined reporting, safe harbors, or materiality thresholds.
- Best practices for preparing narrative overlap and supply-relationship descriptions.
- The costs and benefits associated with the use of artificial intelligence or generative AI tools in preparing HSR filings and responding to Second Requests.

### Key Substantive Areas of Focus

In addition to general questions about burden and utility, the RFI highlights several specific areas where the Agencies are considering potential revisions:

- **Foreign Investment and Sovereign Wealth Funds.** The Agencies are evaluating whether filers should be required to provide additional information regarding compliance with the Committee on Foreign Investment in the United States (CFIUS) and the involvement of sovereign wealth funds or foreign

government-affiliated investors.

- **Defense-Related Transactions.** The Agencies seek comment on whether to expand disclosures relating to contracts with, or sales to, the Department of War or other U.S. defense entities, even in the absence of a horizontal competitive overlap.
- **Solely-for-the-Purpose-of-Investment Exemption.** Citing recent litigation, the Agencies are considering whether to clarify that the HSR exemption for acquisitions made solely for investment purposes does not apply where an investor uses its ownership stake to influence competitive decision-making.
- **Non-Traditional Transaction Structures.** The Agencies express concern about transactions that may fall outside current HSR reporting requirements but nonetheless eliminate a competitive constraint, including certain licensing arrangements, acquihires, reverse acquihires, and investments involving convertible securities.
- **Late-Stage Transaction Modifications and Remedies.** The RFI explores whether new or supplemental HSR filings should be required when parties propose structural remedies or materially modify transactions late in the review process, including during a Second Request or enforcement litigation.
- **Single-Family Housing Acquisitions.** Consistent with a recent Executive Order, the Agencies are evaluating whether changes to the HSR rules are warranted to better capture large-scale acquisitions of single-family homes by institutional investors.

### Why This Matters for Companies

For companies that regularly engage in mergers, acquisitions, or significant minority investments, the RFI presents an important opportunity to shape U.S. premerger notification requirements. Although the updated HSR Form is currently vacated, the Agencies have made clear that they are not abandoning efforts to modernize the HSR process. Comments submitted in response to the RFI could directly influence whether, and how, the Agencies pursue a new rulemaking.

Thoughtful submissions can help the Agencies understand how expanded reporting obligations operate in practice, identify areas where additional guidance would improve predictability and compliance, and advocate for a balanced approach that focuses agency resources on transactions most likely to raise substantive antitrust concerns. In particular, companies may wish to address the real-world costs of compliance, the availability (or lack) of requested information in the ordinary course of business, and the potential impact on deal timing and certainty.

### Next Steps

Comments must be submitted through Regulations.gov no later than May 26, 2026. Submissions will be publicly available, and commenters should avoid including competitively sensitive or confidential information.

Wiley's Antitrust Practice advises clients on HSR compliance, merger strategy, and engagement with the antitrust agencies through public comments and advocacy. Companies and trade associations considering whether and how to participate in this comment process may benefit from early coordination with counsel to

develop clear, practical, and persuasive input.