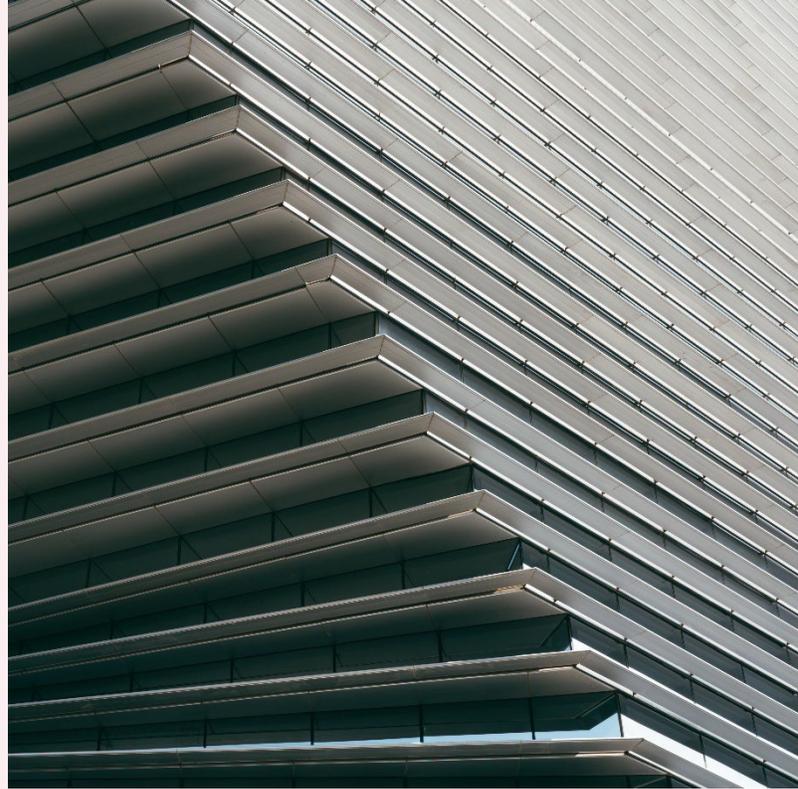


Shorter and Simpler "Old" HSR Filing Form Is Back, Effective Immediately After the Fifth Circuit Denies FTC's Motion to Stay Order Vacating New HSR Form

March 20, 2026



Key issues

- 1 In February, the U.S. District Court for the Eastern District of Texas issued a vacatur of the FTC rule implementing the New HSR Filing Form. On March 19, 2026, the Fifth Circuit denied the FTC's motion for a stay pending an appeal of that decision.
- 2 While the full appeal plays out, and the possibility that the FTC considers a new rulemaking process to create yet another revised HSR filing form, parties can go back to relying on the less burdensome HSR filing form that was in effect prior to February 10, 2025. Parties can also "voluntarily" continue to use the New HSR Filing Form.

Background and Prior Circuit Court Decision

On February 10, 2025, a new premerger notification filing form ("**New HSR Filing Form**") under the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, went into effect. The U.S. Federal Trade Commission's ("**FTC**") final rule, titled "Premerger Notification; Reporting and Waiting Period Requirements" ("**the HSR Rule**"),¹ implementing the New HSR Filing Form,

¹ Fed. Trade Comm'n, As Published Final Rule on Premerger Notification; Reporting and Waiting Period Requirements (Nov. 12, 2024), <https://www.federalregister.gov/documents/2024/11/12/2024-25024/premerger-notification-reporting-and-waiting-period-requirements>.

was immediately challenged by private parties, including the U.S. Chamber of Commerce.

Almost exactly one year after the New HSR Filing Form went into effect, a judge in the U.S. District Court for the Eastern District of Texas vacated the HSR Rule. The court agreed with the plaintiffs that the expanded requirements of the New HSR Filing Form were not "necessary and appropriate" because the benefits of the increased requirements did not "reasonably outweigh" the significant costs. The District Court described the FTC's claimed benefits—that the New HSR Filing Form helped detect additional anticompetitive mergers and saved the FTC time and costs—was "illusory or, at best, unsubstantiated." The District Court also agreed with the plaintiffs that the HSR Rule was the result of arbitrary and capricious rulemaking.

On February 12, 2026, the District Court vacated the HSR Rule but provided a preliminary stay, allowing the FTC to appeal. On February 19, the Fifth Circuit granted an administrative stay of the District Court's decision, "until further order of our court." On March 19, the Fifth Circuit denied the FTC's motion for a stay pending appeal, immediately vacating the HSR Rule.

For additional background on the District Court's ruling and the Fifth Circuit's initial administrative stay, see our previous client alert [here](#).

What this Means for Filing Parties

Within hours of the Fifth Circuit's decision, the FTC published a notice on its website stating that filing parties could submit filings using the HSR filing form in effect prior to February 10, 2025 (the "**Old HSR Filing Form**"). The notice also stated that parties could "voluntarily" continue to submit the New HSR Filing Form.

The Old HSR Filing Form largely requires less information than the New HSR Filing Form. For example, parties using the Old HSR Filing Form no longer need to collect and provide the following:

- information about certain current and former officers and directors;
- certain documents sent to a CEO or the Board of Directors in the ordinary course of business;
- narratives describing the filing parties' principal categories of products or services;
- narratives, as well as customer and sales information, pertaining to competitive overlaps between the parties and supply relationships between the parties or their competitors;
- subsidies from foreign governments or entities of concern; and
- products subject to countervailing duties.

While many other aspects of the old and new HSR filing forms remain the same, allowing parties that began to prepare a New HSR Filing Form to utilize that same information, there are three important changes parties will need to

gather and submit. In particular, the Old HSR Filing Form requires filing parties to:

- use 2017 NAICS Codes (rather than 2022 NAICS Codes);
- provide both 2017 six-digit NAICS Codes and corresponding ten-digit NAPCS Codes (whereas the New HSR Filing Form eliminated the need to report NAPCS Codes); and
- provide precise US revenue figures for qualifying US sales apportioned by each NAICS and NAPCS Code (as opposed to selecting a revenue "range" as permitted in the New HSR Filing Form).

What Happens Next?

The FTC's appeal remains pending before the Fifth Circuit. Under the current briefing notice, the FTC's opening merits brief is due by April 20, 2026. Any reply briefs are due within 21 days thereafter. Based on the existing briefing schedule, the Old HSR Filing Form is expected to remain operative for at least several weeks.

Pending a decision on the merits by the Fifth Circuit, the FTC may need to implement another round of rulemaking. The FTC was mandated by Congress to begin collecting information regarding subsidies from foreign governments or entities of concern, and products subject to countervailing duties. Therefore, it's likely a re-revised version of the HSR filing form will be implemented at some point in the future. Given the length of any rulemaking process, we would not expect a revised, newer HSR filing form to go into effect for months, if not longer.

Parties should continue to monitor developments closely and consult with antitrust counsel regarding filing strategy, timing, and risk management, as the applicable HSR filing requirements will continue to evolve as this situation develops.



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