

# HSR Update: Status Quo (for Now) While Agencies Consider New Premerger Rules

---

May 28, 2026

---

**PRACTICES** Corporate, Mergers and Acquisitions

---

The Federal Trade Commission (“FTC”) appears poised to take another shot at revamping its premerger notification rules (“HSR Rules”) under the Hart-Scott-Rodino (“HSR”) Antitrust Improvements Act of 1976. On May 26, 2026, the Fifth Circuit granted an FTC motion<sup>1</sup> to stay its appeal in a case challenging the HSR Rules (*Chamber of Commerce of the United States v. FTC*)<sup>2</sup> until year-end, pausing the litigation while the FTC and the Antitrust Division of the U.S. Department of Justice (collectively, “Agencies”) consider potential new rulemaking.

Of immediate practical importance for deal makers: Merging parties can continue to use the simpler, previous iteration of the HSR premerger notification form (“HSR Form”) that was revived by the litigation while the Agencies determine next steps.

## How We Got Here: The District Court Vacatur and Its Aftereffects

In February 2026, the U.S. District Court for the Eastern District of Texas vacated the expansive new HSR Rules promulgated by the FTC in early 2025 (“2025 Rules”). The 2025 Rules were the result of bipartisan compromise and represented the first major change to the HSR Form in nearly 50 years. Nonetheless, the District Court held that the 2025 Rules – which significantly increased the scope of documents and information required by filing parties – are not “necessary and appropriate” and thus exceed the FTC’s statutory authority.<sup>3</sup> The Fifth Circuit subsequently denied the FTC’s motion for a stay pending appeal, and in March 2026, the pre-2025 Rules (“Old Rules”) and corresponding HSR Form went back into effect while the FTC proceeded with its appeal.<sup>4</sup>

## The RFI: What the Agencies Are Asking — and Why It Matters

Days after the Fifth Circuit declined to enter a stay pending appeal, the Agencies announced a request for information (“RFI”) seeking public comment on the effectiveness of the HSR Rules. In particular, the RFI sought comments about how to “reduce the burden for nonproblematic transactions while also making necessary updates informed by lessons learned from the recent implementation” of the 2025 Rules. Notably, the RFI focused on potential changes to the recently vacated 2025 Rules rather than the Old Rules, including input on any requirements in the 2025 Rules that “may impose burdens on filers that outweigh their probative value” to the Agencies’ analysis of whether a transaction may violate the antitrust laws.

The RFI also poses broader questions about the scope of HSR reportability – not just changes to the HSR Form – a line of inquiry that goes beyond even the extensive rulemaking that produced the 2025 Rules. For example, the RFI addresses possible new reporting obligations for nontraditional transaction structures that often fall outside HSR filing requirements (such as so-called “acquihires,” nonexclusive licensing agreements and acquisitions of convertible voting securities), seeks comment on the scope of the “solely for the purpose of investment” exemption and asks whether the broad HSR exemption for REIT acquisitions should be eliminated.

The RFI comment period closed on May 26, 2026, producing more than 50 comments from a range of stakeholders expressing varying levels of support for or opposition to the 2025 Rules and other issues raised in the RFI. Among the more notable comments, and consistent with the recent uptick in state-level antitrust enforcement, the Attorneys General of five states – California, Connecticut, Rhode Island, Washington and Washington D.C. (collectively, “State AGs”) – submitted comments supporting the reinstatement of the 2025 Rules and HSR Form.

The State AGs also recommend new rulemaking to narrow the “solely for the purpose of investment” exemption, eliminate the REIT exemption and require merging parties to provide additional upfront disclosures regarding acquihires and serial acquisitions. According to the State AGs, these recommendations aim to address “potentially harmful impacts from consolidation in multiple industries such as healthcare, technology and housing.”

## Looking Ahead: Next Steps and Key Takeaways for Deal Teams

With the RFI comment period now closed and the *Chamber of Commerce* appeal stayed through year-end, the ball is back in the Agencies’ court to determine next steps, including whether to proceed with a notice of proposed rulemaking (“NPRM”). An NPRM would initiate a formal rulemaking process under the Administrative Procedure Act that would include another public comment period and, potentially, publication of a final, updated version of the HSR Rules.

The FTC has previously signaled that new rulemaking is on the table regardless of the ultimate outcome of *Chamber of Commerce*.<sup>5</sup> The FTC motion to pause the case underscores this posture, citing the RFI and potential rulemaking process as grounds for the stay and committing to update the Fifth Circuit on relevant developments every 60 days moving forward. The FTC has also stated that the Agencies’ current goal is to publish any NPRM by the end of 2026, which, if it materializes, could mean new HSR Rules that take effect sometime in 2027. For now, filing parties should continue reporting under the Old Rules and corresponding HSR Form – filing burdens are lighter today, but the regulatory ground is uncertain and shifting. Companies engaged in M&A activity (and some of the nontraditional transactions described above) should monitor these developments closely and consult antitrust counsel to prepare for what’s next.

For more information and assistance regarding HSR issues, please contact Paul Feinstein or Hannah Shoss.

---

<sup>1</sup> FTC unopposed motion to stay linked [here](#).

<sup>2</sup> FTC Complaint linked [here](#).

<sup>3</sup> HB Alert (Feb 17, 2026) linked [here](#).

<sup>4</sup> HB Alert (March 23, 2026) linked [here](#).

<sup>5</sup> FTC RFI Press Release (March 25, 2026) linked [here](#).