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FTC Reverts to Prior HSR Form After Fifth Circuit Denies Stay Pending Appeal

March 23, 2026

On March 19, 2026, the US Court of Appeals for the Fifth Circuit denied the Federal Trade Commission's (FTC) motion for a stay pending appeal in *Chamber of Commerce v. FTC*, No. 26-40094.[1] As a result, the district court's judgment vacating the FTC's expanded premerger notification HSR Form (Hart-Scott-Rodino Act) is now effective, and parties may immediately submit filings using the form and instructions that were in place before February 10, 2025 (the Prior Form). The FTC has also stated that it will continue to accept filings prepared under the revised form on a voluntary basis.[2]

What Happened

The FTC's 2024 amendments to the HSR Form and instructions represented the most significant revision to the premerger notification process in nearly four decades. The revised form, which became effective on February 10, 2025 (the New HSR Form), required substantially more information and documents at the outset of the filing process, including additional narrative disclosures and broader document production.

In January 2025, the US Chamber of Commerce filed suit in the Eastern District of Texas challenging the rule under the Administrative Procedure Act. Plaintiffs argued that the expanded form exceeded the FTC's statutory authority and that the rule was arbitrary and capricious because the FTC failed to adequately justify the burden the additional disclosures in the New HSR Form imposed on filers.

On February 12, 2026, the District Court granted summary judgment in favor of the Plaintiffs and vacated the New HSR Form. The FTC appealed. The Fifth Circuit initially entered an administrative stay while it considered the FTC's motion for a stay pending appeal. With the Fifth Circuit's March 19, 2026, denial of that motion, the vacatur is now in effect, and the FTC immediately announced that it is accepting filings using the Prior Form.

Key Takeaways

- **The Prior Form is back in effect immediately.** The FTC's Premerger Notification Office has announced that the form and instructions in place before February 10, 2025, are again operative. Parties preparing HSR filings may now use the Prior Form. The Prior Form, with its more limited set of disclosure requirements, is generally considered less burdensome to prepare. As such, this development is a positive one for HSR filers.
- **Filers may still submit under the New Form voluntarily.** The FTC will continue to accept filings submitted under the expanded New Form on a voluntary basis. That creates flexibility for parties whose filings are already substantially complete under the revised regime or who prefer to provide additional information up front.
- **This ruling affects HSR Form content, not reportability.** The Fifth Circuit's order changes the content of the HSR filing, not whether a transaction is reportable. The 2026 HSR jurisdictional thresholds and filing fees, which became effective on February 17, 2026, remain unchanged. For 2026, the minimum size-of-transaction threshold is $133.9 million.[3]
- **Agency staff retain their investigative tools.** The vacatur does not limit the FTC's or DOJ's ability to request similar information from parties on a voluntary basis during the initial waiting period or on a mandatory basis through a Second Request. As a practical matter, transactions likely to attract substantive scrutiny should expect that staff may still seek the types of information the expanded form is intended to require upfront.
- **Further developments remain possible.** The merits appeal remains pending. In addition, the district court's ruling does not foreclose future revisions to the HSR Form. The FTC could pursue a narrower rulemaking. For now, however, the operative filing regime is the pre-February 10, 2025 form.

We will continue to monitor developments and will provide updates as warranted.

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1 Order, *Chamber of Commerce v. Federal Trade Commission*, No. 26-40094, ECF 44-2 (5th Cir. Mar. 19, 2026).

2 Premerger Notification Program, FTC, available at https://www.ftc.gov/enforcement/premerger-notification-program (last visited Mar. 20, 2026).

3 New HSR thresholds and filing fees for 2026, FTC, available at https://www.ftc.gov/enforcement/competition-matters/2026/01/new-hsr-thresholds-filing-fees-2026 (last visited Mar. 20, 2026).

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