

Antitrust agencies request public comment on new changes to HSR form and reporting requirements

March 27, 2026 | Client Update | 6-minute read

The FTC and DOJ issued a request for public comment regarding changes to the Hart-Scott-Rodino (HSR) Act notification form and a potential broader overhaul of the HSR rules. In particular, the agencies invited public comment on the scope of transactions that may be subject to HSR reporting and waiting period requirements, as well as the applicability of certain filing exemptions.

On March 25, 2026, the Federal Trade Commission (FTC) and the U.S. Department of Justice Antitrust Division (DOJ) announced a new inquiry into the effectiveness of the premerger notifications under the HSR Act, including the new form that had taken effect in February 2025 (Updated Form).¹ This announcement comes shortly after the Fifth Circuit Court of Appeals refused the FTC's request to stay a lower court decision vacating the HSR rules implementing the Updated Form.²

The newly issued request for public comment³ (the Request) seeks input on the benefits and drawbacks of the Updated Form, as well as whether certain aspects of the Updated Form's instructions may require further guidance. In addition, the agencies are also seeking comments on whether certain transaction structures should be made subject to HSR reporting and waiting period requirements, including "acquihires," and whether post-filing changes to a transaction should trigger new filing or other disclosure requirements.

The background: From old to new and back again

In June 2023, the agencies announced a significant overhaul of the HSR Act document and information reporting requirements. These changes were narrowed in October 2024 and became effective on February 10, 2025 (the revised rules are referred to as the "New Rules"; the prior rules referred to as the "Old Rules"). On January 10, 2025, the U.S. Chamber of Commerce and other parties filed a lawsuit in the District Court for the Eastern District of Texas seeking to enjoin enforcement of the New Rules.⁴ On February 12, 2026, the district court granted the plaintiffs' motion for summary judgment and vacated the New Rules in their entirety.⁵ On March 19, 2026, the Fifth Circuit denied the FTC's request for a stay pending appeal. Immediately thereafter, the FTC informed parties that they could submit HSR filings using the Old Rules (or file using the New Rules on a voluntary basis).⁶

The recent developments in the litigation over the New Rules are just part of the reason for this most recent request for public comment on the HSR regime, according to the agencies. When FTC Chair Andrew Ferguson voted to approve the New Rules as a Commissioner, he expressed that "experience almost certainly will reveal that the [New Rules] can be improved," and that "subsequent rulemakings" based on experience with the New Rules may be appropriate to further refine the Updated Form.⁷ As the Request states, "[t]he [FTC] continues to believe that the information required by the prior, nearly 50-year-old form was insufficient to review modern mergers and acquisitions. Regardless of the outcome of the pending appeal, the Commission is considering engaging in a new rulemaking process."⁸

Request reflects wide-ranging scope of potential overhaul

In the Request, the antitrust agencies ask for input regarding whether to require additional information from filing parties, highlighting a range of topics including:

- compliance with legal obligations related to the Committee on Foreign Investment in the United States (CFIUS);⁹
- sovereign wealth funds and the sovereigns with which they are affiliated;¹⁰
- contracts with, or direct and indirect sales to, the Department of War, regardless of whether there is currently a horizontal competitive overlap between the merging firms;¹¹
- information regarding the use of any artificial intelligence or generative artificial intelligence tools in preparing any HSR submissions;¹² and
- other information that would provide benefits that justify the costs borne by filing parties.¹³

More generally, the Request asks for information about the costs associated with the HSR filing process (as compared to the probative value of information obtained from the process) as well as responding to Voluntary Access Letters and Second Requests.¹⁴

The Request also asks for the public's views on whether there are certain categories of transactions currently subject to the HSR Act that are less likely to cause concerns, and whether there are safe harbor or materiality requirements that could reduce compliance complexity or uncertainty without compromising access to information needed to assess the potential for any competitive issues.¹⁵ At the same time, the Request seeks evidence of potentially anticompetitive transactions that, before implementation of the Updated Form, "may have escaped identification for more in-depth review of the [antitrust agencies]," and any "investment strategies that enable investors to evade HSR filing requirements for transactions that should be subject to premerger review."¹⁶

Additionally, the Request asks for comment on whether the HSR reporting and waiting period requirements should:

- address certain "novel transaction forms" which may eliminate a market participant, including "acquihires," "reverse acquihires," the purchase of convertible securities, and certain sales/purchase of non-exclusive intellectual property licenses;¹⁷
- impose new requirements on parties that change their transaction during the HSR review process to address competitive concerns themselves, rather than through settlement with the DOJ or FTC;¹⁸
- reassess the exemption for acquisitions involving real estate¹⁹ or real estate investment trusts (REITs);²⁰
- expand to reflect a recent Executive Order instructing the antitrust agencies to "review substantial acquisitions, including series of acquisitions, by large institutional investors of single-family homes";²¹ or
- clarify the scope of the "solely for the purpose of investment" exemption.²²

What will the future hold for HSR?

This latest request for public comment may ultimately result in new HSR rules that limit or eliminate longstanding exemptions and subject additional transactions to HSR reporting. The HSR net would thus catch a larger set of transactions, increasing the time it takes to close those deals. Some transaction types identified, for example, acquihires and non-exclusive licenses to intellectual property, may pose difficult definitional issues that the agencies would need to address to craft effective rules, especially if they want to avoid triggering a large volume of filings that would cover what are today ordinary course and non-notifiable business transactions.

The deadline to submit a comment in response to the request is May 26, 2026.

In addition, the FTC's appeal to the Fifth Circuit is pending. For now, transacting parties can submit HSR filings using the Old Rules, but further changes may be coming.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Nathaniel L. Asker

+1 212 450 4113
nate.asker@davispolk.com

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Amanda M. Griggs

+1 212 450 4115
amanda.griggs@davispolk.com

Christopher Lynch

+1 212 450 4034
christopher.lynch@davispolk.com

Meytal McCoy

+1 202 962 7104
meytal.mccoy@davispolk.com

Becki McCraw

+1 202 962 7041
becki.mccraw@davispolk.com

Gregory S. Morrison

+1 212 450 3455
gregory.morrison@davispolk.com

Gil Ohana

+1 650 752 2017
gil.ohana@davispolk.com

Ilana M. Rice

+1 202 962 7139
ilana.rice@davispolk.com

Howard Shelanski

+1 202 962 7060
howard.shelanski@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

- ¹ Press Release, Federal Trade Commission and Department of Justice Seek Public Comment on the Premerger Notification and Report Form (Mar. 35, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/03/federal-trade-commission-department-justice-seek-public-comment-premerger-notification-report-form?utm_source=govdelivery.
- ² See Davis Polk client update, *District court vacates FTC's new HSR rules* (Feb. 13, 2026), <https://www.davispolk.com/insights/client-update/district-court-vacates-ftc-s-new-hsr-rules>.
- ³ Request for Public Comment Regarding Making Improvements to the Premerger Notification and Report Form (Mar. 25, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/2026.03.25-HSR-RFI.pdf (hereinafter the "Request").
- ⁴ See Davis Polk client update, *Parties sue FTC seeking to enjoin implementation of new HSR rules* (Jan. 14, 2025), <https://www.davispolk.com/insights/client-update/parties-sue-ftc-seeking-enjoin-implementation-new-hsr-rules>.
- ⁵ See Memorandum Opinion and Order, *Chamber of Commerce of the United States v. FTC* (E.D. Tex. Feb 12, 2026).

- ⁶ See “Special Highlights,” Premerger Notification Program, Federal Trade Commission, <https://www.ftc.gov/enforcement/premerger-notification-program>.
- ⁷ Request, at 1, *citing* Concurring Statement of Comm’r Andrew N. Ferguson, In re Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule 16 C.F.R. Parts 801 and 803, Matter No. P239300, at 1, 14 (Oct. 10, 2024).
- ⁸ *Id.* at 1.
- ⁹ *Id.* at 2, 5-6.
- ¹⁰ *Id.* at 2, 6.
- ¹¹ *Id.*
- ¹² *Id.* at 8.
- ¹³ *Id.* at 4.
- ¹⁴ *Id.* at 4, 8.
- ¹⁵ *Id.* at 5.
- ¹⁶ *Id.* at 5, 6.
- ¹⁷ *Id.* at 2-3, 6.
- ¹⁸ *Id.* at 3, 6-7.
- ¹⁹ *Id.* at 7-8.
- ²⁰ *Id.* at 8.
- ²¹ *Id.* at 3; Exec. Order No. 14376, Stopping Wall Street from Competing with Main Street Homebuyers, 91 Fed. Reg. 3023, 3024 (Jan. 20, 2026).
- ²² Request, at 2, 6. The HSR Act exempts from its requirements certain acquisitions of voting securities “solely for the purpose of investment” applies. See 16 C.F.R. § 802.9.