

May 19, 2026

FTC Seeks to Pause HSR Form Appeal Amid New Rulemaking Review

Update: On May 26, 2026, the Fifth Circuit granted the FTC's unopposed motion.

On May 18, 2026, the Federal Trade Commission (“FTC”) filed an unopposed motion in the Fifth Circuit seeking to hold in abeyance, until the end of this year, its appeal of a district court order vacating the 2025 Hart-Scott-Rodino (“HSR”) Act notification requirements. While the appeal is held in abeyance, the FTC is “seriously considering” potential new revisions to these 2025 HSR Act notification requirements. The FTC’s unopposed motion for abeyance follows the Eastern District of Texas’s [February 2026 ruling](#) invalidating the updated form and the Fifth Circuit’s subsequent [denial](#) of the FTC’s motion for a stay pending appeal on March 19, 2026.

Practically speaking, this motion for abeyance suggests the FTC’s new rulemaking expected later this year may ultimately moot or substantially narrow the scope of the appeal. If the motion is granted, the FTC’s appeal will remain technically alive but will be paused and unresolved. The FTC continues to accept HSR filings under the old, pre-2025 form.

Background: The HSR Act, the 2025 Form and Vacatur and the March RFI

- **HSR Act.** The HSR Act requires parties to certain transactions exceeding specified monetary thresholds to file a premerger notification form with the FTC and the Department of Justice Antitrust Division (the “DOJ”) and observe a waiting period prior to closing.
- **2025 Form and Eventual Vacatur.** In 2024, the FTC [published](#) a final rule substantially expanding the HSR premerger notification form and filing requirements. The changes took effect on February 10, 2025 (the “2025 Form”). The 2025 Form imposed a significantly greater burden and expense on filing parties. On February 12, 2026, in a challenge by the Chamber of Commerce to the FTC’s rule making, the Eastern District of Texas [vacated](#) the 2025 Form, and, on March 19, 2026 the Fifth Circuit [denied](#) the FTC’s motion for a stay pending appeal. As a result, the DOJ and FTC are currently accepting filings under the older, pre-2025 Form.
- **RFI.** On March 25, 2026, the DOJ and FTC published a [Request for Information](#) (“RFI”) seeking public comment on potential improvements to the 2025 Form.
 - ◆ **Two-track strategy.** The RFI suggests that the Agencies are pursuing a two-track strategy in the next HSR rulemaking: seeking to reduce burdens for clearly non-problematic transactions while simultaneously expanding the reach of the HSR regime to capture a wider universe of transactions and more granular information.
 - ◆ The **comment period** closes on May 26, 2026.

The FTC's Unopposed Motion for Abeyance

- The FTC states that, because the FTC and DOJ are “seriously considering revisions to the reporting requirements,” placing the appeal in abeyance would “promote judicial economy by ensuring that this Court’s review is focused on enduring agency action that reflects the Antitrust Agencies’ current views, as informed by public comments and the Agencies’ experience with the revised requirements.”
- The FTC’s and DOJ’s “current aim is to publish any notice of proposed rulemaking by the end of this calendar year.”
- The FTC and DOJ will continue to accept the pre-2025 Form.
- The FTC proposes to submit status reports to the court every 60 days and further requests that existing briefing deadlines be tolled while the court considers the motion.

HSR filers will continue using the pre-2025 Form for the foreseeable future and should maintain their current filing practices at least for the remainder of 2026. Once the comments period closes in a week, the FTC and DOJ will be reviewing public comments and likely developing a new proposed rule before the end of this year. This means filers face a prolonged period of uncertainty about what the eventual reporting requirements will look like—potentially stretching well into 2027 or beyond if a new rulemaking is initiated, since notice-and-comment rulemaking typically takes many months.

We will continue to monitor the agencies’ rulemaking activity closely.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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