



## PRESS RELEASE

# Justice Department Concurrs with Federal Trade Commission's Changes to Premerger Notification Form Used in Merger Review

Thursday, October 10, 2024

**For Immediate Release**

Office of Public Affairs

## Final Rule Modernizes Premerger Notification Procedure to Help Streamline Merger Review Process

The Justice Department's Antitrust Division announced today its concurrence with the Federal Trade Commission (FTC)'s unanimous vote to finalize changes to the premerger notification form and associated instructions, as well as to the premerger notification rules implementing the Hart-Scott-Rodino (HSR) Act.

The [final rule](#), which was adopted after a rigorous public comment process, marks the first large-scale material update to the HSR form since it was first established in 1978. The rule will address critical gaps in the information available to the Justice Department and the FTC (the Agencies) when they review merger filings, making the Agencies' initial review more efficient and effective. In response to public comment on the proposed rule, the final rule contains many changes aimed at reducing the burden on parties while still improving the information the Agencies receive to help streamline initial merger review.

“Access to better information at the beginning of the merger review process ensures that the antitrust agencies can devote our resources to the most important issues and reduces the burden on filers, third parties, and other market participants,” said Assistant Attorney General Jonathan Kanter of the Justice Department’s Antitrust Division. “I’m grateful to the Commissioners who have worked diligently to evaluate the public comments to develop the excellent rule.”

Under the HSR Act, parties to certain mergers and acquisitions are required to submit premerger notification forms that disclose certain information about their proposed deal and business operations. The Agencies use this information to conduct a premerger assessment in the short time allowed under the HSR Act, typically 30 days, to determine which transactions may violate the antitrust laws, and thus require additional review.

The requests added to the HSR form reflect the dramatic changes over the past four decades in global markets and in how mergers and acquisitions are conducted. These additions include:

- Requiring parties to submit transaction-related documents prepared by or for the supervisory leader of the deal team;
- Requiring parties to describe their principal categories of products and services as reflected in the parties’ ordinary course business documents;
- Requiring disclosure of additional information about the buyer’s officers, directors, and investors, including those with management rights over the firm; and
- Ensuring the Agencies have access to translations of all documents submitted in a language other than English.

This additional information will enable the Agencies to streamline their initial reviews and make decisions more quickly. In some circumstances, it will allow the Agencies to evaluate a merger without opening a preliminary investigation or seeking additional information through a second request. In this way, the final rule complements the FTC’s decision to lift its temporary suspension on early termination of HSR filings. When additional information is necessary to review a merger, the final rule will enable the Agencies to issue more targeted requests, reducing the time and effort required to respond. Under the prior form, the Agencies routinely had to rely on third parties, many of whom were small businesses, to fill in informational gaps. By helping to fill some of these gaps, the final rule can alleviate the burden on third parties as well.

The new information required by the final rule is already within the possession of the filing parties. The rule was carefully structured to provide the Agencies with important additional factual and documentary information that is readily available to the merging parties. Moreover, the Agencies carefully reviewed the hundreds of public comments filed in

response to the proposed rule and made substantial changes to reduce the burden on merging parties. The final rule differs from the proposed rule in many ways, including among other things, eliminating the requirements to:

- Submit preliminary drafts of deal-related documents;
- Collect and produce ordinary course documents from people who report directly to the CEO;
- Provide information about employees' commuting zones and occupation classifications;
- Report prior acquisitions that are more than five years old or involve entities with less than \$10 million in sales or revenue; and
- Certify that the filer took steps to preserve documents.

These changes eliminated substantial costs to filing parties while ensuring that the Agencies will receive the additional information they require to more effectively and efficiently review merger filings.

The final rule will be effective 90 days after it is published in the Federal Register.

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## Topic

**ANTITRUST**

## Component

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