

Justification for Non-Material Change

Calculating the burden for the auto-withdrawal amendments in §803.12(b) of the HSR Rules requires an analysis of two potential scenarios. In one scenario, a filing is automatically withdrawn and the acquiring person utilizes the two-day resubmission process under §803.12(c). In that case, no additional transaction is generated as the acquiring person simply restarts the waiting period on the same transaction. In the second scenario, the parties to a terminated transaction for which the filing is automatically withdrawn do not utilize the two-day resubmission process under §803.12(c) but later decide to move forward with the transaction. In that case, a new filing would be required. Both of these scenarios are rare, as it is very unlikely that a transaction for which the HSR filing is automatically withdrawn during the merger review process (due to the parties' SEC filing indicating that the transaction has been terminated) would be subsequently restarted. Based on past experience, this would occur approximately once every fifteen years. If the parties to such a transaction do not utilize the two-day resubmission process, the rule change would require non-index HSR filings for, on average, a small fraction of a single transaction per year. The currently cleared estimate for a single non-index filing is 37 hours. *See* 76 FR 42471, 42479 (July 19, 2011). FTC staff believes that this new filing would require the same work and diligence as any new non-index filing. Assuming, then, an average of 37 hours for one transaction, when applied to a traditional frequency of .067 (one every fifteen years), this amounts to an annual average of 3 hours, rounded up.