

**Verne, B. Michael**

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**From:** [REDACTED]  
**Sent:** Tuesday, February 12, 2013 2:51 PM  
**To:** Verne, B. Michael; Walsh, Kathryn  
**Subject:** Item 8 -- Foreign Person's Prior Acquisitions of Foreign Entities

Mike and Kate –

I have a question about Item 8 on which I've been unable to find any prior informal advice, perhaps because it results from relatively recent changes to the form and rules.

Item 5 is limited to U.S. operations and sales into the U.S., and the Item 5 data is the basis for identifying overlapping NAICS codes. It is clear from Item 7 that the information called for there likewise is limited to U.S. operations and revenues.

Since Items 5 and 7 drive Item 8, it seems logical that in responding to Item 8 you should not need to consider prior acquisitions by a foreign person of foreign entities if those entities have no U.S. revenue that is counted for Item 5 purposes (that is, they themselves have no sales in or into the U.S.).

Prior to the 2011 changes to the form and rules, it was clear that Item 8 did not cover foreign acquisitions, as former Rule 803.2(c)(1) limited responses to Items 5, 7 and 8 to information "with respect to operations conducted within the United States." See *Notice of Proposed Rulemaking*, 75 Fed. Reg. 57110 (Sept. 17, 2010). While that provision was deleted, the *NOPR* makes clear that the only non-U.S. information now required involves foreign entities that have U.S. operations or revenues. See *id.* at 57111, 57117, 57121. (The only change made to Item 8 was to include non-corporate interests, *id.* at 57119.)

That continuing limitation is evident from the Item 5 instructions, the PNO website's resource sheets for Items 5 and 6 and the text of Item 7. However, because it is not expressly stated in the Item 8 instructions, I wanted to confirm with you that Item 8 is limited to a foreign person's prior acquisitions of entities having U.S. revenues reported in Item 5 (as well as being subject to the other cut-offs in those Instructions).

Thanks as always for your help.

THIS IS CORRECT –  
Bm  
2/12/13  
KW CONCURS