
From: Storm, Evan
Sent: Tuesday, September 06, 2016 2:52 PM
To: [REDACTED]
Subject: RE: Ocean Shipping Sales "in or into" the US

[REDACTED]

Informal 0307004 is superseded by PNPM 152. "Sales in or into" are the same for both 802.50 and 802.51.

Regards
Evan

From: [REDACTED]
Sent: Friday, September 2, 2016 4:25 PM
To: kwalsh@ftc.gov; 'Whitehead, Nora' <nwhitehead@ftc.gov>
Subject: Ocean Shipping Sales "in or into" the US

Kate and Nora –

I am conducting a couple of HSR filing analyses and have two questions on which I would appreciate your advice. I am sending as two separate e-mails (and would appreciate two separate responses) because I may forward the responses to different clients and both issues are not relevant to both clients.

I am having trouble reconciling the attached interpretation from the PNPM and this informal interpretation: <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0307004> and I am hoping that you might be able to help me sort it out.

I read the PNPM interpretation as saying that the PNO's position for a foreign flagged vessel is that sales in or into the US would be:

- Revenues from US imports, regardless of who paid, PLUS
- Revenues from US exports, regardless of who paid.

I read the informal interpretation as saying sales in or into the US would be:

- Revenues from US imports only if the recipient is paying, PLUS
- Revenues from US exports only if the shipper is paying.

Am I misreading one or the other? Also, I note that the PNPM interpretation is specifically about 802.50(a) and the informal interpretation about 802.51(b). It is not evident to me why "sales in or into" would have a different meaning in the two sections, but I would be glad to learn.

Any guidance you can provide would be helpful as I actually get this question fairly frequently.

Thanks,

