

From: Whitehead, Nora
Sent: Wednesday, November 30, 2016 10:29 AM
To: [REDACTED]
Subject: RE: Agricultural Cooperatives

You are right that there is no general exemption for agricultural co-ops. Informal 1201002 has that notation because we no longer look to whether the members have rights to vote or to profits/assets upon dissolution to determine whether an acquisition of co-op interests should be treated as an acquisition of voting securities, non-corporate interests, or assets.

An acquisition of co-op interests is to be treated as an acquisition of non-corporate interests. If it meets the relevant thresholds and no other exemptions apply, then it is reportable.

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From: [REDACTED]
Sent: Wednesday, November 30, 2016 9:42 AM
To: Whitehead, Nora
Subject: Agricultural Cooperatives

Hi Nora. We represent an agricultural co-op that plans to merge with another co-op in 2017. We represent the surviving entity and they have asked us if this merger would be exempt from an HSR filing. I have assumed that this would be treated as an acquisition of assets per Interpretation No. 95 of the PNPM and that if we satisfy the thresholds then a filing will be required.

I found Informal Interpretation No. 1201002 which was helpful, but there is a notation on the bottom that says that this no longer represents the position of the PNO as of December 18, 2015. I am unable to find anything that explains what has changed with respect to the PNO's position with respect to this interpretation. Could you please advise me as to what items in that Interpretation are no longer valid? Have there been any recent interpretations exempting agricultural cooperatives of which I am unaware? The client has been told by their consultants that because they are both agricultural cooperatives that this merger is exempt from an HSR filing. I have not found anything that supports that belief, but I certainly could have missed something. Any help you can provide me would be greatly appreciated.

Thanks. [REDACTED]

PS. Both cooperatives satisfy the requirements of Capper Volstead if that is relevant.

[REDACTED]