

Sheinberg, Samuel I.

From: HSRHelp
Sent: Tuesday, January 21, 2025 1:12 PM
To: HSR Auto Forward List
Subject: FW: Warehouse exemption - 802.2(h)

From: Whitehead, Nora
Sent: Tuesday, January 21, 2025 1:12:01 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Warehouse exemption - 802.2(h)

You're correct, 802.2(h) doesn't apply.

From: HSRHelp
Sent: Monday, January 20, 2025 9:41 AM
To: HSR Auto Forward List
Subject: FW: Warehouse exemption - 802.2(h)

From: [REDACTED]
Sent: Monday, January 20, 2025 9:40:43 AM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp
Cc: [REDACTED]
Subject: Warehouse exemption - 802.2(h)

Dear PNO members,

I am writing to seek clarification on the warehouse exemption under 802.2(h).

Our client is looking into acquiring 100% of the equity of a target in an otherwise reportable transaction (e.g., assume the SoP and SoT tests are met and no other exemptions apply). The target owns and operates tank terminals located in the U.S. In fact, the target is in the business of offering terminaling/storage for third parties, such that these terminals provide bulk storage for third parties. Some of the terminal sites are focused exclusively on chemicals, not oil and gas. Other terminal sites offer storage for a mix of chemicals, base oils, and other petro-products, and other terminals are dedicated to oil.

It is clear that the warehouse exemption, 802.2(h), is not available for "oil/gas storage facilities." (See [guidance published in response to Informal Interpretation 1211008](#) and notice published by the PNO in 2015: <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-news-archive>). Based on this, we know that the exemption would not apply to the target's terminals dedicated to crude oil.

We wanted to confirm whether: (i) the exemption applies to those terminals dedicated to chemicals; and (ii) to those portions of the other terminals dedicated to chemicals and non-oil/gas products. In the latter instance, it is clear those assets related to the storage of oil/gas products are non-exempt. As noted above, these terminals are used to store products of third parties, such that this is dissimilar to example #12 to 802.2(h) (e.g., the target here is not involved in a wholesale distribution business for which these terminals are used).

We have previously heard that the exemption may not apply to chemical storage for rationales similar to the exclusion of the remedy for oil/gas storage. However, could you please confirm if that is the case?

Please let us know if you have any further questions or need for clarification to assist in your response.

Kind regards,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]