

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Wednesday, June 12, 2019 11:26 AM  
**To:** Walsh, Kathryn E.; Carson, Timothy; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Olson, Eric  
**Subject:** FW: Item 5 NAICS code question: manufacturing vs wholesale

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**From:** Berg, Karen E.  
**Sent:** Wednesday, June 12, 2019 11:26:05 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Item 5 NAICS code question: manufacturing vs wholesale

[REDACTED], use the wholesaling code and include an endnote, as you describe.

Thanks,  
Karen Berg

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**From:** [REDACTED]  
**Sent:** Wednesday, June 12, 2019 9:00:48 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Subject:** Item 5 NAICS code question: manufacturing vs wholesale

Good morning,

I have a question regarding the guidance on reporting revenues under Item 5. My client contracts with a third party to manufacture a product. My client provides certain key ingredients, though not all ingredients. My client also provides the manufacturing specifications, but does not provide the equipment used to manufacture nor the "hardware" components of the product. The third party is obviously paid for its work. However, my client is ultimately responsible for the distribution as well as the quality or any issues with the product, with some indemnification from the third party if the third party was negligent or if there was an issue with the third party's equipment.

I see the Item 5 tip sheet and guidance in the Premerger Notification Handbook that indicates that where a third party manufactures a product, even if the filer provides the manufacturing specifications and raw material, the filer should NOT use a manufacturing NAICS code, but instead should use a retail or wholesale code. However, the wholesale code that seems the closest does not accurately capture my client's business.

Given the facts above, do you still recommend that my client use a 42 code? Or should we use a 31-33 code? If we use a 42 code, is it appropriate to include an endnote explaining the manufacturing arrangement?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]