

## § 800.103

## 31 CFR Ch. VIII (7–1–02 Edition)

### § 800.103 Prior acquisitions.

Section 721 and the regulations in this part apply to acquisitions concluded on or after the effective date (as defined in § 800.207), including acquisitions concluded prior to issuance of these regulations. Section 721 and the regulations in this part do not apply to acquisitions concluded prior to the effective date.

### § 800.104 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and these rules shall be applied to the substance of the transaction(s).

*Example.* Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a corporation which is organized under the laws of a state of the United States, and which engages in business activities in the United States. That sham transaction is subject to section 721.

## Subpart B—Definitions

### § 800.201 Acquisition.

The term *acquisition* is used in these regulations to refer collectively to an acquisition, merger, or takeover. It includes, without limitation:

- (a) The acquisition of a person by:
  - (1) The purchase of its voting securities,
  - (2) The conversion of its convertible voting securities,
  - (3) The acquisition of its convertible voting securities if that involves the acquisition of control, or
  - (4) The acquisition and the voting of proxies, if that involves the acquisition of control.

- (b) The acquisition of a business, including any acquisition of production or research and development facilities operated prior to the acquisition as part of a business, if there will likely be a substantial use of:

- (1) The technology of that business, excluding technical information gen-

erally accompanying the sale of equipment, or

- (2) Personnel previously employed by that business.

- (c) A consolidation.

*Example* (relating to paragraph (b) of this section). Corporation A, organized under the laws of a foreign state and wholly owned and controlled by a foreign national, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a business and has not made an acquisition within the meaning of these regulations.

### § 800.202 Affiliate.

An *affiliate* of an entity, as that term is used in §§ 800.205 and 800.402, is any other entity in the chain of ownership between a parent and that entity.

*Example.* Corporation P holds 50 percent of the voting securities of Corporations R and S. Corporation R holds 40 percent of the voting securities of Corporation X, and Corporation S holds 50 percent of the voting securities of Corporation Y. Under this definition, Corporation S is an affiliate of Corporation Y. (An entity can be both an affiliate and a parent.) Corporation R is not an affiliate of Corporation S or Y because it is not in the chain of ownership between Corporation P and Corporation Y. Corporation X is also not an affiliate of Corporation Y.

### § 800.203 Committee; Chairman of the Committee.

The term *Committee* means the Committee on Foreign Investment in the United States, as established in Executive Order No. 11858, 40 FR 20263, 3 CFR, 1971–1975 Comp., p. 990, as amended. The Chairman of the Committee is the Secretary of the Treasury.

### § 800.204 Control.

- (a) The term *control* means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an issuer, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding:

(1) The sale, lease, mortgage, pledge or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;

(2) The dissolution of the entity;

(3) The closing and/or relocation of the production or research and development facilities of the entity;

(4) The termination or non-fulfillment of contracts of the entity; or

(5) The amendment of the Articles of Incorporation or constituent agreement of the entity with respect to the matters described at paragraph (a) (1) through (4) of this section.

(b) In examining questions of control in situations where more than one foreign person has an interest in a U.S. person, consideration will be given to factors such as whether the foreign persons are related and/or whether they have commitments to act in concert.

#### § 800.205 Conversion.

The term *conversion* means the exercise of a right inherent in the ownership or holding of particular securities to exchange such securities for securities which currently entitle the owner or holder to vote for directors of the issuer or of any affiliate of the issuer.

#### § 800.206 Convertible voting security.

The term *convertible voting security* means a security which currently does not entitle its owner or holder to vote for directors of any entity and which is convertible into a voting security. See §§ 800.201 and 800.302(c).

#### § 800.207 Effective date.

The term *effective date* means August 23, 1988, the date section 721 became effective.

#### § 800.208 Engage in.

The term *engage in*, as used in the phrase *seeks to engage in any merger, acquisition or takeover* in section 721(b), means *seeks to acquire control through*.

[59 FR 27179, May 25, 1994]

#### § 800.209 Entity.

The term *entity* means any branch, partnership, associated group, association, estate, trust, corporation, divi-

sion of a corporation, business enterprise, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

[56 FR 58780, Nov. 21, 1991. Redesignated at 59 FR 27179, May 25, 1994]

#### § 800.210 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the government of the United States, a State of the United States, or a political subdivision of the United States or a State. The term includes but is not limited to national, state, provincial and municipal governments, including their respective departments, agencies, government-owned enterprises and other agencies and instrumentalities.

[59 FR 27179, May 25, 1994]

#### § 800.211 Foreign interest.

The term *foreign interest* means any foreign person, including a foreign government.

[56 FR 58780, Nov. 21, 1991. Redesignated at 59 FR 27179, May 25, 1994]

#### § 800.212 Foreign national.

The term *foreign national* means any natural person other than a United States national.

[56 FR 58780, Nov. 21, 1991. Redesignated at 59 FR 27179, May 25, 1994]

#### § 800.213 Foreign person.

The term *foreign person* means

(a) Any foreign national or

(b) Any entity over which control is exercised or exercisable by a foreign interest.

*Example 1.* Corporation A is organized under the laws of a foreign state and is engaged in business outside the United States. All its shares are held by Corporation X, which controls Corporation A. Corporation X is organized in the United States, and is wholly owned and controlled by U.S. nationals. Corporation A, although organized and operating outside the U.S., is not a "foreign