

(1) The entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

#### **3009.104-73 Special rules.**

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of section 835 of the Homeland Security Act (the Act), Pub. L. 107-296.

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of certain rights.* (1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;

(ii) Options;

(iii) Contracts to acquire stock;

(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of section 835 of the Act.

#### **3009.104-74 Waiver.**

(a) The Secretary shall waive subsection (a) of section 835 of Pub. L. 107-296 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

(b) Contractors shall submit waiver requests to the CPO. If a waiver is granted, a copy of the approved waiver shall be attached with the bid or proposal.

#### **3009.104-75 Clause.**

Insert the provision (HSAR) 48 CFR 3052.209-70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

#### **Subpart 3009.4—Debarment, Suspension, and Ineligibility**

##### **3009.470 Reserve Officer Training Corps and military recruiting on campus.**

#### **3009.470-1 Definition.**

*Institution of higher education* as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

#### **3009.470-2 Policy.**

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that—

(1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or

(2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

#### **3009.470-3 Procedures.**

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR part 216); and

(b) The Department of Homeland Security—

(1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution;

(2) Shall make no further payments under existing contracts with the institution; and

(3) Shall terminate existing contracts with the institution.

#### **3009.470-4 Contract clause.**

Insert the clause at (HSAR) 48 CFR 3052.3009-71, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and