sition 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—

(A) 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

(B) 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.

(c) Definitions and special rules

(1) Rules for application of subsection (b)

In applying subsection (b) of this section for purposes of subsection (a) of this section, the following rules shall apply:

(A) Certain stock disregarded

There shall not be taken into account in determining ownership for purposes of subsection (b)(2) of this section—

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

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of this section.

(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 2 years before the ownership requirements of subsection (b)(2) of this section 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) of this section 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 title 26) shall be treated as I[1] partnership.

(E) Treatment of certain rights

The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) Expanded affiliated group

The term ''expanded affiliated group'' means an affiliated group as defined in section 1504(a) of title 26 (without regard to section 1504(b) of such title), except that section 1504 of such title shall be applied by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears.

(3) Foreign incorporated entity

The term ''foreign incorporated entity'' means any entity which is, or but for subsection (b) of this section would be, treated as a foreign corporation for purposes of title 26.

(4) Other definitions

The terms ''person'', ''domestic'', and ''foreign'' have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of title 26, respectively.

(d) Waivers

The Secretary shall waive subsection (a) of this section with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(Pub. L. 107–296, title VIII, § 835, Nov. 25, 2002, 116 Stat. 2227; Pub. L. 108–7, div. L, § 101(2), Feb. 20, 2003, 117 Stat. 528; Pub. L. 108–334, title V, § 523, Oct. 18, 2004, 118 Stat. 1320.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–334, § 523(1), inserted before period at end '', or any subsidiary of such an entity''.

Subsec. (b)(1). Pub. L. 108–334, § 523(2), inserted ''before, on, or'' after ''completes''.

Subsec. (c)(1)(B). Pub. L. 108–334, § 523(3), struck out ''which is after November 25, 2002, and'' after ''beginning on the date''.

Subsec. (d). Pub. L. 108–334, § 523(4), substituted ''national'' for ''homeland''.

2003—Subsec. (d). Pub. L. 108–7 struck out '', 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'' before period at end.

§ 396. Lead system integrator; financial interests

(a) In general

With respect to contracts entered into after July 1, 2007, and except as provided in subsection (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(b) Exception

An entity described in subsection (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if—

(1) the Secretary of Homeland Security certifies to the Committees on Appropriations of

[1] So in original.

the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(A) the entity was selected by the Department of Homeland Security as a contractor to develop or construct the system or element concerned through the use of competitive procedures; and

(B) the Department took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) the entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) Construction

Nothing in this section shall be construed to preclude an entity described in subsection (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

(d) Regulations update

Not later than July 1, 2007, the Secretary of Homeland Security shall update the acquisition regulations of the Department of Homeland Security in order to specify fully in such regulations the matters with respect to lead system integrators set forth in this section. Included in such regulations shall be: (1) a precise and comprehensive definition of the term ''lead system integrator'', modeled after that used by the Department of Defense; and (2) a specification of various types of contracts and fee structures that are appropriate for use by lead system integrators in the production, fielding, and sustainment of complex systems.

(Pub. L. 110–28, title VI, § 6405, May 25, 2007, 121 Stat. 176.)

CODIFICATION

Section was enacted as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, and not as part of the Homeland Security Act of 2002 which comprises this chapter.

PART E—HUMAN RESOURCES MANAGEMENT

§ 411. Establishment of human resources management system

(a) Authority

(1) Sense of Congress

It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2), (3) Omitted

(b) Effect on personnel

(1) Nonseparation or nonreduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer under this chapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) Positions compensated in accordance with Executive Schedule

Any person who, on the day preceding such person's date of transfer pursuant to this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) Coordination rule

Any exercise of authority under chapter 97 of title 5, including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

(Pub. L. 107–296, title VIII, § 841, Nov. 25, 2002, 116 Stat. 2229.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), (2), was in the original ''this Act'', meaning Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2135, known as the Homeland Security Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 101 of this title and Tables.

CODIFICATION

Section is comprised of section 841 of Pub. L. 107–296. Subsec. (a)(2), (3) of section 841 of Pub. L. 107–296 enacted chapter 97 (§ 9701) of Title 5, Government Organization and Employees.

§ 412. Labor-management relations

(a) Limitation on exclusionary authority

(1) In general

No agency or subdivision of an agency which is transferred to the Department pursuant to this chapter shall be excluded from the coverage of chapter 71 of title 5 as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and