

## § 800.212

## 31 CFR Ch. VIII (7–1–11 Edition)

States, and any of their respective departments, agencies, or instrumentalities). (See examples following §§ 800.301(c) and 800.302(c).)

### § 800.212 Foreign entity.

(a) The term *foreign entity* means any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(b) Notwithstanding paragraph (a) of this section, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity.

### § 800.213 Foreign government.

The term *foreign government* means any government or body exercising governmental functions, other than the United States Government or a subnational government of the United States. The term includes, but is not limited to, national and subnational governments, including their respective departments, agencies, and instrumentalities.

### § 800.214 Foreign government-controlled transaction.

The term *foreign government-controlled transaction* means any covered transaction that could result in control of a U.S. business by a foreign government or a person controlled by or acting on behalf of a foreign government.

### § 800.215 Foreign national.

The term *foreign national* means any individual other than a U.S. national.

### § 800.216 Foreign person.

The term *foreign person* means:

(a) Any foreign national, foreign government, or foreign entity; or

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

*Example 1.* Corporation A is organized under the laws of a foreign state and is only engaged in business outside the United States. All of 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. Assuming no other relevant facts, Corporation A, although organized and only operating outside the United States, is not a foreign person.

*Example 2.* Same facts as in the first sentence of Example 1. The government of the foreign state under whose laws Corporation A is organized exercises control over Corporation A through government interveners. Corporation A is a foreign person.

*Example 3.* Corporation A is organized in the United States, is engaged in interstate commerce in the United States, and is controlled by Corporation X. Corporation X is organized under the laws of a foreign state, its principal place of business is located outside the United States, and 50 percent of its shares are held by foreign nationals and 50 percent of its shares are held by U.S. nationals. Both Corporation A and Corporation X are foreign persons. Corporation A is also a U.S. business.

*Example 4.* Corporation A is organized under the laws of a foreign state and is owned and controlled by a foreign national. A branch of Corporation A engages in interstate commerce in the United States. Corporation A (including its branch) is a foreign person. The branch is also a U.S. business.

*Example 5.* Corporation A is a corporation organized under the laws of a foreign state and its principal place of business is located outside the United States. Forty-five percent of the voting interest in Corporation A is owned in equal shares by numerous unrelated foreign investors, none of whom has control. The foreign investors have no formal or informal arrangement to act in concert with regard to Corporation A with any other holder of voting interest in Corporation A. Corporation A demonstrates that the remainder of the voting interest in Corporation A is held by U.S. nationals. Assuming no other relevant facts, Corporation A is not a foreign person.

*Example 6.* Same facts as Example 5, except that one of the foreign investors controls Corporation A. Assuming no other relevant facts, Corporation A is not a foreign entity pursuant to § 800.212(b), but it is a foreign person because it is controlled by a foreign person.

### § 800.217 Hold.

The terms *hold(s)* and *holding* mean legal or beneficial ownership, whether direct or indirect, whether through fiduciaries, agents, or other means.