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DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Parts 850 and 851

[Docket No. TREAS-DO-2026-0595]

RIN 1505-AC94

Outbound Investment Security Program Regulations

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth regulations that would implement Subtitle C of the Comprehensive Outbound Investment National Security Act, which is codified at Title VIII of the Defense Production Act. The proposed rule would require United States persons to provide notification to the U.S. Department of the Treasury regarding certain transactions involving foreign persons that are engaged in notifiable technologies; and prohibit United States persons from engaging in certain other transactions involving foreign persons that are engaged in prohibited technologies. Where consistent with Title VIII, the proposed rule incorporates certain definitions and concepts from the current regulations governing the Outbound Investment Security Program. The proposed rule also would add applicability dates to the regulations, such that those regulations would continue to apply to activities that occurred within the relevant timeframe.

DATES: Written comments must be received by December 7, 2026.

ADDRESSES: Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal Government eRulemaking portal at https://www.regulations.gov. Electronic submission of

comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury to make the comments available to the public.

- *Mail:* Send to U.S. Department of the Treasury, Attention: Meena R. Sharma, Director, Office of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

We encourage comments to be submitted via https://www.regulations.gov. Please submit comments only and include your name and organization name (if any) and cite "Outbound Investment Security Program Regulations" in all correspondence. All comments submitted, including attachments and other supporting material, in response to this Notice of Proposed Rulemaking will be made public, including any personally identifiable or confidential business information that is included in a comment. Therefore, you should submit only information that you wish to make publicly available.

As required by the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available at https://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Meena R. Sharma, Director, Office of Investment Security for Policy and International Relations, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; email: OIS.Outbound.Regulations@treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order 14105 and Current Outbound Investment Security Program

On August 9, 2023, Executive Order 14105 (88 FR 54867), "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" (the Outbound Order), was issued. The Outbound Order described the threat posed to the United States by countries of concern that exploit, or have the ability to exploit, certain U.S. outbound

investments, including certain intangible benefits that often accompany U.S. investments and that help companies succeed. The Outbound Order identified the People's Republic of China (PRC), along with the Special Administrative Regions of Hong Kong and Macau, as a country of concern, and identified three technology areas for coverage.

On November 15, 2024, the Department of the Treasury (Treasury Department) published regulations to implement the Outbound Order. These regulations are found at 31 CFR Part 850 (Part 850 Regulations), and they established the Outbound Investment Security Program (OISP), which went into effect on January 2, 2025. Among other things, the Part 850 Regulations (1) require U.S. persons to provide notification to the Treasury Department regarding certain transactions involving persons of a country of concern that are engaged in specified activities in the semiconductor and microelectronics and artificial intelligence (AI) sectors that may contribute to the threat to the national security of the United States; and (2) prohibit U.S. persons from engaging in certain other transactions involving persons of a country of concern that are engaged in other specified activities in the semiconductor and microelectronics, quantum information technologies, and AI systems sectors that pose a particularly acute national security threat to the United States.

In the time since the OISP went into effect (approximately 21 months), the Treasury Department has received approximately 100 notifications of investments in the semiconductor and AI industries from a range of transaction parties, including venture capital firms, asset managers, investment banks, and individual investors and entrepreneurs. Many other transaction parties and their counsel have engaged with the Treasury Department during this time. The Treasury Department also has been closely monitoring investment activity that may be subject to the OISP, because such investment was either potentially prohibited or not notified. Additionally, the Treasury Department has engaged with a wide range of stakeholders across industries, issued guidance and responses to more than 50 Frequently Asked Questions, and launched a website dedicated to the OISP that includes an online portal for submission of notifications.

B. Comprehensive Outbound Investment National Security Act of 2025

On December 18, 2025, Congress enacted the Comprehensive Outbound Investment National Security (COINS) Act as part of the National Defense Authorization Act for Fiscal Year 2026 (FY26 NDAA). In passing the COINS Act, Congress made clear that restricting certain U.S. outbound investments into dual-use strategic technologies that benefit a foreign adversary's military modernization efforts, surveillance states, and human rights abuses is necessary to prevent harm to U.S. national security and foreign policy interests. In addition, Congress stated that the President should exercise the authorities granted in the COINS Act to prevent countries of concern from exploiting U.S. capital to undermine U.S. national security and foreign policy interests.

Subtitle C of the COINS Act adds Title VIII to the Defense Production Act of 1950, 50 U.S.C. 4581–4589 (Title VIII), and establishes a statutory basis for the OISP. In the COINS Act, Congress codified the framework for the Secretary of the Treasury (Secretary) to (1) require United States persons to provide notification to the Treasury Department regarding certain transactions involving foreign persons engaged in notifiable technologies, and (2) prohibit United States persons from engaging in certain other transactions involving foreign persons engaged in prohibited technologies. Title VIII maintains various aspects of the current OISP—such as its application to certain transactions involving the semiconductor and microelectronics, AI systems, and quantum information technologies sectors in the PRC including the Hong Kong and Macau Special Administrative Regions—while broadening the program to address threats to U.S. national security posed by other advanced technologies. Specifically, Title VIII expands the OISP's jurisdiction to include two new technology sectors (in addition to the three already covered under the Part 850 Regulations): (1) high-performance computing and supercomputing; and (2) hypersonic systems. Title VIII also authorizes the Secretary—in consultation with the appropriate congressional committees and subject to notice and comment—to identify additional categories of notifiable and prohibited technologies beyond those specifically listed in the law that enable the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern, and to

define the technical parameters of the technologies within those categories as reasonably needed for national security purposes.

Title VIII includes an expanded list of countries of concern. In addition to the PRC (including Hong Kong and Macau), Title VIII includes as *countries of concern* the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, and the Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros. Title VIII uses the terms *notifiable technology* and *prohibited technology* to capture the relevant technologies for coverage largely in place of the terms "notifiable transaction" and "prohibited transaction" found in the Part 850 Regulations. Title VIII uses the term *covered national security transaction* (in place of the term "covered transaction" found in the Part 850 Regulations) and explicitly excepts from its coverage, among other things, underwriting services (including where such services involve the acquisition of equity), bank lending, processing or clearing of payments, prime brokerage, and global custody services. Title VIII also includes exceptions for *de minimis* transactions, specifically for (1) any transaction the value of which the Secretary determines is *de minimis* and (2) certain investments made by a limited partner or the equivalent where committed capital is not more than a *de minimis* amount, as determined by the Secretary. Title VIII does not set such *de minimis* values and instead grants the Secretary the discretion to do so. Title VIII additionally defines a *covered foreign person* only in terms of such person's relationship to a *country of concern* and not in connection with the technology or technologies in which such person engages (in contrast to the Part 850 Regulations, where "covered foreign person" has a different meaning).

In addition to certain changes that expand the scope of the OISP, Title VIII includes certain new processes. In particular, Title VIII requires the Treasury Department to implement regulations establishing a process under which a person can request confidential non-binding feedback or anonymized public guidance for a potentially *prohibited transaction*. Title VIII also requires the Secretary to establish a mechanism for the public to submit evidence on a confidential basis with

respect to whether a *foreign person* is a *covered foreign person* engaged in a *prohibited technology* or a *notifiable technology*. Title VIII further provides the Secretary with the discretionary authority to establish a publicly accessible, non-exhaustive database that identifies *covered foreign person*s that are engaged in a *prohibited technology* or a *notifiable technology*.

II. The Proposed Rule

A. Scope and Structure of the Proposed Rule

The United States remains committed to maintaining a strong, open investment environment and supporting cross-border investment where consistent with the protection of U.S. national security. Certain U.S. investments, however, may be exploited by countries of concern to advance the development of sensitive technologies and products that contribute to those countries' military, intelligence, surveillance, or cyber-enabled capabilities.

This current rulemaking seeks comment on the draft regulatory framework (Proposed Rule) to implement Subtitle C of the COINS Act. Consistent with the sense of Congress, in implementing the COINS Act, the Treasury Department seeks to (1) restrict certain U.S. outbound investments into certain technologies in countries of concern as is necessary to prevent harm to United States national security and foreign policy interests; and (2) balance the priority of protecting the national security interest of the United States while, to the extent practicable, minimizing the cost and complexity of compliance, adopting the least burdensome alternative that achieves regulatory objectives, and prioritizing transparency and stakeholder involvement in the process of issuing the rules.

To implement Title VIII, Congress has directed the Secretary to issue or update current regulations that, as necessary, amend, terminate, supersede, revoke, or streamline the existing requirements in the Part 850 Regulations. Where consistent with Title VIII, the Proposed Rule incorporates certain definitions and concepts from the Part 850 Regulations. Where Title VIII uses new or different terminology, the Treasury Department has made adjustments while seeking, to the extent consistent with congressional intent, to preserve relevant aspects of the Part 850 Regulations. This approach is intended to minimize the cost and complexity of compliance for affected parties by maintaining certain definitions and concepts with which the regulated community is already familiar.

The Proposed Rule, therefore, includes detailed definitions and descriptions of terms and elements to clearly delineate the scope of coverage and facilitate compliance by *U.S. persons*. At the same time, the Proposed Rule seeks to avoid loopholes that could undermine the intent of the COINS Act. The Treasury Department seeks input on how the Proposed Rule can best meet these objectives.

Consistent with Title VIII, the Proposed Rule would place certain obligations upon any *U.S. person* in connection with a *covered national security transaction* in a *prohibited technology* or in a *notifiable technology*. A *covered national security transaction* would involve a *U.S. person*'s investment in, or other specific activities in connection with, a *covered foreign person* that "engages in" a *prohibited technology* or *notifiable technology*. The proposed definition of *covered foreign person* is based on the person's relationship with a *country of concern*. A *covered national security transaction* relating to a *prohibited technology—i.e.*, where the relevant *covered foreign person* "engages in" a *prohibited technology*—would be a *prohibited transaction*, meaning it could not legally be undertaken. As set forth in the Proposed Rule, a *covered foreign person* "engages in" a *prohibited technology* when it undertakes an activity specified in the definition of *prohibited technology*. The Proposed Rule would define *prohibited technology* to include specific activities in the sensitive technology sectors identified in Title VIII or by the Secretary pursuant to statutory authority. Meanwhile, a *covered national security transaction* in a *notifiable technology—i.e.*, where the relevant *covered foreign person* "engages in" a *notifiable technology*—would be a *notifiable transaction*, meaning that it would be permitted under the Proposed Rule where a *U.S. person* would need to submit specified information about the transaction to the Treasury Department. As set forth in the Proposed Rule, a *covered foreign person* "engages in" a *notifiable technology* when it undertakes an activity specified in the definition of *notifiable technology*. The Proposed Rule would define *notifiable technology* to include certain other (*i.e.*, non-prohibited) specific activities in the sensitive technology sectors identified in Title VIII or by the Secretary pursuant to statutory authority. Further, a *U.S. person* would have certain

obligations under the Proposed Rule in connection with certain transactions undertaken by any non-U.S. person entity that it controls, referred to as a *controlled foreign entity*. These and other terms are defined in Subpart B of the Proposed Rule.

Under the Proposed Rule, a *U.S. person* undertaking a transaction would have the obligation to determine whether the given transaction is prohibited, permissible but subject to notification requirements, or not covered by the Proposed Rule because it is an *excepted transaction*, it is exempt, or it is not within the jurisdiction set forth under the Proposed Rule. A *U.S. person* could seek a national interest exemption from the prohibition set out in the Proposed Rule by following the process described in § 851.502 and further discussed below.

As directed by Title VIII, the provisions contained in the Proposed Rule will not have retroactive effect. The Part 850 Regulations, however, will continue to apply to activities occurring between January 2, 2025, and the effective date of the final regulations implementing Title VIII. Nothing in this Proposed Rule limits the authority of the Treasury Department or any other department or agency of the U.S. Government to take action, including enforcement action, in connection with conduct that would be a violation of the Part 850 Regulations, as applicable.

In Section III, the Treasury Department seeks comment from stakeholders regarding the provisions of the Proposed Rule. The Treasury Department asks commentors to provide, where possible, empirical data or other specific information in support of their comments.

B. Discussion of the Proposed Rule

The following discussion provides an overview and narrative description of the key substantive provisions of the Proposed Rule to implement Title VIII. Because the Part 850 Regulations will remain in effect for transactions occurring during the relevant period, the Treasury Department views establishing a new Part 851 within Title 31 of the Code of Federal Regulations with the full process, procedures, and requirements under Title VIII as the most administrable approach. To make clear the applicability of the Part 850 Regulations, the Proposed

Rule also would add a new § 850.105 to the Part 850 Regulations that sets the specific dates for the applicability of those regulations.

Many provisions of the Proposed Rule are substantively identical to the corresponding provisions in the Part 850 Regulations. The Proposed Rule should be read in its entirety as many terms are related and various features are discussed in different parts. The Treasury Department will carefully consider all comments provided to the Proposed Rule and is particularly interested in receiving comments relating to the new provisions and revisions described below.

Subpart A—General

This subpart includes a general discussion of the Proposed Rule's scope, how the Proposed Rule relates to other laws and regulations, the similarities and differences between the Proposed Rule and the Part 850 Regulations, proposed guidance on how to interpret and apply certain terms and provisions, the application of the knowledge standard in certain circumstances, and, consistent with Title VIII, the role of the heads of other relevant *Federal departments and agencies* in the implementation and administration of Title VIII and the Proposed Rule. Subpart A of the Proposed Rule would generally be identical in substance to §§ 850.101 through 850.104 in Subpart A of the Part 850 Regulations, with most differences focused on conforming the language of the regulatory text to terms used in Title VIII. Proposed § 851.101(e) would also revise the Secretary's responsibilities to conform to Title VIII's requirements.

The most significant change in Subpart A compared to the Part 850 Regulations is an additional element explicitly added to the *knowledge* standard. The Treasury Department proposes to clarify in § 851.104 that it will take into consideration whether a *U.S. person* appropriately considered any information that the Treasury Department has provided to such *U.S. person* when assessing whether the *U.S. person* conducted a reasonable and diligent inquiry.

§ 851.104—Knowledge standard

Under the Proposed Rule, certain provisions, including the definition of *covered national security transaction,* would apply only if a *U.S. person knows* of a relevant fact or circumstance.

As with the Part 850 Regulations, § 851.104 of the Proposed Rule would provide explanation and guidance regarding the application of the knowledge standard. It would state that if a *U.S. person* fails to conduct a "reasonable and diligent inquiry" at the time of a transaction and undertakes the transaction where a particular fact or circumstance indicative of a *covered national security transaction* is present, the Treasury Department may find in the course of determining compliance with the Proposed Rule that the *U.S. person* had reason to know of such fact or circumstance (and therefore, for purposes of the Proposed Rule, *knew*). The articulation of the application of the knowledge standard in § 851.104 would be similar to that in the Part 850 Regulations. This is because Title VIII's definition of *knowledge* is substantially identical to that in the Part 850 Regulations, which indicates congressional intent to maintain the Part 850 Regulations' general approach to the knowledge standard. Further, consistency in this provision minimizes the cost and complexity of compliance for affected parties because the regulated community is already familiar with it. As such, the Proposed Rule would maintain both the definition of *knowledge* from the Part 850 Regulations (see the discussion of § 851.217 below), as well as the important explanatory language in § 851.104, with certain modifications discussed below.

The Treasury Department recognizes that for some potential *covered national security transactions*, a *U.S. person*'s ability to conduct diligence may be somewhat limited in certain situations, including in the context of certain secondary market transactions. The Treasury Department reiterates that its assessment of whether a *U.S. person* has undertaken a reasonable and diligent inquiry would under the Proposed Rule be based on a consideration of the totality of the relevant facts and circumstances surrounding the transaction.

Based on experience operating the OISP, the Treasury Department proposes adding at § 851.104(c) of the Proposed Rule an additional factor it will consider when assessing whether a *U.S. person* has undertaken a reasonable and diligent inquiry: whether the *U.S. person* appropriately considered information provided by the Treasury Department prior to undertaking the transaction, including any assessments by the Treasury Department that the relevant *covered*

foreign person may be engaged in a *notifiable technology* or a *prohibited technology*. The Treasury Department would consider the provision of such information when determining whether the *U.S. person* had *knowledge* of certain facts or circumstances. As discussed further below, the Treasury Department also proposes adding at § 851.104(e) of the Proposed Rule a clarification that the knowledge standard shall also apply to the *knowledge* of a *controlled foreign entity* for the purposes of applying §§ 851.402 and 851.403.

Subpart B—Definitions

The Proposed Rule would preserve several definitions from the Part 850 Regulations in their entirety; amend certain definitions from the Part 850 Regulations; and add several new defined terms both to implement the requirements in Title VIII and to make adjustments based on feedback received during implementation of the Part 850 Regulations. To assist in understanding this Proposed Rule, the discussion below notes proposed changes from the Part 850 Regulations and, in certain cases, highlights that the Proposed Rule would make no such substantive changes.

§ 851.202—Affiliate

The Treasury Department proposes defining the term *affiliate* to mean, in the context of a transaction or activity covered under the Proposed Rule, a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a person subject to this part. Under the Proposed Rule, if an *affiliate* of a *covered foreign person* is included on a list enumerated in § 851.226(v), then a *covered national security transaction* involving a *covered foreign person* engaged in a *notifiable technology* would be a *prohibited transaction*.

§ 851.206—Controlled foreign entity

Title VIII refers to the actions of a *controlled foreign entity* of a *U.S. person* when explaining the application of the prohibition and notification requirement but does not define the term. The Treasury Department proposes using the definition of *controlled foreign entity* from the Part 850 Regulations. As noted in the preamble to the Part 850 Regulations, a *controlled foreign*

entity is an entity incorporated in, or otherwise organized under the laws of, a country other than the United States of which a *U.S. person* is a *parent*. The definition is intended to draw a clear line so that it is straightforward for a *U.S. person* to ascertain whether an entity is a *controlled foreign entity.* Of note, Title VIII also uses the term "controlled foreign person" in reference to the exception for certain intracompany transfers of funds. The term "controlled foreign person" is not used in the Part 850 Regulations, and the context for its use in Title VIII is substantially similar to that of a *controlled foreign entity* in the Part 850 Regulations. Therefore, the Proposed Rule would continue only to refer to a *controlled foreign entity*.

§ 851.207—Country of concern

Title VIII defines *country of concern* as the PRC (including the Hong Kong and Macau Special Administrative Regions), which is consistent with the Part 850 Regulations, and adds Cuba, Iran, North Korea, Russia, and the Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros. The Proposed Rule would define *country of concern* consistent with the definition in Title VIII.

With respect to inclusion of the Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros in Title VIII, that regime no longer exists. On March 5, 2026, the United States recognized Delcy Rodríguez as the head of state of Venezuela and her government is not the regime of Nicolás Maduro Moros.

§ 851.208—Covered foreign person

Title VIII defines a *covered foreign person* as, subject to regulations, a *foreign person* that (i) is incorporated in, has a *principal place of business* in, or is organized under the laws of a *country of concern*; (ii) is a member of the Central Committee of the Chinese Communist Party (CCP) or is a member of the political leadership of a *country of concern*; (iii) is directly or indirectly subject to the direction or control of a *country of concern*, as defined by regulation, an entity described in (i) or (ii), or the state or the government of a *country of concern* (including any political subdivision, agency, or instrumentality thereof); or (iv) is owned in the aggregate, directly

or indirectly, 50 percent or more by a *country of concern*, an entity described in (i) or (ii), or the state or the government of a *country of concern* (including any political subdivision, agency, or instrumentality thereof).

Many aspects of the definition of *covered foreign person* in Title VIII generally align with the definition of "person of a country of concern" in the Part 850 Regulations, and Title VIII provides no indication that it was intended to limit the application of the program in ways that would permit easy circumvention of its restrictions. The Treasury Department therefore proposes defining *covered foreign person* in the Proposed Rule in a manner consistent with the definition of "person of a country of concern" from the Part 850 Regulations. The Proposed Rule would maintain the Part 850 Regulations' coverage of certain individual foreign persons who are citizens or permanent residents of a *country of concern*. This inclusion is necessary to prevent circumvention that would undermine the effectiveness of the Proposed Rule. For example, if an individual national of a *country of concern* (who is not a member of the CCP Central Committee or the political leadership of a *country of concern*) chose to redomicile an entity that such individual wholly owned to engage in a *prohibited technology* or *notifiable technology* outside of a *country of concern*, the proposed definition would treat such entity as a *covered foreign person*. Including such individuals also minimizes the cost and complexity of compliance for affected parties, in this case by maintaining a definition with which the regulated community is already familiar.

Title VIII includes as a category of *covered foreign person* certain *foreign persons* who are, directly or indirectly, subject to the direction or control of a *country of concern* or certain entities associated with a *country of concern*. For the purpose of the proposed definition of a *covered foreign person*, the Proposed Rule would define "subject to the direction or control" to mean that the government of a *country of concern* (including any political subdivision, political party, agency, or instrumentality thereof, or any person acting for or on behalf of the government of a *country of concern*), relevant individual, or relevant entity has the power, directly or indirectly,

to direct or cause the direction of the management or policies of the subject entity (whether through the ownership of voting securities, by contract, or otherwise).

The Proposed Rule would also clarify that the 50 percent aggregate ownership requirement in Title VIII can be met through holdings of outstanding voting interest, voting power of the board, or equity interest. In addition, consistent with the need to prevent circumvention and retain features of the Proposed Rule that strengthen its effectiveness and are familiar to the regulated community, the Proposed Rule would state that this ownership interest also can be held by any individual that meets the definition of *covered foreign person*.

Additionally, the Treasury Department proposes that where a person holds a voting interest, board seat, equity interest, or the contractual power to direct or cause the direction of management or policies of a *covered foreign person*, and more than 50 percent of the revenue, net income, capital expenditure, or operating expenses of the *covered foreign person* are attributable to that person, then that person be considered a *covered foreign person*. A person would also meet this condition if that person holds an interest in more than one *covered foreign person,* and more than 50 percent of the person's revenue, net income, capital expenditure, or operating expenses is attributable to such *covered foreign persons*, in aggregate. When calculating whether more than 50 percent of the person's revenue, net income, capital expenditure, or operating expenses are attributable to a given *covered foreign person*, amounts below $50,000 should not be included for purposes of calculating revenue attributable to a *covered foreign person*.

This provision is intended to align the Proposed Rule's definition of *covered foreign person* with the definition of *covered foreign person* at § 850.209(a)(2) of the Part 850 Regulations. This approach is consistent with Title VIII given its coverage of indirect *covered national security transactions*. This approach also addresses potential evasion or avoidance pursuant to the Secretary's authority in Title VIII, and it furthers the goal of providing clear guidance about coverage, while reducing confusion that might be caused by changes from the Part 850 Regulations.

§ 851.209—Covered national security transaction

Title VIII defines the term *covered national security transaction* as, subject to regulations, a *U.S. person*'s direct or indirect:

- Acquisition of an equity interest or *contingent equity interest* in a *covered foreign person* that the *U.S. person knows* at the time of the acquisition is a *covered foreign person*;
- Provision of a loan or similar debt financing agreement to a *covered foreign person* that the *U.S. person knows* at the time of the provision is a *covered foreign person* and where the provision affords or will afford the *U.S. person* lender certain financial or governance rights characteristic of an equity investment in the *covered foreign person* but not typical of a loan;
- Entrance into a joint venture, wherever located, that is formed with a *person* of a *country of concern* where the *U.S. person knows* at the time of entrance into the joint venture, that the joint venture will engage, or plans to engage, in a *prohibited technology* or *notifiable technology*;
- Conversion of *contingent equity interest* (or equivalent) or debt into an equity interest in a *covered foreign person*;
- Acquisition, leasing, or other development of operations, land, property, or other assets in a *country of concern* that will result in, or the *U.S. person* plans to result in, the establishment of a *covered foreign person* or the engagement of a *person* of a *country of concern* in a *prohibited technology* or *notifiable technology*;
- Direction of a transaction by a *foreign person* that the *U.S. person knows* at the time of the transaction would be a *covered national security transaction* if engaged in by a *U.S. person*, other than an acquisition of a limited partner interest or equivalent in a non-U.S. person pooled investment fund;
- Acquisition of a limited partner or equivalent interest in a pooled investment fund where the fund is not a *U.S. person* and the *U.S. person knows* at the time of the acquisition that

such fund likely will invest in a *person* of a *country of concern* that is in an enumerated *prohibited technology* or a *notifiable technology* sector, and where such fund undertakes a transaction that would be a *covered national security transaction* if engaged in by a *U.S. person*; and

- Any other transaction identified by the Secretary, in consultation with the appropriate congressional committees and subject to public notice and comment, that is contributing to the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*.

The Treasury Department proposes to implement Title VIII's definition of *covered national security transaction* in a way substantively consistent with the statutory text, but with a number of important modifications to ensure clarity and consistency with other provisions of Title VIII. Specifically, the Title VIII definition of *covered national security transaction* refers in multiple places to a "person of a country of concern." The term "person of a country of concern" is not defined in Title VIII but is used in the Part 850 Regulations. Title VIII also uses the term *covered foreign person*, which appears to be the equivalent of "person of a country of concern." As previously discussed, the Proposed Rule would include within the definition of *covered foreign person* some provisions currently included in the definition of a *person of a country of concern* in the Part 850 Regulations. Accordingly, the Proposed Rule would replace all references to a "person of a country of concern" in the definition of *covered national security transaction* with the term *covered foreign person.* Additionally, in each of the relevant provisions of the definition of *covered national security transaction*, the Treasury Department proposes to clarify that the relevant *knowledge* that the *U.S. person* must possess is not merely that the transaction involves a *covered foreign person*, but rather that it involves a *covered foreign person* that engages in a *notifiable technology* or *prohibited technology*. As reflected in the Proposed Rule, this would include specified circumstances in which that engagement is indirect because the *covered foreign person* has one of certain specified relationships with a covered foreign person engaged in a *notifiable*

technology or *prohibited technology*. Without this clarification, the definition of *covered national security transaction* would extend to transactions without any nexus to relevant technologies.

In addition, as noted in the discussion regarding the definition of *covered foreign person*, Title VIII and the Proposed Rule do not define that term in connection with activity that meets the definition of *notifiable technology* or *prohibited technology*. A *covered national security transaction*, however, involves a *covered foreign person* engaged in a *notifiable technology* or *prohibited technology*. For the Proposed Rule to reach a *U.S. person* investment in a *covered foreign person* or relevant joint venture that meet the conditions set forth in § 851.208(a)(8) because of its relationship to one or more *covered foreign persons* that engage in a *notifiable technology* under § 851.218(a) through (g) or a *prohibited technology* under § 851.226(a) through (u), the Treasury Department would propose to define *covered national security transaction* to include where such conditions are met.

With respect to the provision of a loan or similar debt financing, the Treasury Department proposes to incorporate into the definition of *covered national security transaction* clarifications that were included in Note 2 to § 850.210 of the Part 850 Regulations.

The Proposed Rule would make one substantive clarification to the definition of *covered national security transaction* in Title VIII by adding a *knowledge* element to the conversion of a *contingent equity interest* (or equivalent) or debt in a *covered foreign person* that engages in a *notifiable technology* or *prohibited technology* or meets the conditions of § 851.208(a)(8). This clarification would harmonize the conversion prong of the definition of a *covered national security transaction* with the other prongs of the definition and would avoid penalizing unwitting activity by a *U.S. person* that conducted a reasonable and diligent inquiry prior to the conversion of such interest and lacked reason to *know* that the *contingent equity interest* was subject to the Proposed Rule. The Proposed Rule would also clarify that the conversion prong applies only to a *contingent equity interest* (or equivalent) or debt acquired on or after the effective date that is set when the Proposed Rule is finalized.

The Treasury Department notes that Title VIII incorporates directly into the definition of *covered national security transaction* the concept of "knowingly directing" present in the Part 850 Regulations and, accordingly, extends the scope of "knowingly directing" to include *notifiable transactions*. By contrast, the Part 850 Regulations limit the application of "knowingly directing" to *prohibited transactions* as that term is defined in that part (see 31 CFR 850.303). Consistent with Title VIII, proposed § 851.209 incorporates the concept of "knowingly directing" into the definition of a *covered national security transaction.* Proposed § 851.209(a)(6) also states when the Treasury Department considers the criteria in this prong to have been met and describes the conditions under which a *U.S. person* may recuse themself from decision-making so as not to be considered engaging in such a *covered national security transaction*. The proposed § 851.209(a)(6) closely corresponds to § 850.303 of the Part 850 Regulations.

The Treasury Department clarifies that a *covered national security transaction* involving the entrance into a joint venture under § 851.209(a)(3) would not require the establishment or formation of a new entity. The Proposed Rule would not define the term "joint venture" and instead, the Treasury Department refers to the plain English meaning of the term, *i.e.,* as involving the contribution of capital and/or assets by two parties and the sharing of profits and losses.

The Treasury Department also clarifies that *U.S. person* investments in venture capital funds, private equity funds, "funds of funds," or other pooled investment funds with pre-existing investments in a *covered foreign person* may constitute an indirect covered national security transaction as proposed to be defined in § 851.209(a)(1) through (a)(6), separate and apart from whether the acquisition may be a *covered national security transaction* under § 851.209(a)(7).

The Treasury Department also clarifies that an indirect *covered national security transaction* as proposed could include not only a *U.S. person*'s use of an intermediary entity or natural person to engage in a transaction that would be a *covered national security transaction* if engaged in directly by a *U.S. person*, but also a *U.S. person*'s use of a transaction structure that

obfuscates or conceals the *U.S. person*'s role in a transaction that would be a *covered national security transaction* if engaged in directly by a *U.S. person*.

§ 851.210—Develop

Title VIII does not define *develop* and the Treasury Department proposes to maintain the definition of *develop* as it exists in the Part 850 Regulations with three substantive clarifications. First, the Proposed Rule would make explicit that the term extends to activities engaged in through or in collaboration with *affiliates*, consistent with Title VIII's coverage of indirect *covered national security transactions*. Second, the Proposed Rule would also supplement the list of example stages prior to serial production provided in the Part 850 Regulations by adding the act of transforming blueprints, schema, or other plans into a product. Finally, the Proposed Rule would clarify in § 851.210(b) that the term *develop* includes the provision of high-level oversight, direction, approval, conceptual input, or strategic planning in connection with any stage prior to serial production.

§ 851.212—Excepted transaction

Title VIII identifies certain "exceptions and clarifications" to the term *covered national security transaction* but does not use the term *excepted transaction* as that term is used in the Part 850 Regulations. The Treasury Department proposes to retain the term *excepted transaction* in the Proposed Rule to refer to a transaction that is not a *covered national security transaction* because it meets specified conditions. See the discussion in Subpart E below for more information.

§ 851.214—Foreign person

Title VIII introduces the term *foreign person* but leaves the definition to regulations. Accordingly, the Treasury Department proposes to define *foreign person* as any person that is not a U.S. citizen or alien lawfully admitted for permanent residence in the United States or an entity organized under U.S. law, including any foreign branch of such entity, except that for the purposes of § 851.208(a)(5) through (a)(8), the term *foreign person* means any *person*. The carveout related to § 851.208(a)(5) through (a)(8) is intended to preserve Title VIII's introduction of the term

foreign person while continuing to capture in the proposed definition of *covered foreign person* those persons that have significant financial or other material relationships with *covered foreign persons*. This approach is consistent with the Part 850 Regulations and is intended to prevent circumvention of the Proposed Rule and strengthen its effectiveness.

§ 851.215—Hypersonic system

Title VIII adds *hypersonic systems* as a technology sector in which the Secretary may identify *prohibited technology* or *notifiable technology*. The Treasury Department proposes adding the term *hypersonic system* as a defined term in the Proposed Rule. The term would mean a vehicle or weapon delivery system capable of sustained atmospheric flight or very low Earth orbit flight at speeds of Mach 5 or greater. The Proposed Rule would identify hypersonic glide vehicles, hypersonic cruise missiles, hypersonic air-launched or aero-ballistic missiles, maneuvering reentry vehicles, and reusable hypersonic vehicles as examples of a *hypersonic system*. Notably, the examples include both military and civilian *hypersonic systems*, which may include systems intended for spaceflight. The Treasury Department believes that this definition is consistent with industry usage and with other regulatory regimes, including export controls, specifically items with Export Control Classification Number (ECCN) 9A011 on the Commerce Control List and defense articles within Category IV of the United States Munitions List.

§ 851.216—Intracompany transfer of funds

Title VIII provides an exception to the definition of *covered national security transaction* for an *intracompany transfer of funds* from a *U.S. person* "parent company" to a "subsidiary" located in a *country of concern*, where each of "parent," "subsidiary," and "intracompany transfer of funds" is left undefined. As explained above, the Proposed Rule would define a *controlled foreign entity* to be the non-U.S. *subsidiary* of a *U.S. person parent*. The Treasury Department proposes to define the term *intracompany transfer of funds* to mean the provision of cash or credit by a *U.S. person parent* to (1) support operations of a *controlled foreign entity*, which operations are not in a *notifiable technology* or a *prohibited technology*; or (2) maintain operations of a *controlled foreign entity*, which operations are in a *notifiable technology* or *prohibited technology* that the *controlled foreign entity* was engaged in prior to the effective date that is set when the Proposed Rule is finalized at a later time. This definition is further discussed below in Subpart E.

§ 851.217—Knowledge

Title VIII defines the terms *knowledge* and variants such as *know* as they are currently defined in the Part 850 Regulations. The Treasury Department proposes to maintain such definition in the Proposed Rule.

§ 851.218—Notifiable technology

Title VIII introduces the term *notifiable technology* and, subject to regulations, defines it as a technology within the areas of (1) semiconductor technology and microelectronics; (2) artificial intelligence systems; (3) quantum information technologies; (4) high-performance computing and supercomputing; or (5) hypersonic systems, in each case where not already specified in regulations for *prohibited technology*. This statutory definition makes clear that the Secretary, in consultation with appropriate congressional committees and subject to notice and comment, may prescribe regulations defining the technical parameters of *notifiable technologies* as reasonably needed for national security purposes and may add and define categories to the list of technology sectors that enable the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*.

The Proposed Rule would define certain *notifiable technology* sectors with reference to specific activities and technical parameters consistent with the activities and technical parameters in the Part 850 Regulations, with specific changes and additions that reflect both Title VIII's requirement to consider *notifiable technology* in the areas of high-performance computing and supercomputing and *hypersonic systems*, as well as recent advances and developments in the semiconductor technology and microelectronics sector, which is currently covered by the Part 850 Regulations.

With respect to changes to the three technology sectors covered by the Part 850 Regulations, the most notable involves what was defined as AI systems in the Part 850 Regulations and is referred to as "super intelligence systems" (SI systems) in the Proposed Rule. As discussed in more detail below, the Treasury Department, in consultation with interagency partners and the Executive Office of the President, has determined that the rapid advances in super intelligence

capabilities of *countries of concern* warrant a broad prohibition on *U.S. person* investment in that sector. Accordingly, the Proposed Rule lists the development of *SI systems* within the definition of *prohibited technology*, and not within *notifiable technology*. The Treasury Department particularly welcomes comment on this approach, as discussed in further detail below.

Semiconductor Technology and Microelectronics

As with the Part 850 Regulations, the Treasury Department proposes including within the definition of *notifiable technology* the design, fabrication, or packaging of any integrated circuit that is not included within the definition of *prohibited technology* (*i.e.*, that does not meet the performance parameters and criteria identified in § 851.226(c), (d), (e), and (f), as applicable, although these criteria differ in certain respects from those in the Part 850 Regulations). Additionally, the Treasury Department proposes to include as *notifiable technology* the development or production of certain equipment not described in § 851.226(b) that is designed or intended for use in the design, fabrication, or packaging of any integrated circuit. The Proposed Rule would separately define the terms *fabricate* and *package*, adding further technical detail as to both *notifiable technology* and *prohibited technology*. The Treasury Department assesses that the scope of this notification requirement would aid the U.S. Government's visibility into the volume and nature of investments of *U.S. person* transactions involving these technologies and products.

SI Systems

In contrast to the Part 850 Regulations, the Proposed Rule would not include development of any *SI system* within the definition of *notifiable technology*. Instead, the Treasury Department would include development of any *SI system* within the definition of *prohibited technology*, as discussed below.

Quantum Information Technologies

Similar to the Part 850 Regulations, the Proposed Rule would not include any quantum information technologies within the definition of a *notifiable technology*. The Treasury

Department would include quantum information technologies within the definition of *prohibited technology* as set forth below.

While Title VIII includes both artificial intelligence systems and quantum information technologies in the definition of a *notifiable technology*, Title VIII explicitly states that such technologies are to be included in the regulatory definition of a *notifiable technology* to the extent "not already captured by the technical thresholds specified" in the regulatory definition of a *prohibited technology*. Title VIII also explicitly directs the Secretary, in consultation with the appropriate congressional committees and subject to notice and comment, to define the parameters of those technologies as reasonably needed for national security purposes. For the reasons discussed below, the Treasury Department has not proposed any technical parameters within which the U.S. Government can permit a *covered national security transaction* into the *SI systems* or quantum information technologies sectors consistent with U.S. national security.

High-Performance Computing and Supercomputing

The Proposed Rule would include as a *notifiable technology* the development or production of high-bandwidth, low-latency interconnects for high-performance computing, including interconnects for system-on-chip, system-in-package, scale-up networks, and scale-out networks that are not otherwise proposed to be prohibited under the Proposed Rule. These interconnect technologies and approaches to integration contribute to the capability of super intelligence clusters, high-performance computing environments, and modern data centers through high-speed data transfer between and effective scaling of compute components.

Hypersonic Systems

As noted above, the Treasury Department proposes to define *hypersonic system* at § 851.215 as a vehicle or weapon delivery system capable of sustained atmospheric or very low Earth orbit flight at speeds of Mach 5 or greater, including hypersonic glide vehicles, hypersonic cruise missiles, hypersonic air-launched or aero-ballistic missiles, maneuvering reentry vehicles, and reusable hypersonic vehicles. The Treasury Department would include in the definition of *notifiable technology* the development or production of certain technologies capable of use in or for a *hypersonic system* or its components, including sensor, guidance, navigation, or control equipment or systems; software for research, modeling and simulation, analysis, or testing not included in the definition of *prohibited technology*; and metals, alloys, composites, ceramics, coatings, or other materials not included in the definition of *prohibited technology*.

§ 851.219—Notifiable transaction

Title VIII does not define the term *notifiable transaction*. The Treasury Department proposes using this term to describe the relevant language of Title VIII and to promote consistency with the Part 850 Regulations, in which this term is used, to minimize the cost and complexity of compliance for affected parties. Accordingly, the Treasury Department proposes to define *notifiable transaction* as a *covered national security transaction* (that is not a *prohibited transaction*) in which the relevant *covered foreign person* or relevant joint venture (1) engages in

a *notifiable technology* or (2) meets the conditions set forth in § 851.208(a)(8) because of its relationship to one or more *covered foreign persons* that engage in a *notifiable technology*.

§ 851.221—Parent

The Proposed Rule would define *parent*, with respect to an entity, as (1) a person that directly or indirectly holds more than 50 percent of the outstanding voting interest in an entity or the voting power of the board of the entity; (2) the general partner, managing member, or equivalent of the entity; or (3) the investment adviser to any entity that is a pooled investment fund, with "investment adviser" as defined in the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

The Treasury Department is considering whether to expand the definition of *parent* to incorporate certain sub-advisers to a non-U.S. person fund as well as the general manager (or equivalent) to a non-U.S. person entity. The Treasury Department welcomes comments on this definition.

§ 851.222—Party

Title VIII introduces the term *party* with respect to a *covered national security transaction* and states that it should have the meaning provided in regulations. The Treasury Department proposes defining *party* to mean any *U.S. person*, any *covered foreign person*, and any *foreign person* relevant to the *covered national security transaction*, including in the context of joint ventures or *controlled foreign entities*. The term would be used in proposed § 851.902 concerning submission of information in connection with a request for non-binding feedback. The Proposed Rule would require identification of "each party to the transaction," to include relevant intermediaries, financing sources, and *controlled foreign entities*. *Party* would also be used in § 851.104(c) concerning a *U.S. person*'s reasonable and diligent inquiry.

§ 851.223—Person

Title VIII defines *person* as "an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local

government or agency thereof." The Treasury Department proposes modifying the definition to include any entity—where *entity* is separately defined in the Proposed Rule—rather than listing specific types or organizations. The Proposed Rule otherwise would implement Title VIII's definition without substantive changes.

§ 851.224—Principal place of business

The term *principal place of business* is used in Title VIII's definition of *covered foreign person* but is not defined, leaving it to the Treasury Department to do so in regulations. The Treasury Department proposes defining *principal place of business* in a way that is similar to the corresponding definition in the Part 850 Regulations, but also specifically includes the location of an entity's headquarters and, separately, the location where an entity conducts its main business activities. For example, if a company is incorporated and has its official headquarters in the United States, but its chief executive officer resides and primarily manages the business in a *country of concern*, then the company's *principal place of business* would be in both the United States and the *country of concern*.

§ 851.226—Prohibited technology

Title VIII introduces the term *prohibited technology*, which is defined, subject to regulations, as a technology within one of the five technology areas enumerated in Title VIII: advanced semiconductor technology and microelectronics; artificial intelligence systems; quantum information technologies; high-performance computing and supercomputing; and hypersonic systems. As with *notifiable technology* discussed above, Title VIII provides the Secretary with the authority, in consultation with the appropriate congressional committees, to prescribe regulations that define the technical parameters of such technology as reasonably needed for national security purposes. The Secretary may also add and define technology categories beyond those listed in Title VIII that enable the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*. As discussed further below, the Secretary, in consultation with interagency partners and the Executive Office of the President, has determined that the biotechnology sector in

countries of concern enables the military, intelligence, surveillance, or cyber-enabled capabilities of those countries and, therefore, pursuant to his authority under Title VIII to prescribe regulations, has added that sector to the proposed definition of *prohibited technology*.

Advanced Semiconductor Technology and Microelectronics

Consistent with the Part 850 Regulations, the Treasury Department proposes including within the definition of *prohibited technology* the development or production of any electronic design automation software for the design of integrated circuits or *advanced packaging* and the development or production of any of the following: certain front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits (to include extreme ultraviolet and deep ultraviolet lithography equipment), equipment for performing volume *advanced packaging*, or other items designed or intended for use in or with deep ultraviolet or extreme ultraviolet lithography fabrication equipment.

Further consistent with the Part 850 Regulations, the Proposed Rule would also include within the definition of *prohibited technology* the design of any integrated circuit that meets or exceeds certain advanced technical thresholds identified by the Department of Commerce's Bureau of Industry and Security (BIS), the fabrication of certain other advanced integrated circuits that meet certain specified parameters, and the development or production of integrated circuits manufactured from certain specified semiconductors, certain radiation hardened integrated circuits designed to withstand specified high-radiation environments, and photonic integrated circuits. Additionally, the term would include the packaging of any integrated circuit using *advanced packaging* techniques.

The Proposed Rule also would include within the definition of *prohibited technology* the development or production of high-bandwidth memory with a memory bandwidth density greater than 2 gigabytes per second per square millimeter. This modification as compared to the Part 850 Regulations would bring the scope of *prohibited technology* in this sector into alignment with current export control restrictions, specifically ECCN 3A090 on the Commerce Control List.

Also consistent with the Part 850 Regulations, the Proposed Rule would separately define the terms *advanced packaging*, *develop*, and *produce*, adding further technical detail to the relevant prohibition provisions.

SI Systems

Since publication of the Part 850 Regulations nearly two years ago, technology has undergone rapid transformation, with breakthrough advances in the capabilities and development of *SI systems*. A range of *SI systems* developed by *covered foreign persons* present significant national security risks—from the ability to autonomously conduct cyberattacks to the potential use by malign actors and foreign adversaries to develop weapons of mass destruction. *SI systems* can also provide *countries of concern* with the potential to substantially enhance military modernization efforts, surveillance, and real-time targeting and decision-making capabilities. A range of *SI systems* may pose novel national security risks in areas such as cyberattacks and the development of chemical, biological, radiological, nuclear, or explosive weapons, as well as expose novel security vulnerabilities. The Treasury Department has observed advances in the capabilities and development of *SI systems* directly through its market monitoring activity, receipt of notifications as part of the OISP, and other sources.

The Part 850 Regulations distinguished among "AI systems" for purposes of the prohibition, the notification requirement, or absence from OISP coverage based on the quantity of computing power for training, designed end uses, and intended end uses. Over the past two years, SI models have achieved notable performance gains through additional means other than the quantity of training compute. Therefore, no single measure, benchmark, or threshold is currently sufficient to distinguish advanced models. Although the quantity of training compute may continue to indicate a degree of SI model capability, developers increasingly rely on additional methods to improve model capability, including other research and development activities such as synthetic data generation, improved algorithmic or architectural efficiencies, and novel post-training techniques or increasing inference-time compute.

Similarly, the proliferation and adoption of SI capabilities have made SI system end uses more challenging to isolate. General-purpose SI models that were not necessarily designed to be used for relevant national security applications nevertheless may exhibit that functionality, and investors may lack insight into the capabilities of such models if model developers have not evaluated or advertised these capabilities. Additionally, the availability of capable open-source SI models that have fewer safeguards and oversight may lead to their utilization and incorporation into SI systems in contexts outside their intended scope.

Accordingly, the Secretary, in consultation with interagency partners and the Executive Office of the President, has determined that it is necessary for national security purposes to define *prohibited technology* to include the development of any *SI system*. The Treasury Department notes that this approach is consistent with the COINS Act's direction to balance the priority of protecting the national security interest of the United States, while, to the extent practicable, minimizing the cost and complexity of compliance for affected parties and adopting the least burdensome alternative that achieves regulatory objectives. Specifically, this approach seeks to protect U.S. national security and streamline compliance through clear proposed regulatory text that does not rely on a *U.S. person* ascertaining the technical capabilities or thresholds of *SI systems* being developed by a *covered foreign person* (which was the case in the Part 850 Regulations).

Importantly, the Treasury Department proposes to include clarifying language regarding when the use or incorporation of certain third-party SI systems would or would not constitute the development of an SI system. This language generally corresponds to Notes 2 and 3 to § 850.224 in the Part 850 Regulations.

The Treasury Department particularly welcomes feedback regarding the potential implications arising from defining *prohibited technology* to include the development of any *SI system*, as well as feedback relating to the definition of an *SI system*. Where possible, feedback should discuss impacts, possible alternative approaches aimed at the same policy intent described above, and where relevant, should include suggestions for how the Proposed Rule could be scoped

to address the national security concerns described above accounting for the potential impact on U.S. businesses and consumers. To the extent that a *U.S. person* believes engaging in a *covered national security transaction* is in the national interest of the United States, the Treasury Department notes that the Proposed Rule provides a process by which the *U.S. person* may request an exemption from the Proposed Rule's coverage, provided that the Secretary, in coordination with other relevant Federal departments and agencies, determines the transaction to be in the U.S. national interest. See Subpart E for a further discussion on exceptions and exemptions.

Quantum Information Technologies

The Treasury Department proposes to include within the definition of *prohibited technology* the development of a *quantum computer* or production of any of the critical components required to *produce* or operate a *quantum computer* (such as a dilution refrigerator or two-stage pulse tube cryocooler), or the development of software for the purpose of designing, simulating, testing, or controlling a *quantum computer*, or for identifying, implementing, costing, or optimizing algorithms and applications for a *quantum computer*.

The Proposed Rule would also include in the definition of *prohibited technology* the development of algorithms and applications for quantum information science technologies. The Proposed Rule would include an end-use limitation to appropriately scope this provision to refer to activities that could give rise to an acute national security threat, recognizing that similar technologies could have important civilian purposes.

The definition of *prohibited technology* would include the development or production of any quantum sensing platform designed for, or that the relevant *covered foreign person* intends to be used for, any military, government intelligence, or mass-surveillance end uses.

The development or production of certain quantum networks and quantum communication systems would also be *prohibited technology*. Specifically, *prohibited technology* would include such networks and systems designed for, or that the relevant *covered foreign person* intends to be used for: (1) networking to scale up the capabilities of *quantum computers;* (2) secure

communications, such as quantum key distribution; or (3) any other application that has any military, government intelligence, or mass-surveillance end use.

The Proposed Rule would separately define the term *quantum computer*, adding further technical detail to the prohibition provision.

High-Performance Computing and Supercomputing

The Treasury Department proposes maintaining the prohibition in the Part 850 Regulations on *U.S. person* investment with respect to the high-performance computing and supercomputing technology area. Consistent with the Part 850 Regulations, the definition of *prohibited technology* would include developing, installing, selling, or producing any supercomputer enabled by advanced integrated circuits that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power within a 41,600 cubic foot or smaller envelope, or components designed for enabling any of such capabilities of a supercomputer. Certain technologies included within the advanced semiconductor technology and microelectronics category also are relevant to the high-performance computing and supercomputing technology area, including the fabrication of any specified DRAM integrated circuit, the development and production of any photonic integrated circuit (including the development of optical components, co-packaged optics, or silicon-photonics integration), and the development and production of certain high-bandwidth memory.

Hypersonic Systems

The Treasury Department proposes to define *prohibited technology* to include the development or production of a *hypersonic system*, as that term is defined in the Proposed Rule (and discussed above), a propulsion system capable of enabling hypersonic flight, or fuels or propellants for hypersonic propulsion systems. Propulsion systems capable of enabling hypersonic flight would include rocket-based propulsion, hypersonic airbreathing propulsion such as ramjets and scramjets, and combined cycle propulsion.

The term *prohibited technology* would also include the development or production of certain materials designed for, or that a *covered foreign person* intends to be used for, a *hypersonic system*, including refractory metals or alloys, refractory or ultra-high temperature ceramics, certain carbon composites, and stealth coatings, as well as the development or operation of specialized infrastructure or a facility capable of testing a *hypersonic system*.

The Proposed Rule would define *prohibited technology* to also include the development of digital twin technology for modeling and simulation of, monitoring, or optimizing a *hypersonic system* and the development of digital thread technology that collects, manages, or represents the data flows related to a *hypersonic system*.

Biotechnology

Certain advanced or sensitive biotechnologies in *countries of concern*—including those that are subject to export controls, biomanufacturing or bioengineering of certain compounds and materials, and the technology and equipment capable of being used to engage in such manufacturing or engineering—pose an acute risk to U.S. national security. Such risks include the proliferation of biological weapons, the development of brain-computer interfaces, harm to U.S. supply chain security, and the indigenization by *countries of concern* of advanced technologies with military, government intelligence, and mass surveillance end uses. *U.S. person* investments in *covered foreign persons* engaged in such activities are at risk of exploitation. Accordingly, pursuant to the authority granted to the Secretary by Title VIII, the definition of *prohibited technology* would include specific activities and technical parameters associated with the biotechnology sector, as discussed further below.

Specifically, the Treasury Department proposes to define *prohibited technology* to include the development, engineering, or use of a biological system—or component of a biological system—to modify, enhance, produce, or control: (1) certain export-controlled agents or toxins, as well as novel agents and toxins capable of similar effects as those currently export-controlled; (2) energetic precursors or energetic materials; (3) novel or high-performance functional materials

(*i.e.*, bio-derived products that exhibit novel or enhanced properties, such as adaptive or protective coatings, materials for agile infrastructure, materials capable of self-repair or self-assembly, and biosensors); (4) pharmaceutical compounds (*e.g.*, small molecules, polymers, vaccines, blood and blood components, allergenics, cell and gene therapies, and monoclonal antibodies or other recombinant therapeutic proteins), as well as their delivery systems; and (5) biofuels (*i.e.*, fuels made or derived from bio-based feedstock). The Proposed Rule also would define *prohibited technology* to include the development or production of brain computer interfaces and the development, construction, or production of biomanufacturing equipment, including components and associated software or technology, as identified in ECCNs 2B352, 2D352, and 2E001 on the Commerce Control List. The Treasury Department also proposes to include in the definition of *prohibited technology* the development or production of certain other related technology or equipment (including components and associated software), to include: biological sequencing technology, including short-read or long-read sequencing; certain flow cytometers and cell sorters; certain liquid chromatography mass spectrometry instruments; certain computational or bioinformatics tools; and hardware, robotics, or software for automated scientific discovery or experimentation, including laboratory automation or cloud lab infrastructure.

It is necessary to place restrictions in this sector in the interest of protecting U.S. national security; at the same time, the Treasury Department recognizes that restrictions may potentially have countervailing effects on national security to the extent restrictions lead to significant public health risks or harm U.S. businesses in this sector. Accordingly, the Treasury Department is particularly interested in comment on this approach. Where possible, feedback should discuss impacts, possible alternative approaches aimed at the same policy intent described above, and any suggestions for how the Proposed Rule could be scoped to address the national security concerns described above. In particular, the Treasury Department requests comments on the following questions:

- Whether or how the Treasury Department should more precisely describe the biological systems covered in proposed § 851.226(r);
- Whether the Treasury Department should adjust proposed § 851.226(r) to focus on where the development, engineering, or use of a biological system is undertaken using equipment identified in proposed § 851.226(t) or (u);
- Whether or how the Treasury Department should more precisely describe the biofuels covered in proposed § 851.226(r), such that the Proposed Rule does not include fuels that do not pose acute national security risks (such as ethanol);
- Whether or how a "novel or high-performance functional material" identified in proposed § 851.226(r)(3) could be more precisely described and whether definitions used in other regulatory programs, including export controls, could be leveraged to achieve additional clarity;
- Whether and how "pharmaceutical compounds" described in proposed § 851.226(r)(4) should be more precisely scoped to focus on advanced or frontier technologies; and
- Whether the technical parameters of the equipment listed in proposed § 851.226(u) should be more precisely scoped to focus on advanced or frontier technologies.

To the extent that a *U.S. person* believes engaging in a *covered national security transaction* is in the national interest of the United States, the Treasury Department notes that the Proposed Rule provides a process by which the *U.S. person* may request an exemption from the Proposed Rule's coverage, which could be granted if the Secretary, in coordination with other federal departments and agencies, determines the transaction to be in the U.S. national interest. See Subpart E for a further discussion on exceptions and exemptions.

Cross-Reference to U.S. Government Lists

The Treasury Department would also include within the definition of *prohibited technology* any *notifiable technology* engaged in by a *covered foreign person* or relevant joint venture where such covered foreign person or joint venture is, or any of its *affiliates* or subsidiaries are, included

on one of several U.S. Government lists, such as the Entity List maintained by BIS. Defining *prohibited technology* to include *notifiable technology* engaged in by such persons is reasonably needed for national security purposes because the U.S. Government's inclusion of such persons on any of these lists reflects a determination that the person poses a threat to the foreign policy or national security interests of the United States. In addition, defining *prohibited technology* in this manner promotes consistency with the Part 850 Regulations and provides bright lines for certain *U.S. person* investments, which would minimize the cost and complexity of compliance for affected parties while addressing national security risks.

Section 851.226(v) would cross-reference two additional U.S. Government lists beyond those in the Part 850 Regulations: the Department of War's list of Chinese military companies under section 1260H of the National Defense Authorization Act for Fiscal Year 2021 and the Office of Management and Budget's list of biotechnology companies of concern under the BIOSECURE Act, section 851 of the FY26 NDAA. Such lists are particularly relevant for the OISP, given their focus on entities with connections to the PRC military.

The Treasury Department also proposes that relevant listed entities in § 851.226(v) include the *affiliates* and subsidiaries of a *covered foreign person* or relevant joint venture that engages in a *notifiable technology*. Prohibiting a *U.S. person* from engaging in a *covered national security transaction* with a *covered foreign person* engaged in a *notifiable technology* whose *affiliate* or *subsidiary* is included on one of the U.S. Government lists would strengthen the Proposed Rule by deterring listed persons from establishing subsidiaries to engage in a *notifiable technology* and participate in a *covered national security transaction* that the listed person could not.

§ 851.227—Prohibited transaction

Title VIII does not use the term *prohibited transaction*, which was used in the Part 850 Regulations. The Treasury Department proposes maintaining this term and concept to provide a single term to describe the operative language of section 801 of Title VIII and to promote consistency with the Part 850 Regulations to minimize the cost and complexity of compliance for

affected parties. Accordingly, the Treasury Department proposes to define *prohibited transaction* as a *covered national security transaction* in which the relevant *covered foreign person* or relevant joint venture:

- Engages in a *prohibited technology*; or
- Meets the investment and financial thresholds under proposed § 851.208(a)(8) because of its relationship to one or more *covered foreign persons* that engage in a *prohibited technology*.

§ 851.229—Relevant Federal departments and agencies

The Treasury Department proposes defining the *relevant Federal departments and agencies* as those departments or agencies specifically mentioned in Title VIII; *i.e.*, the Departments of State, War, Commerce, and Energy, and the Office of the Director of National Intelligence—as well as the Office of the U.S. Trade Representative and the Office of Science and Technology Policy, and any other department, agency, or office the Secretary determines to be appropriate.

§ 851.232—Super intelligence (SI) system

Title VIII includes "AI systems" as a technology area in which the Secretary may identify specific *notifiable technology* or *prohibited technology*. Title VIII does not further define an "AI system." The Treasury Department proposes to define *super intelligence (SI) system*[1] in a manner that is generally consistent with the existing definition of an "AI system" found in the Part 850 Regulations, but with some modifications. The narrative description of the Proposed Rule below refers to "artificial intelligence system" or "AI system" when discussing the applicable requirements in the Part 850 Regulations or Title VIII and refers to *SI system* and the abbreviation "SI" when discussing the Proposed Rule.

Under § 851.232(a) of the Proposed Rule, an *SI system* would be a machine-based system with certain specified functions and characteristics that are consistent with those in the Part 850 Regulations and also would specifically include machine-based systems that can generate content (with the phrase "generate content" seeking to capture generative SI that can create content such as text, audio, images, multimedia, or code). Section 851.232(b) of the Proposed Rule would include within the definition of *SI system* any data system, software, hardware, application, tool, or utility that operates in whole or in part using such a machine-based system, including a harness for agentic capability or an embodied *SI system*. Under § 851.232(b), an *SI system* would include,

[1] On September 29, 2026, Executive Order 14434 (91 FR 63129), "Inaugurating the Era of Super Intelligence," was issued. Section 2 of Executive Order 14434 requires executive departments and agencies to use "Super Intelligence" and "SI" in place of "Artificial Intelligence" and "AI" in certain documents.

for example, robotic or other autonomous or unmanned systems that operate using an *SI system*. The Treasury Department welcomes comment on the proposed definition of *SI system*.

Subpart C—Prohibited Transactions and Other Prohibited Activities

Title VIII authorizes the Secretary to prohibit a *U.S. person*, including its *controlled foreign entities*, from knowingly engaging in a *covered national security transaction* in any *prohibited technology*. To promote consistency with the Part 850 Regulations and to minimize the cost and complexity of compliance for affected parties, this subpart of the Proposed Rule closely aligns with the text of the Part 850 Regulations and describes activities that would be prohibited. Such activities would include a *U.S. person* engaging in a *prohibited transaction* unless an exemption has been granted. A *U.S. person* would also be required to take all reasonable steps to prohibit and prevent any transaction by its *controlled foreign entity* that would be a *prohibited transaction* if engaged in by a *U.S. person*.

Subpart D—Notifiable Transactions and Other Notifiable Activities

This subpart of the Proposed Rule would require a *U.S. person* to notify the Treasury Department in any of the following circumstances: (1) if the *U.S person* knowingly undertakes a *notifiable transaction*; (2) if a *controlled foreign entity* of the *U.S. person* knowingly undertakes a transaction that would be notifiable if undertaken by a *U.S. person*; and (3) if the *U.S. person* learns following the completion date that a transaction that it undertook would have been a *covered national security transaction* if the *U.S. person* had known of certain facts or circumstances at the time of the transaction. In each case, the *U.S. person* would be required to meet certain deadlines and follow specified procedures that include requirements to submit detailed information to the Treasury Department, certify the completeness and accuracy of the information submitted, and maintain records. A *U.S. person* would also be required to promptly notify the Treasury Department of any material omission or inaccuracy that the *U.S. person* learns about following any information submission.

The Treasury Department notes that § 851.402 would clarify that a *U.S. person* must submit a notification when its *controlled foreign entity* undertakes a transaction that the *controlled foreign entity* or the *U.S. person knew* at the time of the transaction would be a *notifiable transaction* if engaged in by a *U.S. person*. Section 851.403 would clarify that a *U.S. person's* notification obligations in connection with post-transaction knowledge apply both to transactions undertaken by a *U.S. person* and to transactions undertaken by a *controlled foreign entity* of a *U.S. person.* As discussed above, to reflect the proposed changes to §§ 851.402 and 851.403, the Treasury Department proposes to clarify in § 851.104 that the knowledge standard would also apply to the *knowledge* of a *controlled foreign entity* for the purposes of applying §§ 851.402 and 851.403.

Section 851.405 would expand the information from the Part 850 Regulations that is required as part of a notification. The items that would be added are those that typically have been part of follow-on requests for information by the Treasury Department. Including these items in the regulatory text is intended to streamline any follow-on requests once a notification has been submitted.

Subpart E—Exceptions and Exemptions

Title VIII gives the Secretary authority to exempt from prohibition any activity determined by the President, in consultation with or delegated to the Secretary, and in coordination with the Secretary of Commerce, Secretary of State, and, as appropriate, the heads of other *relevant Federal departments and agencies*, to be in the national interest of the United States. Additionally, Title VIII establishes an exemption from prohibition for any authorized intelligence activities of the United States.

This subpart of the Proposed Rule identifies the activities or transactions that are not included within the definition of *covered national security transaction*, as discussed below.

§ 851.501—Excepted Transaction

Title VIII identifies, subject to regulations, those transactions or activities that are not included within the definition of *covered national security transaction*. Under the Proposed Rule, as in the Part 850 Regulations, such transactions would be referred to as *excepted transactions*.

As discussed in more detail below, an *excepted transaction* in the Proposed Rule would include the following (subject to limitations in some instances, as explained below):

- An investment by a *U.S. person* in a security that trades on a securities exchange or the over-the-counter market in any jurisdiction;
- An investment by a *U.S. person* in a security issued by an investment company, such as an index fund, mutual fund, or exchange traded fund;
- An investment by a *U.S. person* limited partner or equivalent in a pooled investment fund as described in § 851.209(a)(7) where (1) the *U.S. person*'s committed capital does not exceed $2 million, or (2) the investment is subject to a specific binding contractual assurance regarding a *notifiable transaction* (for purposes of an exception from the notification requirement) or a *prohibited transaction* (for purposes of an exception from the prohibition);
- An investment in a derivative of any security described above;
- A *U.S. person*'s full buyout of all equity or interests of all *covered foreign persons* in an entity or assets located outside a *country of concern*;
- An *intracompany transfer of funds* from a *U.S. person* to its *controlled foreign entity*;
- A transaction made after the effective date of the final regulations implementing the COINS Act pursuant to a binding, uncalled capital commitment entered into before that date;
- Acquisition of a voting interest in a *covered foreign person* by a *U.S. person* lender upon default or other condition of a loan made by a lending syndicate;

- The receipt of employment compensation by an individual in the form of an award of equity or the grant of an option to purchase equity in a *covered foreign person*, or the exercise of such option;
- Transactions by a *U.S. person* that, in the aggregate across the preceding 12 months, do not exceed $50,000 in value (for an exception from the notification requirement only);
- A transaction secondary to a *covered national security transaction*, including certain contractual arrangements or the procurement of material inputs for any *covered national security transaction*; bank lending; processing, clearing, or sending of payments by a bank; underwriting services; debt rating services; prime brokerage; global custody; equity research and analysis; or other similar services;
- Any ordinary or administrative business transaction;
- Any ancillary transaction involving *covered foreign persons* undertaken by a financial institution, such as the processing of cash transactions, underwriting and credit rating services, or other services ordinarily incidental to the provision of financial services;
- Certain transactions that occur in a country or territory outside the United States that has been designated by the Secretary in accordance with provisions set forth in § 851.501(k) of the Proposed Rule; and
- Any transactions completed before the enactment of Title VIII on December 18, 2025, unless subject to the Part 850 Regulations, in which case those rules apply.

Certain *excepted transactions* listed above were included in the Part 850 Regulations but not specifically included in Title VIII: (1) fulfilment of a binding, uncalled capital commitment made prior to the effective date of the final regulations; (2) acquisition of a voting interest in a *covered foreign person* upon default or other condition of a loan made by a lending syndicate; (3) receipt and exercise of employment compensation in the form of equity or options to purchase equity in a *covered foreign person*; and (4) a transaction with or involving a country or territory outside the United States designated by the Secretary in accordance with criteria that relate to the

country or territory's own measures to address risks related to outbound investment. To further Congress's direction to balance protecting national security with minimizing the cost and complexity of compliance for affected parties, and to minimize impacts on the smooth functioning of U.S. capital markets while still achieving the national security objectives of the COINS Act, the Secretary has determined, pursuant to the authority provided in Title VIII, that maintaining these *excepted transactions*, with which the regulated public is already familiar, is in the national interest of the United States, and therefore includes these exceptions in the Proposed Rule. Further explanation regarding the Secretary's determination is provided below.

Fulfilment of a binding, uncalled capital commitment. Including this exception in § 851.501 is in the national interest because it is intended to avoid disruption to a *U.S. person* that entered into a binding commitment prior to the effective date of the final regulations. Such a transaction, however, may be a "covered transaction" pursuant to the Part 850 Regulations.

Acquisition of voting interest upon default of a syndicated loan. Including this exception is in the national interest because it would avoid potential disruption to private credit markets in a narrow set of circumstances where a *U.S. person* lender has passively received an interest in a *covered foreign person* and, even after receiving such interest, lacks a role in the lending syndicate that could create the opportunity for a *U.S. person* lender's intangible benefits to transfer to the *covered foreign person* debtor. The Treasury Department welcomes comments regarding whether this exception is redundant given Title VIII's language regarding the exception for secondary transactions, which includes bank lending.

Receipt of employment compensation in the form of stock or stock options and the exercise of such options. Including an exception for receipt of employment compensation in the form of equity or the option to acquire equity (and the exercise of such an option) in a *covered foreign person* is in the national interest because it avoids interference with certain individual U.S. workers' employment prospects and potentially personal finances. Moreover, *U.S. person* employees are generally not providing capital to a *covered foreign person* employer.

Transactions in certain designated countries or territories. Title VIII directs the Secretary, in coordination with the Secretary of State, Secretary of Commerce, and the heads of other *relevant Federal departments and agencies*, to engage on both a bilateral and multilateral basis with allies and partners to encourage the development of mechanisms similar to the OISP to prevent the development of *prohibited technologies* by a *country of concern*. Including an exception for certain transactions occurring in countries and territories that develop such similar mechanisms is in the national interest because it incentivizes allies and partners to take such steps, which helps protect U.S. national security and foreign policy interests.

Details regarding the other exceptions pursuant to Title VIII are provided below.

Publicly traded securities. Title VIII includes as an *excepted transaction* investment in a security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10), that trades on a securities exchange or the "over-the-counter" market in any jurisdiction. The Proposed Rule incorporates the exception with minor, non-substantive clarifications. The Treasury Department considers this exception to be substantively equivalent to the corresponding exception in the Part 850 Regulations. As a result, the Treasury Department considers that existing guidance available on the OISP website related to the publicly traded securities exception would likely be re-issued in a manner that applies similarly to this exception under Title VIII.

Securities issued by an investment company. Title VIII also includes an exception for investment in a security issued by an investment company, as defined in the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission. Consistent with Title VIII and with the Part 850 Regulations, the Proposed Rule also includes such an exception, along with illustrative language from the corresponding exception in the Part 850 Regulations, *i.e.*, "such as an index fund, mutual fund, or exchange traded fund."

The Part 850 Regulations also provide for an exception to the definition of a *covered national security transaction* for investment by a *U.S. person* in any company that has elected to

be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a-53. Title VIII does not provide for a corresponding exception to the definition of *covered national security transaction*, and the Proposed Rule likewise does not include it. The Treasury Department welcomes comment on whether extending the exception in § 851.501(a)(1)(ii) of the Proposed Rule to an investment in a business development company is in the national interest. Title VIII additionally provides the Secretary discretion to except investment in a "security issued by a non-United States investment company that is registered with a foreign regulator with comparable oversight standards and regulatory jurisdiction to the Securities and Exchange Commission as determined by the Secretary." The Treasury Department does not include this exception in the Proposed Rule but invites comment regarding which foreign regulators may qualify under Title VIII's standard and the potential scope of such an exception.

Limited partner investments. Title VIII also contains an exception from the coverage of limited partner investments when made as a limited partner or equivalent in a venture capital fund, private equity fund, "fund of funds," or pooled investment fund, including where (1) the limited partner or equivalent's committed capital is not more than a *de minimis* amount, as determined by the Secretary; and (2) where the limited partner or equivalent obtains a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a *covered national security transaction* if engaged in by a *U.S. person*. With respect to the first prong, to promote consistency with the Part 850 Regulations to minimize the cost and complexity of compliance for affected parties, and in light of the notifications received to date as part of the OISP, the Secretary has determined to set this *de minimis* value at $2,000,000 in the Proposed Rule. With respect to the second prong, the Proposed Rule refers to a *prohibited transaction* or *notifiable transaction*, as applicable, as the corresponding exception in the Part 850 Regulations currently does, rather than a *covered national security transaction*. For clarification, the phrase "as applicable" means that receipt of a binding contractual assurance regarding *notifiable transactions*

would except the *U.S. person* from the notification requirement, while receipt of a binding contractual assurance regarding *prohibited transactions* would mean that a *U.S. person* limited partner or equivalent would not commit a violation in the event that the fund used the *U.S. person*'s capital to engage in a *prohibited transaction*, despite such contractual assurances. Additionally, the Treasury Department clarifies that this exception applies only to limited partner investments covered by § 851.209(a)(7), consistent with the corresponding exception in the Part 850 Regulations.

Derivatives. The Title VIII exception for investments in derivatives is explicitly limited to derivatives of a security described in three exceptions discussed above: publicly traded securities, securities issued by an investment company, and limited partner investments. The Proposed Rule maintains this scope for exceptions for investments in derivatives although it no longer contains the carve-out from the corresponding exception present in the Part 850 Regulations for derivatives that confer the right to acquire equity, rights associated with equity, or any assets of a *covered foreign person*. The Treasury Department invites comment on whether removing this carve-out would create a loophole for *U.S. person* investments that could raise national security concerns.

Exclusion from exception for investments affording certain governance rights. The Secretary also has determined that it is in the national interest to exclude from certain exceptions (namely, those for investments in publicly traded securities, securities issued by an investment company, limited partner investments, and derivatives, each as discussed above) *covered national security transactions* involving certain equity investments that would afford the *U.S. person* certain governance rights beyond standard minority shareholder protections with respect to a *covered foreign person*. This carveout would help ensure that the exceptions in the Proposed Rule are consistent with the policy objectives of Title VIII, and that *U.S. persons* cannot undertake a transaction that has a higher likelihood of advancing the technologies that are a core concern of Title VIII. The Treasury Department further believes this carveout would be important to protect against potential evasion of the Proposed Rule's notification requirements and prohibitions.

Additionally, the Proposed Rule would include clarifying language noting that the relevant "rights" of the *U.S. person* are governance-related rights.

Buyout exception. Title VIII creates an exception similar to the buyout exception in the Part 850 Regulations. The Title VIII exception appears broader than the exception in the Part 850 Regulations in that it applies to a *U.S. person*'s acquisition of all the equity or other interests owned or held by a single *covered foreign person* in an *entity* or assets located outside of a *country of concern*, while the corresponding exception in the Part 850 Regulations requires for its application that a *U.S. person* acquire all equity or interests owned or held by all "persons of a country of concern."

The wording of the statutory exception, if left unclarified, could introduce administrative challenges for the OISP and create interpretive ambiguity. This is so because in the case of an entity or assets outside of a *country of concern* in which multiple *covered foreign persons* hold equity or other interests, excepting a *U.S. person*'s buyout of a single *covered foreign person*'s interest in such entity or assets could effectively permit *U.S. person* investment in a *covered foreign person* entity that is engaged in a *prohibited technology* (or allow for such a transaction to go unnotified where the *covered foreign person* is engaged in a *notifiable technology*) even while such *covered foreign person* continues to have significant, or even majority, post-transaction ownership by other *covered foreign persons*. And although Title VIII's language would on its face permit such a circumstance, its emphasis on excepting a *U.S. person*'s acquisition of the "totality of the interest" indicates that Congress did not contemplate this scenario. The Proposed Rule, therefore, would apply the buyout exception only where a *U.S. person* acquires all equity or interests owned or held by all *covered foreign persons* such that, following the acquisition, the entity no longer constitutes a *covered foreign person*.

Intracompany transfer exception. Title VIII provides an exception for the *intracompany transfer of funds*, as defined by the Secretary, "from a United States *parent* company to a *subsidiary* located in a *country of concern* or a transaction that, but for this clause, would be a

covered national security transaction between a *U.S. person* and its controlled foreign person that supports operations that are not *covered national security transactions* or that maintains *covered national security transactions* that the controlled foreign person was engaged in prior to the effective date of the regulations implementing" Title VIII. (Emphases added for clarity.)

The Proposed Rule would clarify the statutory exception and harmonize its terminology with the rest of the Proposed Rule. By operation of the proposed definitions of "parent," "subsidiary," "controlled foreign entity," and "intracompany transfer of funds" in the Proposed Rule, a *U.S. person parent*'s *subsidiary* located in a *country of concern* would be a *controlled foreign entity*, such that the relevant exception in the Proposed Rule would refer to the *intracompany transfer of funds* by a *U.S. person* to a c*ontrolled foreign entity*. The Treasury Department notes that the intracompany transfer exception in Title VIII refers to transactions between a *U.S. person* and its "controlled foreign person." As discussed above, the term "controlled foreign person" is used only in the intracompany transfer exception and does not otherwise appear in Title VIII, and the Proposed Rule therefore instead uses the term *controlled foreign entity*, consistent with the other parts of Title VIII and with the Part 850 Regulations.

The Title VIII statutory exception also is limited to supporting "operations that are not *covered national security transactions*." On its face, such language would apply the intracompany transfer exception only to investments in entities that themselves engage in *covered national security transactions*. Given the statutory definition's similarity to the corresponding exception in Part 850 Regulations, it is unlikely Congress intended such a result. To ensure the proper and intended operation of Title VIII and to promote consistency with the Part 850 Regulations to minimize the cost and complexity of compliance for affected parties, the proposed exception (via the definition of an *intracompany transfer of funds*) would refer instead to supporting operations that are not in a *prohibited technology* or a *notifiable technology*.

The Treasury Department is considering whether and how it should further define what it means to "maintain operations" within the intracompany transfer exception. Specifically, the

Treasury Department invites comment on whether to (1) adopt a narrow construction of this term, such that the *U.S. person parent* would be limited to providing capital that would permit the *controlled foreign entity* to perform no more than upkeep and maintenance of the *notifiable technology* or *prohibited technology*; (2) adopt a broader construction to include upgrading or improving the existing operations, but not permitting any expanded production of the technology; or (3) most expansively, adopt a construction that permits expanding production or improving technological capabilities (provided that such improvement does not involve engaging in a different *notifiable technology* or *prohibited technology* or shifting from a *notifiable technology* to a *prohibited technology*).

De minimis transaction. Title VIII also includes an exception for transactions, the value of which the Secretary determines is *de minimis*. Based on the Treasury Department's experience administering the OISP, the Secretary has determined that the *de minimis* value should be $50,000, aggregated across the *covered national security transactions* or provision of funds to the relevant *covered foreign person* or joint venture in the preceding 12 months. The $50,000 threshold would refer to the value of the transaction or transactions, which can include the provision of funds as well as the fair market value of any non-cash consideration. Pursuant to the authority delegated to the Secretary in Title VIII and as explained in the proposed definition of an *excepted transaction*, the Treasury Department would not be bound by the *U.S. person*'s determination of the value of a transaction. A *U.S. person* investor considering the applicability of this exception to a transaction involving non-cash consideration is encouraged to consider valuing such consideration in ways consistent with the equity or other interest acquired in exchange for such non-cash consideration.

The Proposed Rule would further limit the application of this exception to transactions that would otherwise be *notifiable transactions*. A *prohibited transaction* below this threshold could raise national security concerns given that the technology at issue may enable the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*. Therefore, the

Secretary does not believe that any such transaction should be classified under Title VIII as *de minimis*.

Secondary transaction. Title VIII includes a new category of *excepted transaction*: a transaction secondary to a *covered national security transaction*. The Proposed Rule would incorporate the relevant text from Title VIII without modification. The Treasury Department invites comment on the scope of "contractual arrangements;" what "other similar services" may exist that would constitute a secondary transaction; whether "bank lending" would except all "banks" from *covered national security transactions* involving loan provision or similar debt financing; and whether other "secondary transactions" are duplicative of any ancillary transactions, including the exception for underwriting services or the processing, clearing, or sending of payments by a bank.

Ordinary or administrative business transaction. Title VIII includes an exception for any ordinary or administrative business transaction as may be defined in regulations. The Treasury Department has opted not to include a definition of an ordinary or administrative business transaction in the Proposed Rule. Given the broad scope of the exceptions for ancillary transactions and secondary transactions, the Treasury Department believes that transactions that may fall within the category of ordinary or administrative business transaction likely would already be within the scope of those exceptions or would not be *covered national security transactions* at all. The Treasury Department welcomes comment on what may constitute an ordinary or administrative business transaction that (1) would meet the definition of a *covered national security transaction*; and (2) is not otherwise included in another exception in the Proposed Rule.

Ancillary transaction. Title VIII creates a new exception for any ancillary transaction undertaken by a financial institution, as "financial institution" is defined in 31 U.S.C. 5312. The Proposed Rule would incorporate Title VIII's statutory definition and clarify that such transactions must be undertaken in connection with, or in certain situations, on behalf of, a *covered foreign person*.

Transaction completed before the effective date of Title VIII. Title VIII also includes an exception for any transaction completed before the date of the enactment of Title VIII, *i.e.,* December 18, 2025. The Proposed Rule would implement this provision but limit the application to any *covered national security transaction* not otherwise subject to the Part 850 Regulations. This additional language is intended to ensure that parties understand that the exception does not permit them to avoid any prohibition or notification requirements under the Part 850 Regulations for any *covered national security transaction* that would be a "covered transaction" under the Part 850 Regulations.

§ 851.502—National interest exemption

Title VIII authorizes the Secretary to exempt from prohibition any activity determined by the President, in consultation with the Secretary, or delegated to the Secretary, in coordination with the Secretary of Commerce, Secretary of State, and, as appropriate, the heads of other *relevant Federal departments and agencies*, to be in the national interest of the United States. Any determination to grant a *national interest exemption* will be based on a consideration of the totality of the relevant facts and circumstances.

Instructions for submitting a request for a *national interest exemption* can be found on the OISP website.

The Treasury Department is considering whether a streamlined process for seeking a *national interest exemption* would be appropriate for *covered national security transactions* in one or more technology sectors. The Treasury Department requests comment on what the criteria and timelines should be if any such process were to be considered.

§ 851.503—Intelligence activities exemption

Title VIII adds an exemption for any authorized intelligence activities of the United States. Section 851.503 of the Proposed Rule incorporates this exemption.

Subpart F—Violations

This subpart of the Proposed Rule describes conduct that would be treated as a violation of the Proposed Rule. Such conduct would include taking any action prohibited by the Proposed Rule, failing to take any action required by the Proposed Rule within the timeframe and in the manner required, taking action to evade or avoid—or conspiring to violate—the Proposed Rule's requirements, and making materially false or misleading representations to the Treasury Department when submitting any information required by the Proposed Rule.

The Treasury Department notes that the proposed anti-evasion language would apply to any action that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the Proposed Rule's obligations, as well as to any conspiracies formed to violate the obligations of the Proposed Rule. Evasion may include the establishment by a *U.S. person* of an entity or corporate structure to effectuate a transaction that would be a *covered national security transaction* if undertaken by a *U.S. person*. While many U.S. investors or asset managers may have bona fide commercial reasons to establish non-U.S. investment vehicles to effectuate investments outside of the United States, in determining whether an entity was established or used for the purpose of evading the obligations of the Proposed Rule, the Treasury Department may consider, *inter alia*: whether a *U.S. person* de facto controls the non-U.S. entity irrespective of formal corporate governance rights or voting interest held in the entity; the extent and nature of any shared personnel, services, facilities, or branding between a *U.S. person* and the non-U.S. entity, or commingling of funds; privity in limited partnership interest between a *U.S. person* and the non-U.S. entity (*i.e.*, does the non-U.S. entity have the same investors as an affiliated U.S. fund or fund controlled by a *U.S. person*); and shared beneficial ownership or right to proceeds (including any commercial arrangements effectuating the same) between the *U.S. person* and the non-U.S. entity.

Pursuant to Title VIII, the Treasury Department proposes adding a new § 851.605, which would establish that, in an enforcement action for a violation of the Proposed Rule, the burden of proof shall be upon the Secretary.

Subpart G—Penalties and Disclosures

This subpart of the Proposed Rule describes the penalties that would be applicable to violations of the Proposed Rule. The Treasury Department notes that the current Part 850 Regulations contain text that allows for civil and criminal penalties. Title VIII, however, includes language regarding civil penalties but does not include language regarding criminal penalties. As such, the Treasury Department proposes to retain previous civil penalty language from the Part 850 Regulations in the Proposed Rule and to omit language that allows for criminal penalties from the Proposed Rule. The Proposed Rule would include civil penalties up to the maximum amount set forth in section 206 of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et. seq*. The Treasury Department may impose a civil penalty on any person that violates the Proposed Rule. Further, to implement Title VIII, the Proposed Rule would also state that the Secretary may compel the divestment of a *covered national security transaction* in a *prohibited technology*.

This subpart would also describe the process for submission of a voluntary self-disclosure by a person that may have violated applicable rules. The Treasury Department may take self-disclosures into account as a mitigating factor in determining any appropriate response, including the potential imposition of penalties, if the Treasury Department determines that there was a violation. Consistent with Title VIII, the Proposed Rule would use corresponding language from the Part 850 Regulations but would modify the scope of a voluntary self-disclosure to require that such disclosures contain a proposal for mitigation of any harms associated with the violation, including divestment or a voluntary disgorgement of profits. The Proposed Rule would further specify the information that must be included in a voluntary self-disclosure letter.

Subpart H—Provision and Handling of Information

This subpart of the Proposed Rule would implement the section of Title VIII that provides that information or documentary material provided to the Treasury Department under this part is

exempt from disclosure under section 552(b)(3) of Title 5 of the United States Code. Title VIII also identifies exceptions to this rule.

The Proposed Rule would incorporate this provision of Title VIII with certain clarifications. Title VIII excepts from the disclosure exemption certain information "[g]athered by the Secretary or the Secretary's designee where the disclosure is determined to be in the national interest." Section 851.801(b)(6) would clarify that the determination is made by the Secretary or the Secretary's designee. Factors that the Secretary or the Secretary's designee may consider when determining if disclosure is in the national interest may include whether such disclosure will further national security interests, address law enforcement needs, or promote compliance with the rule. Circumstances in which the Secretary may determine the disclosure of information to be in the national interest can include, for example, in the context of notifying the public regarding an action taken by the Treasury Department to enforce compliance with the Proposed Rule. The Treasury Department anticipates this exception to be invoked only in circumstances in which the Secretary identifies a national interest that disclosure could help to address.

Subpart I—Non-binding feedback

This subpart would implement Title VIII by establishing procedures by which an eligible person may request non-binding feedback from the Treasury Department regarding a *prohibited transaction*.

The Treasury Department recognizes that parties may have questions regarding whether a specific investment would constitute a *prohibited transaction*. Indeed, since the Part 850 Regulations became effective in January 2025, transaction parties and the public have requested feedback on interpretations of the Part 850 Regulations, submitted questions regarding compliance with the regulations, and sought additional public guidance. In response, the Treasury Department

has published on its website several tranches of Frequently Asked Questions designed to assist the public with understanding and complying with the regulations.

To make effective and efficient use of the Treasury Department's resources, limit frivolous requests as contemplated under Title VIII, and adhere to Title VIII's confidentiality requirements, the Proposed Rule would require that requests for feedback be submitted in writing by a *party* with a direct financial interest in an actual—not hypothetical—transaction. While an executed contract would not be required, the material terms of the prospective transaction would need to be identified in a binding written agreement or other binding document to demonstrate that the transaction is not hypothetical. Requesters would need to provide sufficient detail regarding the transaction—which could be in the form of an executed contract, term sheet, or other written documentation—to permit a meaningful review and potential determination by the Treasury Department as to whether the transaction is a *prohibited transaction*. The Treasury Department recognizes that a *person* that is not a *party* to a *covered national security transaction* may have tips or referrals related to compliance with the OISP, and the Treasury Department continues to encourage the submission of tips and referrals by email to Outbound.Tips@treasury.gov. The Treasury Department will continue to monitor and evaluate such tips and referrals, but it does not intend to provide feedback to them.

The Treasury Department expects that a *party*, before submitting a request for non-binding feedback, will have conducted sufficient diligence with respect to a potential investment to provide the information that the Treasury Department would need to evaluate such a request. This would include, at a minimum, information about the requester and any *party* to the transaction; a detailed description of the structure of the transaction (including the form of investment, governance and information rights, timing, and *completion date*); a detailed description of the products, services, technologies, or activities implicated by the transaction; all operative documents and material term sheets, draft agreements, side letters, and other written materials reflecting the transaction; and any

other information that the requester believes would be relevant to the application of the Proposed Rule to the transaction.

The Proposed Rule would outline additional features of the submission process for non-binding feedback, including a required *certification* that the request contains true, correct, and complete disclosure of all material facts and circumstances known to the requester at the time of submission and that the requester will supplement the request if the requester learns of material changes or omissions. The Proposed Rule notes that the Treasury Department may request additional information or a meeting with the requester and any relevant parties to the transaction.

The Proposed Rule would state that receipt of a complete request for non-binding feedback would not obligate the Treasury Department to issue such feedback and would also state that the Treasury Department may, in its sole discretion, respond to a complete request by providing anonymized public guidance, issuing confidential, written non-binding feedback, or declining to provide feedback. The Proposed Rule would further state that non-binding feedback provided pursuant to this subpart would address only whether a transaction, as described in the request, would constitute a *prohibited transaction*, and that the Treasury Department may provide feedback that is responsive to some, but not all, of the questions or information presented by the requester. The Proposed Rule would also describe the non-binding nature of the feedback, noting that feedback provided pursuant to this subpart would not bind the Treasury Department, any other Federal or local department or agency, or any court; would not constitute an authorization, license, exemption, or waiver; and would not preclude the Treasury Department from taking any action authorized by the law with respect to the transaction, the requester, or any other person.

To further limit frivolous requests as authorized under Title VIII, the Proposed Rule would describe types of requests that the Treasury Department may identify as frivolous, including requests that concern hypothetical conduct, are incomplete or lack sufficient information to permit

a meaningful review, or seek general advisory views or policy guidance that is not specific to the transaction that is the subject of the request.

The Treasury Department notes that this non-binding feedback process would be a new addition to the OISP, as the Part 850 Regulations do not include such a process, and welcomes comment on this subpart.

Subpart J—Information on Covered Foreign Persons

Subpart J of the Proposed Rule would implement Title VIII by establishing a mechanism by which the public can submit evidence, on a confidential basis, regarding whether a *foreign person* is a *covered foreign person* engaged in a *prohibited technology* or *notifiable technology*. The Proposed Rule would describe the information that the Treasury Department requires to determine whether a *foreign person* is a *covered foreign person*.

The Treasury Department is actively considering whether and how to establish a publicly accessible, non-exhaustive database of *covered foreign persons* as described in Title VIII. Items under consideration include: (1) whether to limit such a database to only *covered foreign persons* engaged in *prohibited technology*; (2) the evidentiary standard that the Treasury Department should meet before determining that a *foreign person* is (or is no longer) a *covered foreign person* engaged in a *prohibited technology* or a *notifiable technology* and should be included in (or removed from) a database; (3) how to communicate the limited temporal nature of inclusion in any such database, given that a *covered foreign person*'s engagement in a *prohibited technology* or *notifiable technology* can change over time; and (4) the administrative burden this may place on the Treasury Department. The Treasury Department welcomes comment on these and any other issues that may be relevant to the establishment of the public database.

Subpart K—Other Provisions

This subpart of the Proposed Rule would implement provisions related to the delegation of the Secretary's authorities under Title VIII, any amendment or modification of the Proposed Rule, severability of the Proposed Rule, and a requirement for certain information regarding any

transaction to be furnished upon demand. The Proposed Rule would also state that, consistent with Title VIII, the Treasury Department has the power to investigate conduct that may constitute a violation, hold hearings, call witnesses, and require in-person testimony or production of documents.

III. Request for Comment

The Treasury Department welcomes comment with respect to the Proposed Rule as a whole and to specific provisions discussed above in Section II, accompanied by empirical data or other specific information wherever possible.

IV. Rulemaking Requirements

This Proposed Rule is intended to implement Subtitle C of the COINS Act, which added Title VIII to the Defense Production Act of 1950. Title VIII establishes a statutory framework for the Secretary to (1) require *U.S. persons* to provide notification to the Treasury Department regarding certain transactions involving foreign persons that are engaged in activities involving *notifiable technologies*, and (2) prohibit U.S. persons from engaging in certain other transactions involving foreign persons that are engaged in activities involving *prohibited technologies*.

The Treasury Department has opted, as a matter of discretion, to undertake a high-level analysis of the anticipated costs and benefits of the Proposed Rule.

In addition, this section includes the required assessments of the reporting and recordkeeping burdens under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et. seq.*, and the potential impact on small entities pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et. seq*.

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives for certain types of rulemaking in certain circumstances and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Management and Budget's Office of Information and Regulatory Affairs has designated this

Proposed Rule a significant regulatory action under EO 12866. The Treasury Department conducted an assessment of the costs and benefits of the Proposed Rule, as well as the costs and benefits of available regulatory alternatives.

As noted above, Title VIII directs the Secretary to issue regulations to (1) require *U.S. person*s to provide notification to the Treasury Department regarding certain transactions involving foreign persons that are engaged in activities involving *notifiable technologies*, and (2) prohibit *U.S. person*s from engaging in certain other transactions involving foreign persons that are engaged in activities involving *prohibited technologies*. The Proposed Rule maintains the general framework of the Part 850 Regulations while making changes to implement Title VIII and address the effort by *countries of concern* to develop certain technologies that pose a threat to the national security of the United States.

Title VIII authorizes the Secretary, in consultation with the appropriate congressional committees and subject to notice and comment, to prescribe regulations defining the technical parameters of *notifiable technologies* and *prohibited technologies* in the following technology sectors: (1) semiconductor technology and microelectronics; (2) artificial intelligence systems; (3) quantum information technologies; (4) high-performance computing and supercomputing; and (5) hypersonic systems. As described above, the Treasury Department has determined that rapid advances in the development, adoption, and use of SI capabilities by *countries of concern* warrant an expansion in the prohibition of *U.S. person* investment in that sector. Additionally, for the reasons described above, the Treasury Department has expanded the prohibition on *U.S. person* investment into semiconductors and quantum computing in *countries of concern*. Title VIII also authorizes the Secretary, in consultation with the appropriate congressional committees, to add and define categories of technologies and products that enable the military, intelligence, surveillance, or cyber-enabled capabilities of a *country of concern*. The Secretary has determined for purposes of this Proposed Rule to add certain technologies and products within the biotechnology sector as *prohibited technologies*. Other changes include the coverage of additional

countries of concern: Russia, Iran, Cuba, the Democratic People's Republic of Korea, and Venezuela under the regime of Nicolás Maduro Moros. Title VIII also requires that the implementing regulations establish a process under which a person can request confidential non-binding feedback or anonymized public guidance for a potentially *prohibited transaction*.

The Proposed Rule would apply to certain types of investments by *U.S. persons* in *covered foreign persons* engaged in the technologies and activities described above or meets the conditions of § 851.208(a)(8). These include certain acquisitions of equity interests, limited partner investments, greenfield investments, joint ventures, and certain debt financing transactions. The Proposed Rule would except from coverage certain activities or transactions that are identified in Title VIII, including investments in publicly traded securities, certain investment funds, any *de minimis* transaction, any ancillary transaction, an *intracompany transfer of funds*, or any ordinary or administrative business transaction, as well as other transactions secondary to a *covered national security transaction*. Title VIII also authorizes the Secretary to except from coverage any other transaction that the Secretary determines is in the national interest of the United States.

B. Costs

The primary direct costs to the public associated with the Proposed Rule would relate to (1) understanding the Proposed Rule, (2) conducting the transaction-specific diligence that would be needed for a *U.S. person* to determine whether its intended transaction would be subject to either the notification or prohibition provisions of the Proposed Rule; and (3) if applicable, preparing and submitting a mandatory notification of certain transactions or other information to the Treasury Department pursuant the Proposed Rule. The Treasury Department requests comments on any of the assumptions and estimates in this analysis.

The Proposed Rule would apply to all *U.S. persons* undertaking a *covered national security transaction* with or involving a *covered foreign person*. To estimate the number of potential transactions subject to the Proposed Rule, the Treasury Department considered the number of transactions filed under the notification requirement pursuant to the Part 850 Regulations, the

scoping of the Proposed Rule, and a review of commercially available data on transactions that may be subject to the Proposed Rule based on the identified sector of the investment target.

For example, to estimate the number of entities and transactions that would be potentially affected by the Proposed Rule and would incur associated compliance costs, the Treasury Department considered publicly available data from PitchBook relating to transactions from approximately 2023 through 2025. This data indicated that over the relevant three-year period, almost 230 unique U.S.-based investors completed approximately 300 initial and add-on investment transactions in the semiconductor, artificial intelligence, quantum information technology, hypersonic system, high-performance computing and supercomputing, and biotechnology sectors (as such sectors are identified in the commercially available data) in *countries of concern*. This data suggests an annual average of 75 different investors collectively engaging in an annual average of approximately 100 potentially *covered national security transactions*. While granular details of U.S. private investment overseas cannot be determined with precision, the Treasury Department believes this figure to be a reasonable estimate. For purpose of this analysis, the Treasury Department then doubled the averages from this data over the relevant three-year period to account for the possibility that these average figures undercount transactions. For example, commercially available data may not include certain transactions that would be subject to the Proposed Rule, or such data may not identify certain transactions as occurring in the technology sectors subject to the Proposed Rule. Thus, the Treasury Department's analysis is based on the assumption that, annually, around 150 different investors collectively engage in 200 transactions that would be potentially covered by the Proposed Rule.

The Treasury Department is interested in comments regarding additional publicly available data sources that the Treasury Department should consider. The Treasury Department also welcomes comment on whether doubling the averages from publicly available data is a reasonable way to account for uncertainty or whether the Treasury Department should account for this uncertainty using a different methodology.

To derive an estimate for the costs related to the Proposed Rule, the Treasury Department first estimated the associated labor costs. The Treasury Department expects that businesses reviewing the Proposed Rule and engaging in potentially relevant transactions would engage their own employees as well as lawyers from outside law firms.

For a low-end estimate, the Treasury Department relied on May 2025 Occupational Employment and Wage Statistics (OEWS) data from the Bureau of Labor Statistics (BLS), which reports the mean hourly wage for Standard Occupational Classification System Code (SOC Code) 231011—Lawyers to be $89.35 per hour and SOC Code 111021—General and Operations Managers to be $64.87 per hour.[2] In each instance the Treasury Department tripled the BLS mean hourly wage figure. This adjustment is meant not only to account for employee benefits and overhead, but also to reflect the presumption that, because these U.S. investors require attorneys and other staff with experience in cross-border investments that involve complex financial and corporate structures, the hourly labor costs of the investors and their advisers likely to be affected by the Proposed Rule will be systematically higher than the hourly mean wage in these occupational categories. Accordingly, the Treasury Department estimates that the impacted entities will each incur costs of $195 per hour for operations managers and $268 for lawyers. As the Treasury Department is unable to determine which particular tasks will be performed by managers as compared to lawyers, this cost analysis uses the average wage of the two positions for both the low-end and high-end estimate, which the Treasury Department assesses is a reasonable method for estimating the hourly cost. The average of these figures is $231 per hour, which is the low-end estimate.

For a high-end estimate, for the reasons discussed in the preceding paragraph, the Treasury Department acknowledges that the hourly rate billed for a lawyer performing the relevant type of work at an outside firm may be higher than the average hourly wage of a lawyer. Using BLS

[2] Occupational Employment and Wage Statistics Tables: U.S. Bureau of Labor Statistics, https://www.bls.gov/oes/tables.htm.

OEWS data from 2025, the average hourly attorney billing rate in Washington, DC, where many private practice attorneys who advise on the OISP are based, was $116.73 and the hourly cost for operations managers was $78.67.[3] In each instance, the Treasury Department tripled the BLS mean hourly wage figure. This adjustment is meant not only to account for employee benefits and overhead, but also to reflect the presumption that hourly labor costs of the investors and their advisers likely to be affected by the Proposed Rule will be systematically higher than the hourly mean wage in these occupation categories. Accordingly, the Treasury Department estimates that the affected entities will each incur costs of $236 per hour for operations managers and $350 for lawyers. The blended average figure for Washington, DC, is $293 per hour. The Treasury Department seeks comment on whether these figures (*i.e.*, the low-end or the high-end estimate) are reasonable benchmarks and estimates for this analysis or whether there are other sources of data or estimates it should consider.

Costs Associated with Understanding the Proposed Rule

Based on the above assumptions and estimates of affected entities, number of transactions, and labor costs, the Treasury Department has estimated the annual time and cost that would be spent by affected entities in understanding the Proposed Rule. While recognizing that the amount of time necessary to understand the Proposed Rule will vary, the Treasury Department arrived at the below estimates for purposes of this analysis.

The range of estimated aggregate annual costs for understanding the Proposed Rule begins at $462,000 on the low end and rises to $586,000 on the high end. This is based on the estimate of an average time burden to be 10 total person-hours per transaction for understanding the Proposed Rule. As such, 10 total person-hours per transaction multiplied by 200 annual transactions and the low-end hourly labor cost range and high-end hourly labor cost range described above, respectively, result in the total cost range for understanding the Proposed Rule.

Costs Associated with Diligence and Maintaining Records

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[3] *Id.*

Based on the above assumptions and estimates of affected entities, number of transactions, and labor costs, the Treasury Department has estimated the annual time and cost that would be spent by affected entities on conducting diligence. While recognizing that the extent of this diligence will necessarily vary from transaction to transaction and noting that these economic estimates should in no way be construed as relevant to a party's determination of what constitutes a reasonable and diligent inquiry in light of the particular facts and circumstances of a transaction and the requirements of the Proposed Rule, the Treasury Department arrived at the following estimates for purposes of this regulatory analysis.

The Treasury Department estimates that the range of the annual additional cost for conducting diligence and maintaining records would range from $0 on the low-end to $2,344,000 on the high-end. In estimating the low-end, the Treasury Department recognizes that virtually all investment transactions, regardless of whether the investment is potentially subject to this Proposed Rule, require some minimum level of review, diligence, assessment, and recordkeeping by the investor. And, in most cases, the level of collected and retained information necessary to comply with the Proposed Rule would not give rise to an additional cost to the investor.

The Treasury Department estimates that with respect to those investment transactions where diligence and recordkeeping costs are expected to marginally exceed the normal costs due to more detailed inquiry regarding a technology or other detail relevant to the Proposed Rule, the average additional burden would not exceed 40 total person hours per transaction for conducting diligence and maintaining records.

As such, the Treasury Department arrived at the high-end estimate by multiplying 40 total person hours per transaction by 200 annual transactions by the high-end hourly labor cost range described above. The Treasury Department estimates 40 person-hours per transaction, based on a total of approximately eight person-hours across all involved employees and lawyers per business day for one week. However, the cost and duration of a *U.S. person* conducting diligence will vary depending on a transaction's complexity and may be higher for certain transactions, such as

indirect transactions, including transactions undertaken by a *U.S. person*'s *controlled foreign entity*.

The Treasury Department seeks comment on whether these figures are reasonable benchmarks and estimates for this analysis or whether there are specific sources of data or estimates it should consider.

Costs Associated with Providing Information

The Proposed Rule contemplates mandatory notifications for *notifiable transactions* and other notices and information submissions. The Treasury Department intends to require *U.S. persons* to provide notification of certain transactions under the Proposed Rule. The Proposed Rule also contemplates that a person seeking a *national interest exemption* from the prohibition requirements of the Proposed Rule would submit certain information to the Treasury Department. The Proposed Rule also would require a *U.S. person* to make a post-closing submission regarding a transaction that the *U.S. person* believed at closing was not a *covered national security transaction* if the person later discovers information that, had it been known at closing, would have caused the transaction to be a *covered national security transaction*. Moreover, the Proposed Rule would require a person to submit a notice of any material omission or inaccuracy in any previous representation, statement, or certification. Lastly, the Treasury Department anticipates time and cost associated with responding to inquiries by the Treasury Department.

The Treasury Department expects that, of the universe of potentially *covered national security transactions* for which *U.S. persons* perform due diligence each year, some will turn out not to be covered, others will turn out to be notifiable, and still others will turn out to be prohibited. For purposes of this analysis, however, the Treasury Department has assumed that *U.S. persons* will perform due diligence with respect to 200 potentially *covered national security transactions* each year, and that all 200 transactions are *notifiable transactions*. The Treasury Department has made this assumption in the interest of estimating an upper bound. As a general matter, a *notifiable transaction* would likely cost more in terms of time and resources than a *prohibited transaction*,

because, in addition to the due diligence cost, a *notifiable transaction* would entail extra time to prepare and submit a notification.

The estimated annual cost range for time spent submitting information would be $2,310,000 to $2,930,000. This estimate assumes 50 person hours per transaction for preparing and submitting a notification, combined with the number of transactions per year—200—and the hourly labor cost range described above—$231 to $293. As discussed above, this number likely reflects the high-end estimate since this analysis assumes that every potentially relevant transaction would result in a notification. However, the Treasury Department expects that some prospective transactions subjected to due diligence would turn out to be not covered and others would turn out to be prohibited; transactions that are not *covered national security transactions* and *prohibited transactions* would not trigger a notification.

For purposes of this analysis, the Treasury Department estimated only the total annual costs of preparing and submitting a notification. If a respondent submits information in support of a *national interest exemption*, the Treasury Department anticipates that the associated time needed to prepare and submit such information would be comparable to the costs of preparing and submitting a notification. The Treasury Department anticipates that the time and cost of preparing and submitting a post-transaction notice, notice of any material omission or inaccuracy in any previous representation, statement, or certification, or responding to agency inquiries may be comparable but likely lower than the costs of preparing and submitting a notification.

Additionally, the Treasury Department recognizes that a *U.S. person* may incur costs for the preparation of a request for confidential non-binding feedback or anonymized public guidance. However, since this is an optional request for a *U.S. person* and is a new addition to the existing program, the Treasury Department cannot estimate the number of requests that may be submitted. Therefore, the Treasury Department has determined that costs associated with the non-binding feedback process will not be included in this cost estimate.

Estimated Total Direct Cost

Based on the direct cost estimates above, the total annual direct costs associated with complying with the Proposed Rule can be expected to have a range of between $2,772,000 to $5,860,000 and the total annual time burden would be approximately 20,000 person-hours.

Additional Indirect Costs Associated with *Prohibited Transactions*

With respect to *prohibited transactions*, the Treasury Department does not believe that the Proposed Rule will have additional direct economic costs to U.S. investors beyond those described above. There may, however, be additional indirect costs associated with *prohibited transactions*. Investors who would have otherwise engaged in a *prohibited transaction*, absent the Proposed Rule, may have to seek less promising investment opportunities since they would be precluded from undertaking and benefiting from *prohibited transactions* that would be foreclosed to them by the Proposed Rule. These indirect costs amount to the difference between the return that would have been generated by the *prohibited transaction* and the return that would result from the best alternative transaction. In addition, while the Proposed Rule may have an economic impact on investment targets that are *covered foreign persons* because certain transactions would be prohibited, the Proposed Rule is not designed to, nor does it, prohibit all *U.S. person* investments into such persons, due to the several exceptions provided for in the Proposed Rule.

Costs to the U.S. Government

Administering the Proposed Rule would also entail costs to the U.S. Government. Such costs would include information technology (IT) development and ongoing annual maintenance, as well as processing electronic submissions of the transaction data. The Treasury Department estimates that IT development costs would be between $4 million and $5 million with an additional $2 million to $3 million required to maintain the new systems and the underlying technology being leveraged to support the new capabilities. This would include adjustments to address changes in the type of notification information being received, as well as implementing processes for the electronic submission of requests for confidential non-binding feedback, and information submissions regarding potentially *covered foreign persons*, among other changes.

The Treasury Department or other agencies may incur additional costs, besides those estimated above, while promoting compliance with the notification and prohibition requirements, potentially including providing training on the requirements, publishing documents such as guidance and frequently asked questions, and conducting outreach to and answering inquiries from the public. The Treasury Department does not currently have specific estimates for these costs but estimates that there would be personnel costs of less than $1 million associated with the Proposed Rule in Fiscal Year 2027. For future years, the Treasury Department may incur additional costs for ongoing outreach and enforcement, as well as ensuring there is sufficient personnel to review and timely respond to requests for confidential non-binding feedback.

The Treasury Department and other government agencies may also incur costs in enforcing compliance with the Proposed Rule. These may include additional personnel costs related to the expanded prohibition in existing technology sectors as well as new technology sectors added by Title VIII. The Treasury Department does not currently have estimates for these costs, and they are not included in the estimates above.

The Treasury Department plans to monitor compliance with the Proposed Rule, when finalized, by leveraging a variety of data sources, both internal and external. Because the external data sources may include third parties, the Treasury Department requests comment on what external data sources would be appropriate to leverage in identifying non-compliance with the Proposed Rule and what potential costs may be incurred by such third parties. If the external data sources include third party commercial data, the Treasury Department assesses that the costs associated with accessing these databases would be modest and incremental, given that the Treasury Department regularly maintains access to such databases but may need to request additional licenses for employees. After identifying an instance of apparent non-compliance, the Treasury Department may initiate outreach to the involved entity, work with law enforcement to investigate the apparent non-compliance, or initiate an enforcement action. The Treasury Department's enforcement of the Proposed Rule would also involve coordination with law

enforcement agencies. These law enforcement agencies may also incur costs (time and resources) while conducting investigations into potential non-compliance.

C. Benefits

As Congress noted in the COINS Act, there are countless known and unknown entities in *countries of concern* that are developing dual-use strategic technologies that benefit a foreign adversary's military modernization efforts, surveillance states, and human rights abuses. Advancement by *countries of concern* in sensitive technologies and products critical for the military, intelligence, surveillance, human rights abuse, or cyber-enabled capabilities of such countries constitutes a threat to the national security of the United States. Restricting certain U.S. outbound investments into certain technologies in *countries of concern* is necessary to prevent harm to U.S. national security and foreign policy interests.

The Proposed Rule is designed to complement existing tools of the U.S. Government and effectively address the threat to the national security of the United States described in Title VIII. While the benefit of protecting national security is difficult to quantify, the Treasury Department has identified specific benefits below. The notification function of the Proposed Rule is intended to provide key information that the Treasury Department could use to better inform the development and implementation of the OISP. Such notifications received under the existing OISP have increased the U.S. Government's visibility into transactions by *U.S. persons*, or their *controlled foreign entities*, in the SI and the semiconductor and microelectronics sectors in a *country of concern*. These have also assisted the U.S. Government by highlighting trends with respect to related capital flows and investment by non-U.S. persons in these technology sectors in a *country of concern*. Finally, these notifications have informed policy development for the Proposed Rule as well as other U.S. Government efforts to protect U.S. national security. The Treasury Department expects to receive similar benefits from notifications filed under the Proposed Rule. The Treasury Department does not currently propose a breakeven analysis for the Proposed Rule, as it continues to collect information on potential costs and benefits of the Proposed Rule through the rulemaking process.

D. Alternatives

The Proposed Rule is promulgated pursuant to Title VIII, which directs the Treasury Department to issue regulations to implement its requirements. However, the Treasury Department considered some alternative approaches that would be consistent with Title VIII. Specifically, the Treasury Department considered the following potential alternatives to the Proposed Rule:

- *Limited exceptions.* In the Proposed Rule, the Treasury Department would define the term "covered national security transaction" largely as defined in Title VIII (as set forth in Subpart B) without further permitted additions and would provide for certain exceptions (in Subpart E), some of which are explicitly required by Title VIII and others that are permitted, but not required, under Title VIII. Therefore, as an alternative consistent with Title VIII, the Treasury Department could have proposed a broader definition of *covered national security transaction* and/or fewer exceptions. This alternative likely would result in the gathering of more information on U.S. investments in sensitive technologies and products in *countries of concern* through *notifiable transactions*, which would expand the information available to assist the development and implementation of the OISP. But the alternative approach also likely would impose higher compliance costs on *U.S. persons*.
- *Prohibited and notifiable technology using broad definition of sectors rather than specific activities and technologies*. In the Proposed Rule, the Treasury Department would define *notifiable technology* and *prohibited technology* in § 851.218 and § 851.226, respectively, by reference to certain technologies and activities, and in some instance, end uses. Alternatively, and consistent with Title VIII, the Treasury Department could have proposed broad sectoral categorizations, such as, for example, defining a *prohibited technology* to include "all super intelligence" in a country of concern. If the Treasury Department had proposed that approach, the Treasury Department estimates that it would create ambiguity and uncertainty for *U.S. persons* about what investments were subject to the prohibition and notification requirements because of the lack of a clear, articulated nexus between a *covered foreign person* and the technology being described. This in turn would result in

significant compliance costs and overall economic consequences on *U.S. persons* and the U.S. economy that could undermine potential national security benefits.

Paperwork Reduction Act

The collections of information contained in this Proposed Rule have been submitted to OMB for review in accordance with section 3507(d) of the PRA under control number 1505-0282.

The Proposed Rule would require *U.S. persons* to submit a notification with respect to (1) any *notifiable transaction*, as defined in the Proposed Rule; (2 any transaction by a *controlled foreign entity* that would be a *notifiable transaction* if engaged in by a *U.S. person*; and (3) any transaction for which a *U.S. person* acquires actual awareness after the completion date of the transaction that the transaction would have been a *prohibited transaction* or *notifiable transaction* if such awareness had been possessed by the relevant *U.S. person* at the time of the transaction. Such notification would include relevant details on the *U.S. person* involved in the transaction, as well as information on the transaction and the foreign person involved. The Proposed Rule would require any *U.S. person* that has filed a notification to respond to any questions or document requests from the Treasury Department related to the transaction or compliance with the Proposed Rule; any information or documents provided to the Treasury Department in response to such request would be deemed part of the notification under the Proposed Rule.

The Proposed Rule would also require any *U.S. person* that files a notification to maintain a copy of the notification filed and supporting documentation for a period of ten years from the date of the filing. Further, the Proposed Rule would require any person who has made any representation, statement, or certification subject to the Proposed Rule to notify the Treasury Department in writing of any material omission or inaccuracy in such representation, statement, or certification. Also, the Proposed Rule would require any voluntary self-disclosure letter to describe the violation and provide complete information to inform an understanding of the violation, and may in some instances require additional supporting documentation. Additionally, the Proposed Rule would require any *U.S. person* seeking confidential non-binding feedback to

have a direct financial interest in an actual transaction and provide sufficient detail in writing to determine if a transaction is a *prohibited transaction*. Finally, the Proposed Rule would also require any *U.S. person* seeking a *national interest exemption* to submit information to the Treasury Department regarding the scope of the transaction, including, as applicable, the information that would be required for a notification of a *notifiable transaction*.

The collections of information described would be used by the Treasury Department and, as appropriate, certain other Executive Branch agencies, in connection with the analysis of *notifiable transactions* pursuant to Title VIII. Under the current OISP, information provided in notifications has increased the U.S. Government's visibility into the volume and nature of *U.S. person* transactions involving the semiconductor and microelectronics and SI sectors, as well as helped highlight trends with respect to related capital flows. Similarly, the Treasury Department expects this information would continue to assist in informing future policy development and decisions, including any modifications to the scope of *prohibited transaction* or *notifiable transaction*. Additionally, the information would assist the Secretary in complying with the reporting requirements in Title VIII and in determining whether to grant a *national interest exemption* to a particular *covered national security transaction*. The Proposed Rule would require the Treasury Department not to make public any information or documentary materials submitted to or filed with the Treasury Department under the Proposed Rule unless required by law or otherwise provided in the Proposed Rule, including when the information is relevant to any penalty imposed or any other enforcement action taken under the Proposed Rule.

Written comments and recommendations for the proposed information collections can be submitted by visiting https://www.reginfo.gov/public/do/PRAMain. Information collection requests may be found by selecting "Currently Under Review—Open for Public Comments" or by using the search function. Comments on the collections of information should be received by December 7, 2026.

The Treasury Department used the methodology described in the previous section to estimate the total annual reporting and recordkeeping burden of the information collections in this Proposed Rule. The Treasury Department estimates that the annual hourly burden would be 18,000 hours. This annual total is based on the Treasury Department's assumption that: (1) 150 entities per year would respond to the information collections in this Proposed Rule and these respondents would file 200 responses to the information collections annually; and (2) each respondent would spend an average of 50 to 90 person hours per response. The Treasury Department estimates that the annual cost burden associated with the information collections in the Proposed Rule would range between $2,310,000 and $5,274,000.

In accordance with 5 CFR 1320.8(d)(1), the Treasury Department is soliciting comments from members of the public concerning these collections of information to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

Regulatory Flexibility Act

It is hereby certified that the Proposed Rule would not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act.

The Proposed Rule may impact any *U.S. person*, including a small business that engages in a *covered national security transaction* with a *covered foreign person*. The Treasury Department does not anticipate that the Proposed Rule would affect "small organizations" or "small governmental jurisdiction[s]," as defined in the RFA.

The Treasury Department expects the Proposed Rule to have a negligible baseline impact on small businesses because the Proposed Rule focuses on certain transactions that—based on the Treasury Department's experience with the type of U.S. investors involved in transactions currently subject to the existing OISP—are more likely to involve a small number of sophisticated investors managing substantial amounts of capital and with access to expertise in a number of emerging technology sectors. This expertise may be acquired through affiliated companies or the hiring of senior advisors with significant experience growing and managing successful technology companies, either of which financial investors that meet the requirements to be a small business are unlikely to have. Further, the *covered foreign persons* subject to the Proposed Rule are largely located outside of the United States, requiring U.S. investors to hire or retain staff skilled in assessing and structuring complex cross-border investments in foreign companies, which is not common to small businesses. In addition, and as discussed below, the Treasury Department has assessed that small businesses would be more likely to enter into the types of transactions excepted from coverage, including *de minimis* transactions and investments in publicly traded securities, if such businesses are investing at all into *covered national security transactions*.

As an example, the Small Business Administration's (SBA's) Table of Size Standards with respect to North American Industry Classification System U.S. Industry Sector 52 "Finance and Insurance" defines a small business in this sector by dollar value rather than by number of employees. For example, SBA categories such as "open end investment funds," and "other

financial vehicles" are not considered small businesses if their average annual receipts exceed $40 million. A number of the U.S. investors who have submitted notifications pursuant to the Part 850 Regulations are investment firms or entities that exceed this threshold, as do most investment entities operating in the United States. As a reference point, according to the Investment Company Institute, there were 11,263 U.S. businesses in this category with net sales of $1.58 trillion.[4] Extrapolating from this data, the average net sales per firm in this category would have been $140.4 million.

Given the applications of technologies and products in these sectors, the Treasury Department believes investments into these sectors involving a person of a *country of concern* is not typical for a small business, as these investor types are treated in the SBA's Table of Size Standards. Importantly, the Proposed Rule would also except certain types of transactions, including certain investments into publicly traded securities or into certain investment funds, as well as *de minimis* transactions where a small business is more likely to consider investing. Given the narrow scoping of what constitutes a *covered national security transaction* under the Proposed Rule, the Treasury Department expects that few small businesses, as that term is defined by SBA, will be impacted by the Proposed Rule.

In the unlikely event that a small entity is subject to the requirements of the Proposed Rule, such entity would be expected to incur the costs described in the separate cost benefit analysis above. For submission of notifications, the Treasury Department has endeavored to develop information gathering procedures that minimize the burden on *U.S. persons*, both large and small. *U.S. persons* who file a notification will use a fillable form that will be available online and is intended to facilitate submission through an electronic format. This fillable form will benefit anyone who submits a notification, regardless of their size, but may be especially helpful for small businesses that will be able to submit directly to the Treasury Department through the online portal.

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[4] Investment Company Institute, 2026, *Investment Company Factbook*, Data Tables https://www.icifactbook.org/26-fb-data-tables.html#sec9.

Notwithstanding this certification, the Treasury Department invites comments from the public about the impact the Proposed Rule would have on small entities. The Proposed Rule will be submitted to the Chief Counsel for the SBA Office of Advocacy for comment on its impact on small business.

Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA, 2 U.S.C. 1532, requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The Proposed Rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the order. The Proposed Rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

List of Subjects

31 CFR Part 850

Administrative practice and procedure, Artificial intelligence, Business and industry, Confidential business information, Electronic filing, Executive orders, Foreign persons, Hong Kong, Holding companies, Investigations, Investments, Investment companies, Microelectronics, National defense, National security, Macau, Penalties, People's Republic of China, Quantum information technologies, Reporting and recordkeeping requirements, Science and technology, Securities, Semiconductors, U.S. investments abroad.

31 CFR Part 851

Administrative practice and procedure, Artificial intelligence, Biobased products, Biologics, Business and industry, Confidential business information, Computer technology, Democratic People's Republic of Korea, Electronic filing, Foreign persons, High-Performance computing, Hong Kong, Holding companies, Hypersonic systems, Investigations, Investments, Investment companies, Islamic Republic of Iran, Microelectronics, National defense, National security, Macau, Penalties, People's Republic of China, Quantum information technologies, Reporting and recordkeeping requirements, Russian Federation, Science and technology, Scientific equipment, Securities, Semiconductors, Supercomputing, U.S. investments abroad, Venezuela.

For the reasons set out in the preamble, 31 CFR chapter VIII is proposed to be amended as follows:

PART 850—PROVISIONS PERTAINING TO U.S. INVESTMENTS IN CERTAIN NATIONAL SECURITY TECHNOLOGIES AND PRODUCTS IN COUNTRIES OF CONCERN

1. The authority citation for part 850 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 14105, 88 FR 54867, 31 U.S.C. 321.

Subpart A—General

2. Add § 850.105 to read as follows:

§ 850.105 Applicability.

The regulations in this part apply to activities of U.S. persons that occurred on or after January 2, 2025, and prior to [EFFECTIVE DATE OF FINAL RULE].

3. Add part 851, consisting of §§ 851.101 through 851.1104, to read as follows:

PART 851—OUTBOUND INVESTMENT SECURITY PROGRAM REGULATIONS

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851.1103 Severability.
851.1104 Reports to be furnished on demand.

Authority: 50 U.S.C. 4581–4589; 31 U.S.C. 321.

Subpart A—General

§ 851.101 Scope.

(a) This part implements Title VIII of the Defense Production Act of 1950, as amended (50 U.S.C. 4581–4589) (Title VIII), which directs the Secretary of the Treasury (the Secretary), in consultation with the Secretary of Commerce, the Secretary of State, and, as appropriate, the heads of other relevant Federal departments and agencies (as defined in § 851.229), to issue, subject to

public notice and comment, regulations to require a U.S. person to provide written notification on behalf of itself or its controlled foreign entity regarding certain covered national security transactions in any notifiable technology and, where the Secretary has exercised the authority under Title VIII to prohibit certain transactions, to prohibit a U.S. person and its controlled foreign entities from engaging in certain covered national security transactions in any prohibited technology.

(b) This part identifies certain types of transactions that are *covered national security transactions*—which are certain transactions by a *U.S. person* into or with a *covered foreign person*. Additionally, this part identifies other instances where a *U.S. person* has obligations with respect to certain transactions. The regulations prescribe exceptions to the definition of *covered national security transaction*. A transaction that meets an exception is not a *covered national security transaction* and is referred to as an *excepted transaction*. Finally, this part:

(1) Exempts any authorized intelligence activities of the United States; and

(2) Prescribes a process to consider exempting certain activities from the definition of a *covered national security transaction* on a case-by-case basis.

(c) This part identifies categories of *covered national security transactions* that are *notifiable transactions*. A *notifiable transaction* is a *covered national security transaction* by a *U.S. person* or its *controlled foreign entity* with a *covered foreign person* or a relevant joint venture involving a *notifiable technology*. A *notifiable transaction* includes a *U.S. person*'s direction of a transaction that the *U.S. person* knows would be a *notifiable transaction* if engaged in by a *U.S. person* (other than an acquisition of a limited partner interest or equivalent in a pooled investment fund that is not a *U.S. person*). This part requires a *U.S. person* to notify the Department of the Treasury of each such *notifiable transaction* by such *U.S. person* or its *controlled foreign entity*. This part also requires a *U.S. person* to provide prompt notice to the Department of the Treasury upon acquiring actual knowledge after the *completion date* of a transaction of facts or circumstances that would have caused the transaction to be a *covered national security transaction*

if the *U.S. person* had such knowledge on the *completion date*. Additionally, any person who makes a representation, statement, or certification to the Department of the Treasury under this part is required to promptly notify the Department of the Treasury upon learning of a material omission or inaccuracy in such representation, statement, or certification.

(d) This part identifies categories of *covered national security transactions* that are *prohibited transactions*. A *prohibited transaction* is a *covered national security transaction* by a *U.S. person* with a *covered foreign person* or relevant joint venture involving a *prohibited technology*. This part prohibits a *U.S. person* from knowingly engaging in a *prohibited transaction*, which includes a prohibition on a *U.S. person*'s direction of a transaction that the *U.S. person* knows would be a *prohibited transaction* if engaged in by a *U.S. person* (other than an acquisition of a limited partner interest or equivalent in a pooled investment fund that is not a *U.S. person*). This part also requires a *U.S. person* to take all reasonable steps to prohibit and prevent any transaction by its *controlled foreign entity* that would be a *prohibited transaction* if undertaken by a *U.S. person*.

(e) This part provides for the imposition of civil penalties for any violation, and the Secretary has the authority to compel divestment of a *covered national security transaction* in a *prohibited technology*. Pursuant to Title VIII, the Secretary also is required to establish a process to identify *covered national security transactions* for which no notification was submitted and for which information is reasonably available.

(f) The Secretary should, as appropriate:

(1) Coordinate with the Secretary of Commerce, the Secretary of State, and the heads of other relevant Federal departments and agencies, to determine whether certain activity is in the national interest of the United States and should be exempted from prohibition;

(2) Consult with the Secretary of Commerce, the Secretary of State, and, as appropriate, the heads of other relevant Federal departments and agencies, when issuing or updating regulations to implement Title VIII;

(3) Consult with the Secretary of Commerce and, as appropriate, the heads of other relevant Federal departments and agencies, regarding the report required by section 803 of Title VIII;

(4) Consult with the Secretary of Commerce regarding the establishment of a publicly accessible, non-exhaustive database that identifies covered foreign persons that are either engaged in a prohibited technology or a notifiable technology and a mechanism for a covered foreign person to petition for removal or inclusion in such a database; and

(5) Coordinate with the Secretary of State, the Secretary of Commerce, and the heads of other relevant Federal departments and agencies to:

(i) Conduct bilateral and multilateral engagement with allies and partners to promote and increase coordination of protocols and procedures to facilitate the effective implementation of and appropriate compliance with the prohibition and notification requirement pursuant to Title VIII;

(ii) Work with allies and partners to establish mechanisms for information sharing; and

(iii) Work with and encourage allies and partners to develop outbound investment screening mechanisms to prevent the development of prohibited technologies by countries of concern.

§ 851.102 Relation of this part to other laws and regulations.

(a) Nothing in this part may be construed to alter, affect, or negate any other authority, process, regulation, investigation, enforcement measure, license, authorization, or review provided by or established under any other provision of Federal law, including the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq*.), or any other authority of the President or the Congress under the Constitution of the United States. This part is separate from, and independent of, the other parts of this subtitle. Differing foreign policy and national security circumstances may result in differing interpretations of the same or similar language among the separate parts of this subtitle. No action taken pursuant to any other provision of law or regulation, including the other parts of this subtitle, authorizes any transaction prohibited by this part or alters

any other obligation under this part. No action taken pursuant to this part relieves any party from complying with any other applicable laws or regulations.

(b) The regulations in this part apply from [EFFECTIVE DATE OF FINAL RULE].

(c) For any activities of a U.S. person to which part 850 of this chapter was applicable on or after January 2, 2025, and prior to [EFFECTIVE DATE OF FINAL RULE], the regulations in part 850 of this chapter will continue to apply.

§ 851.103 Rules of construction and interpretation.

(a) As used in this part, the term "including" (or variations such as "include") means "including but not limited to."

(b) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate.

(c) Section headings are included for convenience of reference only and shall not affect the interpretation of this part.

§ 851.104 Knowledge standard.

(a) Certain provisions of this part apply only if a U.S. person *knows* of a fact or circumstance. The term *knowledge* is defined in § 851.217. In determining whether a U.S. person is complying with this part or has violated any obligation under this part, the Department of the Treasury will assess whether such person has or had knowledge of the relevant facts and circumstances at the specified time.

(b) Such assessment as to whether, at the time of a given transaction, a U.S. person has or had knowledge of a given fact or circumstance will be made based on information a U.S. person had or could have had through a reasonable and diligent inquiry. A U.S. person that has failed to conduct a reasonable and diligent inquiry by the time of a given transaction may be assessed to have had reason to know of a given fact or circumstance, including facts or circumstances that would cause the transaction to be a covered national security transaction in a notifiable technology or a prohibited technology.

(c) In assessing whether a U.S. person has undertaken such a reasonable and diligent inquiry, the Department of the Treasury's considerations will include the following, as applicable, among others that the Department of the Treasury deems relevant, with respect to a particular transaction:

(1) The inquiry a U.S. person has made regarding an investment target or other relevant party, including questions asked of the investment target or relevant party, as of the time of the transaction;

(2) The contractual representations or warranties the U.S. person has obtained or attempted to obtain from the investment target or other relevant party with respect to the determination of a transaction's status as a covered national security transaction in a notifiable technology or a prohibited technology and the status of an investment target or other relevant party as a covered foreign person;

(3) The efforts by the U.S. person as of the time of the transaction to obtain and consider available non-public information relevant to the determination of a transaction's status as a covered national security transaction in a notifiable technology or prohibited technology and the status of an investment target or other relevant party as a covered foreign person;

(4) Available public information, the efforts undertaken by the U.S. person to obtain and consider such information, and the degree to which other information available to the U.S. person as of the time of the transaction is consistent or inconsistent with such publicly available information;

(5) Whether the U.S. person purposefully avoided learning or seeking relevant information;

(6) The presence or absence of warning signs, which may include evasive responses or non-responses from an investment target or other relevant party to questions or a refusal to provide information, contractual representations, or warranties;

(7) The use of available public and commercial databases to identify and verify relevant information of an investment target or other relevant party; and

(8) Whether the U.S. person appropriately considered any information made available by the Department of the Treasury prior to the completion of the transaction, including any assessments by the Department of the Treasury that the relevant covered foreign person may be engaged in a notifiable technology or a prohibited technology.

(d) An assessment of whether a U.S. person has undertaken a reasonable and diligent inquiry shall be based on a consideration of the totality of relevant facts and circumstances.

(e) Paragraphs (a) through (d) of this section shall also apply to the *knowledge* of a controlled foreign entity for the purposes of applying §§ 851.402 and 851.403.

Subpart B—Definitions

§ 851.201 Advanced packaging.

The term *advanced packaging* means to package integrated circuits in a manner that supports the two-and-one-half-dimensional (2.5D) or three-dimensional (3D) assembly of integrated circuits, such as by directly attaching one or more die or wafer using through-silicon vias, die or wafer bonding, heterogeneous integration, or other advanced methods and materials.

§ 851.202 Affiliate.

The term *affiliate* means, in the context of a transaction or activity covered under this part, a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a person subject to this part.

§ 851.203 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of the person filing a notification or providing other information that certifies under the penalties provided in the False Statements Accountability Act of 1996, as amended (18 U.S.C. 1001), that the notification or other information filed or provided:

(1) Fully complies with the regulations in this part; and

(2) Is accurate and complete in all material respects to the best knowledge of the person filing a notification or other information.

(b) For purposes of this section, a duly authorized designee is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer thereof; and

(3) In the case of any entity lacking partners and officers, any individual within the organization exercising executive functions similar to those of a general partner of a partnership or an officer of a corporation or otherwise authorized by the board of directors or equivalent to provide such certification.

(c) In each case described in paragraph (b) of this section, such designee must possess actual authority to make the certification on behalf of the person filing a notification or other information.

Note 1 to § 851.203: A template for certifications may be found at the Department of the Treasury's Outbound Investment Security Program website.

§ 851.204 Completion date.

The term *completion date* means:

(a) With respect to a covered national security transaction other than under § 851.209(a)(7), the earliest date upon which any interest, asset, property, or right is conveyed, assigned, delivered, or otherwise transferred to a U.S. person, or as applicable, its controlled foreign entity; or

(b) With respect to a covered national security transaction under § 851.209(a)(7), the earliest date upon which any interest, asset, property, or right in the relevant covered foreign person is conveyed, assigned, delivered, or otherwise transferred to the applicable fund.

§ 851.205 Contingent equity interest.

The term *contingent equity interest* means a financial interest (including debt) that currently does not constitute an equity interest but is convertible into, or provides the right to acquire, an equity interest upon the occurrence of a contingency or defined event or at the discretion of the U.S. person that holds the financial interest.

§ 851.206 Controlled foreign entity.

(a) The term *controlled foreign entity* means any entity incorporated in, or otherwise organized under the laws of, a country other than the United States of which a U.S. person is a parent.

(b) For purposes of the term *controlled foreign entity*, the following rules shall apply in determining whether an entity is a parent of another entity in a tiered ownership structure:

(1) Where the relationship between an entity and another entity is that of parent and subsidiary, the holdings of voting interest or voting power of the board, as applicable, of a subsidiary shall be fully attributed to the parent.

(2) Where the relationship between an entity and another entity is not that of parent and subsidiary (*i.e.*, because the holdings of voting interest or voting power of the board, as applicable, of the first entity in the second entity is 50 percent or less), then the indirect downstream holdings of voting interest or voting power of the board, as applicable, attributed to the first entity shall be determined proportionately.

(3) Where the circumstances in paragraphs (b)(1) and (2) of this section apply (*i.e.*, because a U.S. person holds both direct and indirect downstream holdings in the same entity), any holdings of voting interest shall be aggregated for the purposes of applying the definition in this section, and any holdings of voting power of the board shall be aggregated for the purposes of applying the definition in this section. Voting interest shall not be aggregated with voting power of the board for the purposes of applying the definition in this section.

§ 851.207 Country of concern.

The term *country of concern* means any of the following:

(a) The People's Republic of China, including the Hong Kong and Macau Special Administrative Regions;

(b) The Republic of Cuba;

(c) The Islamic Republic of Iran;

(d) The Democratic People's Republic of Korea;

(e) The Russian Federation; and

(f) The Bolivarian Republic of Venezuela under the regime of Nicolás Maduro Moros.

§ 851.208 Covered foreign person.

(a) The term *covered foreign person* means a foreign person that:

(1) Is an individual that:

(i) Is a citizen or permanent resident of a country of concern;

(ii) Is not a U.S. citizen; and

(iii) Is not a permanent resident of the United States;

(2) Is an entity incorporated in, has a principal place of business in, or is otherwise organized under the laws of a country of concern;

(3) Is an individual that is a member of the Central Committee of the Chinese Communist Party or is otherwise a member of the political leadership of a country of concern;

(4) Is the government of a country of concern, including any political subdivision, political party, agency, or instrumentality thereof, or any person acting for or on behalf of the government of a country of concern;

(5) Is an entity owned in the aggregate, directly or indirectly, 50 percent or more, in terms of outstanding voting interest, voting power of the board, or equity interest, by a foreign person meeting the criteria of paragraphs (a)(1) through (4) of this section;

(6) Is an entity directly or indirectly subject to the direction or control of a foreign person meeting the criteria of paragraphs (a)(1) through (4) of this section;

(7) Is an entity in which one or more foreign persons meeting the criteria of paragraph (a)(5) or (6) of this section, individually or in the aggregate, directly or indirectly, holds at least 50 percent of any of the following interests of such entity: outstanding voting interest, voting power of the board, or equity interest; or

(8) Is an entity that directly or indirectly holds a board seat on, a voting or equity interest (other than through securities or interests that would satisfy the conditions in § 851.501(a) if held

by a U.S. person) in, or any contractual power to direct or cause the direction of the management or policies of any person or persons meeting the criteria of paragraphs (a)(1) through (7) of this section that engages(s) in a notifiable technology or prohibited technology and from or through which it:

(i) Derives more than 50 percent of its revenue individually, or as aggregated across such persons from each of which it derives at least $50,000 (or equivalent) of its revenue, on an annual basis;

(ii) Derives more than 50 percent of its net income individually, or as aggregated across such persons from each of which it derives at least $50,000 (or equivalent) of its net income, on an annual basis;

(iii) Incurs more than 50 percent of its capital expenditure individually, or as aggregated across such persons from each of which it incurs at least $50,000 (or equivalent) of its capital expenditure, on an annual basis; or

(iv) Incurs more than 50 percent of its operating expenses individually, or as aggregated across such persons from each of which it incurs at least $50,000 (or equivalent) of its operating expenses, on an annual basis.

(b) As used in paragraph (a)(6) of this section, *subject to the direction or control* means that the government of a country of concern (including any political subdivision, political party, agency, or instrumentality thereof, or any person acting for or on behalf of the government of a country of concern), the individual described in paragraph (a)(1) or (3) of this section, or entity described in paragraph (a)(2) of this section has the power, directly or indirectly, to direct or cause the direction of the management or policies of such entity (whether through the ownership of voting securities, by contract, or otherwise).

(c) For purposes of paragraph (a)(8) of this section:

(1) Calculations shall be based on an audited financial statement from the most recent year. If an audited financial statement is not available, the most recent unaudited financial statement

shall be used instead. If no financial statement is available, an independent appraisal shall be used instead. If no independent appraisal is available, a good-faith estimate shall be used instead.

(2) Where an amount is not denominated in U.S. dollars, the U.S. dollar equivalent shall be determined based on the most recent published rate of exchange available on the Department of the Treasury's website.

(d) References in paragraph (a)(8) of this section to revenue, net income, capital expenditure, or operating expenses refer to overall revenue, net income, capital expenditure, or operating expenses, as applicable, without subtracting amounts attributable to persons described in paragraph (a) of this section of less than $50,000 (or equivalent).

§ 851.209 Covered national security transaction.

(a) The term *covered national security transaction* means a U.S. person's direct or indirect:

(1) Acquisition of an equity interest or contingent equity interest in a covered foreign person that the U.S. person knows at the time of the acquisition is a covered foreign person that engages in a notifiable technology or a prohibited technology or that meets the conditions set forth under § 851.208(a)(8);

(2) Provision of a loan or a similar debt financing arrangement to a covered foreign person that the U.S. person knows at the time of the provision is a covered foreign person that engages in a notifiable technology or a prohibited technology or that meets the conditions set forth under § 851.208(a)(8), where such debt financing affords or will afford the U.S. person an interest in profits of the covered foreign person, the right to appoint members of the board of directors (or equivalent) of the covered foreign person, or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan; *provided*:

(i) Neither the issuance of a secured loan or similar debt financing for which equity is pledged as collateral, nor the acquisition of such secured debt on the secondary market, is an acquisition of an equity interest; and

(ii) Foreclosure on collateral where the debtholder takes possession of the pledged equity is an acquisition of an equity interest; *provided that* such an acquisition is not a covered national security transaction where the equity was pledged prior to [EFFECTIVE DATE OF FINAL RULE], or where the U.S. person did not know at the time of issuing or acquiring the debt that the pledged equity was in a covered foreign person that engages in a notifiable technology or prohibited technology;

(3) Entrance into a joint venture, wherever located, that is formed with a covered foreign person, and that the U.S. person knows at the time of entrance into the joint venture that the joint venture will engage, or plans to engage, in a notifiable technology or a prohibited technology;

(4) Conversion of a contingent equity interest (or interest equivalent to a contingent equity interest) or conversion of debt to an equity interest in a covered foreign person that the U.S. person knows at the time of the conversion is a covered foreign person that engages in a notifiable technology or prohibited technology or that meets the conditions set forth under § 851.208(a)(8), where the contingent equity interest (or equivalent) or debt was acquired by the U.S. person on or after [EFFECTIVE DATE OF FINAL RULE];

(5) Acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern that the U.S. person knows at the time of such acquisition, leasing, or other development will result in, or that the U.S. person plans to result in:

(i) The establishment of a covered foreign person that engages in a notifiable technology or prohibited technology; or

(ii) The engagement of a covered foreign person in a prohibited technology or notifiable technology;

(6) Direction of a transaction by a foreign person that the U.S. person knows at the time of the transaction would constitute a transaction described in paragraph (a)(1), (2), (3), (4), or (5) of this section, if engaged in by a U.S. person; *provided*:

(i) The U.S. person has authority, individually or as part of a group, to make or substantially participate in decisions on behalf of a foreign person (including being an officer or director of, or otherwise possessing executive responsibilities with respect to, the foreign person) and, individually or as part of a group, exercises that authority to, direct, order, decide upon, or approve a transaction that the U.S. person knows would be a covered national security transaction if engaged in by a U.S. person.

(ii) A U.S. person that recuses from the following activities will not be considered to have directed a covered national security transaction under this paragraph (a)(6):

(A) Participating in approval and decision-making processes related to the transaction, including making a recommendation;

(B) Reviewing, editing, commenting on, approving, and signing relevant transaction documents; and

(C) Engaging in negotiations with the investment target (or, as applicable, the relevant transaction counterparty, such as a joint venture partner); or

(7) Acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund (in each case where the fund is not a U.S. person) that the U.S. person knows at the time of the acquisition likely will invest in a covered foreign person that is in the semiconductor technology and microelectronics, super intelligence systems, quantum information technologies, hypersonic systems, high-performance computing and supercomputing, or biotechnology sectors, and such fund undertakes a transaction that would be a covered national security transaction if undertaken by a U.S. person.

(b) Notwithstanding paragraph (a) of this section, a transaction is not a covered national security transaction if it is an excepted transaction as set forth in § 851.501.

(c) The acquisition of a contingent interest described in paragraph (a)(1) of this section may constitute a covered national security transaction, and the subsequent occurrence of a conversion event described in paragraph (a)(4) of this section may constitute a separate covered

national security transaction. A U.S. person should assess each of the acquisition and the conversion to determine the applicability of this part.

(d) An indirect covered national security transaction in a notifiable technology or prohibited technology includes a U.S. person's use of an intermediary to engage in a transaction that would be a covered national security transaction if engaged in directly by a U.S. person.

(e) For purposes of paragraph (a)(1) of this section, a U.S. person is not considered to have acquired an indirect equity interest or contingent equity interest in a covered foreign person when the U.S. person acquires a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund and that fund then acquires an equity interest or contingent equity interest in a covered foreign person. (A U.S. person's acquisition of a limited partner or equivalent interest in a non-U.S. person venture capital fund, private equity fund, fund of funds, or other pooled investment fund may, however, be a covered national security transaction under paragraph (a)(7) of this section.)

§ 851.210 Develop.

Except as used in § 851.209(a)(5), the term *develop* means to:

(a) Engage, including through or in collaboration with any affiliates, in any stages prior to serial production, such as design or substantive modification; design research; design analyses; design concepts; assembly and testing of prototypes; pilot production schemes; design data; transforming design data, blueprints, schema, or other plans into a product; configuration design; integration design; and layouts; and

(b) Provide high-level oversight, direction, approval, conceptual input, or strategic planning in connection with any stage prior to serial production.

§ 851.211 Entity.

The term *entity* means any branch, partnership, association, estate, joint venture, trust, corporation or division of a corporation, group, sub-group, or other organization (whether or not organized under the laws of any State of the United States or foreign state).

§ 851.212 Excepted transaction.

The term *excepted transaction* means a transaction that meets the criteria in § 851.501.

§ 851.213 Fabricate.

The term *fabricate* means to form devices such as transistors, poly capacitors, non-metal resistors, and diodes on a wafer of semiconductor material.

§ 851.214 Foreign person.

The term *foreign person* means:

(a) A person that is not:

(1) A United States citizen or alien lawfully admitted for permanent residence to the United States; or

(2) An entity organized under the laws of the United States or of any jurisdiction within the United States, including any foreign branch of any such entity; *except that*:

(b) For the purposes of § 851.208(a)(5) through (8), the term *foreign person* means any person.

§ 851.215 Hypersonic system.

The term *hypersonic system* means a vehicle or weapon delivery system capable of sustained atmospheric or very low Earth orbit flight at speeds of Mach 5 or greater, including hypersonic glide vehicles, hypersonic cruise missiles, hypersonic air-launched or aero-ballistic missiles, maneuvering reentry vehicles, and reusable hypersonic vehicles.

§ 851.216 Intracompany transfer of funds.

An *intracompany transfer of funds* means the provision of cash or credit by a U.S. person parent to:

(a) Support operations of a controlled foreign entity which operations are not in a notifiable technology or a prohibited technology; or

(b) Maintain operations of a controlled foreign entity which operations are in a notifiable technology or prohibited technology that the controlled foreign entity was engaged in prior to [EFFECTIVE DATE OF FINAL RULE].

§ 851.217 Knowledge.

Knowledge of a fact or circumstance (the term may be a variant, such as "know") means:

(a) Actual knowledge that a fact or circumstance exists or is substantially certain to occur;

(b) An awareness of a high probability of a fact or circumstance's existence or future occurrence; or

(c) Reason to know of a fact or circumstance's existence.

Note 1 to § 851.217: See the discussion of the knowledge standard in § 851.104 for more information about how this term is applied in this part.

§ 851.218 Notifiable technology.

The term *notifiable technology* means the:

(a) Design of any integrated circuit that is not described in § 851.226(c);

(b) Fabrication of any integrated circuit that is not described in § 851.226(d);

(c) Development or production of any integrated circuit that is not described in § 851.226(e);

(d) Packaging of any integrated circuit that is not described in § 851.226(f);

(e) Development or production of equipment not described in § 851.226(b) that is designed or intended for use in the design, fabrication, or packaging of any integrated circuit;

(f) Development or production of high bandwidth, low latency interconnects for high-performance computing, including interconnects for system-on-chip, system-in-package, scale-up networks, and scale-out networks; or

(g) Development or production of any of the following technologies when capable of use in or for a hypersonic system or its components:

(1) Sensor, guidance, navigation, or control equipment or systems;

(2) Software for research, modeling and simulation, analysis, or testing not described in § 851.226(q); or

(3) Metals, alloys, composites, ceramics, coatings, or other materials not described in § 851.226(o).

§ 851.219 Notifiable transaction.

The term *notifiable transaction* means a covered national security transaction (that is not a prohibited transaction) in which the relevant covered foreign person or, with respect to a covered national security transaction described in § 851.209(a)(3), the relevant joint venture:

(a) Engages in a notifiable technology; or

(b) Meets the conditions set forth in § 851.208(a)(8) because of its relationship to one or more covered foreign persons that engage(s) in a notifiable technology.

§ 851.220 Package.

The term *package* means to assemble various components, such as the integrated circuit die, lead frames, interconnects, and substrate materials to safeguard the semiconductor device and provide electrical connections between different parts of the die.

§ 851.221 Parent.

(a) The term *parent* means, with respect to an entity:

(1) A person that directly or indirectly holds more than 50 percent of:

(i) The outstanding voting interest in the entity; or

(ii) The voting power of the board of the entity;

(2) The general partner, managing member, or equivalent of the entity; or

(3) The investment adviser to any entity that is a pooled investment fund, with "investment adviser" as defined in the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)).

(b) Any entity that meets the conditions of paragraph (a)(1), (2), or (3) of this section with respect to another entity is the parent, even if the parent entity is an intermediate entity and not the ultimate parent.

§ 851.222 Party.

The term *party*, in the context of a covered national security transaction, means:

(a) Any U.S. person relevant to the covered national security transaction, including the parent to an entity undertaking the transaction;

(b) Any covered foreign person relevant to the covered national security transaction; and

(c) Any foreign person relevant to the covered national security transaction, including when such foreign person is a controlled foreign entity.

§ 851.223 Person.

The term *person* means any:

(a) Individual;

(b) Entity;

(c) Legal successor or representative of persons meeting the criteria of paragraph (a) or (b) of this section; or

(d) State of the United States, foreign state, or local government or agency thereof.

§ 851.224 Principal place of business.

The term *principal place of business* means any of:

(a) The location of an entity's headquarters;

(b) The location where an entity conducts its main business activities;

(c) The primary location where an entity's management directs, controls, or coordinates the entity's activities; or

(d) In the case of an investment fund, where the fund's activities are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member, or equivalent.

Note 1 to § 851.224: An entity may have more than one principal place of business, as such term is defined in this section.

§ 851.225 Produce.

The term *produce* means to engage in any of the post-development stages of realizing the relevant technology or product, such as engineering, manufacture, integration, assembly, inspection, testing, and quality assurance.

§ 851.226 Prohibited technology.

The term *prohibited technology* means the:

(a) Development or production of any electronic design automation software for the design of integrated circuits or advanced packaging;

(b) Development or production of any:

(1) Front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits, including equipment used in the production stages from a blank wafer or substrate to a completed wafer or substrate (*i.e.*, the integrated circuits are processed but they are still on the wafer or substrate);

(2) Equipment for performing volume advanced packaging; or

(3) Commodity, material, software, or technology designed or intended for use in or with deep ultraviolet lithography fabrication equipment or extreme ultraviolet lithography fabrication equipment;

(c) Design of any integrated circuit that meets or exceeds the performance parameters in Export Control Classification Number 3A090.a in supplement no. 1 to 15 CFR part 774, or any integrated circuit designed for operation at or below 4.5 Kelvin;

(d) Fabrication of any:

(1) Logic integrated circuit using a non-planar transistor architecture or with a production technology node of 16/14 nanometers or less, including any fully depleted silicon-on-insulator (FDSOI) integrated circuit;

(2) NOT-AND (NAND) memory integrated circuit with 128 layers or more;

(3) Dynamic random-access memory (DRAM) integrated circuit having:

(i) A memory cell area of less than 0.0026 μm^2;

(ii) A memory density greater than 0.20 gigabits per square millimeter; or

(iii) More than 3000 through-silicon vias per die;

(4) Integrated circuit using graphene transistors or carbon nanotubes; or

(5) Integrated circuit designed for operation at or below 4.5 Kelvin;

(e) Development or production of any:

(1) Integrated circuit manufactured from silicon carbide or a gallium-based compound semiconductor, III-V compound semiconductor, or ultrawide bandgap semiconductor;

(2) Integrated circuit designed to, or rated radiation hardened to, withstand any of the following:

(i) A total dose of 5×10^3 Gy (Si), or higher;

(ii) A dose rate upset of 5×10^6 Gy (Si)/s, or higher; or

(iii) A fluence (integrated flux) of neutrons (1 MeV equivalent) of 5×10^{13} n/cm^2 or higher on silicon, or its equivalent for other materials; or

(3) Photonic integrated circuit, including development of optical components, co-packaged optics, or silicon-photonics integration;

(f) Packaging of any integrated circuit using advanced packaging techniques;

(g) Development or production of high-bandwidth memory with a memory bandwidth density greater than 2 gigabytes per second per square millimeter;

(h) Development of any SI system; *provided that*:

(1) Where an SI system as defined at § 851.232(b) operates in whole or in part using an SI system as defined at § 851.232(a), the latter of which is sourced from a third party, the relevant covered foreign person or joint venture develops such SI system when it enhances or extends the capability of such third-party system. For example, developing an agentic harness layer with a third-party SI model enhances and extends the capability of the third-party model by enabling autonomous execution of action loops; managing memory and context; or using intermediate or

hidden reasoning or self-correction, among other functions, to solve complex tasks and format feedback prior to producing user-facing outputs; and

(2) Use of an off-the-shelf third-party SI system strictly for internal, non-commercial purposes (including the customization, configuration, or fine-tuning of a third-party SI model or machine-based system strictly for internal, non-commercial use (*e.g.*, not for sale or licensing)) does not constitute development of an SI system solely on that basis;

(i) Development of a quantum computer or production of any of the critical components required to produce or operate a quantum computer (such as a dilution refrigerator or two-stage pulse tube cryocooler), or development of software for the purpose of designing, simulating, testing, or controlling a quantum computer, or for identifying, implementing, costing, or optimizing algorithms and applications for a quantum computer;

(j) Development of any algorithm or application for quantum information science technologies;

(k) Development or production of any quantum sensing platform designed for, or that the relevant covered foreign person intends to be used for, any military, government intelligence, or mass-surveillance end use;

(l) Development or production of any quantum network or quantum communication system designed for, or that the relevant covered foreign person intends to be used for:

(1) Networking to scale up the capabilities of any quantum computer, such as for the purposes of breaking or compromising encryption;

(2) Secure communications, such as quantum key distribution; or

(3) Any other application that has any military, government intelligence, or mass-surveillance end use;

(m) Development, installation, sale, or production of any supercomputer enabled by advanced integrated circuits that can provide a theoretical compute capacity of 100 or more double-precision (64-bit) petaflops or 200 or more single-precision (32-bit) petaflops of processing power

within a 41,600 cubic foot or smaller envelope, or components designed for enabling any of such capabilities of a supercomputer;

(n) Development or production of any:

(1) Hypersonic system; or

(2) Propulsion system capable of enabling hypersonic flight, including rocket-based propulsion, hypersonic airbreathing propulsion such as ramjets and scramjets, and combined cycle propulsion, or fuels or propellants for hypersonic propulsion systems;

(o) Development or production of any of the following materials designed for, or that the covered foreign person intends to be used for, a hypersonic system:

(1) Refractory metals or alloys;

(2) Refractory or ultra-high temperature ceramics, or ultra-high temperature ceramic matrix composites;

(3) Carbon-carbon or carbon-matrix composites; or

(4) Stealth coatings or other materials designed to minimize external observation of a hypersonic system, such as spectral or multispectral absorption materials;

(p) Development or operation of specialized infrastructure or a facility capable of testing a hypersonic system, including hypersonic arc jet facilities, wind tunnels, and ground test beds;

(q) Development of:

(1) Digital twin technology for modeling and simulation of, monitoring, or optimizing a hypersonic system; or

(2) Digital thread technology that collects, manages, or represents the data flows related to a hypersonic system;

(r) Development, engineering, or use of a biological system—or any component of a biological system—to modify, enhance, produce, or control any of the following compounds or materials:

(1) An agent or toxin restricted in 7 CFR part 331, 9 CFR part 121, 42 CFR part 73, 22 CFR part 121, or 15 CFR part 774, or novel agents or toxins that are capable of causing death, disease, or other biological malfunction in a living organism; deterioration of food, water, equipment, supplies, or material; or deleterious alteration of the environment;

(2) An energetic precursor or energetic material, including propellants, explosives, and pyrotechnics;

(3) A novel or high-performance functional material, *i.e.*, a bio-derived product that exhibits novel or enhanced properties, such as an adaptive or protective coating, bio-cement or other material for agile infrastructure, material capable of self-repair or self-assembly, and a biosensor;

(4) A pharmaceutical compound, including, small molecules, polymers, vaccines, blood and blood components, allergenics, cell and gene therapies, and monoclonal antibodies or other recombinant therapeutic proteins, as well as their delivery mechanisms; or

(5) A biofuel, *i.e.*, fuel made or derived from a bio-based feedstock;

(s) Development or production of brain computer interfaces, including invasive, partially invasive, non-invasive, and hybrid systems that enable interaction between the brain and its environment, as well as associated software;

(t) Development, construction, or production of biomanufacturing equipment, including components and associated software or technology and as identified in Export Control Classification Numbers 2B352, 2D352, or 2E001, in supplement no. 1 to 15 CFR part 774;

(u) Development or production of the following technology or equipment, including components and associated software:

(1) Biological sequencing technology, including short-read or long-read sequencing;

(2) Flow cytometers and cell sorters that are designed for spectral analysis or that contain 26 or greater detectors or channels;

(3) Liquid chromatography mass spectrometry instruments designed for top-down proteomic analysis;

(4) Computational or bioinformatics tools for research, design, optimization, modeling and simulation, discovery, or assessment of biological systems or processes; and

(5) Hardware, robotics, or software for automated scientific discovery or experimentation, including laboratory automation or cloud lab infrastructure; or

(v) Engagement in a notifiable technology by a covered foreign person, or, with respect to a covered national security transaction described in § 851.209(a)(3), the relevant joint venture, where such covered foreign person or joint venture is, or any of its affiliates or subsidiaries are:

(1) Included on the Bureau of Industry and Security's Entity List (15 CFR part 744, supplement no. 4);

(2) Included on the Bureau of Industry and Security's Military End User List (15 CFR part 744, supplement no. 7);

(3) Defined as a "Military Intelligence End-User" by the Bureau of Industry and Security in 15 CFR 744.22(f)(2);

(4) Included on the Department of the Treasury's list of Specially Designated Nationals and Blocked Persons (SDN List), or is an entity in which one or more individuals or entities included on the SDN List, individually or in the aggregate, directly or indirectly, own a 50 percent or greater interest;

(5) Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC List);

(6) Included on the Department of War's list of Chinese military companies in accordance with section 1260H of the National Defense Authorization Act for Fiscal Year 2021 including subsequent amendments;

(7) Included on the Office of Management and Budget's list of biotechnology companies of concern in accordance with the BIOSECURE Act, section 851 of the National Defense Authorization Act for Fiscal Year 2026; or

(8) Designated as a foreign terrorist organization by the Secretary of State under 8 U.S.C. 1189.

§ 851.227 Prohibited transaction.

The term *prohibited transaction* means a covered national security transaction in which the relevant covered foreign person or, with respect to a covered national security transaction described in § 851.209(a)(3), the relevant joint venture:

(a) Engages in a prohibited technology; or

(b) Meets the conditions set forth in § 851.208(a)(8) because of its relationship to one or more covered foreign persons that engage(s) in a prohibited technology described in § 851.226(a) through (u).

§ 851.228 Quantum computer.

The term *quantum computer* means a computer that performs computations that harness the collective properties of quantum states, such as superposition, interference, or entanglement.

§ 851.229 Relevant Federal departments and agencies.

The term *relevant Federal departments and agencies* means the Departments of State, War, Commerce, and Energy, the Office of the Director of National Intelligence, the Office of the United States Trade Representative, the Office of Science and Technology Policy, and any other department, agency, or office the Secretary determines appropriate.

§ 851.230 Secretary.

Except as otherwise provided, the term *Secretary* means the Secretary of the Treasury.

§ 851.231 Subsidiary.

The term *subsidiary* means, with respect to a person, an entity of which such person is a parent.

§ 851.232 Super intelligence (SI) system.

The term *super intelligence (SI) system* means:

(a) A machine-based system that can, for a given set of human-defined objectives, generate content or make predictions, recommendations, or decisions influencing real or virtual environments, *i.e.*, a system that:

(1) Uses data inputs to perceive real or virtual environments;

(2) Abstracts such perceptions into models through automated or algorithmic statistical analysis; and

(3) Uses model inference to generate content or make a classification, prediction, recommendation, or decision.

(b) Any data system, software, hardware, application, tool, or utility that operates in whole or in part using an SI system defined in paragraph (a) of this section, including an SI agent harness and an embodied SI or physical SI system (*e.g.*, SI-enabled: industrial robots, bipedal or humanoid robots, quadruped robots, other mobile robots, autonomous vehicles, and unmanned systems).

§ 851.233 United States.

The term *United States* or *U.S.* means the United States of America, the States of the United States of America, the District of Columbia, and any commonwealth, territory, dependency, or possession of the United States of America, or any subdivision of the foregoing, and includes the territorial sea of the United States of America. For purposes of this part, an entity organized under the laws of the United States of America, one of the States, the District of Columbia, or a commonwealth, territory, dependency, or possession of the United States is an entity organized "in the United States."

§ 851.234 U.S. person.

The term *U.S. person* means:

(a) Any United States citizen or an alien lawfully admitted for permanent residence to the United States;

(b) Any entity organized under the laws of the United States or of any jurisdiction within the United States, including any foreign branch of any such entity; or

(c) Any person in the United States.

Subpart C—Prohibited Transactions and Other Prohibited Activities

§ 851.301 Undertaking a prohibited transaction.

A U.S. person may not engage in a prohibited transaction unless an exemption for that transaction has been granted under § 851.502 or the transaction qualifies for the exemption under § 851.503.

§ 851.302 Actions of a controlled foreign entity.

(a) A U.S. person shall take all reasonable steps to prohibit and prevent any transaction by its controlled foreign entity that would be a prohibited transaction if engaged in by a U.S. person.

(b) If a controlled foreign entity engages in a transaction that would be a prohibited transaction if engaged in by a U.S. person, in determining whether the relevant U.S. person took all reasonable steps to prohibit and prevent such transaction, the Department of the Treasury will consider, among other factors, any of the following with respect to a U.S. person and its controlled foreign entity:

(1) The execution of agreements with respect to compliance with the regulations in this part between the subject U.S. person and its controlled foreign entity;

(2) The existence and exercise of governance or shareholder rights by the U.S. person with respect to the controlled foreign entity, where applicable;

(3) The existence and implementation of periodic training and internal reporting requirements by the U.S. person and its controlled foreign entity with respect to compliance with the regulations in this part;

(4) The implementation of appropriate and documented internal controls, including internal policies, procedures, or guidelines that are periodically reviewed internally, by the U.S. person and its controlled foreign entity; and

(5) Implementation of a documented testing and/or auditing process of internal controls, policies, procedures, or guidelines.

Note 1 to § 851.302: Findings of violations of this section and decisions related to enforcement and penalties will be made based on a consideration of the totality of relevant facts and circumstances, including whether the U.S. person has taken the steps described in paragraph (b) of this section and whether such steps were reasonable in light of the relevant facts and circumstances.

Subpart D—Notifiable Transactions and Other Notifiable Activities

§ 851.401 Undertaking a notifiable transaction.

A U.S. person that engages in a notifiable transaction shall file a notification of that transaction with the Department of the Treasury pursuant to § 851.404.

§ 851.402 Notification of actions of a controlled foreign entity.

A U.S. person shall file a notification with the Department of the Treasury pursuant to § 851.404 with respect to any transaction undertaken by a controlled foreign entity of the U.S. person that the controlled foreign entity or the U.S. person knew at the time of the transaction would be a notifiable transaction if engaged in by a U.S. person.

§ 851.403 Notification of post-transaction knowledge.

If a U.S. person or its controlled foreign entity acquires actual knowledge after the completion date of a transaction of a fact or circumstance such that the transaction would have been a notifiable transaction or prohibited transaction if such knowledge had been possessed by the relevant U.S. person at the time of the transaction, then the relevant U.S. person shall promptly, and in no event later than 30 calendar days following the acquisition of such knowledge, submit a notification pursuant to § 851.404.

Note 1 to § 851.403: A U.S. person's submission of a notification pursuant to this section shall not preclude a finding by the Department of the Treasury that the U.S. person or its controlled

foreign entity had knowledge of the relevant facts and circumstances regarding the transaction's status as a notifiable transaction or prohibited transaction at the time of the transaction.

§ 851.404 Procedures for notifications.

(a) A U.S. person that has an obligation under § 851.401, § 851.402, or § 851.403 shall file an electronic copy of the notification of the transaction with the Department of the Treasury including the information set out in § 851.405 and a certification referred to in § 851.203. The U.S. person shall follow the electronic filing instructions posted on the Department of the Treasury's Outbound Investment Security Program website. No communications or submissions other than those described in this section shall constitute the filing of a notification for purposes of this part.

(b) The Department of the Treasury may contact a U.S. person that has filed a notification with questions or document requests (including questions or document requests made on behalf of other relevant Federal departments or agencies) related to the transaction or compliance with the regulations in this part. The U.S. person shall respond to any such questions or requests within the time frame and in the manner specified by the Department of the Treasury. Information and other documents provided by the U.S. person to the Department of the Treasury after the filing of the notification under this section shall be deemed part of the notification and shall be subject to the certification set out in § 851.203.

(c) A U.S. person shall file a notification under § 851.401 or § 851.402 with the Department of the Treasury no later than 30 calendar days following the completion date of a notifiable transaction. A U.S. person shall file a notification required under § 851.403 with the Department of the Treasury no later than 30 calendar days after it acquires the knowledge referred to in § 851.403.

(d) If a U.S. person files a notification prior to the completion date of the notifiable transaction, the U.S. person shall update such notification no later than 30 calendar days following the completion date of the notifiable transaction if information in the original filing has materially changed.

(e) A U.S. person shall inform the Department of the Treasury in writing no later than 30 calendar days following the acquisition of previously unavailable information required under § 851.405.

§ 851.405 Content of notifications.

(a) A U.S. person that has an obligation under this part to file a notification shall provide the information set forth in this section, which must be accurate and complete in all material respects, subject to paragraph (d) of this section.

(b) A notification shall provide, as applicable:

(1) The contact information of a representative of the U.S. person filing the notification who is available to communicate with the Department of the Treasury about the notification including such representative's:

(i) Full legal name;

(ii) Title;

(iii) Email address;

(iv) Mailing address;

(v) Phone number; and

(vi) Employer;

(2) A complete description of the U.S. person, including, as applicable:

(i) Name (in English and any applicable native language);

(ii) All principal places of business;

(iii) Place of incorporation or legal organization;

(iv) Company address(es);

(v) Website;

(vi) Citizenship (for individuals);

(vii) Identity and citizenship of the members of the board of directors (or equivalent), officers, or other key personnel expected to be involved in overseeing or collaborating with the investment target; and

(viii) If the U.S. person is an entity, such U.S. person's ultimate owner;

(3) A post-transaction organizational chart of the U.S. person that includes:

(i) The name and principal place or places of business and place of incorporation or legal organization of all entities listed, including intermediate and ultimate parent entities, and any foreign person beneficial owner holding greater than 5 percent of the voting or economic interest in the U.S. person, and a description of the relationship among and between the U.S. person and any such listed entities or foreign person as expressed in percentage of economic or voting interests, limited partnership interests, investment advisory or manager status;

(ii) The U.S. person's relationship with any controlled foreign entity or entities relevant to the transaction; and

(iii) The covered foreign person and other relevant persons involved in the transaction;

(4) A description of the commercial rationale for the transaction, including:

(i) A description of the U.S. person's plans for involvement in the investment target's commercial operations and the expected drivers and timeline for return on the investment;

(ii) Whether the U.S. person plans to transfer or second any employees to the investment target;

(iii) A description of how the U.S. person learned of the investment opportunity in the investment target, including whether the U.S. person first approached the investment target or vice versa; and

(iv) A timeline identifying the date on which the U.S. person initially considered making its investment, along with dates and descriptions of any further negotiations leading up to the transaction;

(5) A brief description of why the U.S. person has determined the transaction is a notifiable transaction that includes a discussion of the nature of the transaction, its structure, reference to the paragraph of § 851.209(a) that best describes the transaction type, and whether the notification is being submitted pursuant to § 851.401, § 851.402, or § 851.403;

(6) The status of the transaction, including the actual or expected completion date of the transaction;

(7) A copy of all transaction documentation, including any partnership, integration, collaboration and ancillary agreements, or other side agreements relating to the transaction;

(8) The total transaction value in U.S. dollars or U.S. dollar equivalent, an explanation of how the transaction value was determined, and a description of the consideration for the transaction (including cash, securities, other assets, and debt forgiveness);

(9) The aggregate economic and voting interest and board seats (or equivalent holdings) of the U.S. person and its affiliates in the covered foreign person (or in the joint venture, as applicable) following the completion date of the transaction, including a description of any agreements or commitments for future investment or options to make future investments in the covered foreign person (or joint venture);

(10) A description of any past, current, or future commercial arrangements between the U.S. person and investment target, such as customer/supplier relationships, joint development arrangements, or joint marketing arrangements;

(11) Information about the covered foreign person, including, as applicable:

(i) Name (in English and any applicable native language);

(ii) Principal place(s) of business;

(iii) Place of incorporation or legal organization;

(iv) Company address(es);

(v) Website;

(vi) A description of the company's current and expected future products and services;

(vii) Annual revenue and profitability;

(viii) Total asset value;

(ix) Customer make-up;

(x) Jurisdictions in which it operates, exports or sells its products or services;

(xi) Key suppliers;

(xii) Name of ultimate owner; and

(xiii) Full legal names and titles of each officer, director, and other member of management of the covered foreign person;

(12) A post-transaction organizational chart of the covered foreign person that includes the name and principal place(s) of business and place of incorporation or legal organization of all entities listed, including any intermediate and ultimate parent entities of the covered foreign person, and a description of the relationship among and between such entities and the covered foreign person, as expressed in

(i) Percentage of economic or voting interests;

(ii) Limited partnership interests; or

(iii) Status as investment adviser or manager;

(13) Identification and description of each notifiable technology engaged in by the covered foreign person that makes the transaction a notifiable transaction, as well as a brief description of the known end use(s) and end user(s) of the covered foreign person's notifiable technology;

(14) A statement describing the attributes that cause the entity to be a covered foreign person, and any other relevant information regarding the covered foreign person and notifiable technology;

(15) If a transaction involves a notifiable technology identified in § 851.218(a), (b), (c), (d), or (e), identification of the technology node(s) at which any applicable product is produced; and

(16) If the notification is required under § 851.403:

(i) Identification of the fact or circumstance of which the U.S. person acquired knowledge post-transaction;

(ii) The date upon which the U.S. person acquired such knowledge;

(iii) A statement explaining why the U.S. person did not possess or obtain such knowledge at the time of the transaction; and

(iv) A description of any pre-transaction diligence undertaken by the U.S. person, including, as applicable, any steps described in § 851.104(c).

(c) The U.S. person shall maintain a copy of the notification filed and supporting documentation for a period of ten years from the date of the filing. Such supporting documentation shall include, as applicable, any pitch decks, marketing letters, and offering memorandums; transaction documents including side letters and investment agreements; and due diligence materials related to the transaction. The U.S. person shall make all supporting documentation available upon request by the Department of the Treasury.

(d) If the U.S. person does not provide responses to the information required in paragraph (b) of this section, the U.S. person shall provide sufficient explanation for why the information is unavailable or otherwise cannot be obtained and explain the U.S. person's efforts to obtain such information. If such information subsequently becomes available, the U.S. person shall provide such information to the Department of the Treasury promptly, and no later than 30 calendar days following the availability of such information.

§ 851.406 Notice of material omission or inaccuracy.

A person who has made any representation, statement, or certification subject to this part, including in connection with any enforcement inquiry or action pursuant to subpart F of this part, shall inform the Department of the Treasury in writing promptly, and in no event later than 30 calendar days after learning of a material omission or inaccuracy in such representation, statement, or certification.

Subpart E—Exceptions and Exemptions

§ 851.501 Excepted transaction.

A transaction that would be either a prohibited transaction or a notifiable transaction if engaged in by a U.S. person but for this section is not a prohibited transaction or a notifiable transaction, as applicable, if the conditions set forth in this section are met. In that case, the transaction is an excepted transaction. The following transactions are excepted transactions:

(a)(1) An investment by a U.S. person:

(i) In a "security" as defined in section 3(a)(10) of the Securities Exchange Act of 1934, as amended, at 15 U.S.C. 78c(a)(10), denominated in any currency, and that trades on an exchange or the over-the-counter market in any jurisdiction;

(ii) In a security issued by any "investment company" as defined in section 3(a)(1) of the Investment Company Act of 1940, as amended, at 15 U.S.C. 80a-3(a)(1), that is registered with the U.S. Securities and Exchange Commission, such as an index fund, mutual fund, or exchange traded fund;

(iii) In connection with a transaction described in § 851.209(a)(7), made as a limited partner or equivalent in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund other than as described in paragraph (a)(1)(ii) of this section, where:

(A) The limited partner or equivalent's committed capital is not more than the *de minimis* amount of $2,000,000, aggregated across any investment and co-investment vehicles of the fund; or

(B) The limited partner or equivalent has secured a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a prohibited transaction or notifiable transaction, as applicable, if engaged in by a U.S. person; or

(iv) In a derivative of a security described under paragraph (a)(1)(i), (ii), or (iii) of this section; and

(2) Notwithstanding paragraph (a)(1) of this section, an investment is not an excepted transaction if it affords the U.S. person governance rights beyond standard minority shareholder

protections with respect to the covered foreign person. Such standard minority shareholder protections include:

(i) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(ii) The power to prevent an entity from entering into contracts with majority investors or their affiliates;

(iii) The power to prevent an entity from guaranteeing the obligations of majority investors or their affiliates;

(iv) The right to purchase an additional interest in an entity to prevent the dilution of an investor's pro rata interest in that entity in the event that the entity issues additional instruments conveying interests in the entity;

(v) The power to prevent the change of existing legal rights or preferences of the particular class of stock held by minority investors, as provided in the relevant corporate documents governing such stock; and

(vi) The power to prevent the amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of an entity with respect to the matters described in paragraphs (a)(2)(i) through (v) of this section;

(b) The acquisition by a U.S. person of equity or other interest owned or held by a covered foreign person in an entity or assets located outside of a country of concern in which the U.S. person is acquiring the totality of the equity or other interest in such entity held by all covered foreign persons and, following such acquisition, the entity does not constitute a covered foreign person;

(c) An intracompany transfer of funds (as defined in § 851.216) from a U.S. person to its controlled foreign entity;

(d) A transaction made on or after [EFFECTIVE DATE OF FINAL RULE] pursuant to a binding, uncalled capital commitment entered into before [EFFECTIVE DATE OF FINAL RULE];

(e) The acquisition of a voting interest in a covered foreign person by a U.S. person upon default or other condition involving a loan or a similar financing arrangement, where the loan was made by a syndicate of banks in a loan participation where the U.S. person lender(s) in the syndicate:

(1) Cannot on its own initiate any action vis-à-vis the debtor; and

(2) Is not the syndication agent;

(f) The receipt of employment compensation by an individual in the form of an award of equity or the grant of an option to purchase equity in a covered foreign person, or the exercise of such option;

(g) Transactions that would otherwise be notifiable transactions, where neither the value of the covered national security transaction, nor provision of funds or other consideration to the relevant covered foreign person or joint venture, in the aggregate across the preceding 12 months, exceeds the *de minimis* amount of $50,000 (When applying the *de minimis* exception, the U.S. person must account for any funds provided and the fair market value of any non-cash consideration. The Department of the Treasury is not bound by the U.S. person's valuation of the transaction or transactions.);

(h) A transaction secondary to a covered national security transaction, *i.e.*:

(1) Contractual arrangements (not including contractual arrangements for technology transfer or technical knowledge transfer) or the procurement of material inputs for any covered national security transaction (such as raw materials);

(2) Bank lending;

(3) The processing, clearing, or sending of payments by a bank;

(4) Underwriting services including, but not limited to, the temporary acquisition of an equity interest for the sole purpose of facilitating underwriting services;

(5) Debt rating services;

(6) Prime brokerage;

(7) Global custody;

(8) Equity research or analysis; or

(9) Other similar services;

(i) Any ordinary or administrative business transaction;

(j) Any ancillary transaction undertaken by a "financial institution" as defined in 31 U.S.C. 5312, *i.e.*:

(1) The processing, clearing, or sending of payments and cash transactions for or to a covered foreign person;

(2) Underwriting services, including the temporary acquisition of an equity interest in a covered foreign person for the sole purpose of facilitating underwriting services;

(3) Credit rating services on behalf of a covered foreign person; and

(4) Other services ordinarily incident to and part of the provision of financial services on behalf of a covered foreign person, such as opening deposit accounts, direct custody services, foreign exchange services, remittances services, and safe deposit services;

(k)(1) A transaction that is:

(i) With or involving a person of a country or territory outside of the United States designated by the Secretary, after taking into account whether the country or territory is addressing national security risks substantially similar to those described in section 8504 of Subtitle A of Title LXXXV of the National Defense Authorization Act for Fiscal Year 2026 and related to outbound investment; and

(ii) Of a type for which the Secretary has determined that the related national security concerns are likely to be adequately addressed by measures taken or that may be taken by the government of the relevant country or territory.

(2) Prior to making a designation or determination under this paragraph (k), the Secretary shall consult with the Secretary of State, the Secretary of Commerce, and, as appropriate, the heads of other relevant Federal departments and agencies.

(3) The Secretary's designations and determinations under paragraph (k)(1) of this section shall be made available through public notice.

(4) The Secretary may rescind a designation or determination under paragraph (k)(1) of this section if the Secretary, in consultation with the Secretary of State, Secretary of Commerce, and, as appropriate, the heads of other relevant agencies, determines that such a rescission is appropriate. Any rescission shall be made available through public notice; or

(l) Any transaction completed before the enactment of Title VIII on December 18, 2025 (although transactions prior to this date may be subject to part 850 of this chapter).

§ 851.502 National interest exemption.

(a) The Secretary, in coordination with the Secretary of Commerce, the Secretary of State, and the heads of other relevant Federal departments and agencies, as appropriate, may determine that a covered national security transaction is in the national interest of the United States and therefore is exempt from applicable provisions in subpart C of this part (excluding §§ 851.406, 851.603, and 851.604). Such a determination may be made following a request by a U.S. person on its own behalf or on behalf of its controlled foreign entity.

(b) Any determination pursuant to paragraph (a) of this section will be based on a consideration of the totality of the relevant facts and circumstances and may be informed by, among other considerations, the transaction's effect on critical U.S. supply chain needs; domestic production needs in the United States for projected national defense requirements; U.S. public

health needs; U.S. technological leadership globally in areas affecting U.S. national security; and impact on U.S. national security if the U.S. person is prohibited from undertaking the transaction.

(c) The Secretary shall:

(1) Notify the appropriate congressional committees not later than five business days after issuing an exemption under paragraph (a) of this section; and

(2) Include in such notification an identification of the national interest justifying the use of the exemption, subject to appropriate confidentiality and classification requirements.

(d) A U.S. person requesting a national interest exemption shall submit relevant information to the Department of the Treasury regarding the transaction and shall articulate the basis for the request, including the U.S. person's analysis of the transaction's potential impact on the national interest of the United States, and the certification set out in § 851.203. Information and other documents submitted by the U.S. person to the Department of the Treasury under this section shall be deemed part of the national interest exemption request. The U.S. person shall follow the instructions posted on the Department of the Treasury's Outbound Investment Security Program website. No communications or submissions other than those described in this section shall constitute a request for a national interest exemption. The Department of the Treasury may request additional information that may include some or all of the information required under § 851.405.

(e) A determination that a covered national security transaction is exempt under this section may be subject to binding conditions.

(f) No determination pursuant to paragraph (a) of this section will be valid unless provided to the subject U.S. person in writing and signed by an official no less senior than Deputy Assistant Secretary of the Treasury for Investment Security.

Note 1 to § 851.502: The process and related information for national interest exemption requests is available on the Department of the Treasury's Outbound Investment Security Program website.

§ 851.503 Intelligence activities exemption.

Transactions undertaken as part of any authorized intelligence activities of the United States shall not be regulated or prohibited, directly or indirectly, by this part.

Subpart F—Violations

§ 851.601 Taking actions prohibited by this part.

The taking of any action prohibited by this part is a violation of this part.

§ 851.602 Failure to fulfill requirements.

Failure to take any action required by this part, and within the time frame and in the manner specified by the regulations in this part, as applicable, is a violation of the regulations in this part.

§ 851.603 Misrepresentation, concealment, and omission of facts.

With respect to any information submission to or communication with the Department of the Treasury pursuant to any provision of this part, the making of any materially false or misleading representation, statement, or certification, or falsifying, concealing or omitting any material fact is a violation of this part.

§ 851.604 Evasions; attempts; causing violations; conspiracies.

(a) Any action that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the obligations set forth in this part is prohibited.

(b) Any conspiracy formed to violate the obligations set forth in this part is prohibited.

§ 851.605 Burden of proof.

In an enforcement action for a violation of this part, the burden of proof shall be upon the Secretary.

Subpart G—Penalties and disclosures

§ 851.701 Penalties.

(a) Section 807 of Title VIII applies to any person subject to the jurisdiction of the United States who violates, attempts to violate, conspires to violate, or causes a violation of any order, regulation, or notification requirement, or prohibition under Title VIII.

(b) A civil penalty may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any order, regulation, notification requirement, or prohibition issued under Title VIII, including any provision of this part in amounts equivalent to amounts provided for under section 206(b) of IEEPA. Those amounts are not to exceed the greater of:

(1) $250,000, as such amount is adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Pub. L. 101–410, 28 U.S.C. 2461 note); or

(2) An amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(c) The civil penalties provided for in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Pub. L. 101–410, 28 U.S.C. 2461 note). Notice of the maximum penalty which may be assessed under this section will be published in the **Federal Register** and on the Department of the Treasury's Outbound Investment Security Program website on an annual basis.

(d) The penalties available under this section are without prejudice to other penalties, civil or criminal, and forfeiture of property, available under other applicable law.

(e) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

§ 851.702 Administrative collection; referral to United States Department of Justice.

The imposition of a monetary penalty under this part creates an immediate debt due to the U.S. Government. The Department of the Treasury may take action to collect the penalty assessed

if not paid. In addition or instead, the matter may be referred to the Department of Justice for appropriate action to recover the penalty.

§ 851.703 Divestment.

(a) The Secretary may compel the divestment of a covered national security transaction in a prohibited technology.

(b) The Secretary may refer any action taken under paragraph (a) of this section to the Attorney General to seek appropriate relief to enforce such action, including divestment or other relief.

§ 851.704 Voluntary self-disclosure.

(a) Any person that has engaged in conduct that may constitute a violation of this part may submit a voluntary self-disclosure of that conduct to the Department of the Treasury.

(b) In determining the appropriate response to any violation, the Department of the Treasury will consider the submission and the timeliness of any voluntary self-disclosure.

(c) In assessing the timeliness of a voluntary self-disclosure, the Department of the Treasury will consider whether it has learned of the conduct prior to the voluntary self-disclosure. The Department of the Treasury may consider disclosure of a violation to another government agency other than the Department of the Treasury as a voluntary self-disclosure based on a case-by-case assessment.

(d) Notwithstanding paragraphs (a) through (c) of this section, identification to the Department of the Treasury of conduct that may constitute a violation of this part may not be assessed to be a voluntary self-disclosure in one or more of the following circumstances:

(1) A different party has provided a prior disclosure to the Department of the Treasury of the conduct or similar conduct related to the same pattern or practice, regardless of whether the disclosing person knew of the different party's prior disclosure;

(2) The disclosure includes materially false or misleading information;

(3) The disclosure, when considered along with supplemental information timely provided by the disclosing person, is materially incomplete;

(4) The disclosure is not self-initiated, including when the disclosure results from a suggestion or order of a Federal or state agency or official;

(5) The disclosure is a response to an administrative subpoena or other inquiry from the Department of the Treasury or another government agency;

(6) The disclosure is made about the conduct of an entity by an individual in such entity without the authorization of such entity's senior management; or

(7) The filing is made pursuant to a required notification under this part, including § 851.403 or § 851.406.

(e) A voluntary self-disclosure to the Department of the Treasury must take the form of a written letter submitted through the electronic Outbound Notification System and addressed to the Assistant Secretary for Investment Security describing the conduct that may constitute a violation and each of the persons involved. Specifically, the letter must include, or be followed within a reasonable period by supplemental information that contains sufficient detail to afford a complete understanding of the conduct that may constitute the violation, including;

(1) Whether the relevant covered national security transaction (or transactions) was in a notifiable technology or prohibited technology, with reference to the relevant paragraph of § 851.218 or § 851.226;

(2) The date or dates on which the conduct occurred;

(3) The parties to the transaction(s);

(4) Whether any of the parties have established programs or protocols aimed at compliance with the regulations in this part;

(5) A description of any pre-transaction diligence undertaken by the U.S. person, including, as applicable, any steps described in § 851.104(c);

(6) A statement of the reason why the transaction was undertaken in light of the regulations in this part; and

(7) A proposal for mitigation of any harms associated with the violation, which may include divestment or a voluntary disgorgement of profits.

(f) A person making a voluntary self-disclosure must respond to any follow-up inquiries by the Department of the Treasury within the time frame and in the manner specified by the Department of the Treasury.

Subpart H—Provision and Handling of Information

§ 851.801 Confidentiality.

(a) Except to the extent required by law or otherwise provided in paragraph (b) of this section, any information or documentary materials not otherwise publicly available that are submitted to or filed with the Department of the Treasury under this part, including in connection with a compliance inquiry or action under subpart F of this part, shall be exempt from disclosure under 5 U.S.C. 552(b)(3), and no such material may be made public.

(b) Notwithstanding paragraph (a) of this section, except to the extent prohibited by law, the Department of the Treasury may disclose information or documentary materials that are not otherwise publicly available, subject to appropriate confidentiality and classification requirements, when such information is or documentary materials are:

(1) Relevant to any judicial or administrative action or proceeding;

(2) Provided to Congress or to any duly authorized committee or subcommittee of Congress;

(3) Important to the national security analysis or actions of the Secretary to any domestic governmental entity, or to any foreign governmental entity of a U.S. ally or partner, only to the extent necessary for national security purposes;

(4) The identity of a covered foreign person in any public database established under section 805 of Title VIII;

(5) Information that the submitting or filing parties have consented to be disclosed to non-parties; or

(6) Gathered by the Secretary or the Secretary's designee where the disclosure is determined by the Secretary or the Secretary's designee to be in the national interest, which may include publication of anonymized data.

§ 851.802 Language of information.

All materials or information submitted or filed with the Department of the Treasury under this part shall be submitted in English. If supplementary or additional materials were originally written in a foreign language, they shall be submitted in their original language. Where English versions of those documents exist, they shall also be submitted.

Subpart I—Non-binding Feedback

§ 851.901 Eligibility to request feedback.

(a) This subpart establishes procedures by which an eligible person may request non-binding feedback from the Department of the Treasury as to whether a transaction would constitute a prohibited transaction under this part.

(b) Only a person with a direct financial interest in the subject transaction may submit a request under this subpart.

(c) The transaction that is the subject of the request must be an actual—not hypothetical—transaction and involve only prospective conduct (*i.e.*, conduct that has not yet occurred). An executed contract is not required, but the material terms of the prospective transaction must be identified in a binding written agreement or other binding document to demonstrate that the transaction is not hypothetical.

Note 1 to § 851.901: Because feedback may only be requested for prospective conduct, submission of a voluntary self-disclosure under § 851.704 does not constitute a request under this subpart.

§ 851.902 Submission requirements.

(a) A request for non-binding feedback must be submitted in writing.

(b) A request must be submitted in accordance with the instructions found on the Department of the Treasury's Outbound Investment Security Program website or as otherwise specified by the Department of the Treasury.

(c) A request must address a single transaction.

(d) A request must include all relevant and material information bearing on whether the subject transaction would constitute a prohibited transaction, including:

(1) Identification of the requester and any other persons joining in the request, including name, address, place of incorporation or organization (if applicable), principal place of business, citizenship, and points of contact;

(2) Identification of each party to the transaction (including relevant intermediaries, financing sources, and controlled foreign entities), and each covered foreign person, if known;

(3) A detailed description of the contemplated structure of the transaction, including the form of investment, governance and information rights, timing, and completion date;

(4) A detailed description of the products, services, technologies, or activities implicated by the transaction and the basis for the requester's view as to whether such products, services, technologies, or activities may constitute prohibited technology;

(5) All operative documents and material term sheets, draft agreements, side letters, and other written materials reflecting the contemplated transaction, as available at the time of submission;

(6) Any other information that the requester believes is relevant to the application of this part to the transaction, including any prior submissions to the Department of the Treasury under this part or part 850 of this chapter concerning the same or closely related transaction, or any other information that may be material to the subject transaction; and

(7) A statement as to whether the requester seeks:

(i) Anonymized guidance to the public; or

(ii) Confidential non-binding feedback provided to the requester.

(e) A request must be signed by an authorized representative of the requester or by counsel expressly authorized in writing to sign on the requester's behalf and the signer must certify

(1) That the request contains a true, correct, and complete disclosure of all material facts and circumstances known to the requester at the time of submission; and

(2) That the requester will promptly supplement the request if the requester learns of material changes to facts stated in the request or omissions therefrom.

(f) A requester may identify in its submission any information that it considers proprietary or identifying to assist in the event anonymized guidance is issued to the public.

§ 851.903 Additional information; completeness.

(a) If a request does not contain all information the Department of the Treasury deems necessary to review the matter, the Department of the Treasury may request additional information or documents, or a meeting with the requester and any other relevant parties to the transaction.

(b) Failure to provide requested information within the time frame specified by the Department of the Treasury may result in the closing of the request without providing feedback.

(c) A request will not be deemed complete until the Department of the Treasury receives all additional information it has requested.

Note 1 to § 851.903: The Department of the Treasury may request additional information from other relevant parties to conduct its analysis.

§ 851.904 Issuance of non-binding feedback.

(a) Receipt of a complete request for non-binding feedback by an eligible person under this subpart does not obligate the Department of the Treasury to issue such feedback.

(b) The Department of the Treasury may, in its sole discretion, respond to a complete request by providing anonymized public guidance, issuing confidential, written non-binding feedback stating the Department of the Treasury's view as to whether the transaction, as described, would constitute a covered national security transaction in a prohibited technology, or declining to provide feedback. When providing feedback, the Department of the Treasury may, in its sole discretion, respond to some, but not all, of the questions or information provided by the requestor (*e.g.*, non-binding feedback limited to whether the foreign person is a covered foreign person).

(c) No oral clearance, release, or other statement purporting to provide non-binding feedback under this subpart may be given.

(d) Non-binding feedback does not express the Department of the Treasury's views on any legal or factual issues that may arise under other statutes or regulations, or before any other department or agency.

(e) Non-binding feedback may be invalidated, modified, or revoked by the Department of the Treasury at any time, including if it was based on inaccurate, incomplete, or outdated information.

§ 851.905 Effect of non-binding feedback.

(a) Any non-binding feedback issued under this subpart is not binding on the Department of the Treasury, any other Federal or local department or agency, or any court; does not constitute an authorization, license, exemption, or waiver; and does not preclude the Department of the Treasury from taking any action authorized by law with respect to the transaction, the requester, or any other person.

(b) In determining an appropriate response to a potential violation under this part, the Department of the Treasury may consider, among other factors, whether the requester sought and reasonably acted consistent with non-binding feedback, provided that the requester made a true, correct, and complete disclosure of all material facts and circumstances known to the requester at the time of submission.

§ 851.906 Anonymized public guidance.

Anonymized public guidance issued pursuant to this subpart may take the form of answers to frequently asked questions, standalone regulatory guidance, or anonymized versions of the feedback provided to a requestor.

§ 851.907 Limitations; frivolous feedback requests.

(a) In establishing and administering processes under this subpart, the Department of the Treasury may reject or otherwise limit any request identified as frivolous. The Department of the Treasury may identify a request as frivolous in its sole discretion and based on a totality of the circumstances, including whether the request:

(1) Lacks sufficient detail or supporting materials to permit meaningful review;

(2) Duplicates, without material change, a prior request by the same requester;

(3) Seeks general advisory views or policy guidance not specific to the transaction described;

(4) Is submitted in bad faith, for purposes of delay, harassment, or to burden the Department of the Treasury; or

(5) Otherwise fails to further the administration or enforcement of this part.

(b) The Department of the Treasury, in its sole discretion, may place limitations on a requester that submits a frivolous request. Such limitations may include declining to accept the request, closing the request, requiring consolidation of multiple requests, limiting the number of requests submitted by a requester within a specified period, or requiring pre-submission consultation, as specified by the Department of the Treasury through public notice or instructions published on the Department of the Treasury's Outbound Investment Security Program website.

§ 851.908 Signature requirement.

Confidential non-binding feedback must be signed by the Assistant Secretary of the Treasury for Investment Security, a Deputy Assistant Secretary for Investment Security, or another official acting pursuant to § 851.1101 or other applicable delegation.

Subpart J—Information on Covered Foreign Persons

§ 851.1001 Confidential submission of information on covered foreign persons.

(a) Any person may submit information, including supporting documents, to the Department of the Treasury regarding whether a foreign person is a covered foreign person engaged in a prohibited technology or in a notifiable technology. Submission instructions are available on the Department of the Treasury's Outbound Investment Security Program website.

(b) A person submitting information must include their:

(1) Full legal name (last, first, middle name);

(2) Occupation or line of work, including name of employer (if any); and

(3) Contact information.

(c) The submission must include the following information, as applicable, and to the best of the submitter's ability, about the foreign person that is the subject of the confidential submission:

(1) Name, including any known aliases;

(2) Principal place(s) of business;

(3) Place of incorporation or legal organization;

(4) Company address(es);

(5) Company website;

(6) Any information regarding the foreign person's nationality (if an individual) or ownership (if an entity), including the foreign person's ultimate owner, and the full legal names and titles of each officer, director, and other member of management of the foreign person;

(7) The notifiable technology or prohibited technology in which the foreign person is engaged by reference to the relevant paragraph under § 851.218 or § 851.226, as appropriate; and

(8) Any other information that the submitter believes would assist the Department of the Treasury to analyze and understand the information submitted.

(d) The submission must also include an explanation regarding how the submitter determined or discovered that the foreign person is engaged in a prohibited technology or a

notifiable technology. If the explanation refers to specific documents or other materials, the submitter should, if possible, provide such documents or materials as part of the submission.

(e) The Department of the Treasury may contact the submitter with follow-up inquiries regarding the submission.

(f) The Department of the Treasury, in its sole discretion, may place limitations on a person that makes frivolous or bad faith submissions of information. Such limitations may include prohibiting the person from making additional submissions or limiting the number of submissions that may be made within a specified period.

Subpart K—Other Provisions

§ 851.1101 Delegation of authorities of the Secretary of the Treasury.

Any action that the Secretary is authorized to take pursuant to Title VIII may be taken by the Assistant Secretary of the Treasury for Investment Security or their designee or by any other person to whom the Secretary has delegated the authority so to act, as appropriate.

§ 851.1102 Amendment, modification, or revocation.

(a) Except as otherwise provided by law, the Secretary, in consultation with the Secretary of Commerce, the Secretary of State, and, as appropriate, the heads of other relevant Federal departments and agencies, may amend, modify, or revoke provisions of this part at any time.

(b) Except as otherwise provided by law, any instructions, orders, forms, regulations, or rulings issued pursuant to this part may be amended, modified, or revoked at any time.

(c) Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in this part does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such instructions, orders, forms, regulations, or rulings pursuant to this part continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 851.1103 Severability.

The provisions of this part are separate and severable from one another. If any of the provisions of this part, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

§ 851.1104 Reports to be furnished on demand.

(a) Any person is required to furnish under oath, in the form of reports or otherwise, at any time as may be required by the Department of the Treasury, complete information regarding any act or transaction subject to the provisions of this part, regardless of whether such act or transaction is effected pursuant to a national interest exemption under § 851.502. Except as provided otherwise, the Department of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of any books, contracts, letters, papers, and other hard copy or electronic documents relating to any matter under investigation, regardless of whether any report has been required or filed under this section.

(b) For purposes of paragraph (a) of this section, the term *document* includes any written, recorded, or graphic matter or other means of preserving thought or expression (including in electronic format), and all tangible things stored in any medium from which information can be processed, transcribed, or obtained directly or indirectly.

(c) Persons providing documents to the Department of the Treasury pursuant to this section must do so in a usable format agreed upon by the Department of the Treasury.

Christopher M. Pilkerton,

Assistant Secretary for Investment Security.

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