

Treasury Seeks to Bar Investments in Foreign Super Intelligence Developers

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The U.S. Department of the Treasury (Treasury) has proposed rules that would bar U.S. persons from investing in covered foreign persons that develop any super intelligence (SI) system. Under proposed Section 851.208, a covered foreign person is defined by its ties to a country of concern, such as China. It includes entities organized or principally based in a country of concern, and that country's citizens and government. It also includes entities owned at least 50 percent by, or controlled by, such persons. Treasury's Office of Investment Security issued the proposal under the Comprehensive Outbound Investment National Security (COINS) Act. SI is the term Executive Order 14434 directs agencies to use in place of AI in certain documents. The proposal would replace part 850's approach, under which an AI deal could be prohibited, notifiable or not covered depending on training compute and end use. It was published Oct. 26, 2026, at 91 FR 67396 (Docket No. TREAS-DO-2026-0595, RIN 1505-AC94). It would add a new Part 851 to Title 31 of the Code of Federal Regulations. Comments are due Dec. 7, 2026.¹

Takeaways

- Under the proposal, compute and end use would no longer determine how an AI deal is treated. A covered transaction under proposed Section 851.208 with a covered foreign person that develops any SI system would be prohibited absent an exception or exemption. Deals now treated as notifiable, or as outside part 850, warrant review against that test.
- Diligence should capture how a target uses third-party models. Under the proposal, adding an agentic layer to a third-party model counts as development. Fine-tuning a model purely for internal, noncommercial use does not, on its own. Diligence questionnaires and representations can be drafted to capture that distinction.
- Comments on the proposal are due Dec. 7, 2026. Treasury has asked for comments on the scope of the SI prohibition and on alternative approaches, supported by data where possible.
- Compliance under the current part 850 tiers remains relevant. Part 850 would continue to govern activities from Jan. 2, 2025, until the final rule takes effect. Treasury also preserves enforcement of part 850 violations.

Background

The COINS Act puts Treasury's outbound investment program on a statutory footing and expands its reach. Subtitle C of the Act was enacted Dec. 18, 2025, as part of the fiscal 2026 National Defense Authorization Act. It added Title VIII to the Defense Production Act, Sections 4581-4589 of Title 50 of the U.S. Code. Title VIII gives a statutory basis to the program Treasury built under Executive Order 14105 and the part 850 rules, in effect since Jan. 2, 2025. Treasury reports about 100 notifications under those rules. Title VIII adds high-performance computing and hypersonics as covered sectors. Using its authority to designate additional technologies, Treasury would also add biotechnology. Title VIII also adds Cuba, Iran, North Korea, Russia and Venezuela under the

Maduro regime as countries of concern, alongside China (which includes Hong Kong and Macau). Treasury notes that the Maduro regime no longer exists.¹

Treasury issued the proposal on Oct. 22, 2026,¹ and filed it for public inspection on Oct. 23, 2026.² The proposal also adopts the new SI terminology. Following Executive Order 14434 of Sept. 29, 2026 (91 FR 63129), proposed Section 851.232 defines an SI system where part 850 defined an AI system.¹

Analysis

From compute tiers to a categorical prohibition

The proposal drops part 850's compute-based tiers because Treasury no longer sees compute as a reliable measure of capability. Part 850 sorted AI transactions into prohibited, notifiable or not covered according to training compute and the system's designed and intended end uses. Treasury reasons that models now also gain capability in other ways. These include synthetic data, more efficient algorithms or architectures, post-training techniques and greater inference-time compute (computation used when a model runs rather than when it is trained). As a result, "no single measure, benchmark, or threshold is currently sufficient to distinguish advanced models." Treasury adds that general-purpose models make end uses harder to isolate. Proposed Section 851.226(h) therefore includes the development of any SI system in the definition of "prohibited technology." Proposed Section 851.218, which defines "notifiable technology," contains no SI item.¹

What counts as developing an SI system

The proposed definition of an SI system is broad. Under proposed Section 851.232, an SI system is a machine-based system that can, for human-defined objectives, generate content or make predictions, recommendations or decisions. The term also covers any software, hardware, application or tool that runs in whole or in part on such a system. That includes an SI agent harness (the software layer that lets a model carry out multistep tasks autonomously). It also includes SI-enabled robots and autonomous vehicles.¹

The proposal separates enhancing a third-party model, which counts as development, from merely using one. Under proposed Section 851.226(h)(1), a covered foreign person develops an SI system built on a third-party model when it enhances or extends that model's capability. Building an agentic harness layer on the model is one example. Under proposed Section 851.226(h)(2), using an off-the-shelf third-party system strictly for internal, noncommercial purposes is not development on that basis alone. That exclusion covers fine-tuning (further training a model on narrower data) for internal use rather than for sale or licensing. Treasury says this language generally tracks clarifying notes in part 850. The proposal would also broaden the definition of "develop." It would cover work done through or with affiliates. It would also cover high-level oversight, direction or strategic planning before serial production.¹

Exceptions, exemptions and comment requests

Most exceptions from the definition of a covered national security transaction would remain, but the new de minimis exception would not cover SI deals. Excepted transactions would include investments in publicly traded securities and limited partner commitments of \$2 million or less to certain non-U.S. funds. The proposal would add a \$50,000 de minimis exception, but it would reach

only transactions that would otherwise be notifiable. Proposed Section 851.502 would let the Treasury secretary exempt a transaction found to be in the national interest. The secretary would act in coordination with the Departments of Commerce and State and other agencies as appropriate. The secretary would notify congressional committees of an exemption within five business days. Treasury seeks comment on the breadth of the SI prohibition and on the SI definition. That includes alternatives and the effect on U.S. businesses and consumers.¹

Endnotes

1. Department of the Treasury, Office of Investment Security, Outbound Investment Security Program Regulations, Proposed Rule, 91 FR 67396 (Oct. 26, 2026), FR Doc. 2026-21786, available at <https://www.govinfo.gov/content/pkg/FR-2026-10-26/pdf/2026-21786.pdf>.
2. Federal Register Public Inspection, FR Doc. 2026-21786 (filed Oct. 23, 2026, 8:45 a.m.; publication date Oct. 26, 2026), available at <https://public-inspection.federalregister.gov/2026-21786.pdf>.