

§ 850.502

31 CFR Ch. VIII (7–1–25 Edition)

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 interests in an entity held by one or more persons of a country of concern; *provided that*:

(1) The U.S. person is acquiring all equity or other interests in such entity held by all persons of a country of concern; and

(2) Following such acquisition, the entity does not constitute a covered foreign person;

(c) A transaction that, but for this paragraph, would be a covered transaction between a U.S. person and its controlled foreign entity that supports operations that are not covered activities or that maintains covered activities that the controlled foreign entity was engaged in prior to January 2, 2025;

(d) A transaction made after January 2, 2025, pursuant to a binding, uncalled capital commitment entered into before January 2, 2025;

(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; or

(g)(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 the Order 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 (g), the Secretary shall consult with the Secretary of State, the Secretary of Commerce, and, as appropriate, the heads of other relevant agencies.

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

(4) The Secretary may rescind a designation or determination under paragraph (g)(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.

§ 850.502 National interest exemption.

(a) The Secretary, in consultation with the Secretary of Commerce, the Secretary of State, and the heads of relevant agencies, as appropriate, may determine that a covered transaction is in the national interest of the United States and therefore is exempt from applicable provisions in subparts C and D of this part (excluding §§ 850.406, 850.603, and 850.604). 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; United States' 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) A U.S. person seeking 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 referred to in § 850.203. 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 § 850.405.

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

(e) 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 the Assistant Secretary or Deputy Assistant Secretary of the Treasury for Investment Security.

NOTE 1 TO § 850.502: A process and related information for exemption requests will be made available on the Department of the Treasury's Outbound Investment Security Program website.

§ 850.503 IEEPA statutory exception.

Conduct referred to in 50 U.S.C. 1702(b) shall not be regulated or prohibited, directly or indirectly, by this part.

Subpart F—Violations

§ 850.601 Taking actions prohibited by this part.

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

§ 850.602 Failure to fulfill requirements.

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

§ 850.603 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.

§ 850.604 Evasions; attempts; causing violations; conspiracies.

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

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

Subpart G—Penalties and Disclosures

§ 850.701 Penalties.

(a) Section 206 of IEEPA 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 prohibition issued by or