

# CFIUS 2026 Kickoff: A Three-Event Countdown Reshaping Foreign Investment Risk

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The Treasury Department is entering 2026 with a more assertive and coordinated posture on both inbound and outbound capital. The administration's first presidential divestment order of the year, the push to strengthen scrutiny of foreign ownership of U.S. agricultural land (with implications for infrastructure sited on farmland), and the codification and expansion of the outbound investment regime collectively underscore a more far-reaching national security framework for cross-border investment. Taken together, these developments underscore the importance of incorporating Committee on Foreign Investment in the United States (CFIUS) and related national security reviews into a transaction from the outset.

### **#3: Agricultural Foreign Investment Disclosure Act (AFIDA) Rulemaking Sharpens Efforts to Promote National Security**

Agriculture has become a recurring flashpoint in the national security debate, including at the state level, where several legislatures have proposed or enacted restrictions on land purchases by certain foreign buyers. Policymakers are increasingly focused on who ultimately owns or controls U.S. land located near military installations, critical infrastructure, and strategic food and energy assets.

Against this backdrop, on December 29, 2025, the U.S. Department of Agriculture (USDA) issued a proposed rule under 7 C.F.R. Part 781, *Agricultural Foreign Investment Disclosure Act: Revisions to Reporting Requirements*, to update reporting obligations under AFIDA. The proposal would expand USDA's information collection in several key ways: (i) requiring more detailed disclosure of indirect foreign ownership, particularly in complex organizational structures; (ii) revisiting and potentially broadening the definition of a reportable "interest" to capture, for example, certain security interests and leases of less than 10 years; and (iii) enhancing the level of detail required to describe the property, including its location and characteristics, to ensure more accurate and actionable data.

The proposed rule does not change AFIDA's underlying statutory definitions or core legal obligations. Foreign "persons" — including foreign individuals, foreign entities, foreign governments, and certain U.S. entities in which foreign persons hold a "significant interest or substantial control" — must still report when they acquire, transfer, or hold an interest in U.S. agricultural land. That obligation continues to apply to land used, or intended to be used, for forestry, or that is currently used or has been used within the past five years for farming, ranching, or timber production. Small parcels of land (10 acres or less) that generate no more than \$1,000 per year in gross agricultural receipts remain outside AFIDA's reporting requirements.

For CFIUS purposes, the implications extend well beyond traditional farming and timber assets. Enhanced AFIDA data is intended to support national security reviews and deepen USDA's coordination with CFIUS, particularly in cases involving land near sensitive military, energy, and infrastructure sites. Foreign investors, especially those involved in energy transactions, are squarely implicated: utility-scale solar and wind projects, transmission corridors, battery storage sites, pipelines, LNG facilities, and other major infrastructure investments all typically rely on long-term property interests — fee ownership, leases, and easements — over significant tracts of land. As AFIDA reporting improves the government's visibility into who ultimately controls that land, foreign-backed energy and infrastructure projects located near bases, grid nodes, ports, and other critical facilities can expect closer scrutiny of both the property rights involved and the foreign investor profile, with CFIUS more likely to ask not just “who owns the company?” but “how trustworthy are these investors and what are their plans for this real estate?”

## **#2: A New Year, a New Presidential Divestment**

On January 2, President Trump [ordered](#) HieFo Corporation, a Delaware company specializing in optical semiconductor chips, to divest certain semiconductor assets it [acquired](#) from EMCORE Corporation, following a CFIUS review that identified unresolved national security risks related to sensitive chip technology and potential foreign access to critical know-how and supply chains. This divestment is not President Trump's first since taking office last year. On July 8, 2025, he also [ordered](#) the unwinding of the acquisition of Jupiter Systems, a U.S. provider of display and visualization products used in sensitive environments, by Chinese-owned Suirui International Co., Limited.

Although HieFo is a U.S.-incorporated company, the divestment order finds that it is “controlled by a citizen of the People's Republic of China” and therefore qualifies as a foreign person for CFIUS purposes. The transaction occurred in April 2024, when HieFo acquired certain EMCORE assets related to chips, including wafer fabrication capabilities, for [only \\$2.9 million](#). The parties did not file the transaction with CFIUS, which came to CFIUS's attention through its non-notified monitoring team. HieFo must divest all interests and rights in the EMCORE assets, “wherever located,” within 180 days of the January 2 divestment order, unless CFIUS grants an extension.

Moreover, the divestment order imposes stringent interim controls — including restrictions on access to nonpublic technical information, facility and IT audits, and weekly compliance certifications to CFIUS. The case underscores CFIUS's non-notified enforcement posture: even relatively small, completed deals in sensitive technology areas like specialized chips can be forced to unwind post-closing.

This recent action illustrates the importance of conducting a thorough CFIUS risk analysis pre-closing, at the earliest stage possible. Even U.S.-incorporated entities controlled by foreign nationals will be treated as foreign persons and subject to CFIUS jurisdiction. This action is part of a broader pattern of heightened scrutiny around semiconductors and advanced manufacturing, with strong emphasis on IP protection, supply chain security, and continued U.S. access to key technologies.

## **#1: Beyond CFIUS: The COINS Act and Outbound Investment Controls**

Rounding out the landscape, Congress has now anchored outbound investment screening in statute. The FY 2026 National Defense Authorization Act (NDAA) incorporates the Comprehensive Outbound Investment National

Security Act of 2025 (COINS Act), which codifies and amends the Department of the Treasury (Treasury)'s existing outbound investment rule found at [31 CFR Part 850](#) and first implemented via [Executive Order 14105](#). We discuss the current rule [here](#), as well as the Trump administration's signaling early last year that it intended to expand this regulatory framework into new sectors [here](#).

The existing outbound investment rule requires the Treasury Department to prohibit, or require notification of, certain investments involving U.S. persons and semiconductors, artificial intelligence, supercomputers, quantum information systems, quantum sensing, or quantum communications or networking technologies, when those investments involve "covered foreign persons" with a nexus to a "country of concern." This existing regulatory framework was established by executive action under the President's general authorities pursuant to the International Emergency Economic Powers Act (IEEPA).

The COINS Act codifies the outbound investment framework under the Defense Production Act and broadens its reach in some respects, while also expanding some of the exceptions. Perhaps the most significant change is that the new statute authorizes the definition of "covered foreign person" to be expanded beyond China, Hong Kong, and Macau to also encompass Cuba, Iran, North Korea, Russia, and Venezuela (the Maduro regime). While very little covered technology activity occurs in those countries or by their companies globally, this expansion will nonetheless require companies and investors to consider this broader scope in diligence, agreement terms, etc. The COINS Act also expands the types of foreign entities that are covered to include those that may be less than 50% owned by covered persons, but are nonetheless subject to their "direction or control," presenting less of a clear line and a potential diligence challenge. Furthermore, it extends the existing rule to reach U.S. persons' "knowingly directing" (e.g., as an officer or director, or senior employee) notifiable transactions by non-U.S. persons, adding to the current prohibition on U.S. persons' knowingly directing prohibited transactions. On the technology side, the COINS Act authorizes an expansion of coverage, subject to executive branch policy determinations, to include hypersonic systems. The Act also calls for new exceptions to be added, including for de minimis activities (to be defined by Treasury) and secondary transactions (such as temporarily acquiring equity solely for the purpose of providing underwriting services). The COINS Act authorizes the creation of a nonexhaustive list of covered foreign persons that are subject to these investment restrictions (as well as a channel to seek removal from that list). Finally, it requires Treasury to set up a process to request nonbinding, confidential guidance about transactions that are envisioned, which will be a great relief for certain investors seeking clarity in unusual situations. There is other language in the statute that largely repeats what is already in the regulations, as well as some language that differs from the current regulations, but many have questioned whether these may have been congressional drafting errors. For now, the current regulations remain in force, and Treasury has 450 days from the enactment of the COINS Act to issue amended regulations.

Together with CFIUS, COINS signals a two-way gate: inbound and outbound capital flows in critical technology sectors will be regulated as complementary national security tools.

### **Moving Forward in the New Year**

For companies seeking foreign capital — particularly from investors with ties to countries of concern or in sensitive sectors (including certain investments in agricultural land) — these developments collectively raise the bar on diligence, structuring, and compliance.

At the same time, the COINS Act signals that outbound investment regulation is here to stay, with an enduring statutory framework, and that the direction of travel is an expanding regulatory scope. Going into the new year, deal parties should consider careful regulatory analysis when foreign parties are involved.

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