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BUREAU OF INDUSTRY AND SECURITY

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# U.S.-Finland Defense Cooperation

U.S.-Finland Defense and Security Industry Day  
February 26, 2020

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Strategic Analysis Division  
Office of Strategic Industries and Economic  
Security

# Topics



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- Export Control Updates
- CFIUS/FIRRMA Updates
- Defense Priorities and Allocations System (DPAS)/Security of Supply

# Export Control Reform Act of 2018



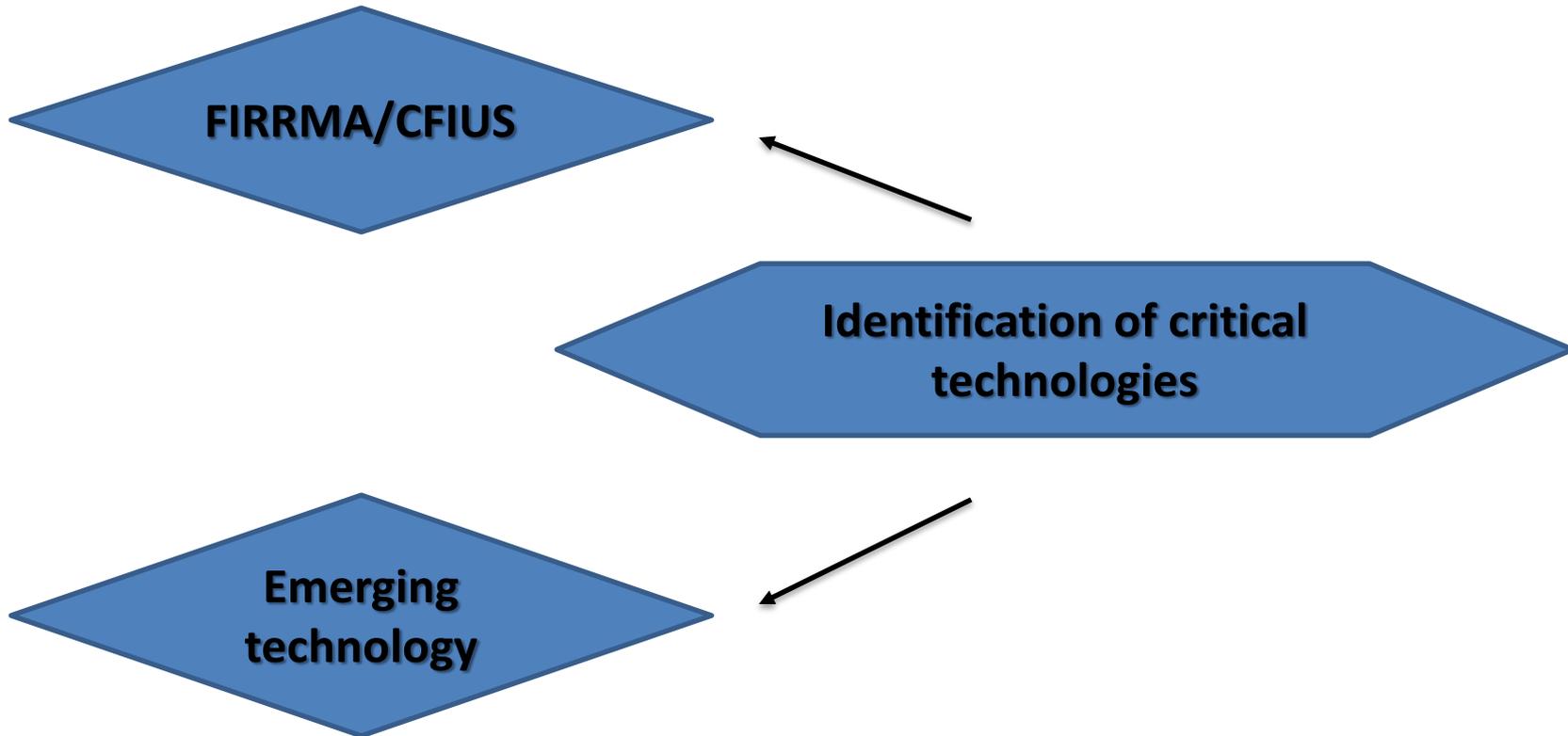
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- Signed into law August 13, 2018
- “ECRA” – within H.R. 5515 – The John S. McCain National Defense Authorization Act of FY19

# ECRA Section 1758



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- \* Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA)
- \* The Committee on Foreign Investment in the United States (CFIUS)

# Emerging Technology



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- Advance Notice of Proposed Rulemaking publishing 11/19/18 (83 FR 58201)
- 230 public comments
- 14 broad representative technology categories, including:
  - (i) biotechnology; (ii) artificial intelligence; (iii) Position, Navigation, and Timing (PNT) technology; (iv) microprocessor technology; (v) advanced computing technology; (vi) data analytics technology; (vii) quantum information and sensing technology; (viii) logistics technology; (ix) additive manufacturing; (x) robotics; (xi) brain-computer interfaces; (xii) hypersonics; (xiii) advanced materials; and (xiv) advanced surveillance technologies.

# Emerging Technology Cont.



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## New Controls

- nucleic acid assemblers and synthesizers; Implementation of the February 2017 Australia Group (AG) Decisions rule; published 4/2/18 (83 FR 13849)
- discrete microwave transistors, continuity of operation software, postquantum cryptographic algorithms, underwater transducers designed to operate as hydrophones, and aircraft specially designed or modified to be air-launch platforms; Wassenaar Arrangement (WA) 2018 rule published 5/23/19 (84 FR 23886)
- Addition of Software Specially Designed to Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series; Interim Final Rule published 1/6/2020 (85 FR 459)

# WA 19 Implementation...

## *Coming Soon*



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### **Statement Issued by the Plenary Chair on 2019 Outcomes of the WA...**

In 2019 WA Participating States, among other things,

- adopted new export controls in a number of areas, such as cyber-warfare software, communications monitoring, digital investigative tools/forensic systems, sub-orbital aerospace vehicles, technology for the production of substrates for high-end integrated circuits, hybrid machine tools, and lithography equipment and technology; further clarified existing controls regarding ballistic protection, optical sensors, ball bearings, and inorganic fibrous and filamentary materials; and relaxed some controls, including with respect to certain laminates and commercial components with embedded cryptography;

### **ANPRM seeking public comment on Emerging Technologies (83 FR 58201)**

Representative technology categories... include:

- (i) biotechnology; (ii) artificial intelligence; (iii) Position, Navigation, and Timing (PNT) technology; (iv) microprocessor technology; (v) advanced computing technology; (vi) data analytics technology; (vii) quantum information and sensing technology; (viii) logistics technology; (ix) additive manufacturing; (x) robotics; (xi) brain-computer interfaces; (xii) hypersonics; (xiii) advanced materials; and (xiv) advanced surveillance technologies.

# Foundational Technology



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- Mature technologies or technologies that have been reviewed for classification
- Considers whether changes in control are necessitated by evolving threats

# Committee on Foreign Investment in the U.S.



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- The Committee on Foreign Investment in the United States (CFIUS) reviews foreign acquisitions of U.S. businesses that have a potential link to national security
- The Department of Commerce is a statutory member of CFIUS, chaired by Treasury
- The Bureau of Industry and Security is one of two bureaus within Commerce that review all CFIUS filings, along with the International Trade Administration

# CFIUS Developments



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- In August 2018, as part of the FY19 NDAA, the Foreign Investment Risk Review Modernization Act (FIRRMA) was enacted
- FIRRMA gives CFIUS authority to review new kinds of activities that do not result in control of a U.S. business
- These include certain non-controlling investments in U.S. companies involved in critical technologies, critical infrastructure, and sensitive personal data; as well as certain real estate transactions near sensitive government facilities

# FIRRMA Pilot Program



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- In November 2018, CFIUS established a pilot program as authorized by FIRRMA to begin reviewing non-controlling investments in U.S. companies involved in critical technologies
- Parties subject to these transactions are required submit a mandatory “declaration” to CFIUS
- CFIUS has received over 150 declarations under the pilot program

# FIRRMA Implementation



- FIRRMA required that its provisions be enacted no later than 18 months after its passage
- Treasury, as CFIUS chair, issued final regulations on FIRRMA on January 13 that went into effect on February 13
- Treasury issued proposed rules in September 2019 and received public comments, which were addressed in the final regulations
- The expanded scope authorized under FIRRMA will result in a substantial increase in transactions reviewed by CFIUS

# FIRRTMA Regulations



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- In addition to expanding CFIUS's scope, the final regulations implementing FIRRTMA also included other new provisions/concepts
- Codified the Pilot Program with minor changes
- Includes a requirement for mandatory declarations for certain transactions where a foreign government has a "significant interest"
- Includes a list of "excepted countries" – Australia, Canada, the United Kingdom
  - If an investor from those countries meet the requirements in the CFIUS regulations, they can be exempt from filings related to non-controlling and real estate transactions

# FIRRMA



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- FIRRMA did expand CFIUS's jurisdiction, but the law also made clear that the United States still welcomes foreign investment
- The majority of CFIUS cases are still cleared without mitigation
- FIRRMA also gives expanded options for declarations or "short form" filings for transactions that are less likely to pose national security concerns
- FIRRMA also encourages more international engagement on investment screening issues

# U.S.-Finland Security of Supply Arrangement



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- In 2009, the United States and Finland concluded a Security of Supply Arrangement
- The Security of Supply (SoS) Arrangement establishes a process for requesting priority acceptance and performance of contracts, subcontracts, and purchase orders for industrial resources to address national defense needs.
  - Assistance can be requested by government or industry.
  - Not limited to crises, emergency, or armed conflict.
  - Designates points of contact in each government to respond to issues/requests.
- The SoS Arrangement provides U.S. assurance of meeting requests through the Defense Priorities and Allocation System (DPAS)

# Defense Priorities and Allocations System



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- The DPAS is a regulation administered by the U.S. Department of Commerce (Commerce).
  - The DPAS is used to prioritize national defense-related contracts or orders throughout the U.S. supply chain for industrial resources in order to support military programs, energy programs, homeland security, emergency preparedness, and critical infrastructure.
  - The DPAS can also be used to provide military or critical infrastructure assistance to foreign nations.
  - U.S. companies are required by law to accept “rated orders” and provide preferential scheduling if necessary to meet required delivery date(s).

# Defense Priorities and Allocations System



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- Commerce has delegated the authority to place priority ratings on contract/orders (“rated orders”) necessary or appropriate to promote the national defense to the DoD.
  - DoD uses DPAS authority on approximately 300,000 contracts annually.
  - Commerce and DoD estimate that, in addition, approximately 400,000 rated orders are “flowed down” annually through the supply chain to support those rated orders.
  - Orders through DoD’s Foreign Military Sales program are rated.
  - Direct commercial sales are not rated unless authorized by Commerce.

# Defense Priorities and Allocations System



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- Commerce may authorize foreign governments, international organizations, and foreign contractors, subcontractors, and suppliers to place rated orders on a case-by-case basis.
  - Before Commerce can provide authorization, DoD must approve and endorse the request.
- A rated order placed by an authorized foreign partner has the same status as a rated order placed by an authorized U.S. agency or person.

# Foreign Basis for Assistance



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- Finnish MoD uses best efforts to address U.S. delivery issues when a problem arises.
- The Finnish MoD and the Association of Finnish Defence & Aerospace Industries signed a Code of Conduct to codify these best efforts in October 2009.
  - Foreign companies will make best effort to provide preferential scheduling when needed to meet required delivery date(s).
- Finnish MoD also will contact a company that is not a member of the Code of Conduct to request accommodation.

# Security of Supply Arrangement Benefits



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- Requests from foreign partners that do not have a SoS Arrangement must be determined by DoD to benefit U.S. national defense.
  - Determination is based on a case-by-case review.
- Requests from foreign partners that do have a SoS Arrangement are, to the greatest extent possible, automatically sponsored/approved.

# Security of Supply Arrangement Benefits



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- Acknowledgement of globalization of defense industry/supplier base
- Supports the ability of each country's industry to supply defense articles/services
- Increases attractiveness of procuring/teaming with industries in partner nations
  - Companies can offer participation in a priority support system as an indication of their reliability in providing defense articles/services to the foreign purchaser or team member



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# ***QUESTIONS?***