

July 9, 2019

FAQs on the Foreign Investment Risk Review Modernization Act (FIRRMA) and the CFIUS Pilot Program

Advisory

By John P. Barker, John B. Bellinger, III, Charles A. Blanchard, Ronald D. Lee, Nancy L. Perkins, Nicholas L. Townsend

I. CFIUS's Expanded Jurisdiction Under FIRRMA

1. What is CFIUS and how is it relevant to investments by funds?

CFIUS is the Committee on Foreign Investment in the United States, an interagency committee that reviews and investigates certain investments by “foreign persons” in any “U.S. business” to determine if the investment could impair U.S. national security. Both “foreign person” and “U.S. business” have broad meanings in this context. A “foreign person” includes foreign citizens, entities organized under laws other than those of the United States, and entities organized under U.S. state or federal law that are controlled by a foreign person. A “U.S. business” is any entity “engaged in interstate commerce in the United States,” regardless of the nationality of the person or persons who control it.

CFIUS has authority to recommend that the President, pursuant to Section 721 of the Defense Production Act, as amended (Section 721), block or unwind investments subject to the statute (“covered transactions”) based on concerns for U.S. national security. Many funds that are “foreign persons” invest in U.S. businesses, and where these investments constitute “covered transactions,” under Section 721, CFIUS could recommend that they be blocked or otherwise interfered with by the President.

2. What is FIRRMA and what did it change?

FIRRMA is the Foreign Investment Risk Review Modernization Act of 2018, which was enacted on August 13, 2018, as part of the National Defense Authorization Act of 2019 (NDAA). FIRRMA amended Section 721 to expand the jurisdiction of CFIUS substantially. Prior to the enactment of FIRRMA, the investments subject to CFIUS review (i.e., “covered transactions”) were limited to “[a]ny merger, acquisition or takeover . . . by or with any foreign person that could result in foreign control of any U.S. business, including such a merger, acquisition or takeover carried out through a joint venture.”

CFIUS's broader jurisdiction under FIRRMA includes the review of any “other investment” (i.e., a non-controlling investment) by a foreign person in any U.S. business that (i) owns, operates, manufactures, supplies, or services “critical infrastructure”; (ii) produces, designs, tests, manufactures, fabricates, or develops one or more “critical technologies”; or (iii) maintains or collects sensitive personal data of U.S. citizens that may be exploited in a manner that threatens national security. As discussed below, a subset of these “other investments” are now subject to mandatory CFIUS filing under CFIUS's pilot program.

Although some provisions of FIRRMA became effective immediately upon the law's enactment, the provisions expanding the types of “covered transactions” to include “other transactions” take effect considerably later—on the earlier of (i) 18 months after FIRRMA's enactment (i.e., February 13, 2020) or (ii) 30 days after publication in the Federal Register of a determination by the CFIUS Chair that the regulations, organizational structure, personnel, and other resources necessary to administer those new provisions are in place. However, as discussed

below, CFIUS currently is conducting a pilot program that imposes requirements on parties to certain “other investment” transactions.

3. How does CFIUS define “other investments”?

“Other investments” subject to CFIUS review under FIRRMA include any investment, direct or indirect, that affords the foreign person (i) access to any material non-public technical information in the U.S. business’ possession (excluding the U.S. business’ financial information); (ii) membership or observer rights on the board of directors or equivalent governing body or the right to nominate an individual to such a position; or (iii) any involvement (other than through voting of shares) in substantive decision-making of the U.S. business regarding the use, development, acquisition, safekeeping, or release of critical technologies or sensitive personal data of U.S. citizens, or regarding the management, operation, manufacture, or supply of critical infrastructure.

4. What are “critical technologies”?

FIRRMA defines “critical technologies” as including (1) defense articles and defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations (ITAR); (2) certain items controlled under the Commerce Department’s Commerce Control List of the Export Administration Regulations (EAR); (3) nuclear facilities, equipment, and material; (4) select agents and toxins; (5) and emerging and foundational technologies controlled pursuant to the Export Control Reform Act of 2018 (ECRA).

CFIUS will further define these terms through regulation, and, as discussed below, the Commerce Department will identify emerging and foundational technologies and impose restrictions on the export, reexport, and in-country transfers of such technologies. By statute, the Commerce Department must require a license for the export of emerging and foundational technologies to China and other countries subject to a U.S. embargo.

5. How do I know if my company’s technology constitutes “emerging or foundational technology”?

The scope of “emerging and foundational technologies” will be determined by an interagency process that will consider both public and classified information as well as information from the Emerging Technology Technical Advisory Committee (formerly known as the Emerging Technology and Research Advisory Committee) and CFIUS. This interagency process is anticipated to result in proposed rules for new Export Control Classification Numbers (ECCNs) on the Commerce Department’s Commerce Control List. As emerging and foundational technologies are identified and become controlled under the ECRA, they will be covered under the definition of “critical technologies” in the CFIUS regulations. CFIUS is not creating a separate definition of emerging and foundational technologies outside the interagency process outlined by the ECRA.

6. When will the process of defining “emerging or foundational technologies” occur?

It has already started. On November 19, 2018, the Commerce Department’s Bureau of Industry and Security (BIS) published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register seeking public comment on the criteria for identifying emerging technologies that are essential to U.S. national security.¹ Comments submitted on this ANPRM will help inform the interagency process to identify and describe such emerging technologies. BIS is expected to issue a separate ANPRM regarding criteria for identifying foundational technologies that may be important to U.S. national security.

¹ See 83 Fed. Reg. 58201 (Nov. 19, 2018) and 83 Fed. Reg. 64299 (Dec. 14, 2018) (extending the public comment period until Jan. 10, 2019).

7. Which technologies are likely to be identified as “emerging or foundational technologies”?

The Commerce Department’s ANPRM suggests that the emerging technologies subject to additional government regulation could include any of the following:

- (1) Biotechnology
- (2) Artificial intelligence and machine learning technology
- (3) Position, navigation and timing technology
- (4) Microprocessor technology
- (5) Advanced computing technology
- (6) Data analytics technology
- (7) Quantum information and sensing technology
- (8) Logistics technology
- (9) Additive manufacturing (e.g., 3D printing)
- (10) Robotics
- (12) Brain-computer interfaces
- (13) Hypersonics
- (14) Advanced materials
- (15) Advanced surveillance technologies

8. Will there be heightened scrutiny of investments from certain countries?

FIRRMA does not identify by name any countries from which investment will be subject to heightened scrutiny. However, the legislation encourages CFIUS, when evaluating national security risks, to consider whether a covered transaction involves a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology or critical infrastructure that would affect U.S. leadership in areas related to national security.

The legislation also directs CFIUS to define further the term “foreign person” for purposes of reviews of “other investments,” so that the scope of such reviews will depend in part on connections the investor may have with particular countries or the governments of such countries, where such connections may affect the national security of the United States.

Given the heightened sensitivity to investments from China, parties engaged in transactions involving a Chinese investor should be prepared to consider possible mitigation measures that would preclude the foreign investor’s influence over the U.S. business or exposure to sensitive information.

II. FIRRMA’s Impact on Venture Capital, Private Equity, and Other Investment Funds

1. How are investment funds affected by FIRRMA?

FIRRMA may impact the structuring of investment funds and the manner in which they structure investments and interact with their investors—particularly for (1) funds focused on investing in businesses developing any type of critical technology or critical infrastructure, or in businesses with access to sensitive personally identifiable information, (2) funds with significant investor participation from certain non-U.S. jurisdictions,

and (3) managers utilizing alternative structures or structures that provide investors with greater participation, access, and information than customary for traditional well-established funds.

FIRRMA's "other investment" provision could expand dramatically the number of transactions reviewable by CFIUS. It is not uncommon for minority, non-controlling fund investors to seek representation on a board of directors. A typical minority investment in an advanced technology company could be subject to CFIUS review under FIRRMA.

Managers of investment funds should be aware that there is no size limitation on transactions subject to FIRRMA, because of congressional concern around foreign investment in and acquisition of emerging technologies considered critical to U.S. national security. Thus, small funds and funds focused on minority and seed or other early stage investments, including as part of an accelerator or incubator, need to consider potential CFIUS implications when structuring their funds.

2. What if a foreign person's role in a fund is passive?

During the legislative process, many investment firms expressed concern that the "other investment" provision of FIRRMA would apply to virtually all of their transactions, because they have foreign investors. This resulted in a carve-out: even if a foreign person invests through a fund in a U.S. business, and, as a limited partner or the equivalent, is on an advisory board or a committee of the fund, the investment is not an "other investment" if: (i) the fund is managed exclusively by a general partner, a managing member, or an equivalent who is a U.S. person; (ii) the advisory board or committee does not have the ability to approve, disapprove, or otherwise control investment decisions of the fund, and the foreign person does not otherwise have the ability to control the fund; and (iii) the foreign person does not have access to material non-public technical information by participating on the advisory board or committee.

3. How do I determine if a fund is controlled by a "U.S. general partner or equivalent" for CFIUS purposes?

The safe harbor described in Question 2 above is available only for funds managed by a U.S. general partner or equivalent. CFIUS tends to review nationality of the general partner from both a formal (e.g., the jurisdiction of incorporation or organization of the general partner) as well as a substantive perspective (e.g., who controls the legal entity that is the general partner).

CFIUS defines "control" expansively as "the power, direct or indirect, whether exercised or not exercised, to determine, direct, or decide important matters affecting an entity." This broad definition of "control" means that fund managers need to exercise care in structuring the general partnership and in allowing anchor investors or other limited partners control over certain or all aspects of the general partnership or its investment process, including potentially removal and/or replacement provisions of the general partner or its key personnel.

4. What information can a fund provide to non-U.S. investors without triggering CFIUS concerns?

Foreign investors are permitted explicitly to receive financial information, both at the fund level and with respect to specific fund investments. Information that foreign investors are not permitted to receive—referred to as "material nonpublic technical information"—is defined as information that (i) provides knowledge, know-how, or understanding, not available in the public domain, of the design, location, or operation of critical infrastructure; or (ii) is not available in the public domain, and is necessary to design, fabricate, develop, test, produce, or manufacture critical technologies, including processes, techniques, or methods.

A wide range of information will not be either financial information or material nonpublic technical information, such as business plans and product development roadmaps. Fund managers will need to consider carefully what information rights can be provided to foreign investors in a fund without creating an “other transaction” under CFIUS jurisdiction.

III. CFIUS Procedural Changes Under FIRRMA: Declarations, Filing Fees, and Extended Review Periods

1. How have CFIUS filings changed under FIRRMA?

Previously, there was no requirement that the parties to a covered transaction notify CFIUS of the transaction. But parties to a covered transaction often chose to file voluntarily a “notice” with CFIUS, seeking CFIUS’s confirmation that the investment would not be blocked by the President. Because Section 721 permits the President to order divestiture by a foreign investor after-the-fact, it has been in the interest of parties to foreign investment transactions that have potential national security implications to file a notice with CFIUS before undertaking the transaction. Undergoing a CFIUS review is the only mechanism through which to obtain assurance that the President will not exercise his authority under Section 721 to interfere with the transaction. Filing notices with CFIUS in many (if not most) cases remains voluntary under FIRRMA. However, FIRRMA requires CFIUS to issue regulations that make it mandatory for the parties to certain transactions to file “declarations” regarding their proposed deals. Such declarations are shorter than notices to CFIUS (they may be no longer than five pages) and they must be submitted more than 45 days before the closing of the relevant transaction. Notices must provide a considerable amount of additional information on the transaction and the parties to the transaction, as specified in CFIUS’s regulations pre-existing FIRRMA. Parties submitting a declaration must use [this form](#) and follow the instructions.

Severe penalties can be imposed on parties who fail to file declarations when it is mandatory to do so. As discussed below, under interim regulations issued by CFIUS in late 2018, filing a declaration currently is mandatory with respect to any “Pilot Program Covered Transaction.” CFIUS is not currently accepting voluntary declarations.

Whether filing a declaration is mandatory or not, FIRRMA permits the parties to a covered transaction to file a notice rather than a declaration. Because declarations are less detailed and extensive than notices, and because there is no fee for filing a declaration (*see* FAQ on filing fees below), filing declarations may be an attractive option for the parties to relatively routine covered transactions that seem unlikely to implicate national security concerns. In addition, CFIUS must complete its review of a declaration within **30 days**—as opposed to the 45-day period CFIUS has to review a notice. Thus, although there is a risk that CFIUS, after reviewing a declaration, will request the parties to file a full “notice” as well (*see* FAQ below on what is involved in a CFIUS review), for transactions that do not appear to raise serious national security concerns, parties may wish to file a declaration rather than a full notice. Conversely, where a transaction seems to have the potential to cause concern for CFIUS, the parties should consider skipping the filing of a declaration and proceeding directly to filing a notice.

2. Is there a fee for initiating a CFIUS review?

FIRRMA authorizes CFIUS to assess, for the first time, a fee for the filing of a notice of a covered transaction. This authority does not extend to filing declarations (either under mandate or voluntarily). Thus, while there are efficiency reasons for filing a notice and not a declaration, cost considerations made lead parties to file declarations in the first instance. Although CFIUS has yet to issue regulations regarding its assessment of fees

for filing notices, by statute, it may impose a fee of up to one percent of the transaction value or \$300,000 (adjusted for inflation), whichever is less.

3. What is the timing of a CFIUS review?

The previous statutory framework authorized CFIUS to conduct a 30-day review and an optional, subsequent 45-day investigation after receiving a notice of a covered transaction. FIRRMA extends the initial review period for a notice to 45 days, retains the 45-day investigation period, and provides for one 15-day extension for extraordinary circumstances. Thus, the notice review period could last up to 105 days, instead of the previous 75 days. However, the 15-day extension may permit CFIUS to complete some reviews without requiring parties to withdraw and resubmit their notices (a practice CFIUS exercised pre-FIRRMA), thereby restarting the review clock. As noted, CFIUS's review of a declaration is statutorily limited to 30 days.

4. What is involved in a CFIUS review?

By law, CFIUS treats as confidential all declarations and notices (other than in certain circumstances, such as disclosures to members of Congress) and not subject to disclosure under the Freedom of Information Act. Upon receiving a complete declaration, CFIUS has the discretion to:

- (1) request that the parties to the transaction file a formal written notice;
- (2) inform the parties to the transaction that CFIUS is not able to conclude all proceedings under Section 721 on the basis of the declaration and that the parties may file a formal written notice to request that CFIUS conclude all action under Section 721 with respect to the transaction;
- (3) initiate a 45-day review of the transaction based on CFIUS's authority to self-initiate reviews; or
- (4) notify the parties in writing that CFIUS has concluded all action under Section 721 with respect to the transaction.

IV. CFIUS's Pilot Program

1. What is the CFIUS pilot program?

FIRRMA authorizes CFIUS to conduct one or more pilot programs to implement any provisions of the legislation that were not immediately effective upon enactment. On October 10, 2018, the Treasury Department released interim regulations establishing a pilot program (officially called a "Pilot Program to Review Certain Transactions Involving Foreign Persons and Critical Technologies"), which requires declarations to CFIUS for certain planned transactions involving foreign investment in certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies.

The interim regulations require that the parties to any "pilot program covered transaction" submit either a declaration (as described above) or, at the option of the parties, a notice (which must contain the detailed information required under the CFIUS rules for voluntary notifications to CFIUS). Failure to submit at least a declaration could result in a civil monetary penalty up to the value of the transaction.

The Pilot Program regulations will remain in force until final regulations implementing FIRRMA are adopted, which FIRRMA specifies must be on or before March 5, 2020.

2. What transactions are subject to the Pilot Program?

The interim regulations require submission of a declaration (or, at the parties' discretion, a full notice of the nature prescribed in the current CFIUS regulations) to CFIUS of any "pilot program covered transaction," which is defined as:

- (1) any transaction by or with any foreign person that could result in foreign control of any "pilot program U.S. business," including such a transaction carried out through a joint venture; or
- (2) any "pilot program covered investment."

The first category includes transactions that have been "covered transactions" under the CFIUS regulations for years—i.e., transactions in which a foreign person (including a U.S. entity that is controlled by a foreign person or entity) will gain "control" over important decisions of a U.S. business.

The second category, called "pilot program covered investment," covers any non-controlling foreign investment in a "pilot program U.S. business" if it would afford the foreign investor (i) access to material nonpublic technical information held by the pilot program U.S. business; (ii) membership or observer rights on the board of directors or similar governing body of the pilot program U.S. business; or (iii) the right to appoint a member of the pilot program U.S. business' board of directors; or (iv) any involvement,² beyond the mere voting of shares, in substantive decision-making³ regarding the pilot program U.S. business' use, development, acquisition, or release of critical technology.

3. How do I determine whether a company is a pilot program U.S. business?

Pursuant to 31 CFR 801.213, a U.S. business meets the definition of a "pilot program U.S. business" if it produces, designs, tests, manufactures, fabricates, or develops a critical technology that is (a) utilized in connection with the U.S. business's activity in one or more pilot program industries; or (b) designed by the U.S. business specifically for use in one or more pilot program industries (i.e., the industries identified in Annex A to 31 CFR part 801). See Appendix below for the list of the pilot program industries.

The first step is to determine, if not already known, whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops a critical technology. This will involve considering everything that the U.S. business produces, designs, tests, manufactures, fabricates, and develops, and determining whether anything falls within the definition of a "critical technology" pursuant to 31 CFR 801.204.

If a U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies, the next step is to determine whether the U.S. business utilizes any of those critical technologies

² The term "any involvement" does not mean that the foreign person must have final decision-making authority. It captures situations in which the investment gives the foreign person, among other things, any of the following with respect to decision-making regarding the use, development, acquisition, or release of critical technology: the right to consult with or provide advice to a decision-maker; special approval or veto rights; the right or ability to participate on a committee with decision-making authority; the right to have direct access to directors, officers, managers, and other employees engaged in or with the ability to make decisions; or the right to appoint officers or employees who have involvement of the type listed above.

³ The term "substantive decision-making" as it relates to the use, development, acquisition, or release of a critical technology may include, for example, decisions regarding the following: licensing; pricing, sales, and specific contracts; supply arrangements; corporate strategy and business development; research and product development, including budget allocation; manufacturing locations; access to such technology; the storage or protection of such technology; appointment or removal of personnel or management with operational oversight; or strategic partnerships. As a general matter, substantive decision-making for purposes of 31 CFR 801.209(c) does not include strictly administrative decisions.

in connection with its activities in one or more pilot program industries. If so, the U.S. business is a pilot program U.S. business.

If not, the final step is to determine whether one or more of the critical technologies produced, designed, tested, manufactured, fabricated, or developed by the U.S. business is designed by the U.S. business specifically for use in one or more pilot program industries, irrespective of whether such use is by the U.S. business itself or by another person. If so, the U.S. business is a pilot program U.S. business.

Notably, the definition of pilot program U.S. business only includes companies involved in various stages of development of relevant critical technologies. It does not extend to companies in pilot program industries that merely use those critical technologies.

4. If a transaction falls within the scope of the pilot program, how should parties determine whether to submit a declaration versus a written notice?

The pilot program regulations require that parties to a pilot program covered transaction submit a declaration to CFIUS. Parties may elect, however, to submit a full written notice instead of a declaration. Parties will need to consider at the outset whether to submit a declaration or a full written notice based on the complexity of the transaction, timing considerations, and other relevant factors. A full written notice may be more appropriate than a declaration when the parties believe CFIUS may require more extensive information to analyze potential national security risks. With respect to timing, parties should consider the likelihood that CFIUS will be able to conclude action under Section 721 in the 30 days allotted for assessing a declaration. Because CFIUS has the option of responding to a declaration by requesting that the parties file a written notice, there may be instances in which parties would save time overall by filing a written notice at the outset.

5. Under the pilot program, what information is required in a declaration and a notice?

A declaration is intended to be an abbreviated way of informing CFIUS of a transaction and generally should not exceed five pages in length. The following basic information about a pilot program covered transaction is requested in a declaration:

- a brief description of the transaction and its structure, the voting interest acquired, the economic interest acquired, the total transaction value, the expected closing date and all sources of financing for the transaction;
- a stipulation as to whether the transaction (i) is a pilot program covered transaction, and (ii) could result in control of a pilot program U.S. business by a foreign person, or is a foreign government-controlled transaction;
- an explanation of what access or rights the foreign person will acquire with respect to the pilot program U.S. business;
- business information and activity related to the pilot program U.S. business (including geographic coordinates and U.S. government contracts, grants and funding);
- a statement as to which critical technologies are involved, including whether they are controlled under the EAR or ITAR;
- information related to the foreign person's parent companies;
- whether the parties have been party to another notified transaction; and

- whether the parties to the transaction (or the foreign parent or subsidiaries) have been convicted of a crime in the last ten years.

If parties elect to file a notice instead of a mandatory declaration, the following information is requested (in addition to the content required for a notice under the existing CFIUS regulations):

- a stipulation as to whether the transaction is a pilot program covered transaction;
- an explanation of what access or rights the foreign person will acquire with respect to the pilot program U.S. business; and
- a statement as to which critical technologies are involved, including whether they are controlled under the EAR or ITAR.

5. What is a stipulation and what is the value of a stipulation?

The interim regulations permit parties to stipulate in a CFIUS declaration or notice that a transaction is subject to CFIUS jurisdiction and that the foreign party is a foreign government-controlled entity. A stipulation could expedite review and action by CFIUS because it may streamline certain aspects of CFIUS's review. It also may result in fewer follow-up questions from CFIUS. In the case of a pilot program covered transaction filed through a notice, stipulating control will reduce certain information requirements. FIRRMA contemplates such stipulations as a condition for limiting to 10 business days the amount of time CFIUS could take to comment on draft notices and accept formal notices, but the interim regulations do not include such time limits.

6. Is there an exemption for certain investment fund investments?

Paralleling FIRRMA, the new interim regulations recognize that certain investment funds may include foreign investors whose interest and involvement in a target U.S. business may be sufficiently limited to refute the possibility of a national security risk arising from the foreign investment. Thus, under the new regulations, there is an exemption from the definition of "pilot program covered transaction" for certain indirect investments in "pilot program industries" by a foreign person through an investment fund even if the foreign person sits on an advisory board or committee of the fund. Specifically, such an indirect investment is not a "pilot program covered investment" with respect to the foreign person if:

- (1) the fund is managed exclusively by a general partner, a managing member or an equivalent and that manager is not the foreign person;
- (2) the advisory board or committee does not have the ability to approve, disapprove or otherwise control:
 - a. investment decisions of the investment fund; or
 - b. decisions made by the general partner, managing member or equivalent related to entities in which the investment fund is invested;
- (3) the foreign person does not otherwise have the ability to control the investment fund, including the authority:
 - a. to approve, disapprove, or otherwise control investment decisions of the investment fund;
 - b. to approve, disapprove, or otherwise control decisions made by the general partner, managing member or equivalent related to entities in which the investment fund is invested; or

- c. to unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent; and
- (4) the foreign person does not have access to material nonpublic technical information as a result of its participation on the advisory board or committee.

The interim regulations also provide, for purposes of the decision-making referred to in paragraphs (2) and (3) above, that a waiver of a potential conflict of interest, a waiver of an allocation limitation or a similar activity (as applicable to a transaction pursuant to the terms of an agreement governing an investment fund) will not be considered to constitute control of investment decisions of the investment fund or decisions relating to entities in which the investment fund is invested. However, the regulations also provide that CFIUS may, in “extraordinary circumstances,” consider such a waiver to constitute control of such decisions. It therefore would pose risk to rest a decision not to file a declaration on the understanding that such a waiver will not constitute such control.

APPENDIX: PILOT PROGRAM U.S. INDUSTRIES

The “pilot program industries” under the CFIUS pilot program are:

1. **Aircraft Manufacturing**, NAICS Code: 336411
2. **Aircraft Engine and Engine Parts Manufacturing**, NAICS Code: 336412
3. **Alumina Refining and Primary Aluminum Production**, NAICS Code: 331313
4. **Ball and Roller Bearing Manufacturing**, NAICS Code: 332991
5. **Computer Storage Device Manufacturing**, NAICS Code: 334112
6. **Electronic Computer Manufacturing**, NAICS Code: 334111
7. **Guided Missile and Space Vehicle Manufacturing**, NAICS Code: 336414
8. **Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing**, NAICS Code: 336415
9. **Military Armored Vehicle, Tank, and Tank Component Manufacturing**, NAICS Code: 336992
10. **Nuclear Electric Power Generation**, NAICS Code: 221113
11. **Optical Instrument and Lens Manufacturing**, NAICS Code: 333314
12. **Other Basic Inorganic Chemical Manufacturing**, NAICS Code: 325180
13. **Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing**, NAICS Code: 336419
14. **Petrochemical Manufacturing**, NAICS Code: 325110
15. **Powder Metallurgy Part Manufacturing**, NAICS Code: 332117
16. **Power, Distribution, and Specialty Transformer Manufacturing**, NAICS Code: 335311
17. **Primary Battery Manufacturing**, NAICS Code: 335912

18. **Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing**, NAICS Code: 334220
19. **Research and Development in Nanotechnology**, NAICS Code: 541713
20. **Research and Development in Biotechnology (except Nanobiotechnology)**, NAICS Code: 541714
21. **Secondary Smelting and Alloying of Aluminum**, NAICS Code: 331314
22. **Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing**, NAICS Code: 334511
23. **Semiconductor and Related Device Manufacturing**, NAICS Code: 334413
24. **Semiconductor Machinery Manufacturing**, NAICS Code: 333242
25. **Storage Battery Manufacturing**, NAICS Code: 335911
26. **Telephone Apparatus Manufacturing**, NAICS Code: 334210
27. **Turbine and Turbine Generator Set Units Manufacturing**, NAICS Code: 333611

© Arnold & Porter Kaye Scholer LLP 2019 All Rights Reserved. This Advisory is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific fact situation.

Team Contacts



[John P. Barker](#)

Partner, Washington, DC
john.barker@arnoldporter.com

+1 202.942.5328



[John B. Bellinger, III](#)

Partner, Washington, DC
john.bellinger@arnoldporter.com

+1 202.942.6599



[Charles A. Blanchard](#)

Partner, Washington, DC
charles.blanchard@arnoldporter.com

+1 202.942.5805



[Ronald D. Lee](#)

Partner, Washington, DC
ronald.lee@arnoldporter.com

+1 202.942.5380



[Nancy L. Perkins](#)

Counsel, Washington, DC
nancy.perkins@arnoldporter.com

+1 202.942.5065



[Nicholas L. Townsend](#)

Counsel, Washington, DC
nicholas.townsend@arnoldporter.com

+1 202.942.5249