

Funding innovation. Empowering entrepreneurs.



NVCA Blog (<https://nvca.org/blog/>) /

Public Policy (<https://nvca.org/blog/issues/>) /

Should VCs Care What the Government Considers “Emerging Technology”?

# Should VCs Care What the Government Considers “Emerging Technology”?



December 20th, 2018 by Jeff Farrah (<https://nvca.org/author/jfarrah/>) & filed under NVCA Blog (<https://nvca.org/blog/>), Public Policy (<https://nvca.org/blog/issues/>).

TL; DR: **YES.**

Okay, for those of you still with me: I’ve previously written about foreign investment scrutiny and its impact on the venture and startup ecosystem, including how the legislative process **played out** (<https://nvca.org/blog/foreign-investment-bill-impact-vc-startup-ecosystem/>), how the **new pilot program rules impact VCs** (<https://nvca.org/blog/foreign-investment-scrutiny-5-questions-every-venture-investor-know-answer/>), and **what to expect next** (<https://nvca.org/blog/cfius-head-sat-nvca-members-heres-learned/>). In a nutshell, earlier this year Congress greatly expanded the authority of the Committee on Foreign Investment in the U.S. (**CFIUS** (<https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>)) to examine foreign investment deals for national security implications. Through the *Foreign Investment Risk Review Modernization Act* (FIRRMA), Congress gave CFIUS the authority to **review minority, non-controlling investments by a foreign person into U.S. critical technology** companies.



## But what is a critical technology?

Under the FIRRMA pilot rules, critical technologies are those on various export controls lists, such as the Commerce Control List and the United States Munitions List. Under the statute, the **Commerce Department must define so-called “emerging and foundational technologies” so those can be added to the definition of critical technologies.** Read: the types of companies the pilot rules will apply to is going to grow once Commerce completes its process.

The definition of emerging and foundational technologies is very important **because these technologies will be subject to export controls and an investment into those companies could trigger a mandatory CFIUS filing under the pilot rules if other requirements (<https://nvca.org/blog/foreign-investment-scrutiny-5-questions-every-venture-investor-know-answer/>) are met.** Once an emerging technology has been identified, Commerce must establish controls on the export, reexport, or transfer (in-country) of that technology.

The Commerce Department decided to take a stab at defining “emerging” technologies before “foundational” technologies. Right now, Commerce is in the middle of the **emerging technologies comment period (<https://www.federalregister.gov/documents/2018/11/19/2018-25221/review-of-controls-for-certain-emerging-technologies>)**, and the department is looking for feedback on **identifying emerging technologies that are essential to national security.** The comment period was recently **extended (<https://www.federalregister.gov/documents/2018/12/14/2018-27148/review-of-controls-for-certain-emerging-technologies>)** to January 10, which gives venture investors and startups a better opportunity to share knowledge with the government on the relationship between emerging technology and national security.

## Why does this matter to you?

**Bottom line:** This process matters to you because the technologies the government is examining are the sweet spot of the bat for venture investors. Commerce name checks several hot areas for VC investment, like **biotechnology; artificial intelligence and machine learning; data analytics technology; quantum information and sensing technology; and several others.**

The current emerging technologies comment period is the first step in Commerce’s process. **It is earnestly interested in public input so it can better respond to its statutory responsibility.**

Commerce gives several examples of areas you can comment on:

- How to define emerging technologies to assist identification of such technology in the future;
- Other general technology categories that warrant review to identify emerging technology that are important to U.S. national security;
- The status of development of these technologies in the U.S. and other countries.
- The impact specific emerging technology controls would have on U.S. technological leadership.

This last bullet is an important one, which brings us to....

## What is NVCA doing?

You’ve seen our **advocacy** (<https://nvca.org/wp-content/uploads/2018/11/NVCA-Comments-on-FIRRMA-Interim-Rule.pdf>) and industry education efforts on FIRRMA and broader foreign investment law changes. That will continue in 2019. Currently, NVCA is preparing its filing in the emerging technologies comment period. We will provide Commerce with information about the development of emerging technologies in the U.S. and how venture capital is powering American leadership in these areas. Importantly, we will also make the case for why an overly broad emerging technology definition could chill investment and harm our country’s future position. **Remember:** included technologies are not only **subject to export controls**, they are also those that could trigger a CFIUS filing since **“emerging technologies” feed directly into the FIRRMA pilot program.**

## What can you do?

NVCA will continue to speak on behalf of the venture industry on this topic, but we need all the help we can get. That means you, your firm, your company, or a like-minded-group of individuals are very welcome to **share your expertise**. You can answer questions like:

- How well positioned are young, high-growth companies to deal with new, complex government regulation whether through export controls or CFIUS?
- How well understood and definable are technologies like AI/ML?

- What is the future for the emerging technologies listed by Commerce?
- What might government regulation of emerging technologies mean for the ability of these companies to attract foreign capital? Do these companies even raise foreign capital

Your comments are due by January 10 and can be submitted **here** (<https://www.federalregister.gov/documents/2018/11/19/2018-25221/review-of-controls-for-certain-emerging-technologies#open-comment>).

**NVCA will continue to advocate on your behalf and keep the venture industry up-to-speed** on the latest developments in this space.

---

**Share this:**

 (<https://nvca.org/blog/vcs-care-government-considers-emerging-technology/?share=twitter&nb=1>)

 (<https://nvca.org/blog/vcs-care-government-considers-emerging-technology/?share=linkedin&nb=1>)

 (<https://nvca.org/blog/vcs-care-government-considers-emerging-technology/?share=facebook&nb=1>)

 (<https://nvca.org/blog/vcs-care-government-considers-emerging-technology/?share=google-plus-1&nb=1>)

---

© 2019 NATIONAL VENTURE CAPITAL ASSOCIATION. | ALL RIGHTS RESERVED.

Site designed and built by **FROST MILLER GROUP** (<https://www.frostmiller.com>)

Home (<https://nvca.org/>) / Contact Us (<https://nvca.org/contact-us/>) / MemberHub (<https://nvca.memberhub.force.com/>) /

For questions or comments,  
please contact NVCA:

[INFO@NVCA.ORG](mailto:INFO@NVCA.ORG) (MAILTO:INFO@NVCA.ORG)