

Antitrust Law Daily Wrap Up, TOP STORY: President to invoke Defense Production Act allowing some industry coordination, (Mar. 18, 2020)

Antitrust Law Daily Wrap Up

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By [Jeffrey May, J.D.](#)

Antitrust exemption could be available for participants in presidential plans to ramp up production of medical supplies, other goods needed to fight COVID-19 epidemic.

In response to the COVID-19 epidemic, President Trump is invoking the Defense Production Act, a 70-year-old law that authorizes presidential authorities to expedite and expand the supply of materials and services from the domestic industrial base needed in national emergencies. The action was disclosed in a March 18 White House press briefing. A day earlier, the president had said in another Coronavirus briefing that the Administration had been studying such a move for two weeks. The powers would likely be used to ramp up production and sharing of medical supplies and protective equipment needed to combat the epidemic.

Antitrust exemption. Because efforts pursuant to the Act call for cooperation among business competitors, companies that participate in these voluntary agreements may be shielded by a limited antitrust exemption. In order to assert the defense under [Section 708](#) of the Defense Production Act, the conduct must be within the scope of an approved voluntary agreement initiated by the president and "actively supervised" per the terms of the Act. A person or entity raising the defense has the burden of proof to establish the elements of the defense.

The statute also provides for consultation with the FTC and U.S. attorney general. The FTC and attorney general are to be given adequate advance notice of meetings to carry out action plans and may have an official representative attend and participate in these meetings.

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