



Apr 02, 2020

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[Rhonda B. Schechter](#)

President Trump Delegates Additional Authority Under the Defense Production Act in Response to COVID-19

As summarized in a [prior bulletin](#), on March 23, 2020, the President of the United States issued Executive Order 13910 in which he delegated his authority under Section 102 of the Defense Production Act of 1950 (50 U.S.C. §4512) (the “Act”) to the Secretary of Health and Human Services (“HHS”) to prevent hoarding of health and medical resources necessary to respond to the COVID-19 pandemic. The President has now expanded on that action by issuing Executive Order 13911, published on April 1, 2020, entitled, “Delegating Additional Authority Under the Defense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19.” ([Federal Register](#)).

In this latest Executive Order, the President delegated to both the Secretary of HHS and the Secretary of Homeland Security his authority under Title III of the Act (50 U.S.C. 4531, 4532, 4533) to guarantee loans by private institutions, make loans, make provision for purchases and commitments to purchase, and take additional actions to expand domestic production of health and medical resources needed to combat COVID-19. He also waived many of the conditions that are generally imposed on such actions by the Act itself, such as a Presidential determination that the action is necessary and, in some cases, review by other government committees. The Secretary of Homeland Security is required to consult with the Secretary of HHS before exercising authority under Title III of the Act with respect to health or medical resources.

In addition to delegating authority under Title III of the Act, Executive Order 13911 also delegates the authority of the President conferred by section 708(c)(1) and (d) of the Act (50 U.S.C. 4558(c), (d)). Section 708(c)(1) authorizes the President to convene representatives of various business interests in order to establish “voluntary agreements and plans of action to help provide for the

national defense.” To further such agreements and plans of action, Section 708(c)(1) authorizes the President or his designees to establish advisory committees. The Secretary of HHS must notify the Secretary of Homeland Security of any use of this delegated authority, while the Secretary of Homeland Security must “consult” with the Secretary of HHS prior to exercising the authority delegated under this section with respect to health or medical resources.

The Executive Order specifies that the Secretary of HHS and the Secretary of Homeland Security are each expected to adopt appropriate rules to implement the order, and that the Assistant to the President for Trade and Manufacturing Policy shall serve as the National Defense Production Act Policy Coordinator.

While it remains to be seen how each Secretary will implement his new authority, the hope is that both will take steps to facilitate and accelerate loans to, and purchases from, companies that provide healthcare products or services useful in combating COVID-19, as well as companies that can modify their operations to begin providing such products and services. In particular, manufacturers who are considering transitioning to the production of ventilators or PPE may find it easier to secure government support for such a transition.

For more information, please contact [Rhonda Schechter](#) or any attorney in Frost Brown Todd’s [Health Care Innovation](#) Industry Team.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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