



## DEPARTMENT OF JUSTICE

### 28 CFR Part 0

[AG Order No. 4917-2020]

#### Delegation of Defense Production Act Authority

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes the Assistant Attorney General in charge of the Antitrust Division to perform, as the delegate of the Attorney General, all functions that the Attorney General is required or authorized to perform by section 708 of the Defense Production Act (“DPA”).

**DATES:** Effective Date: [INSERT DATE OF PUBLICATION IN *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** David G. B. Lawrence, Chief, Competition Policy & Advocacy Section, Antitrust Division, U.S. Department of Justice, Washington, DC 20530; telephone (202) 532-4698.

**SUPPLEMENTARY INFORMATION:** Under the DPA, upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President or his designee may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President or his designee, of voluntary agreements and plans of action to help provide for the national defense. 50 U.S.C. 4558(c)(1)-(2). The DPA requires that each proposed voluntary agreement or proposed plan of action be reviewed by the Attorney General prior to becoming effective. If, after consulting with the Chairman of the Federal Trade Commission, the Attorney General finds that the purposes of 50 U.S.C. 4558(c) “may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any

voluntary agreement or plan of action,” the agreement or plan may become effective. 50 U.S.C. 4558(f)(1)(B).

The DPA therefore requires action from the Attorney General from the standpoint of the antitrust laws. As a result, the Assistant Attorney General in charge of the Antitrust Division is already assigned the preparation of the Attorney General’s approval or disapproval whenever such action is required by the DPA from the standpoint of the antitrust laws. 28 CFR 0.40(e). Conditions that may pose a direct threat to the national defense or its preparedness programs are inherently dynamic, and it is of utmost importance to be able to respond rapidly to such conditions. Therefore, the Attorney General has made the determination to promulgate a regulation unambiguously delegating to the Assistant Attorney General in charge of the Antitrust Division his authority to perform all functions that the Attorney General is required or authorized to perform by section 708 of the DPA (50 U.S.C. 4558).

#### **Administrative Procedure Act--5 U.S.C. 553**

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(A), 553(d).

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. 5 U.S.C. 604(a).

#### **Executive Orders 12866, 13563, and 13771--Regulatory Review**

This action has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, “Regulatory Planning and Review,” and section 1(b) of Executive Order 13563,

“Improving Regulation and Regulatory Review.” This rule is limited to agency organization, management, and personnel as described in section 3(d)(3) of Executive Order 12866 and, therefore, is not a “regulation” or “rule” as defined by the order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

This rule is not subject to the requirements of Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” because it is not a significant regulatory action under Executive Order 12866, and because it is “related to agency organization, management, or personnel” and thus not a “regulation” or “rule” under section 4(b) of Executive Order 13771.

### **Executive Order 13132--Federalism**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### **Executive Order 12988--Civil Justice Reform**

This rule was drafted in accordance with the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

## **Congressional Review Act**

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act, 5 U.S.C. 804(3)(B), (C).

Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

## **List of Subjects**

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Authority delegations (Government agencies), Government employees, National defense, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

### **PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

1. The authority citation for part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Section 0.40(l) is added to read as follows:

#### **§ 0.40 General functions.**

\* \* \* \* \*

(l) As the delegate of the Attorney General, performance of all functions that the Attorney General is required or authorized to perform by section 708 of the Defense Production Act (50 U.S.C. 4558).

Dated: November 20, 2020.

William P. Barr  
Attorney General

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