

For delegation of authority of President under subsec. (a)(2) of this section, see section 305(a) of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, set out as a note under section 4553 of this title.

EXECUTIVE WAIVER OF LOAN LIMITATIONS

Requirements of subssecs. (a)(2) and (d)(1)(A) of this section waived during the national emergency declared by Proc. No. 9994, Mar. 13, 2020, 85 F.R. 15337, set out as a note under section 1621 of this title, see section 2(c) of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18404, set out as a note under section 4511 of this title.

§ 4532. Loans to private business enterprises

(a) Loan authority

To reduce current or projected shortfalls of industrial resources, critical technology items, or materials essential for the national defense, the President may make provision for loans to private business enterprises (including nonprofit research corporations and providers of critical infrastructure) for the creation, maintenance, expansion, protection, or restoration of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals.

(b) Conditions of loans

Loans may be made under this section on such terms and conditions as the President deems necessary, except that—

(1) financial assistance may be extended only to the extent that it is not otherwise available from private sources on reasonable terms; and

(2) during periods of national emergency declared by the Congress or the President, no such loan may be made unless the President determines that—

(A) the loan is for an activity that supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

(B) without the loan, United States industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

(C) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;

(D) the prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan, as determined by the President; and

(E) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(c) Limitations on loans

Loans under this section may be—

(1) made or guaranteed under the authority of this section only to the extent that an appropriations Act—

(A) provides, in advance, budget authority for the cost of such guarantees, as defined in section 661a of title 2; and

(B) establishes a limitation on the total loan principal that may be guaranteed; and

(2) made without regard to the limitations of existing law, other than section 1341 of title 31.

(d) Aggregate loan amounts

(1) In general

If the making of any loan under this section to correct a shortfall would cause the aggregate outstanding amount of all obligations of the Federal Government under this subchapter relating to such shortfall to exceed \$50,000,000, such loan may be made only—

(A) if the President has notified the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, in writing, of the proposed loan; and

(B) after the 30-day period following the date on which notice under subparagraph (A) is provided.

(2) Waivers authorized

The requirements of paragraph (1) may be waived—

(A) during a period of national emergency declared by the Congress or the President; and

(B) upon a determination by the President, on a nondelegable basis, that a specific loan is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.

(Sept. 8, 1950, ch. 932, title III, §302, as added Pub. L. 111-67, §7, Sept. 30, 2009, 123 Stat. 2012.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

Editorial Notes

CODIFICATION

Section was formerly classified to section 2092 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 302 of act Sept. 8, 1950, ch. 932, title III, 64 Stat. 801; June 30, 1952, ch. 530, title I, §104, 66 Stat. 298; Pub. L. 93-155, title VIII, §807(b), Nov. 16, 1973, 87 Stat. 615; Pub. L. 96-294, title I, §104(c), June 30, 1980, 94 Stat. 618; Pub. L. 98-265, §§3(b), 4(b), Apr. 17, 1984, 98 Stat. 149, 151; Pub. L. 102-558, title I, §121(b), Oct. 28, 1992, 106 Stat. 4204, related to loans to private business enterprises, prior to the general amendment of title III of this Act by Pub. L. 111-67.

Statutory Notes and Related Subsidiaries

INCREASING ACCESS TO MATERIALS NECESSARY FOR NATIONAL SECURITY AND PANDEMIC RECOVERY

Pub. L. 116-136, div. A, title IV, §4017, Mar. 27, 2020, 134 Stat. 482, provided that: “Notwithstanding any other provision of law—

“(1) during the 2-year period beginning on the date of enactment of this Act [Mar. 27, 2020], the requirements described in sections 303(a)(6)(C) and 304(e) of the Defense Production Act of 1950 (50 U.S.C. 4533(a)(6)(C), 4534(e)) shall not apply; and

“(2) during the 1-year period beginning on the date of enactment of this Act, the requirements described in sections 302(d)(1) and 303(a)(6)(B) of the Defense

Production Act of 1950 (50 U.S.C. 4532(d)(1), 4533(a)(6)(B)) shall not apply.”

LEGISLATIVE WAIVER OF LOAN LIMITATIONS

Requirement described in subsec. (c)(1) of this section waived for the two-year period beginning with Mar. 27, 2020, see provision of title III of div. B of Pub. L. 116-136, set out as a note under section 4531 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under this section with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and the Secretary of Homeland Security, see section 2 of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18403, set out as a note under section 4511 of this title.

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

For delegation of certain authority of President under this section, see sections 302 and 305(a) of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16654, set out as a note under section 4553 of this title.

EX. ORD. NO. 13922. DELEGATING AUTHORITY UNDER THE DEFENSE PRODUCTION ACT TO THE CHIEF EXECUTIVE OFFICER OF THE UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION TO RESPOND TO THE COVID-19 OUTBREAK

Ex. Ord. No. 13922, May 14, 2020, 85 F.R. 30583, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (50 U.S.C. 4501 et seq.) (the “Act”), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. Policy. In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak) [50 U.S.C. 1621 note], I declared a national emergency recognizing the threat that the novel (new) coronavirus known as SARS-CoV-2 poses to our Nation’s healthcare systems. In recognizing the public health risk, I noted that on March 11, 2020, the World Health Organization announced that the outbreak of COVID-19 (the disease caused by SARS-CoV-2) can be characterized as a pandemic.

To ensure that our country has the capacity, capability, and strong and resilient domestic industrial base necessary to respond to the COVID-19 outbreak, it is the policy of the United States to further expand domestic production of strategic resources needed to respond to the COVID-19 outbreak, including strengthening relevant supply chains within the United States and its territories. It is important to use all resources available to the United States, including executive departments and agencies (agencies) with expertise in loan support for private institutions. Accordingly, I am delegating authority under title III of the Act [50 U.S.C. 4531 et seq.] to make loans, make provision for purchases and commitments to purchase, and take additional actions to create, maintain, protect, expand, and restore the domestic industrial base capabilities, including supply chains within the United States and its territories (“domestic supply chains”), needed to respond to the COVID-19 outbreak.

SEC. 2. Delegation of Authority Under Title III of the Act. (a) Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness) [50 U.S.C. 4553 note], and in addition to the delegation of authority in Executive Order 13911 of March 27, 2020 (Delegating Additional Authority Under the De-

fense Production Act With Respect to Health and Medical Resources to Respond to the Spread of COVID-19) [50 U.S.C. 4511 note], the Chief Executive Officer of the United States International Development Finance Corporation (DFC) is delegated the authority of the President conferred by sections 302 and 303 of the Act (50 U.S.C. 4532 and 4533), and the authority to implement the Act in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, and 4560).

(b) The Chief Executive Officer of the DFC may use the authority under sections 302 and 303 of the Act, in consultation with the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Homeland Security, and the heads of other agencies as he deems appropriate, for the domestic production of strategic resources needed to respond to the COVID-19 outbreak, or to strengthen any relevant domestic supply chains.

(c) The loan authority delegated by this order is limited to loans that create, maintain, protect, expand, or restore domestic industrial base capabilities supporting:

(i) the national response and recovery to the COVID-19 outbreak; or

(ii) the resiliency of any relevant domestic supply chains.

(d) Loans extended using the authority delegated by this order shall be made in accordance with the principles and guidelines outlined in OMB Circular A-11, OMB Circular A-129, and the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661 et seq.).

(e) The Chief Executive Officer of the DFC shall adopt appropriate rules and regulations as may be necessary to implement this order.

SEC. 3. Termination. The delegation of authority in this order shall expire upon termination of the 2-year period during which the requirements described in section 302(c)(1) of the Act (50 U.S.C. 4532(c)(1)) are waived pursuant to title III of division B of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) [see Legislative Waiver of Loan Limitations note set out under section 4531 of this title].

SEC. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 4533. Other presidential action authorized

(a) In general

(1) In general

To create, maintain, protect, expand, or restore domestic industrial base capabilities essential for the national defense, the President may make provision—

(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale;

(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials;

(C) for the development of production capabilities; and

(D) for the increased use of emerging technologies in security program applications