

Antitrust Exemptions for Competitor Collaborations in the Spotlight: Recent Uses of the Defense Production Act

A photograph of a modern building with a curved, glass-and-steel facade, showing multiple floors and windows, set against a clear blue sky.

4 MIN READ

October 19, 2026, 9:43 AM

By: Katrina Rouse, George F. K. Werner

Collaborations between competitors—and the potential for exempting those collaborations from antitrust scrutiny—has increasingly been in the news, with developments in industries ranging from AI to college sports. One area that has received less attention, however, is the Trump administration’s invocation of Section 708 of the Defense Production Act (DPA), 50 U.S.C. § 4558, to allow competitors in industries related to national defense to form voluntary agreements and plans of action with a diminished risk of antitrust liability. This exemption is significant for firms that operate in those industries, as it offers greater protection than alternatives such as the National Cooperative Research and Production Act (NCRPA), 15 U.S.C. §§ 4301–4306, which apply only to certain categories of collaboration and offer less extensive protections.

Here, we offer a primer on Section 708 of the DPA and its ongoing relevance for companies operating in areas where antitrust scrutiny could have national-defense implications.

How does Section 708 of the DPA compare to other antitrust exemptions?

Section 708 is a safe harbor tied to actions taken “in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement” or while “carry[ing] out” such an agreement or plan of action. It requires both that the actions were

in accordance with the terms of the agreement or plan of action and that they were not purposeful violations of the antitrust laws.

There are no published decisions clarifying the protections associated with a Section 708 agreement. As a result, the outer boundaries of Section 708's safe harbor remain somewhat ambiguous. Nor are there reports of the Attorney General rejecting an agency's Section 708 proposed agreement, likely reflecting the collaborative nature of the approval process, in which sponsoring agencies and antitrust regulators may work on the structure of proposed agreements before final approval.

Compared to the NCRPA, Section 708 provides greater liability protection but stricter transparency requirements. Among other things, the NCRPA provides rule-of-reason treatment and damages limitations for qualifying joint ventures and standards-development organizations that satisfy the statute's requirements, and does not require the executive branch oversight that Section 708 mandates.

What is the process under Section 708 of the DPA?

A voluntary agreement or plan of action cannot take effect until the Attorney General, after consulting with the FTC Chairman, determines that the agreement is necessary to achieve a national-defense objective and that the objective cannot reasonably be achieved through a less restrictive alternative. The agreement and accompanying procedures must ordinarily be published.

During this process, meeting notices are also published, with the meetings themselves held in public (unless national-defense or confidentiality concerns require otherwise). Once adopted, the Attorney General must report annually to Congress and the President about the agreement and its effects.

The next step after these meetings is the preparation of one or more specific voluntary agreements or plans of action. Generally, the sponsoring agency (in the case of Presidential Determination No. 2026-15, the Department of War), the Department of Homeland Security (which administers the Section 708 framework), and the antitrust agencies coordinate during that step of the process.

How has the second Trump administration used Section 708 of the DPA?

President Trump has authorized the DPA antitrust exemption twice during the second administration: to expand domestic munitions production and to expand the country's supply of nuclear energy.

The President has invoked the DPA to enable competing munitions manufacturers to coordinate in ways that could raise questions under the antitrust laws, such as through sharing information about their supply chains and developing responses to shortages and other potential disruptions together. On June 11, 2026, President Trump issued Presidential Determination No. 2026-15, which found that "systemic constraints in the munitions industrial base" may threaten national defense and delegated authority to the Secretary of War to establish voluntary agreements and plans of action among industry participants. Presidential Determination No. 2026-15, June 11, 2026. Actions competing munitions suppliers take based

on those voluntary agreements and plans of action, such as data sharing and coordinated production, are generally exempt from antitrust scrutiny.

The President has also invoked the DPA to allow nuclear-fuel companies to coordinate their activities in ways that could also run afoul of antitrust laws. Under the Trump administration, the Department of Energy has been engaged in an effort to strengthen the resilience of the domestic nuclear-fuel supply chain. The agreement between industry participants it facilitated permits domestic nuclear-fuel companies to coordinate directly on capacity-building across the fuel cycle—including mining and milling, conversion, enrichment, fabrication, and recycling/reprocessing.

How can companies participate in exempted activities under Section 708 of the DPA?

The recent authorizations may be relevant to a range of defense industry participants, including companies likely to be affected by wartime demand increases and supply-chain shortages as well as those operating in industries where offshoring raises national-defense concerns.

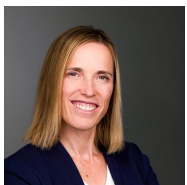
Section 708, as noted above, requires the government to take affirmative steps before voluntary agreements between competitors can fall under the antitrust exemption. In the past, many uses of Section 708 have been top-down initiatives by the executive branch. But Section 708 does provide that “representatives of industry, business, financing, agriculture, labor, or other interests” should be consulted early in the process, highlighting the importance of advocacy by companies and trade associations in developing voluntary agreements. Accordingly, ensuring that potential sponsors within the government are aware of conditions that might warrant use of DPA Section 708 continues to be valuable.

Because Section 708 may offer greater protection than other exemptions, companies with a connection to national defense should consider taking the following steps:

- Engage early with sponsoring agencies, whether directly or through trade associations, as Section 708 contemplates industry consultation.
- Monitor new presidential determinations and regulatory notices related to Section 708.
- Avoid coordinating with competitors in reliance on Section 708’s protections until a voluntary agreement or plan of action involving the company has been approved and confine any coordination to its terms.



Related People



Katrina Rouse



George F. K. Werner

Related Services

Antitrust

To subscribe to our publications, [click here](#).

News & Insights

- Concurrences New Frontiers of Antitrust Conference 2026
SPONSORSHIP ANTITRUST
- Stakeholders 26th Annual CYOC Conference
EVENT ANTITRUST
- ALFDP 20th Anniversary Annual Conference
EVENT ANTITRUST
- GCR Live: Women in Antitrust 2026
SPONSORSHIP ANTITRUST
- GICLI Annual Meeting 2026
SPONSORSHIP ANTITRUST
- Informa CompLaw Advanced EU Conference 2026
SPONSORSHIP ANTITRUST
- Wild Tomorrow 2026 Annual Gala
SPONSORSHIP ANTITRUST
- NAPABA Annual Convention 2026
SPONSORSHIP ANTITRUST
- Law.com General Counsel Conference East 2026
SPONSORSHIP ANTITRUST
- Economist Enterprise's 1st Annual Antitrust Summit US
SPONSORSHIP ANTITRUST

