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President Trump Issues Executive Order Aimed At Limiting Stock Buy Backs and Executive Compensation By Certain Defense Contractors

January 9, 2026

What: On January 7, 2026, President Trump issued an Executive Order "Prioritizing the Warfighter in Defense Contracting," aimed at increasing production of critical defense weapons, supplies, and equipment. The EO was preceded by numerous social media posts by the President and the Secretary of the U.S. Department of Defense/War (Secretary) calling out contractors for "issuing massive Dividends to their Shareholders and massive Stock Buybacks, at the expense and detriment of investing in Plants and Equipment." The EO takes aim at stock buybacks and corporate distributions in situations in which the Secretary finds that a contractor is "underperforming," not investing in "production capacity," not "sufficiently prioritizing" its government contracts, or whose "production speed is insufficient." It also calls for future contractual provisions aimed at curbing stock buybacks, corporate distributions, and executive pay.

When: The EO was issued on January 7, 2026. The Secretary is directed to identify, within 30 days and on a continuing basis, any defense contractor for critical weapons, supplies, or equipment that is underperforming and to take action. The Secretary is directed within 60 days to develop future contract provisions directed at stock buybacks, corporate distribution, and executive pay.

What It Means for Industry: The EO raises a number of questions and potential issues for defense contractors who may provide critical weapons, supplies, or equipment. The EO requires near-term action from the Secretary that may require underperforming contractors to implement "remediation plans" to address the Secretary's concerns and calls for new contract terms restricting stock buybacks and

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executive compensation paid by some defense contractors. As noted in our analysis, the EO does not define many of the terms used, raising numerous questions as to the potential scope of its application, as well as the authority for the U.S. Department of Defense/War (Department) to take some of the actions called for in the EO.

Summary of EO

Prohibition on Buybacks by "Underperforming" Contractors. Section 1 of the EO expresses the Administration's view that although the United States produces the "best military equipment in the world," it is not produced quickly enough or at high enough quality. According to the EO, some unidentified large contractors underperform on their existing contracts while pursuing "newer, more lucrative contracts, stock buy-backs, and excessive dividends to shareholders at the cost of production capacity, innovation, and on-time delivery." As a result, the EO announces that "major defense contractors will no longer conduct stock buybacks or issue dividends at the expense of accelerated procurement and increased production capacity." The EO further directs that, effective immediately, under-performing contractors "are not permitted in any way, shape, or form to pay dividends or buy back stock, until such time as they are able to produce a superior product, on time and on budget."

Identification of "Underperforming" Contractors. To carry out its stated goal, Section 3 of the EO requires the Secretary, within 30 days, and on a continuing basis, to identify any defense contractors for "critical weapons, supplies, and equipment" that have engaged in stock buy-back or corporate distribution during any period where:

- The contractor is "underperforming on their contracts;"
- The contractor is "not investing their own capital into necessary production capacity;"
- The contractor is "not sufficiently prioritizing [US Government] contracts;" or
- The contractor's "production speed is insufficient as determined by the Secretary."

Interestingly, the EO suggests that some contractors may have already been identified as underperforming, in which case "additional review" by the Secretary may not be required.

Those contractors identified by the Secretary as underperforming in accordance with Section 3 of the EO will be provided a notice of their shortfalls in performance and will be required, within 15 days, to engage in resolution discussions, including, as permitted by law, submitting a "remediation plan" approved by the company's board of directors.

Enforcement. Section 4 provides that if any remediation plan is insufficient or any dispute is unable to be resolved within 15 days, the Secretary must initiate action to "expedite production, prioritize the United States military, and return the contractor to sufficient performance, investment, prioritization and production, including through use of voluntary agreement by the contractor, use of the Defense Production Act, and any available enforcement mechanisms" under the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition

Regulation Supplement (DFARS).

The EO also provides that for those contractors identified as underperforming, the Secretary, with the Secretaries of State and Commerce, can assess ceasing advocacy efforts or denying new advocacy cases for foreign military or direct commercial sales. The EO also instructs the Chairman of the Securities and Exchange Commission to consider changes to stock buyback rules to prohibit underperforming contractors from using safe harbors.

Contract Clauses, Limits On Executive Compensation. Going forward, Section 4 of the EO also requires the Secretary, within 60 days, to ensure that new contracts or renewals (presumably referring to option exercises) contain provisions prohibiting stock buybacks and corporate distributions during a period of underperformance, contractual non-compliance, or insufficient contract prioritization, investment, or production.

Second, new contracts must also stipulate that executive incentive compensation "will not be tied to short-term financial metrics, such as free cash flow or earnings per share driven by stock buy-backs" and instead will be based on "on-time delivery, increased production, and all necessary facilitation of investments and operating improvements required to rapidly expand our United States stockpiles and capabilities."

Third, new or renewed contracts must permit the Secretary, where underperformance as described in Section 3 is found, to require capping executive base salaries at current levels, with increases allowed for inflation, consistent with applicable law, "for a time period sufficient to allow the Secretary to scrutinize the incentive portion of executive compensation to ensure it is directly, fairly, and tightly tied to the [EO's] metrics."

The EO Raises Many Questions

The EO raises a number of serious questions regarding its potential scope and application. First, many of the terms used in the EO are undefined. For example, the EO uses the terms "defense contractors," "traditional defense contractors," "major defense contractors," and "defense contractors for critical weapons, supplies, and equipment"—none of which are defined, which raises a threshold question as to which contractors, or "critical weapons, supplies, and equipment," are covered by the EO.

Similarly, the EO does not define or identify what standards are to be applied by the Secretary to determine whether a contractor is not investing sufficient capital into "necessary production capacity," not "sufficiently prioritizing" government contracts, or not maintaining sufficient "production speed." Instead, the EO vests broad discretion in the Secretary to identify "underperforming" contractors and initiate enforcement actions against those contractors.

The EO also does not provide any guidance regarding the contents of or standards for reviewing any "remediation plans" that will be required in the event the Secretary informs the contractor that it is underperforming. Moreover, the EO sets an aggressive 15-day period to resolve potential issues and requires that remediation plans be approved by a corporate board, which, as a practical matter, could raise challenges for contractors to timely respond to and resolve any potential issues identified by the Secretary as a result of the EO.

Although the EO includes provisions requiring the Secretary to implement such provisions "consistent with applicable law," there are several areas where the EO could potentially conflict with or duplicate existing remedies available to the government. For example, to the extent the EO is meant to address concerns regarding "prioritization" of defense contracts, the Defense Priorities and Allocations System (DPAS) *already* provides mechanisms for the Department to require contractors to give priority to Department orders—including penalties for contractors who fail to give priority to "rated orders." Likewise, the Department already has numerous mechanisms for addressing contractors that fail to perform to schedule or provide supplies that meet contractual requirements—including withholdings, warranty assertions, claims for contractual adjustments and consideration, negative past performance evaluations, cure notices, and termination for default. The EO does not address these existing remedies—which include established procedures and standards that provide important protections to both the government and the contractor—or explain why these existing remedies are insufficient to achieve the EO's objectives.

The EO also raises serious questions regarding the authority for the Department to undertake many of the EO's sweeping mandates. For example, while existing contract laws and regulations require disclosure of executive compensation and limit the amount of executive compensation that contractors can charge to their cost-reimbursement contracts, it is not clear what authority the Department has to mandate the factors to be used by companies to determine executive incentive compensation that is not billed to a government contract (*e.g.,* prohibiting use of "short-term financial metrics, such as free cash flow or earnings per share driven by stock buy-backs").

The EO also ignores some of the practical realities of contracting with the government. The EO purports to mandate capital investments in manufacturing, but federal contractors, like federal agencies, are at the mercy of annual appropriations—or, more commonly, continuing resolutions—that introduce unpredictability into government funding and, in turn, capital investment planning. Similarly, at least in the past, contracts have typically been for a base period with yearly options for future performance. Since the government has the unilateral authority to exercise – or decline to exercise – options, contractors reasonably have to factor the possibility that an option will not be exercised in their capital planning.

Finally, the EO potentially conflicts with other Administration priorities and initiatives that are aimed at promoting the acquisition of commercial products and services, and encouraging commercial companies to do business with the government. As noted above, the scope of the EO is unclear, given the lack of clear definitions of the term "defense contractor" and other basic terminology. To the extent the EO were to apply to commercial contractors, however, it could undermine the Administration's efforts to spur innovation by attracting commercial companies to do business with the Department. Additionally, many "traditional" defense contractors have significant commercial businesses, which again raises questions regarding the government's authority to impose limits on compensation and stock buybacks or dividends where government work and revenue is only one element of the company's financial performance.

Attention will now turn quickly to the Department to see how it intends to implement the EO and roll out the future contract terms. Wiley's Government Contracts Practice will continue to monitor developments.