An Overview of the Recent Executive Orders Pursuant to the Defense Production Act

Date: 03/30/20

On March 18, 2020, President Trump issued an Executive Order on "Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19" (the "Order"), invoking the use of the Defense Production Act (the "DPA"). This Order, issued in response to the national emergency caused by COVID-19 and the threatened strain on the nation's healthcare system, can cover the production of health and medical resources, including personal protective equipment and ventilators. The President delegated his authority under the DPA to the Secretary of Health and Human Services ("HHS") with respect to all health and medical resources needed to respond to COVID-19. The Secretary of HHS may use the authority to determine the proper nationwide priorities and allocation of all health and medical resources, including controlling the distribution of such materials (including applicable services) in the civilian market. The Secretary of HHS may consult with the Secretary of Commerce and other executive branch leaders, as appropriate, in making this decision.

On March 27, 2020, President Trump issued two new Executive Orders invoking the DPA. The first Executive Order directed the Secretary of HHS to require General Motors Company ("GM") to accept, perform, and prioritize contracts or orders for the number of ventilators that the Secretary determines to be appropriate. The second Executive Order authorized the government to guarantee loans by private institutions, make loans, and take additional actions to support domestic industrial base capabilities to produce the required health and medical resources.

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