

May 18, 2022 - Memorandum on the Delegation of Authority Under the Defense Production Act to Ensure an Adequate Supply of Infant Formula

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

SUBJECT: Delegating Authority Under the Defense Production Act to Ensure an Adequate Supply of Infant Formula

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 101 of the Defense Production Act of 1950, as amended (the “Act”) (50 U.S.C. 4511), it is hereby ordered as follows:

Section 1. Policy and Findings. On February 17, 2022, the largest infant formula manufacturer in the country — Abbott Nutrition — initiated a voluntary recall of several lines of powdered infant formula made at its Sturgis, Michigan facility, following concerns about bacterial contamination at the facility after four infants fell ill. This incident has combined with supply chain stress associated with effects of the coronavirus 2019 (COVID-19) pandemic to cause an acute disruption in the supply of infant formula in the United States.

Adequate supply of infant formula is critical to the health and safety of the millions of children who depend on the formula for essential nutrition. The Federal Government has worked in the last several months to address the shortfall in infant formula, but additional measures are needed to ensure an adequate supply of infant formula in the United States and thereby protect the health and well-being of our Nation’s children.

This disruption threatens the continued functioning of the national infant formula supply chain, undermining critical infrastructure that is essential to the national defense, including to national public health or safety. As the Abbott Nutrition recall shows, closure of a single formula-producing facility can severely disrupt the supply of formula nationwide. Accordingly, I hereby determine, pursuant to section 101 of the Act, that the ingredients necessary to manufacture infant formula meet the criteria specified in section 101(b) of the Act (50 U.S.C. 4511(b)).

Sec. 2. Ensuring the Continued Supply of Formula. (a) Notwithstanding Executive Order 13603 of March 16, 2012 (National Defense Resources Preparedness), the authority of the President conferred by section 101 of the Act to require performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, and to implement the Act in subchapter III of chapter 55 of title 50, United States Code (50 U.S.C. 4554, 4555, 4556, 4559, 4560), is delegated to the Secretary of Health and Human Services with respect to all health resources, including the ingredients necessary to manufacture infant formula.

(b) The Secretary of Health and Human Services may use the authority under section 101 of the Act to determine, in consultation with the Secretary of Agriculture and the heads of other executive departments and agencies as appropriate, the proper nationwide priorities and allocation of all ingredients necessary to manufacture infant formula, including controlling the distribution of such materials (including applicable services) in the civilian market, for responding to the shortage of infant formula within the United States.

You are authorized and directed to publish this determination in the Federal Register.

JOSEPH R. BIDEN JR.