

Client Alert

President Biden Exercises Defense Production Act Authorities to Address Infant Formula Supply Chain Shortages

May 19, 2022

On May 18, 2022, President Biden issued [Presidential Determination No. 2022-13](#), delegating certain authorities under Section 101 of the Defense Production Act, 50 U.S.C. § 4511 (DPA) for purposes of ensuring an adequate supply of infant formula. Implicit in this directive, the President determined that the ingredients necessary to manufacture infant formula are scarce and critical material essential to the national defense, and that such national defense requirements cannot be met without creating a significant dislocation of the normal distribution of such material in the civilian market. Specifically, the Presidential Determination stated that, the supply chain “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.” The President delegated to the Secretary of Health and Human Services authorities to require performance of contracts or orders for such national defense needs over performance of other contracts or orders, and to allocate materials, services, and facilities with respect to all health resources, including ingredients needed to manufacture infant formula. The President also authorized the Secretary to exercise DPA authorities to determine the proper nationwide priorities and allocation of all ingredients necessary to manufacture infant formula, including controlling the distribution of such materials in the civilian market for purposes of responding to the domestic shortage of infant formula. Frequently asked questions concerning the DPA are included [here](#).

In addition, President Biden [separately directed](#) the use of Department of Defense contracted aircraft to pick up overseas infant formula that meets U.S. health and safety standards. According to the [White House](#), DOD will use its contracts with commercial air cargo lines, as it did to move materials during the early months of the COVID pandemic, to transport products from manufacturing facilities abroad that have met Food and Drug Administration safety standards.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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