



## D 2022 021

### EXECUTIVE ORDER

#### **Declaring a Disaster Emergency Due to the Nationwide Infant Formula Shortage and Making Emergency Funds Available to Support the Free Distribution of Donor Human Milk Across the State**

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.*, I, Jared Polis, Governor of the State of Colorado, issue this Executive Order declaring a state of disaster emergency due to the nationwide infant formula shortage and making emergency funds available to support the free distribution of donor human milk across the State.

#### **I. Background and Purpose**

The Governor is responsible for meeting the dangers to the State and people presented by disasters. C.R.S. § 24-33.5-704(1). The Colorado Disaster Emergency Act (Act) defines a disaster as “the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause or cause of human origin . . .” C.R.S. § 24-33.5-703(3).

The country is experiencing a devastating infant formula shortage that is impacting children and families throughout Colorado. Formula producer Abbott, which closed one of its formula manufacturing plants, announced on May 16, 2022 that it has reached an agreement with the Food and Drug Administration to reopen its plant. However Abbott anticipates another six to eight week delay until additional formula is available on retail shelves. While the federal government is working to address the nationwide infant formula shortage, the State must also act to protect the health and safety of children in Colorado.

Infant formula is a crucial source, and in some cases the only source, of nutrition and sustenance for countless infants. The nationwide infant formula shortage is a disaster that threatens the lives of children throughout our state. It is incomprehensible that babies’ health is threatened by the formula shortage, and the State must ensure that donor human milk, which can be used in place of formula in many instances, is as accessible as possible for all families in need.

Additionally, no one should take advantage of parents or caregivers who are trying to feed infants during this formula shortage. During a declared disaster, price gouging for consumer goods is unlawful and the Attorney General and District Attorneys have the power to enforce

against illegal price gouging. C.R.S. § 6-1-730. I urge the Attorney General Office to pursue any violations of the Consumer Protection Act.

On May 17, 2022, my administration announced a partnership with Mothers' Milk Bank (MMB) through Rocky Mountain Children's Health Foundation to help address the infant formula shortage. Colorado and MMB are calling for donations of human milk or financial donations that would help families with the cost of supply, and bringing awareness to an alternative infant feeding supply during the current crisis.

This Executive Order makes emergency funds available to MMB to support the free distribution of donor human milk across the state. The emergency funds will subsidize the cost of donor human milk for families in need and cover fees for shipping milk for both donors and recipients.

## **II. Declarations and Directives**

- A. The nationwide infant formula shortage, which is impacting children and families throughout Colorado, constitutes a disaster emergency under C.R.S. § 24-33.5-701 *et seq.*
- B. I encumber two hundred twenty thousand dollars (\$220,000) in the Disaster Emergency Fund, established in C.R.S. § 24-33.5-706(2)(a), and make this amount available to the Colorado Department of Public Health and the Environment (CDPHE), for costs associated with subsidizing the cost of donor human milk for families in need and to cover fees for shipping milk for both donors and recipients.
- C. I urge the Attorney General's Office to pursue any violations of the Colorado Consumer Protection Act, C.R.S. § 6-1-730 *et seq.*, relating to the price of infant formula, including charging excessive prices and engaging in price gouging.
- D. I direct all executive branch agencies and departments to take appropriate steps to address the threat to the health and safety of infants posed by the nationwide infant formula shortage, including issuing any directives, guidance, or emergency rules within their authority to increase the availability of and the ability of parents and caregivers to obtain infant formula and/or donor human milk, and exploring opportunities to draw on federal funding.

**III. Duration**

This Executive Order shall expire thirty (30) days from May 25, 2022, unless extended further by Executive Order, except that the funds described in Section II.B above shall remain available for the described purposes for six (6) months from the date of this Executive Order.



GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-fifth day of May 2022.

A handwritten signature in blue ink that reads "Jared Polis".

Jared Polis  
Governor