

EXECUTIVE ORDER NO. 296

WHEREAS, on February 17, 2022, the United States' largest manufacturer of baby formula recalled several lines of powdered formula following concerns about contamination in one of the manufacturer's facilities in Sturgis, Michigan; and

WHEREAS, such recall and the corresponding suspension of production at the Sturgis facility, combined with the extensive supply chain issues affecting the national economy across a host of sectors resulting from the Coronavirus disease 2019 (COVID-19) pandemic, has precipitated a widespread shortage of baby formula at retailers across the State and country; and

WHEREAS, certain specialty formulas are produced only by the manufacturer whose facility is currently not producing those formulas; and

WHEREAS, the shortage of specialty formulas, which are produced and sold in smaller quantities and at fewer retailers throughout the State, is particularly problematic for families that require such formula due to allergies or medical necessity; and

WHEREAS, according to the Centers for Disease Control and Prevention, the majority of parents and caregivers in New Jersey rely on some amount of formula to feed their babies, particularly from the age of three months old to six months old; and

WHEREAS, formula is a crucial source, and in some cases the only source, of nutrition and sustenance for countless infants, and even the temporary inability of parents and caregivers to obtain baby formula poses an imminent threat to the health and safety of infants around the State; and

WHEREAS, President Biden has announced that the federal government will be taking several steps to increase the national supply and availability of baby formula without compromising safety, including working through the Food and Drug Administration ("FDA") to expedite production, supply, and imports of baby formula while also reducing regulatory burdens of the federal Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC Program"); and

WHEREAS, President Biden has encouraged federal and state regulators to enforce laws against price gouging and unfair market practices; and

WHEREAS, the New Jersey WIC Program, administered by the Department of Health, provides the necessary funding to purchase baby formula for eligible New Jersey families in need, but families that receive WIC funding have reported extreme difficulty in locating baby formula throughout the State, including having to travel long distances to multiple locations to obtain baby formula; and

WHEREAS, on May 16, 2022, the FDA reached an agreement with the above-mentioned formula manufacturer supplier to safely recommence production in the Michigan plant by the end of the month, which could result in more formula on store shelves within eight weeks thereafter; and

WHEREAS, until the supply of formula returns to adequate levels, it is necessary and appropriate to take action to address the current threat to the health and safety of babies in this State; and

WHEREAS, parents and caregivers whose babies rely on formula should not be denied access to the available supply due to excessive and inflated prices; and

WHEREAS, New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., enforced by the Division of Consumer Affairs in the Department of Law and Public Safety, prohibits excessive price increases for certain products during a state of emergency or within 30 days after the declaration of a state of emergency, or for such other period of time as the Governor may specify in this declaration of a state of emergency, N.J.S.A. 56:8-107 to -109, and also prohibits as unconscionable commercial practices related to the gross and unreasonable inflation of a product's sale price in response to a threat to public health and safety, N.J.S.A. 56:8-2; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App.A:9-33, et seq., N.J.S.A. 38A:3-6.1, N.J.S.A. 38A:2-4, and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey, Do DECLARE and PROCLAIM that a State of Emergency exists in the State of New Jersey, and I hereby ORDER and DIRECT the following:

1. I authorize and empower the State Director of Emergency Management, who is the Superintendent of the State Police, to take any such emergency measures as he or she may determine necessary, in order to address any actual or potential issues that may result from the shortage of baby formula that currently exists. The State Director of Emergency Management is authorized to coordinate the relief effort for this Emergency with all governmental agencies, volunteer organizations, and the private sector.

2. I authorize and empower the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this Emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of this Executive Order, subject to my prior approval and in consultation with the State Director of Emergency Management. Any such waiver, modification, or suspension shall be promulgated in accordance with N.J.S.A. App. A:9-45.

3. I authorize and empower the executive head of any agency or instrumentality of the State government to take advantage of all waivers of federal rules, regulations, protocols, agreements, or directives that have been made available by the Congress and departments or agencies of the United States Government, where the implementation of such waivers would be beneficial to the public welfare during this Emergency, subject to my prior approval and in consultation with the State Director of Emergency Management.

4. All State departments and agencies, and specifically the Departments of Agriculture, Children and Families, Health, Human Services, and Law and Public Safety shall take appropriate steps to address the threat to the health and safety of New Jersey's infants posed by the baby formula shortage, including issuing any orders, directives, guidance, or emergency regulations in accordance with existing federal and state laws to increase the supply of and the ability of parents and caregivers to obtain baby formula, and exploring opportunities to draw on federal funding to achieve the same goals.

5. I authorize and empower the Adjutant General, in accordance with N.J.S.A. 38A:2-4 and N.J.S.A. 38A:3-6.1, to order to active duty such members of the New Jersey National Guard who, in the Adjutant General's judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety, and welfare and to authorize the employment of any supporting vehicles, equipment, communications, or supplies as may be necessary to support the members so ordered.

6. In accordance with N.J.S.A. App. A:9-34 and N.J.S.A. App. A:9-51, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this Emergency.

7. In accordance with N.J.S.A. App. A:9-40, no municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will in any way interfere with or impede the achievement of the purposes of this Order.

8. It shall be the duty of every person or entity in this State or doing business in this State, and of the members of the governing body and every official, employee, or agent of every political subdivision in this State, and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully with the State Director of Emergency Management in all matters concerning this State of Emergency.

9. This Order shall take effect immediately and shall remain in effect until such time as it is determined by me that this Emergency no longer exists. The protections of N.J.S.A. 56:8-109 provided by this Order shall remain in effect until 30 days after it is determined by me that this Emergency no longer exists.

GIVEN, under my hand and seal this
17th day of May,
Two Thousand and Twenty-two,
and of the Independence of
the United States, the Two
Hundred and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Lisa M. Almeida

Deputy Chief Counsel to the Governor