



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2022-321
June 9, 2022

STATE OF EMERGENCY

The ability to adequately feed and nourish our children is of the utmost importance to the parents and people of the Commonwealth of Kentucky. For many parents, that means relying on baby formula. According to the Centers for Disease Control and Prevention, by the time babies are six (6) months old, 75% of them are receiving formula to meet some or all of their nutritional needs; and

Currently, the United States is experiencing a massive shortage in baby formula.

The shortage began after Abbott Nutrition, the largest manufacturer of baby formula in the United States with more than 40% of the market, recalled a number of batches of formula and ceased production at its Michigan factory due to potential contamination. The recall came months after reports of an infection from Abbott's Michigan facility and months after the U.S. Food and Drug Administration ("FDA") a whistleblower complaint from a former employee about the facility's lack of sanitation. The FDA did not interview that former employee until two months after receiving the complaint. Supply chain issues, hoarding, and price-gouging also are contributing to the shortage. Media reports indicate that price gouging of baby formula is occurring in some States, and some State attorney general offices have received complaints of price gouging and are taking action; and

To help address the shortage, the President of the United States has invoked the Defense Production Act, placing U.S. formula manufacturers first in line to receive resources needed to increase formula production. Additionally, the President has been working to airlift formula to the U.S. from other countries; and

In the Commonwealth, the Kentucky Cabinet for Health and Family Services is offering additional baby formula choices to WIC participants, even though the agency typically only contracts with one company a year to obtain lower prices. Further, Abbott Nutrition recently restarted production at its Michigan facility, focusing first on specialty formulas for babies with metabolic and other needs; and

While these efforts are promising, they are not putting more formula in the hands of Kentucky families today. The Commonwealth must do as much as possible to help Kentucky families while this disaster persists to protect the health and safety of children in Kentucky; and

NOW, THEREFORE, I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of Kentucky and KRS Chapter 39A, do hereby **DECLARE** a State of Emergency relating to the baby formula shortage in the Commonwealth and **ORDER** and **DIRECT** the following:

1. Pursuant to KRS Chapters 367 and 39A, I hereby implement the provisions of KRS 367.372, *et seq.* as to the sale of goods and services, specifically baby formula, as follows:



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- a. No person, within the meaning of KRS 446.010, shall sell or offer to sell consumer food items, specifically baby formula, *see* KRS 367.374(1)(b)1., at a price grossly in excess of the price prior to the declaration of this State of Emergency;
 - b. The foregoing is subject to the qualifications and limitations set forth otherwise in KRS 367.372, *et seq.*, with regard to increased costs to sellers *inter alia*;
 - c. Any person who violates the provisions of KRS 367.372, *et seq.*, as implemented by this Order, shall be subject to the penalties set forth in KRS 367.378 or other applicable law;
 - d. The Division of Emergency Management shall immediately notify the public and those registered with the Division for the purpose of receiving notice of the implementation, renewal, or termination of the provisions of this Order relating to KRS 367.374. The Division shall notify the public by any means available, including the Division's website, news media, and electronic mail. Any person or trade association may register with the Division for the purpose of receiving notification; and
2. I direct that the Cabinet for Health and Family Services, Department for Public Health shall determine and make available the necessary resources to help community partners meet our families' nutritional needs.

This order shall be effective June 9, 2022.

A handwritten signature in cursive script that reads "Andy Beshear".

ANDY BESHEAR, Governor
Commonwealth of Kentucky

MICHAEL G. ADAMS
Secretary of State