

117TH CONGRESS
2D SESSION

H. R. 7791

To amend the Child Nutrition Act of 1966 to establish waiver authority to address certain emergencies, disasters, and supply chain disruptions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2022

Mrs. HAYES (for herself, Mrs. STEEL, Mr. SCOTT of Virginia, Ms. WILSON of Florida, Mr. CONNOLLY, Ms. BROWNLEY, Mr. DANNY K. DAVIS of Illinois, Ms. KUSTER, Ms. ROSS, Mr. SCHIFF, Mr. LARSON of Connecticut, Ms. STEVENS, Ms. DEAN, Mr. CARBAJAL, Ms. WEXTON, Mrs. TRAHAN, Mrs. BUSTOS, Mrs. LURIA, Ms. BLUNT ROCHESTER, Ms. MOORE of Wisconsin, Ms. ESCOBAR, Mr. MOULTON, Ms. WILD, Ms. WILLIAMS of Georgia, Mr. CASTRO of Texas, Ms. SCANLON, Ms. CLARK of Massachusetts, Mr. CORREA, Ms. JACOBS of California, Mrs. DINGELL, Mr. TAKANO, Ms. BARRAGÁN, Mr. MCGOVERN, Ms. JAYAPAL, Ms. PRESSLEY, Ms. LEGER FERNANDEZ, Ms. UNDERWOOD, Mr. COURTNEY, Mr. GALLEG0, Mr. SWALWELL, Ms. MENG, Mr. HORSFORD, Mr. KIM of New Jersey, Mrs. LAWRENCE, Mr. CARSON, Mr. RASKIN, Mrs. CAROLYN B. MALONEY of New York, Mr. MEEKS, Mrs. WATSON COLEMAN, Mr. NEAL, Ms. ESHOO, Mr. CARTER of Louisiana, Mr. CLEAVER, Mr. POCAN, Mr. PERLMUTTER, Ms. MCCOLLUM, Mr. NEGUSE, Ms. LOIS FRANKEL of Florida, Mr. CLYBURN, Mr. LIEU, Mr. TORRES of New York, Mrs. TORRES of California, Mr. KRISHNAMOORTH1, Ms. LEE of California, Ms. STANSBURY, Ms. KELLY of Illinois, Mr. CASTEN, Ms. MATSUI, Ms. SPANBERGER, Mr. ESPAILLAT, Mr. GRIJALVA, Mr. BERA, Ms. SCHRIER, Ms. PINGREE, Ms. TITUS, Mr. HOYER, Mr. THOMPSON of Mississippi, Ms. LOFGREN, Mr. THOMPSON of California, Mr. COHEN, Ms. SHERRILL, Ms. DELBENE, Mr. MORELLE, Mr. COSTA, Mr. JEFFRIES, Ms. OMAR, Ms. DELAURO, Mr. JONES, Mr. SEAN PATRICK MALONEY of New York, Mr. MFUME, Mr. RUSH, Ms. VELÁZQUEZ, Mr. WELCH, Ms. TLAIB, Mr. PHILLIPS, Mr. DEUTCH, and Mr. HARDER of California) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Child Nutrition Act of 1966 to establish waiver authority to address certain emergencies, disasters, and supply chain disruptions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Access to Baby For-
 5 mula Act of 2022”.

6 **SEC. 2. AUTHORITY TO ADDRESS CERTAIN EMERGENCIES,** 7 **DISASTERS, AND SUPPLY CHAIN DISRUP-** 8 **TIONS.**

9 Section 17 of the Child Nutrition Act of 1966 (42
 10 U.S.C. 1786) is amended—

11 (1) in subsection (b), by adding at the end the
 12 following:

13 “(24) SUPPLY CHAIN DISRUPTION.—The term
 14 ‘supply chain disruption’ means a shortage of sup-
 15 plemental foods that impedes the redemption of food
 16 instruments, as determined by the Secretary.”;

17 (2) in subsection (h)(8), by adding at the end
 18 the following:

19 “(L) INFANT FORMULA COST CONTAIN-
 20 MENT CONTRACT REQUIREMENT.—

1 “(i) IN GENERAL.—The Secretary
2 shall require that each infant formula cost
3 containment contract renewed or entered
4 into on or after the date of the enactment
5 of the Access to Baby Formula Act of
6 2022 includes remedies in the event of an
7 infant formula recall, including how an in-
8 fant formula manufacturer would protect
9 against disruption to program participants
10 in the State.

11 “(ii) REBATES.—In the case of an in-
12 fant formula recall, an infant formula
13 manufacturer contracted to provide infant
14 formula under this section shall comply
15 with the contract requirements under
16 clause (i).

17 “(M) MEMORANDUM OF UNDER-
18 STANDING.—Not later than 30 days after the
19 date of the enactment of the Access to Baby
20 Formula Act of 2022, the Secretary shall en-
21 sure there is a memorandum of understanding
22 between the Secretary and the Secretary of
23 Health and Human Services that includes pro-
24 cedures to promote coordination and informa-
25 tion sharing between the Department of Agri-

1 culture and the Department of Health and
2 Human Services regarding any supply chain
3 disruption, including a supplemental food re-
4 call.”; and

5 (3) by adding at the end the following:

6 “(r) EMERGENCIES AND DISASTERS.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of law, during an emergency period, the
9 Secretary may modify or waive any qualified admin-
10 istrative requirement for one or more State agencies
11 if—

12 “(A) the qualified administrative require-
13 ment cannot be met by State agencies during
14 any portion of the emergency period under the
15 conditions which prompted the emergency pe-
16 riod; and

17 “(B) the modification or waiver of such a
18 requirement—

19 “(i) is necessary to provide assistance
20 under this section; and

21 “(ii) does not substantially weaken the
22 nutritional quality of supplemental foods
23 provided under this section.

24 “(2) DURATION.—A waiver established under
25 this subsection may be available for a period of not

1 greater than the emergency period and the 60 days
2 after the end of such emergency period.

3 “(3) DEFINITIONS.—In this subsection:

4 “(A) EMERGENCY PERIOD.—The term
5 ‘emergency period’ means a period during which
6 there exists—

7 “(i) a public health emergency de-
8 clared by the Secretary of Health and
9 Human Services under section 319 of the
10 Public Health Service Act (42 U.S.C.
11 247d);

12 “(ii) any renewal of such a public
13 health emergency pursuant to such section
14 319;

15 “(iii) a presidentially declared major
16 disaster as defined under section 102 of
17 the Robert T. Stafford Disaster Relief and
18 Emergency Assistance Act (42 U.S.C.
19 5121 et seq.); or

20 “(iv) a presidentially declared emer-
21 gency as defined under section 102 of the
22 Robert T. Stafford Disaster Relief and
23 Emergency Assistance Act (42 U.S.C.
24 5121 et seq.).

1 “(B) QUALIFIED ADMINISTRATIVE RE-
2 QUIREMENT.—The term ‘qualified administra-
3 tive requirement’ means a requirement under
4 this section or a regulatory requirement issued
5 pursuant to this section.

6 “(s) SUPPLY CHAIN DISRUPTIONS.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of law, during a supply chain disruption,
9 including a supplemental food product recall, the
10 Secretary may modify or waive any qualified admin-
11 istrative requirement for one or more State agencies
12 if—

13 “(A) the qualified administrative require-
14 ment cannot be met by State agencies during
15 any portion of the supply chain disruption, in-
16 cluding a supplemental food product recall,
17 under the conditions which prompted such dis-
18 ruption or recall; and

19 “(B) the modification or waiver of such a
20 requirement—

21 “(i) is necessary to provide assistance
22 under this section; and

23 “(ii) does not substantially weaken the
24 nutritional quality of supplemental foods
25 provided under this section.

1 “(2) WAIVER AUTHORITY.—The Secretary may,
2 under a waiver or modification under paragraph
3 (1)—

4 “(A) permit authorized vendors to ex-
5 change or substitute authorized supplemental
6 foods obtained with food instruments beyond
7 exchanges for an identical (exact brand and
8 size) food item;

9 “(B) waive any requirement with respect
10 to medical documentation for the issuance of
11 noncontract brand infant formula, except for
12 the requirements for participants receiving
13 Food Package III (as defined in section
14 246.10(e)(3) of title 7, Code of Federal Regula-
15 tions (as in effect on the date of the enactment
16 of this subsection));

17 “(C) waive the maximum monthly allow-
18 ance for infant formula; and

19 “(D) waive any additional qualified admin-
20 istrative requirement to address a supply chain
21 disruption, including a supplemental food prod-
22 uct recall.

23 “(3) DURATION.—A waiver or modification es-
24 tablished under this subsection—

25 “(A) may be—

1 “(i) available for a period of not more
2 than 45 days, to begin on a date deter-
3 mined by the Secretary; and

4 “(ii) renewed so long as the Secretary
5 provides notice at least 15 days before
6 such renewal; and

7 “(B) shall not be available after the date
8 that is 60 days after the supply chain disrup-
9 tion for which such waiver is established ceases
10 to exist.

11 “(4) TRANSPARENCY.—

12 “(A) IN GENERAL.—If the Secretary deter-
13 mines that a supply chain disruption exists and
14 issues a waiver or modification under this sub-
15 section, the Secretary shall notify each State
16 agency affected by such disruption and include
17 with such notification an explanation of such
18 determination.

19 “(B) PUBLICATION.—The Secretary shall
20 make each determination described in subpara-
21 graph (A) publicly available on the website of
22 the Department.

23 “(C) STATE AGENCY REQUIREMENTS.—In
24 the case of a waiver or modification under this
25 subsection related to infant formula, a State

1 agency notified under subparagraph (A) shall
2 notify each infant formula manufacturer that
3 has a contract with such State agency with re-
4 spect to such notification.

5 “(5) QUALIFIED ADMINISTRATIVE REQUIRE-
6 MENT DEFINED.—For purposes of this subsection,
7 the term ‘qualified administrative requirement’ has
8 the meaning given the term in subsection (r).”.

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