

117TH CONGRESS
2^D SESSION

H. R. 7791

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 17), 2022

Received

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

9 (1) in subsection (b), by adding at the end the
10 following:

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

15 (2) in subsection (h)(8), by adding at the end
16 the following:

17 “(L) INFANT FORMULA COST CONTAIN-
18 MENT CONTRACT REQUIREMENT.—

19 “(i) IN GENERAL.—The Secretary
20 shall require that each infant formula cost
21 containment contract renewed or entered
22 into on or after the date of the enactment
23 of the Access to Baby Formula Act of
24 2022 includes remedies in the event of an
25 infant formula recall, including how an in-
26 fant formula manufacturer would protect

1 against disruption to program participants
2 in the State.

3 “(ii) REBATES.—In the case of an in-
4 fant formula recall, an infant formula
5 manufacturer contracted to provide infant
6 formula under this section shall comply
7 with the contract requirements under
8 clause (i).

9 “(M) MEMORANDUM OF UNDER-
10 STANDING.—Not later than 30 days after the
11 date of the enactment of the Access to Baby
12 Formula Act of 2022, the Secretary shall en-
13 sure there is a memorandum of understanding
14 between the Secretary and the Secretary of
15 Health and Human Services that includes pro-
16 cedures to promote coordination and informa-
17 tion sharing between the Department of Agri-
18 culture and the Department of Health and
19 Human Services regarding any supply chain
20 disruption, including a supplemental food re-
21 call.”; and

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

23 “(r) EMERGENCIES AND DISASTERS.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of law, during an emergency period, the

1 Secretary may modify or waive any qualified admin-
2 istrative requirement for one or more State agencies
3 if—

4 “(A) the qualified administrative require-
5 ment cannot be met by State agencies during
6 any portion of the emergency period under the
7 conditions which prompted the emergency pe-
8 riod; and

9 “(B) the modification or waiver of such a
10 requirement—

11 “(i) is necessary to provide assistance
12 under this section; and

13 “(ii) does not substantially weaken the
14 nutritional quality of supplemental foods
15 provided under this section.

16 “(2) DURATION.—A waiver established under
17 this subsection may be available for a period of not
18 greater than the emergency period and the 60 days
19 after the end of such emergency period.

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

21 “(A) EMERGENCY PERIOD.—The term
22 ‘emergency period’ means a period during which
23 there exists—

24 “(i) a public health emergency de-
25 clared by the Secretary of Health and

1 Human Services under section 319 of the
2 Public Health Service Act (42 U.S.C.
3 247d);

4 “(ii) any renewal of such a public
5 health emergency pursuant to such section
6 319;

7 “(iii) a presidentially declared major
8 disaster as defined under section 102 of
9 the Robert T. Stafford Disaster Relief and
10 Emergency Assistance Act (42 U.S.C.
11 5121 et seq.); or

12 “(iv) a presidentially declared emer-
13 gency as defined under section 102 of the
14 Robert T. Stafford Disaster Relief and
15 Emergency Assistance Act (42 U.S.C.
16 5121 et seq.).

17 “(B) QUALIFIED ADMINISTRATIVE RE-
18 QUIREMENT.—The term ‘qualified administra-
19 tive requirement’ means a requirement under
20 this section or a regulatory requirement issued
21 pursuant to this section.

22 “(s) SUPPLY CHAIN DISRUPTIONS.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of law, during a supply chain disruption,
25 including a supplemental food product recall, the

1 Secretary may modify or waive any qualified admin-
2 istrative requirement for one or more State agencies
3 if—

4 “(A) the qualified administrative require-
5 ment cannot be met by State agencies during
6 any portion of the supply chain disruption, in-
7 cluding a supplemental food product recall,
8 under the conditions which prompted such dis-
9 ruption or recall; and

10 “(B) the modification or waiver of such a
11 requirement—

12 “(i) is necessary to provide assistance
13 under this section; and

14 “(ii) does not substantially weaken the
15 nutritional quality of supplemental foods
16 provided under this section.

17 “(2) WAIVER AUTHORITY.—The Secretary may,
18 under a waiver or modification under paragraph
19 (1)—

20 “(A) permit authorized vendors to ex-
21 change or substitute authorized supplemental
22 foods obtained with food instruments beyond
23 exchanges for an identical (exact brand and
24 size) food item;

1 “(B) waive any requirement with respect
2 to medical documentation for the issuance of
3 noncontract brand infant formula, except for
4 the requirements for participants receiving
5 Food Package III (as defined in section
6 246.10(e)(3) of title 7, Code of Federal Regula-
7 tions (as in effect on the date of the enactment
8 of this subsection));

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

11 “(D) waive any additional qualified admin-
12 istrative requirement to address a supply chain
13 disruption, including a supplemental food prod-
14 uct recall.

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

17 “(A) may be—

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

21 “(ii) renewed so long as the Secretary
22 provides notice at least 15 days before
23 such renewal; and

24 “(B) shall not be available after the date
25 that is 60 days after the supply chain disrup-

1 tion for which such waiver is established ceases
2 to exist.

3 “(4) TRANSPARENCY.—

4 “(A) IN GENERAL.—If the Secretary deter-
5 mines that a supply chain disruption exists and
6 issues a waiver or modification under this sub-
7 section, the Secretary shall notify each State
8 agency affected by such disruption and include
9 with such notification an explanation of such
10 determination.

11 “(B) PUBLICATION.—The Secretary shall
12 make each determination described in subpara-
13 graph (A) publicly available on the website of
14 the Department.

15 “(C) STATE AGENCY REQUIREMENTS.—In
16 the case of a waiver or modification under this
17 subsection related to infant formula, a State
18 agency notified under subparagraph (A) shall
19 notify each infant formula manufacturer that
20 has a contract with such State agency with re-
21 spect to such notification.

22 “(5) QUALIFIED ADMINISTRATIVE REQUIRE-
23 MENT DEFINED.—For purposes of this subsection,

1 the term ‘qualified administrative requirement’ has
2 the meaning given the term in subsection (r).”.

Passed the House of Representatives May 18, 2022.

Attest: CHERYL L. JOHNSON,
Clerk.