

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7791

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## 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:

*Clerk.*

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