

Appendix H
Access to Baby Formula Act of 2022

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.

May 21, 2022
[H.R. 7791]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Access to Baby Formula Act of 2022”.

Access to Baby
Formula Act
of 2022.
42 USC 1771
note.

**SEC. 2. AUTHORITY TO ADDRESS CERTAIN EMERGENCIES, DISASTERS,
AND SUPPLY CHAIN DISRUPTIONS.**

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

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

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

Definition.

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

“(L) INFANT FORMULA COST CONTAINMENT CONTRACT REQUIREMENT.—

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

“(ii) REBATES.—In the case of an infant formula recall, an infant formula manufacturer contracted to provide infant formula under this section shall comply with the contract requirements under clause (i).

Compliance.

“(M) MEMORANDUM OF UNDERSTANDING.—Not later than 30 days after the date of the enactment of the Access to Baby Formula Act of 2022, the Secretary shall ensure there is a memorandum of understanding between the Secretary and the Secretary of Health and Human Services that includes procedures to promote coordination and information sharing between the Department of Agriculture and the Department of Health and Human Services regarding any supply chain disruption, including a supplemental food recall.”; and

Deadline.
Procedures.

(3) by adding at the end the following:

“(r) EMERGENCIES AND DISASTERS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, during an emergency period, the Secretary may modify or waive any qualified administrative requirement for one or more State agencies if—

“(A) the qualified administrative requirement cannot be met by State agencies during any portion of the emergency period under the conditions which prompted the emergency period; and

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

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

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

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

“(3) DEFINITIONS.—In this subsection:

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

“(i) a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d);

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

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

“(iv) a presidentially declared emergency as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(B) QUALIFIED ADMINISTRATIVE REQUIREMENT.—The term ‘qualified administrative requirement’ means a requirement under this section or a regulatory requirement issued pursuant to this section.

“(s) SUPPLY CHAIN DISRUPTIONS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, during a supply chain disruption, including a supplemental food product recall, the Secretary may modify or waive any qualified administrative requirement for one or more State agencies if—

“(A) the qualified administrative requirement cannot be met by State agencies during any portion of the supply chain disruption, including a supplemental food product recall, under the conditions which prompted such disruption or recall; and

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

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

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

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

“(A) permit authorized vendors to exchange or substitute authorized supplemental foods obtained with food instruments beyond exchanges for an identical (exact brand and size) food item;

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

“(C) waive the maximum monthly allowance for infant formula; and

“(D) waive any additional qualified administrative requirement to address a supply chain disruption, including a supplemental food product recall.

“(3) DURATION.—A waiver or modification established under this subsection—

“(A) may be—

“(i) available for a period of not more than 45 days, to begin on a date determined by the Secretary; and

Determination.

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

Notice.

“(B) shall not be available after the date that is 60 days after the supply chain disruption for which such waiver is established ceases to exist.

“(4) TRANSPARENCY.—

“(A) IN GENERAL.—If the Secretary determines that a supply chain disruption exists and issues a waiver or modification under this subsection, the Secretary shall notify each State agency affected by such disruption and include with such notification an explanation of such determination.

Determination.
Notification.

“(B) PUBLICATION.—The Secretary shall make each determination described in subparagraph (A) publicly available on the website of the Department.

Public
information.
Web posting.

“(C) STATE AGENCY REQUIREMENTS.—In the case of a waiver or modification under this subsection related to infant formula, a State agency notified under subparagraph (A) shall notify each infant formula manufacturer that has a contract with such State agency with respect to such notification.

Notification.

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

Approved May 21, 2022.

LEGISLATIVE HISTORY—H.R. 7791:

CONGRESSIONAL RECORD, Vol. 168 (2022):

May 18, considered and passed House.

May 19, considered and passed Senate.

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