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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R.

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

Mrs. HAYES (for herself, Mrs. STEEL, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on

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”.

1 **SEC. 2. AUTHORITY TO ADDRESS CERTAIN EMERGENCIES,**
2 **DISASTERS, AND SUPPLY CHAIN DISRUP-**
3 **TIONS.**

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

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

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

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

14 “(L) INFANT FORMULA COST CONTAIN-
15 MENT CONTRACT REQUIREMENT.—

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

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

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

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

21 “(r) EMERGENCIES AND DISASTERS.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of law, during an emergency period, the
24 Secretary may modify or waive any qualified admin-

1 administrative requirement for one or more State agencies
2 if—

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

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

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

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

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

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

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

23 “(i) a public health emergency de-
24 clared by the Secretary of Health and
25 Human Services under section 319 of the

1 Public Health Service Act (42 U.S.C.
2 247d);

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

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

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

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

21 “(s) SUPPLY CHAIN DISRUPTIONS.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of law, during a supply chain disruption,
24 including a supplemental food product recall, the
25 Secretary may modify or waive any qualified admin-

1 administrative requirement for one or more State agencies
2 if—

3 “(A) the qualified administrative require-
4 ment cannot be met by State agencies during
5 any portion of the supply chain disruption, in-
6 cluding a supplemental food product recall,
7 under the conditions which prompted such dis-
8 ruption or recall; 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) WAIVER AUTHORITY.—The Secretary may,
17 under a waiver or modification under paragraph
18 (1)—

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

24 “(B) waive any requirement with respect
25 to medical documentation for the issuance of

1 noncontract brand infant formula, except for
2 the requirements for participants receiving
3 Food Package III (as defined in section
4 246.10(e)(3) of title 7, Code of Federal Regula-
5 tions (as in effect on the date of the enactment
6 of this subsection));

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

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

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

15 “(A) may be—

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

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

22 “(B) shall not be available after the date
23 that is 60 days after the supply chain disrup-
24 tion for which such waiver is established ceases
25 to exist.

1 “(4) TRANSPARENCY.—

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

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

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

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