

119TH CONGRESS  
1ST SESSION

# S. 272

To improve the safety of infant formula through testing of infant formula for microorganisms and toxic elements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2025

Mr. PETERS (for himself and Mr. HOEVEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To improve the safety of infant formula through testing of infant formula for microorganisms and toxic elements, 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 “Protect Infant For-  
5 mula from Contamination Act”.

6 **SEC. 2. NOTIFICATIONS FOR TESTING OF INFANT FOR-**  
7 **MULA.**

8 Section 412(e) of the Federal Food, Drug, and Cos-  
9 metic Act (21 U.S.C. 350a(e)) is amended—

1           (1) in paragraph (1), in the matter following  
2       subparagraph (B)—

3                   (A) by striking “promptly”;

4                   (B) by inserting “, within 1 business day  
5       of acquiring such knowledge” after “such  
6       knowledge”; and

7                   (C) by striking “the infant formula” and  
8       inserting “an infant formula”;

9           (2) by redesignating paragraph (2) as para-  
10       graph (5); and

11           (3) by inserting after paragraph (1) the fol-  
12       lowing:

13       “(2) If the result of any testing of a sample from  
14       any production aggregate of finished infant formula prod-  
15       uct is confirmed as a positive analytical result for any  
16       microorganism for which finished product testing is re-  
17       quired under section 106.55(e) of title 21, Code of Federal  
18       Regulations (or any successor regulation), the manufac-  
19       turer shall—

20                   “(A) within 1 business day of acquiring a con-  
21       firmed positive analytical result, notify the Secretary  
22       of such result, regardless of whether such product  
23       has left an establishment subject to the control of  
24       the manufacturer;

1           “(B) promptly consult with the Secretary for  
2           proper isolation of the affected product, and, as the  
3           Secretary may require, cease distribution and prop-  
4           erly dispose of the affected product; and

5           “(C) promptly provide to the Secretary results  
6           and isolates from a positive sample of such product  
7           or the whole genetic sequence from any confirmed  
8           positive analytical result.

9           “(3) Not later than 1 business day after receipt by  
10          the Secretary of a notification under paragraph (2)(A),  
11          the Secretary shall respond to the manufacturer of the in-  
12          fant formula to begin discussions regarding investigation  
13          and corrective action, and, as appropriate, share the find-  
14          ings of the Secretary with the manufacturer.

15          “(4) Not later than 90 days after receipt of a notifi-  
16          cation under paragraph (1) or (2), the Secretary shall con-  
17          firm, including through the collection of documentation,  
18          that the manufacturer submitting the notification per-  
19          formed, or is performing, an appropriate investigation and  
20          corrective action, if applicable. The Secretary shall con-  
21          sider, as part of the review of the root cause investigation,  
22          the analytical method used to conduct laboratory testing  
23          and, as appropriate, the potential for cross contamination  
24          of the sample by handling and testing. The manufacturer

1 shall make such documentation available to the Secretary  
 2 electronically and for inspection under section 704.”.

3 **SEC. 3. REPORTING TO IMPROVE THE SAFETY AND SUPPLY**  
 4 **OF INFANT FORMULA.**

5 Section 412 of the Federal Food, Drug, and Cosmetic  
 6 Act (21 U.S.C. 350a) is amended by adding at the end  
 7 the following:

8 “(n) REPORTING TO IMPROVE THE SAFETY AND  
 9 SUPPLY OF INFANT FORMULA.—

10 “(1) PROGRESS REPORT.—Not later than 180  
 11 days after the date of enactment of the Protect In-  
 12 fant Formula from Contamination Act, the Sec-  
 13 retary shall issue a progress report on implementa-  
 14 tion of the recommendations to improve the safety  
 15 and supply of infant formula contained in the report  
 16 titled, ‘Long-Term National Strategy to Increase the  
 17 Resiliency of the U.S. Infant Formula Market’,  
 18 issued by the Food and Drug Administration in Jan-  
 19 uary 2025. Such progress report shall include addi-  
 20 tional authorities or resources that the Secretary  
 21 may require for purposes of improving the safety  
 22 and supply of infant formula.

23 “(2) QUARTERLY REPORTS ON SUPPLY  
 24 CHAIN.—Not later than 270 days after the date of  
 25 enactment of the Protect Infant Formula from Con-

1       tamination Act, and not less frequently than quar-  
2       terly for the 5-year period thereafter, the Secretary  
3       shall submit a report on the most current, critical  
4       supply chain data for infant formula, including in-  
5       stock rates, to—

6               “(A) the Committee on Health, Education,  
7       Labor, and Pensions; the Committee on Agri-  
8       culture, Nutrition, and Forestry; and the Sub-  
9       committee on Agriculture, Rural Development,  
10      Food and Drug Administration, and Related  
11      Agencies of the Committee on Appropriations of  
12      the Senate; and

13              “(B) the Committee on Energy and Com-  
14      merce; the Committee on Agriculture; and the  
15      Subcommittee on Agriculture, Rural Develop-  
16      ment, Food and Drug Administration, and Re-  
17      lated Agencies of the Committee on Appropria-  
18      tions of the House of Representatives.

19              “(3) CONSULTATION.—The Secretary shall en-  
20      gage with the Department of Agriculture and other  
21      relevant agencies of the Federal Government regard-  
22      ing ongoing efforts to address immediate formula  
23      needs and build long-term resiliency into the infant  
24      formula market.

1           “(4) REPORTS ON ADEQUACY OF SUPPLY.—Not  
2           later than 1 year, 3 years, and 5 years after the date  
3           of enactment of the Protect Infant Formula from  
4           Contamination Act, the Secretary shall—

5                   “(A) engage with public stakeholders, in-  
6                   fant formula manufacturers, and other stake-  
7                   holders, as determined by the Secretary, to de-  
8                   termine evidence-based practices that can be  
9                   implemented to maximize infant formula supply  
10                  and infant safety, which may include the value  
11                  of high frequency testing for purposes of identi-  
12                  fying contamination events and bracketing po-  
13                  tentially contaminated product, the impact of  
14                  corrective action on contamination events, and  
15                  evidence-based recommendations for enhancing  
16                  infant formula supply and safety; and

17                  “(B) submit a report to the committees de-  
18                  scribed in subparagraphs (A) and (B) of para-  
19                  graph (2) that identifies the modifications to  
20                  manufacturer practices and actions described in  
21                  subparagraph (A), if any, that could be imple-  
22                  mented to improve infant formula supply and  
23                  safety.”.

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