

118TH CONGRESS
1ST SESSION

S. 2540

To amend the Food and Nutrition Act of 2008 to allow for increased flexibility in the food distribution program on Indian reservations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2023

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Food and Nutrition Act of 2008 to allow for increased flexibility in the food distribution program on Indian reservations, 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 “Tribal Nutrition Flexi-
5 bility Act of 2023”.

6 **SEC. 2. INCREASED FLEXIBILITY UNDER FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS.**

7
8 Section 4(b) of the Food and Nutrition Act of 2008
9 (7 U.S.C. 2013(b)) is amended—

1 (1) in paragraph (5)—

2 (A) in the matter preceding subparagraph
3 (A), by striking “paragraph” and inserting
4 “subparagraph”; and

5 (B) by redesignating subparagraphs (A)
6 and (B) as clauses (i) and (ii), respectively, and
7 indenting appropriately;

8 (2) by redesignating paragraph (5) as subpara-
9 graph (B) and indenting appropriately;

10 (3) by inserting after subparagraph (D) of
11 paragraph (4) the following:

12 “(5) DOMESTIC COMMODITIES.—

13 “(A) REQUIREMENT.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), commodities provided
16 through the food distribution program on
17 Indian reservations under this subsection
18 shall be products of the United States.

19 “(ii) EXCEPTION.—Notwithstanding
20 any other provision of law, in the case of
21 a disaster, emergency, or severe supply
22 chain disruption, the Secretary may, on re-
23 quest of a Tribal organization or State
24 agency, temporarily waive the requirement
25 under clause (i).”;

1 (4) in paragraph (6)—

2 (A) by redesignating subparagraphs (C),
3 (D), and (E) as subparagraphs (G), (E), and
4 (F), respectively, and reordering accordingly;
5 and

6 (B) by inserting after subparagraph (B)
7 the following:

8 “(C) TRADITIONAL AND CULTURAL
9 FOODS.—For purposes of the requirement
10 under paragraph (5)(A), any traditional or cul-
11 turally appropriate food sourced under this
12 paragraph by a Tribal organization or the Sec-
13 retary from a Tribal band of the recipient Tribe
14 that is located across an international boundary
15 line shall be considered a product of the United
16 States.

17 “(D) FOODS PROVIDED ON REGIONAL OR
18 NATIONAL BASIS.—The Secretary shall have the
19 authority to distribute traditional and culturally
20 appropriate foods on a regional basis, in addi-
21 tion to a national basis.”;

22 (5) by redesignating paragraph (7) as para-
23 graph (9); and

24 (6) by inserting after paragraph (6) the fol-
25 lowing:

1 “(7) WAIVER AUTHORITY.—

2 “(A) DEFINITION OF COVERED REGULA-
3 TION.—The term ‘covered regulation’ means a
4 regulation issued by the Secretary pursuant to
5 this subsection on determination by the Sec-
6 retary that the regulation is necessary or appro-
7 priate for the effective and efficient administra-
8 tion of the food distribution program on Indian
9 reservations under this subsection.

10 “(B) PURPOSE.—The purpose of this para-
11 graph is to facilitate the effective operation of
12 the food distribution program on Indian res-
13 ervations under this subsection in partnership
14 with Tribal organizations and State agencies.

15 “(C) WAIVER.—

16 “(i) IN GENERAL.—The Secretary
17 may waive a covered regulation on the re-
18 quest of an Indian Tribe.

19 “(ii) REQUEST.—An Indian Tribe
20 shall request a waiver under clause (i)
21 through the Office of Tribal Relations,
22 which shall consult with any implicated
23 agency regarding the waiver.

24 “(iii) DETERMINATION.—

1 “(I) IN GENERAL.—Not later
2 than 30 days after receiving a request
3 under clause (ii), the Secretary shall
4 respond in writing with a determina-
5 tion.

6 “(II) DENIAL.—If the Secretary
7 determines under subclause (I) that
8 the waiver is denied, the Secretary
9 shall—

10 “(aa) include in the written
11 response any curative adjust-
12 ments necessary to approve the
13 waiver; and

14 “(bb) permit the Indian
15 Tribe to resubmit a waiver re-
16 quest with those curative adjust-
17 ments not later than 30 days
18 after the receipt of the response
19 of the Secretary under subclause
20 (I).

21 “(III) SUBSEQUENT AP-
22 PROVAL.—The Secretary shall grant a
23 waiver to an Indian Tribe not later
24 than 30 days after determining that a
25 resubmitted request under subclause

1 (II)(bb) satisfactorily cures the rea-
2 sons for the initial denial of the re-
3 quest.

4 “(8) SOURCING FOR NUTRITION EDUCATION.—

5 “(A) IN GENERAL.—Subject to the avail-
6 ability of appropriations and the funds de-
7 scribed in subparagraph (B), the Secretary
8 shall establish a fund from which the Secretary
9 may—

10 “(i) provide funds to Tribal organiza-
11 tions or State agencies administering the
12 food distribution program on Indian res-
13 ervations under this subsection for the pur-
14 chase of traditional locally- and regionally-
15 grown herbs and spices for use in nutrition
16 education programming for recipients of
17 food distributed under that program; or

18 “(ii) on request of a Tribal organiza-
19 tion or State agency, purchase the herbs
20 and spices described in clause (i) on behalf
21 of the Tribal organization or State agency
22 for the purposes described in that clause.

23 “(B) NUTRITION EDUCATION FUNDING.—

24 If appropriated funds are not available, Tribal
25 organizations and State agencies may use to

1 carry out subparagraph (A) nutrition education
2 funds otherwise provided by the Secretary for
3 the food distribution program on Indian res-
4 ervations under this subsection.

5 “(C) NUTRITION EDUCATION PROGRAM-
6 MING.—Tribal organizations shall have broad
7 discretion in determining the format and con-
8 tent of nutrition education programming pro-
9 vided to recipients of food distributed under the
10 food distribution program on Indian reserva-
11 tions under this subsection.”.

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