

103^D CONGRESS
1ST SESSION

S. 1623

To require the Secretary of Agriculture to carry out procedures for debarment of persons engaged in nonprocurement programs and activities with the Department of Agriculture who have violated the regulations of a program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4 (legislative day, NOVEMBER 2), 1993

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

A BILL

To require the Secretary of Agriculture to carry out procedures for debarment of persons engaged in nonprocurement programs and activities with the Department of Agriculture who have violated the regulations of a program, 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 “USDA Debarment Act
5 of 1993”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) dating back to 1986, several Secretaries of
2 Agriculture have failed to comply with Executive
3 Order No. 12549, which was intended to ensure that
4 the Federal Government did not continue to do busi-
5 ness with companies that violate the regulations of
6 a program of any Executive agency;

7 (2) several companies that have violated the
8 regulations of programs within the Department of
9 Agriculture (such as programs related to inter-
10 national agricultural trade, food and nutrition, com-
11 modity storage, and livestock trade) continue to par-
12 ticipate in the programs with respect to which the
13 companies have violated the regulations; and

14 (3) companies that have violated, and continue
15 to violate, regulations governing Department pro-
16 grams have received billions of dollars, and continue
17 to monetarily benefit.

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act:

20 (1) DEPARTMENT.—The term “Department”
21 means the United States Department of Agriculture.

22 (2) EXECUTIVE AGENCY.—The term “Executive
23 agency” has the same meaning as is provided in sec-
24 tion 105 of title 5, United States Code.

1 (3) FINAL DETERMINATION.—The term “final
2 determination” means the final decision of the Sec-
3 retary in a nonprocurement debarment proceeding
4 involving a person as to whether the person has
5 committed a material violation—

6 (A) including a final decision regarding the
7 term of the debarment; but

8 (B) not including a decision as to whether
9 there is sufficient reason for initiation of a
10 nonprocurement debarment proceeding.

11 (4) MATERIAL VIOLATION.—The term “mate-
12 rial violation” means an action or series of actions
13 taken by a person that constitute a substantial and
14 material violation of a regulation of a program of
15 the Department, as determined by the Secretary.

16 (5) NONPROCUREMENT DEBARMENT.—The
17 term “nonprocurement debarment” means an action
18 to bar a person from programs and activities involv-
19 ing Federal financial and nonfinancial assistance of-
20 fered by the Department, but not including—

21 (A) Federal procurement programs and ac-
22 tivities;

23 (B) contracts entered into by the Commod-
24 ity Credit Corporation under the price support
25 operations and other programs of the Corpora-

1 tion with persons in the capacities of the per-
2 sons as agricultural producers;

3 (C) conservation programs administered by
4 the Secretary; and

5 (D) individuals and households who par-
6 ticipate in nutrition assistance programs admin-
7 istered by the Secretary.

8 (6) PERSON.—The term “person” means any
9 individual, corporation, partnership, association, or
10 other legal entity, however organized, who is partici-
11 pating, or has participated, in a program or activity
12 of the Department.

13 (7) SECRETARY.—The term “Secretary” means
14 the Secretary of Agriculture.

15 **SEC. 4. NONPROCUREMENT DEBARMENT.**

16 (a) INITIATION OF PROCEEDINGS.—Except as pro-
17 vided in subsection (c), if the Secretary obtains notice of
18 the alleged occurrence of a material violation of a regula-
19 tion of a program or activity of the Department and the
20 Secretary determines under subsection (b) that there is
21 sufficient reason for initiation of a nonprocurement debar-
22 ment proceeding the Secretary shall initiate a
23 nonprocurement debarment proceeding against the person
24 not later than 180 days after the determination.

1 (b) SUFFICIENT REASON FOR INITIATION OF
2 NONPROCUREMENT DEBARMENT PROCEEDINGS.—Sub-
3 ject to subsection (c), sufficient reason for initiation of a
4 nonprocurement debarment proceeding includes, as deter-
5 mined by the Secretary—

6 (1) the violation of a Federal or State law rel-
7 evant to the integrity or orderly administration of
8 the program or activity of the Department in which
9 the person is participating; or

10 (2) the commission of an action that may con-
11 stitute a material violation of a regulation applicable
12 to a program or activity of the Department.

13 (c) EXCEPTION.—If the Secretary determines that a
14 decision to initiate a nonprocurement debarment proceed-
15 ing cannot be made within the 180-day period referred
16 to in subsection (a) because of the need to further inves-
17 tigate the actions of a person relating to the alleged mate-
18 rial violation, the Secretary may have such additional time
19 as the Secretary considers necessary to make a decision,
20 but not more than 180 days beyond the original 180-day
21 period.

22 **SEC. 5. NONPROCUREMENT DEBARMENT PROCEEDINGS.**

23 (a) NOTICE AND HEARING.—Subsequent to the de-
24 termination that there is sufficient reason for initiation
25 of a nonprocurement debarment proceeding under section

1 4, the Secretary shall provide the person against whom
2 the proceeding has been initiated with—

3 (1) full notice of the allegations;

4 (2) the opportunity for an informal hearing not
5 on the record, in which the person is provided appro-
6 priate due process procedures, as determined by the
7 Secretary, including an opportunity to rebut any al-
8 legation of a material violation;

9 (3) notice of the finding of the Secretary on
10 whether 1 or more material violations were commit-
11 ted by the person; and

12 (4) notice of the appropriate period of debar-
13 ment.

14 (b) PERIOD OF DEBARMENT.—Subject to subsection
15 (e), a person determined to have committed a material vio-
16 lation shall be ineligible to participate in the program or
17 activity in which the material violation occurred during the
18 5-year period beginning on the date of the determination.

19 (c) PREVIOUS DEBARMENT.—Subject to subsection
20 (e), a person who has been previously debarred by another
21 Executive agency, or has been previously debarred under
22 a nonprocurement debarment proceeding under this Act,
23 who is determined by the Secretary to have committed a
24 material violation based on a separate set of factual occur-

1 rences, shall be permanently debarred from participating
2 in any program or activity of the Department.

3 (d) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—
4 Prior to seeking judicial review in a court of competent
5 jurisdiction, a person against whom a nonprocurement de-
6 barment proceeding has been initiated shall—

7 (1) exhaust all administrative procedures pre-
8 scribed by the Secretary; and

9 (2) receive notice of the final determination of
10 the Secretary.

11 (e) GOOD FAITH.—If the Secretary determines that
12 a person, against whom there is sufficient reason for initi-
13 ation of a nonprocurement debarment proceeding, or
14 against whom a finding of material violation has already
15 been made, committed the act that is the subject of the
16 nonprocurement debarment proceeding in good faith, the
17 Secretary may reduce or eliminate the applicable periods
18 of debarment specified in subsections (b) and (c).

19 (f) COORDINATION.—To the maximum extent prac-
20 ticable, the Secretary shall consolidate and coordinate any
21 nonprocurement debarment action taken under this Act
22 with other adverse actions within the Department, includ-
23 ing other nonprocurement debarment actions.

24 (g) PRECEDENCE.—This Act shall take precedence
25 over any administrative procedure for debarment that af-

fects the Department, to the extent that the procedure
conflicts with this Act.

SEC. 6. REPORT ON CONSISTENT DEBARMENT POLICY.

Not later than 120 days after the date of enactment
of this Act, the Director of the Office of Management and
Budget shall advise the appropriate committees of Con-
gress and the Comptroller General of the United States
as to the appropriateness and usefulness of a policy for
procurement debarment and a policy for nonprocurement
debarment that are applicable all Executive agencies.

SEC. 7. REGULATIONS.

(a) IN GENERAL.—Not later than 30 days after the
date of enactment of this Act, the Secretary shall issue
regulations to ensure compliance with such provisions of
Executive Order No. 12549 as are not in conflict with this
Act.

(b) RULEMAKING PROCEEDING.—Not later than 30
days after the date of enactment of this Act, the Secretary
shall initiate a rulemaking proceeding to implement this
Act. The rulemaking proceeding shall—

- (1) identify all agencies, programs, and activi-
ties that are affected by this Act;
- (2) specify what is sufficient reason for initi-
ation of a nonprocurement debarment proceeding;
- (3) specify the procedures for the proceeding;

1 (4) specify guidelines for the finding of a mate-
2 rial violation; and

3 (5) specify the administrative action to be taken
4 against a person found to have committed a material
5 violation.

6 **SEC. 8. TERMINATION OF AUTHORITY.**

7 The authority provided by this Act shall terminate
8 on September 30, 1999.

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