

103^D CONGRESS
2^D SESSION

H. R. 4220

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anticompetitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 1994

Mr. GOODLING (for himself, Mr. CUNNINGHAM, Mr. FAWELL, and Mr. MCKEON) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National School Lunch Act to protect school districts and the Department of Agriculture from anti-competitive activities of suppliers that sell commodities to schools that participate in the school lunch program, the school breakfast program, the special milk program, and the summer food service program for children, 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 “Child Nutrition Protec-
5 tion Act of 1994”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) In recent years, there has been a substan-
4 tial number of instances of price-fixing, bid-rigging,
5 and other fraudulent activity regarding foods pur-
6 chased for—

7 (A) the school lunch program established
8 under the National School Lunch Act (42
9 U.S.C. 1751 et seq.); and

10 (B) the school breakfast program estab-
11 lished under section 4 of the Child Nutrition
12 Act of 1966 (42 U.S.C. 1773).

13 (2) In 1986, President Reagan issued Executive
14 Order 12549 which was intended to curb fraud,
15 waste, and abuse in Federal programs, increase ac-
16 countability, and ensure consistency among agency
17 regulations concerning debarment and suspension of
18 participants in Federal programs.

19 (3) During the past several years, the Antitrust
20 Division of the Department of Justice has filed over
21 95 criminal cases against companies and individuals
22 accused of bid-rigging conspiracies, false statements,
23 mail fraud, price-fixing, and similar activities involv-
24 ing dairy products sold to schools or to the Depart-
25 ment of Defense.

1 (4) Over 30 grand juries in several States are
2 investigating similar activities.

3 (5) 45 corporations and 48 individuals have
4 been convicted by Federal courts of similar activi-
5 ties, and total fines and civil damages of approxi-
6 mately \$100,000,000 have been assessed in Federal
7 and State court actions for similar activities.

8 (6) Although several companies have violated
9 the regulations of food and nutrition programs of
10 the Department of Agriculture, such companies con-
11 tinue to participate in such programs and monetarily
12 benefit from such programs.

13 (7) A report of the Comptroller General of the
14 United States noted that, as of March 1992, the
15 Secretary of Agriculture had neither suspended nor
16 debarred any of the 13 dairy companies or 28 indi-
17 viduals convicted of milk contract bid-rigging from
18 participating in the school lunch and school break-
19 fast programs.

20 (8) Effective educational and monitoring pro-
21 grams can greatly reduce the incidence of fraud,
22 price-fixing, and bid-rigging by companies that sell
23 food products to schools.

24 (9) Reducing the incidence of fraud, price-fix-
25 ing, and bid-rigging in connection with the school

1 lunch and school breakfast programs could save
2 school districts, parents, and taxpayers millions of
3 dollars per year.

4 (10) The Comptroller General of the United
5 States has noted that bid-rigging awareness training
6 is an effective means of deterring improper collusion
7 and bid-rigging.

8 (11) The Comptroller General of the United
9 States in a General Accounting Office report ad-
10 dressed many of the concerns described in this sec-
11 tion with respect to bid-rigging in the school lunch
12 program.

13 **SEC. 3. DUTIES OF THE SECRETARY OF AGRICULTURE RE-**
14 **LATING TO NONPROCUREMENT DEBARMENT**
15 **UNDER CERTAIN CHILD NUTRITION PRO-**
16 **GRAMS.**

17 (a) IN GENERAL.—The National School Lunch Act
18 (42 U.S.C. 1751 et seq.) is amended by adding at the end
19 the following new section:

20 **“SEC. 25. DUTIES OF THE SECRETARY RELATING TO**
21 **NONPROCUREMENT DEBARMENT.**

22 “(a) DEFINITIONS.—For purposes of this section, the
23 following definitions apply:

24 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
25 TEES.—The term ‘appropriate congressional com-

1 mittees’ means the Committee on Education and
2 Labor of the House of Representatives and the Com-
3 mittee on Agriculture, Nutrition, and Forestry of
4 the Senate.

5 “(2) CHILD NUTRITION PROGRAM.—The term
6 ‘child nutrition program’ means—

7 “(A) the school lunch program established
8 under this Act;

9 “(B) the school breakfast program estab-
10 lished under section 4 of the Child Nutrition
11 Act of 1966 (42 U.S.C. 1773);

12 “(C) the special milk program established
13 under section 3 of such Act (42 U.S.C. 1772);

14 “(D) the special nutrition program for
15 women, infants, and children authorized under
16 section 17 of such Act (42 U.S.C. 1786);

17 “(E) the summer food service program for
18 children established under section 13 of this
19 Act; and

20 “(F) the child and adult care food program
21 established under section 17 of this Act.

22 “(3) CONTRACTOR.—The term ‘contractor’
23 means a person that contracts with a State, an
24 agency of a State, or a local agency to provide goods

1 or services in conjunction with the participation of
2 a local agency in a child nutrition program.

3 “(4) LOCAL AGENCY.—The term ‘local agency’
4 means a school, school food authority, child care
5 center, sponsoring organization, or other entity au-
6 thorized to operate a child nutrition program at the
7 local level.

8 “(5) NONPROCUREMENT DEBARMENT.—The
9 term ‘nonprocurement debarment’ means an action
10 to bar a person from programs and activities involv-
11 ing Federal financial and nonfinancial assistance,
12 but not including Federal procurement programs
13 and activities.

14 “(6) PERSON.—The term ‘person’ means any
15 individual, corporation, partnership, association, or
16 other legal entity, however organized.

17 “(b) ASSISTANCE TO IDENTIFY AND PREVENT
18 FRAUD AND ANTICOMPETITIVE ACTIVITIES.—The Sec-
19 retary shall—

20 “(1) through the food service management in-
21 stitute authorized under section 21, provide advice,
22 training, technical assistance, and guidance (which
23 may include awareness training, training films, and
24 troubleshooting advice) to representatives of States
25 and local agencies regarding means of identifying

1 and preventing fraud and anticompetitive activities
2 relating to the provision of goods or services in con-
3 junction with the participation of a local agency in
4 a child nutrition program; and

5 “(2) provide information to, and fully cooperate
6 with, the Attorney General and State attorneys gen-
7 eral regarding investigations of fraud and anti-
8 competitive activities relating to the provision of
9 goods or services in conjunction with the participa-
10 tion of a local agency in a child nutrition program.

11 “(c) NONPROCUREMENT DEBARMENT.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (3), not later than 180 days after notification
14 of the occurrence of a cause for debarment described
15 in paragraph (2), the Secretary shall initiate
16 nonprocurement debarment proceedings against the
17 contractor who has committed the cause for debar-
18 ment.

19 “(2) CAUSES FOR DEBARMENT.—Actions re-
20 quiring initiation of nonprocurement debarment pur-
21 suant to paragraph (1) shall include the following:

22 “(A) A contractor commits an action or se-
23 ries of actions which constitute a substantial
24 and material violation of a regulation of a child

1 nutrition program of the Department of Agri-
2 culture, as determined by the Secretary.

3 “(B) A contractor is found guilty in any
4 criminal, civil, or administrative proceeding, or
5 found liable in any civil or administrative pro-
6 ceeding, in connection with the supplying, pro-
7 viding, or selling of a product or commodity to
8 any local agency or to any Federal agency in
9 connection with the child nutrition programs,
10 of—

11 “(i) an anticompetitive activity, in-
12 cluding bid-rigging, price-fixing, the alloca-
13 tion of customers between competitors, or
14 other violation of Federal or State anti-
15 trust laws;

16 “(ii) fraud, bribery, theft, forgery or
17 embezzlement;

18 “(iii) breach of contract;

19 “(iv) making a false claim or state-
20 ment; or

21 “(v) other obstruction of justice.

22 “(3) EXCEPTION.—If the Secretary determines
23 that a decision on initiating nonprocurement debar-
24 ment proceedings cannot be made within 180 days
25 after notification of the occurrence of a cause for de-

1 barment described in paragraph (2) because of the
2 need to further investigate matters relating to the
3 possible debarment, the Secretary may have such ad-
4 ditional time as the Secretary considers necessary to
5 make a decision, but not to exceed an additional 180
6 days.

7 “(4) MANDATORY CHILD NUTRITION PROGRAM
8 DEBARMENT PERIODS.—

9 “(A) IN GENERAL.—Subject to the other
10 provisions of this paragraph and notwithstand-
11 ing any other provision of law except subsection
12 (d), if, after deciding to initiate non-
13 procurement debarment proceedings pursuant
14 to paragraph (1), the Secretary decides to
15 debar a contractor, the debarment shall be for
16 a period of not less than 3 years.

17 “(B) PREVIOUS DEBARMENT.—If the con-
18 tractor has been previously debarred pursuant
19 to nonprocurement debarment proceedings initi-
20 ated pursuant to paragraph (1), and the cause
21 for debarment is described in paragraph (2)
22 based on activities that occurred subsequent to
23 the initial debarment, the debarment shall be
24 for a period of not less than 5 years.

1 “(C) SCOPE.—At a minimum, a debarment
2 under this subsection shall serve to bar the con-
3 tractor for the specified period from contracting
4 to provide goods or services in conjunction with
5 the participation of a local agency in a child nu-
6 trition program.

7 “(D) REVERSAL, REDUCTION, OR EXCEP-
8 TION.—Nothing in this paragraph shall restrict
9 the ability of the Secretary to reverse a debar-
10 ment decision, to reduce the period or scope of
11 a debarment, nor to grant an exception permit-
12 ting a debarred contractor to participate in a
13 particular contract to provide goods or services
14 in conjunction with the participation of a local
15 agency in a child nutrition program, if the Sec-
16 retary determines there is good cause for the
17 action.

18 “(5) INFORMATION.—On request, the Secretary
19 shall present to the appropriate congressional com-
20 mittees information regarding the decisions required
21 by this subsection.

22 “(6) RELATIONSHIP TO OTHER AUTHORI-
23 TIES.—A debarment imposed under this section
24 shall not reduce or diminish the authority of a Fed-
25 eral, State, or local government agency or court to

1 penalize, imprison, fine, suspend, debar, or take
2 other adverse action against a person in a civil,
3 criminal, or administrative proceeding.

4 “(7) REGULATIONS.—The Secretary shall issue
5 such regulations as are necessary to carry out this
6 subsection.

7 “(d) MANDATORY DEBARMENT.—Notwithstanding
8 any other provision of this section, the Secretary shall ini-
9 tiate nonprocurement debarment proceedings against the
10 contractor (including any cooperative) who has committed
11 the cause for debarment (as determined under section
12 (c)(2)), unless the action—

13 “(1) is likely to have a significant adverse effect
14 on competition or prices in the relevant market or
15 nationally;

16 “(2) will interfere with the ability of a local
17 agency to procure a needed product for a child nu-
18 trition program;

19 “(3) is unfair to a person, subsidiary corpora-
20 tion, affiliate, parent company, or local division of a
21 corporation that is not involved in the improper ac-
22 tivity that would otherwise result in the debarment;
23 or

24 “(4) is not in the public interest, as determined
25 by the Secretary.

1 “(e) EXHAUSTION OF ADMINISTRATIVE REM-
2 EDIES.—Prior to seeking judicial review in a court of com-
3 petent jurisdiction, a contractor against whom a
4 nonprocurement debarment proceeding has been initiated
5 shall—

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

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

10 “(f) INFORMATION RELATING TO PREVENTION AND
11 CONTROL OF ANTICOMPETITIVE ACTIVITIES.—On re-
12 quest, the Secretary shall present to the appropriate con-
13 gressional committees information regarding the activities
14 of the Secretary relating to anticompetitive activities,
15 fraud, nonprocurement debarment, and any waiver grant-
16 ed by the Secretary under this section.”.

17 (b) APPLICABILITY.—Section 25(c) of the National
18 School Lunch Act (as added by subsection (a)) shall not
19 apply to a cause for debarment as described in section
20 25(c)(2) of such Act that is based on an activity that took
21 place prior to the date of enactment of this Act.

22 **SEC. 4. REPORT ON CONSISTENT DEBARMENT POLICY.**

23 Not later than 120 days after the date of enactment
24 of this Act, the Secretary of Agriculture, in consultation
25 with the Director of the Office of Management and Budg-

1 et, the Secretary of Defense, and such other officials as
2 the Secretary of Agriculture determines are appropriate,
3 shall advise the appropriate committees of the Congress
4 and the Comptroller General of the United States as to
5 the appropriateness and usefulness of a consistent debar-
6 ment policy under—

7 (1) the Federal acquisition regulations issued
8 under title 48, Code of Federal Regulations; and

9 (2) Federal nonprocurement regulations.

10 **SEC. 5. NO REDUCTION IN AUTHORITY TO DEBAR OR SUS-**
11 **PEND A PERSON FROM FEDERAL FINANCIAL**
12 **AND NONFINANCIAL ASSISTANCE AND BENE-**
13 **FITS.**

14 (a) **IN GENERAL.**—The authority of the Secretary of
15 Agriculture that exists on the date of enactment of this
16 Act to debar or suspend a person from Federal financial
17 and nonfinancial assistance and benefits under Federal
18 programs and activities, on a government-wide basis, shall
19 not be diminished or reduced by this Act or the amend-
20 ment made by section 3 of this Act.

21 (b) **DEBARMENT OR SUSPENSION.**—The Secretary
22 may continue, after the date of enactment of this Act, to
23 debar or suspend a person on a government-wide basis,
24 from Federal financial and nonfinancial assistance and
25 benefits for any cause for debarment or suspension that

1 is specified in part 3017 of chapter XXX of subtitle B
2 of title 7, Code of Federal Regulations, or as otherwise
3 permitted by law, including regulations.

○