

106TH CONGRESS
1ST SESSION

H. R. 3159

To impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 1999

Mr. POMEROY (for himself, Mr. MINGE, and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

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 “Agribusiness Merger
5 Moratorium and Antitrust Review Act of 1999”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Concentration in the agricultural economy
2 including mergers, acquisitions, and other combina-
3 tions and alliances among suppliers, producers,
4 packers, other food processors, and distributors has
5 been accelerating at a rapid pace in the 1990's.

6 (2) The trend toward greater concentration in
7 agriculture has important and far-reaching implica-
8 tions not only for family-based farmers, but also for
9 the food we eat, the communities we live in, and the
10 integrity of the natural environment upon which we
11 all depend.

12 (3) In the past decade and a half, the top 4
13 largest pork packers have seized control of some 57
14 percent of the market, up from 36 percent. Over the
15 same period, the top 4 beef packers have expanded
16 their market share from 32 percent to 80 percent,
17 the top 4 flour millers have increased their market
18 share from 40 percent to 62 percent, and the market
19 share of the top 4 soybean crushers has jumped
20 from 54 percent to 80 percent.

21 (4) Today the top 4 sheep, poultry, wet corn,
22 and dry corn processors now control 73 percent, 55
23 percent, 74 percent, and 57 percent of the market,
24 respectively.

1 (5) A handful of firms dominate the processing
2 of every major commodity. Many of them are
3 vertically integrated, which means that they control
4 successive stages of the food chain, from inputs to
5 production to distribution.

6 (6) Growing concentration of the agricultural
7 sector has restricted choices for farmers trying to
8 sell their products. As the bargaining power of agri-
9 business firms over farmers increases, agricultural
10 commodity markets are becoming stacked against
11 the farmer.

12 (7) The farmer's share of every retail dollar has
13 plummeted from around 50 percent in 1952, to less
14 than 25 percent today, while the profit share for
15 farm input, marketing, and processing companies
16 has risen.

17 (8) While agribusiness conglomerates are post-
18 ing record earnings, farmers are facing desperate
19 times. The commodity price index is the lowest since
20 1987. Hog prices are at their lowest since 1972.
21 Cotton and soybean prices are the lowest they have
22 been since the early 1970's.

23 (9) The benefits of low commodity prices are
24 not being passed on to American consumers. The
25 gap between what shoppers pay for food and what

1 farmers are paid is growing wider. From 1984 to
2 1998, prices paid to farmers fell 36 percent, while
3 consumer food prices actually increased by 3 per-
4 cent.

5 (10) Concentration, low prices, anticompetitive
6 practices, and other manipulations and abuses of the
7 agricultural economy are driving family-based farm-
8 ers out of business. Farmers are going bankrupt or
9 giving up, and few are taking their places; more
10 farm families are having to rely on other jobs to stay
11 afloat; and the number of farmers leaving the land
12 will continue to increase unless and until these
13 trends are reversed.

14 (11) The decline of family-based agriculture un-
15 dermines the economies of rural communities across
16 America; it has pushed Main Street businesses, from
17 equipment suppliers to insurance sales people, out of
18 business or to the brink of insolvency.

19 (12) Increased concentration in the agribusiness
20 sector has a harmful effect on the environment; cor-
21 porate hog farming, for example, threatens the in-
22 tegrity of local water supplies and creates noxious
23 odors in neighboring communities. Concentration
24 also can increase the risks to food safety and limit
25 the biodiversity of plants and animals.

1 (13) The decline of family-based farming poses
2 a direct threat to American families and family val-
3 ues, by subjecting farm families to turmoil and
4 stress.

5 (14) The decline of family-based farming causes
6 the demise of rural communities, as stores lose cus-
7 tomers, churches lose congregations, schools and
8 clinics become under-used, career opportunities for
9 young people dry up, and local inequalities of wealth
10 and income grow wider.

11 (15) These developments are not the result of
12 inevitable market forces. Its problems arise rather
13 from policies made in Washington, including farm,
14 antitrust, and trade policies.

15 (16) To restore competition in the agricultural
16 economy, and to increase the bargaining power and
17 enhance economic prospects for family-based farm-
18 ers, the trend toward concentration must be re-
19 versed.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **BROKER.**—The term “broker” means any
23 person engaged in the business of negotiating sales
24 and purchases of any agricultural commodity in
25 interstate or foreign commerce for or on behalf of

1 the vendor or the purchaser, except that no person
2 shall be considered a broker if the only sales of such
3 commodities are for a value less than \$10,000,000
4 per year.

5 (2) COMMISSION MERCHANT.—The term “com-
6 mission merchant” means any person engaged in the
7 business of receiving in interstate or foreign com-
8 merce any agricultural commodity for sale, on com-
9 mission, or for or on behalf of another, except that
10 no person shall be considered a commission mer-
11 chant if the only sales of such commodities are for
12 a value less than \$10,000,000 per year.

13 (3) DEALER.—The term “dealer” means any
14 person engaged in the business of buying, selling, or
15 marketing agricultural commodities in interstate or
16 foreign commerce, except that—

17 (A) no person shall be considered a dealer
18 with respect to sales or marketing of any agri-
19 cultural commodity of that person’s own
20 raising; and

21 (B) no person shall be considered a dealer
22 if the only sales of such commodities are for a
23 value less than \$10,000,000 per year.

24 (4) AGRICULTURAL INPUT SUPPLIER.—The
25 term “agricultural input supplier” means any person

engaged in the business of selling, in interstate or foreign commerce, any product to be used as an input (including seed, germ plasm, hormones, antibiotics, fertilizer, and chemicals, but excluding farm machinery) for the production of any agricultural commodity, except that no person shall be considered an agricultural input supplier if sales of such products are for a value less than \$10,000,000 per year.

(5) PROCESSOR.—The term “processor” means any person engaged in the business of handling, preparing, or manufacturing (including slaughtering) of an agricultural commodity, or the products of such agricultural commodity, for sale or marketing for human consumption, except that no person shall be considered a processor if the only sales of such products are for a value less than \$10,000,000 per year.

TITLE I—MORATORIUM ON LARGE AGRIBUSINESS MERGERS

SEC. 101. MORATORIUM ON LARGE AGRIBUSINESS MERGERS.

(a) IN GENERAL.—

1 (1) MORATORIUM.—Until the date referred to
2 in paragraph (2) and except as provided in sub-
3 section (b)—

4 (A) no dealer, processor, commission mer-
5 chant, agricultural input supplier, broker, or
6 operator of a warehouse of agricultural com-
7 modities with annual net sales or total assets of
8 more than \$100,000,000 shall merge or ac-
9 quire, directly or indirectly, any voting securi-
10 ties or assets of any other dealer, processor,
11 commission merchant, agricultural input sup-
12 plier, broker, or operator of a warehouse of ag-
13 ricultural commodities with annual net sales or
14 total assets of more than \$10,000,000; and

15 (B) no dealer, processor, commission mer-
16 chant, agricultural input supplier, broker, or
17 operator of a warehouse of agricultural com-
18 modities with annual net sales or total assets of
19 more than \$10,000,000 shall merge or acquire,
20 directly or indirectly, any voting securities or
21 assets of any other dealer, processor, commis-
22 sion merchant, agricultural input supplier,
23 broker, or operator of a warehouse of agricul-
24 tural commodities with annual net sales or total

1 assets of more than \$100,000,000 if the acquir-
2 ing person would hold—

3 (i) 15 percent or more of the voting
4 securities or assets of the acquired person;
5 or

6 (ii) an aggregate total amount of the
7 voting securities and assets of the acquired
8 person in excess of \$15,000,000.

9 (2) DATE.—The date referred to in this para-
10 graph is the earlier of—

11 (A) the effective date of comprehensive
12 legislation—

13 (i) addressing the problem of market
14 concentration in the agricultural sector;
15 and

16 (ii) containing a section stating that
17 the legislation is comprehensive legislation
18 as provided in section 101 of the Agri-
19 business Merger Moratorium and Antitrust
20 Review Act of 1999; or

21 (B) the date that is 18 months after the
22 date of enactment of this Act.

23 (b) EXCEPTIONS.—

24 (1) WAIVER AUTHORITY.—The Attorney Gen-
25 eral shall have authority to waive the moratorium

1 imposed by subsection (a) only under extraordinary
2 circumstances, such as insolvency or similar finan-
3 cial distress of 1 of the affected parties.

4 (2) COOPERATIVE ASSOCIATIONS.—Subsection
5 (a) shall not apply to a cooperative association (as
6 defined in section 15(a) of the Agricultural Mar-
7 keting Act (12 U.S.C. 1141j(a)) or to an entity
8 owned by a cooperative association.

9 **TITLE II—AGRICULTURE CON-**
10 **CENTRATION AND MARKET**
11 **POWER REVIEW COMMISSION**

12 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

13 (a) ESTABLISHMENT.—There is established a com-
14 mission to be known as the Agriculture Concentration and
15 Market Power Review Commission (hereafter in this title
16 referred to as the “Commission”).

17 (b) PURPOSES.—The purpose of the Commission is
18 to—

19 (1) study the nature and consequences of con-
20 centration in America’s agricultural economy; and

21 (2) make recommendations on how to change
22 underlying antitrust laws and other Federal laws
23 and regulations to keep a fair and competitive agri-
24 culture marketplace for family farmers, other small

1 and medium sized agriculture producers, generally,
2 and the communities of which they are a part.

3 (c) MEMBERSHIP OF COMMISSION.—

4 (1) COMPOSITION.—The Commission shall be
5 composed of 12 members as follows:

6 (A) Three persons, one of whom shall be a
7 person currently engaged in farming or ranch-
8 ing, shall be appointed by the President pro
9 tempore of the Senate upon the recommenda-
10 tion of the Majority Leader of the Senate, after
11 consultation with the Chairman of the Com-
12 mittee on Agriculture, Nutrition, and Forestry.

13 (B) Three persons, one of whom shall be
14 a person currently engaged in farming or
15 ranching, shall be appointed by the President
16 pro tempore of the Senate upon the rec-
17 ommendation of the Minority Leader of the
18 Senate, after consultation with the ranking mi-
19 nority member of the Committee on Agri-
20 culture, Nutrition, and Forestry.

21 (C) Three persons, one of whom shall be a
22 person currently engaged in farming or ranch-
23 ing, shall be appointed by the Speaker of the
24 House of Representatives, after consultation

1 with the Chairman of the Committee on Agri-
2 culture.

3 (D) Three persons, one of whom shall be
4 a person currently engaged in farming or
5 ranching, shall be appointed by the Minority
6 Leader of the House of Representatives, after
7 consultation with the ranking minority member
8 of the Committee on Agriculture.

9 (2) QUALIFICATIONS OF MEMBERS.—

10 (A) APPOINTMENTS.—Persons who are ap-
11 pointed under paragraph (1) shall be persons
12 who—

13 (i) have experience in farming or
14 ranching, expertise in agricultural econom-
15 ics and antitrust, or have other pertinent
16 qualifications or experience relating to ag-
17 riculture and agriculture industries; and

18 (ii) are not officers or employees of
19 the United States.

20 (B) OTHER CONSIDERATION.—In appoint-
21 ing Commission members, every effort shall be
22 made to ensure that the members—

23 (i) are representative of a broad cross
24 sector of agriculture and antitrust perspec-
25 tives within the United States; and

1 (ii) provide fresh insights to analyzing
2 the causes and impacts of concentration in
3 agriculture industries and sectors.

4 (d) PERIOD OF APPOINTMENT; VACANCIES.—

5 (1) IN GENERAL.—Members shall be appointed
6 not later than 60 days after the date of enactment
7 of this Act and the appointment shall be for the life
8 of the Commission.

9 (2) VACANCIES.—Any vacancy in the Commis-
10 sion shall not affect its powers, but shall be filled in
11 the same manner as the original appointment.

12 (e) INITIAL MEETING.—Not later than 30 days after
13 the date on which all members of the Commission have
14 been appointed, the Commission shall hold its first meet-
15 ing.

16 (f) MEETINGS.—The Commission shall meet at the
17 call of the Chairperson.

18 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
19 members of the Commission shall elect a chairperson and
20 vice chairperson from among the members of the Commis-
21 sion.

22 (h) QUORUM.—A majority of the members of the
23 Commission shall constitute a quorum for the transaction
24 of business.

1 (i) VOTING.—Each member of the Commission shall
2 be entitled to 1 vote, which shall be equal to the vote of
3 every other member of the Commission.

4 **SEC. 202. DUTIES OF THE COMMISSION.**

5 (a) IN GENERAL.—The Commission shall be respon-
6 sible for examining the nature, the causes, and con-
7 sequences concentration in America’s agricultural econ-
8 omy in the broadest possible terms.

9 (b) ISSUES TO BE ADDRESSED.—The study shall in-
10 clude an examination of the following matters:

11 (1) The nature and extent of concentration in
12 the agricultural sector, including food production,
13 transportation, processing, distribution and mar-
14 keting, and farm inputs such as machinery, fer-
15 tilizer, and seeds.

16 (2) Current trends in concentration of the agri-
17 cultural sector and what this sector is likely to look
18 like in the near and longer term future.

19 (3) The effect of this concentration on farmer
20 income.

21 (4) The impacts of this concentration upon
22 rural communities, rural economic development, and
23 the natural environment.

24 (5) The impacts of this concentration upon food
25 shoppers, including the reasons that Depression-level

1 farm prices have not resulted in corresponding drops
2 in supermarket prices.

3 (6) The productivity of family-based farm units,
4 compared with corporate based agriculture, and
5 whether farming is approaching a scale that is larg-
6 er than necessary from the standpoint of produc-
7 tivity.

8 (7) The effect of current laws and administra-
9 tive practices in supporting and encouraging this
10 concentration.

11 (8) Whether the existing antitrust laws provide
12 adequate safeguards against, and remedies for, the
13 impacts of concentration upon family-based agri-
14 culture, the communities they comprise, and the
15 food shoppers of this Nation.

16 (9) Accurate and reliable data on the national
17 and international markets shares of multinational
18 agribusinesses, and the portion of their sales attrib-
19 utable to exports.

20 (10) Barriers that inhibit entry of new competi-
21 tors into markets for the processing of agricultural
22 commodities, such as the meat packing industry.

23 (11) The extent to which developments, such as
24 formula pricing, marketing agreements, and forward
25 contracting tend to give processors, agribusinesses,

1 and other buyers of agricultural commodities addi-
2 tional market power over producers and suppliers in
3 local markets.

4 (12) Such related matters as the Commission
5 determines to be important.

6 **SEC. 203. FINAL REPORT.**

7 (a) IN GENERAL.—Not later than 12 months after
8 the date of the initial meeting of the Commission, the
9 Commission shall submit to the President and Congress
10 a final report which contains—

11 (1) the findings and conclusions of the Commis-
12 sion described in section 202; and

13 (2) recommendations for addressing the prob-
14 lems identified as part of the Commission’s analysis.

15 (b) SEPARATE VIEWS.—Any member of the Commis-
16 sion may submit additional findings and recommendations
17 as part of the final report.

18 **SEC. 204. POWERS OF COMMISSION.**

19 (a) HEARINGS.—The Commission may hold such
20 hearings, sit and act at such times and places, take such
21 testimony, and receive such evidence as the Commission
22 may find advisable to fulfill the requirements of this title.
23 The Commission shall hold at least 1 or more hearings
24 in Washington, D.C., and 4 in different agriculture re-
25 gions of the United States.

1 (b) INFORMATION FROM FEDERAL AGENCIES.—The
2 Commission may secure directly from any Federal depart-
3 ment or agency such information as the Commission con-
4 siderers necessary to carry out the provisions of this title.
5 Upon request of the Chairperson of the Commission, the
6 head of such department or agency shall furnish such in-
7 formation to the Commission.

8 (c) POSTAL SERVICES.—The Commission may use
9 the United States mails in the same manner and under
10 the same conditions as other departments and agencies of
11 the Federal Government.

12 **SEC. 205. COMMISSION PERSONNEL MATTERS.**

13 (a) COMPENSATION OF MEMBERS.—Each member of
14 the Commission shall be compensated at a rate equal to
15 the daily equivalent of the annual rate of basic pay pre-
16 scribed for level IV of the Executive Schedule under sec-
17 tion 5315 of title 5, United States Code, for each day (in-
18 cluding travel time) during which such member is engaged
19 in the performance of the duties of the Commission.

20 (b) TRAVEL EXPENSES.—The members of the Com-
21 mission shall be allowed travel expenses, including per
22 diem in lieu of subsistence, at rates authorized for employ-
23 ees of agencies under subchapter I of chapter 57 of title
24 5, United States Code, while away from their homes or

1 regular places of business in the performance of services
2 for the Commission.

3 (c) STAFF.—

4 (1) IN GENERAL.—The Chairperson of the
5 Commission may, without regard to the civil service
6 laws and regulations, appoint and terminate an execu-
7 tive director and such other additional personnel as
8 may be necessary to enable the Commission to per-
9 form its duties. The employment of an executive di-
10 rector shall be subject to confirmation by the Com-
11 mission.

12 (2) COMPENSATION.—The Chairperson of the
13 Commission may fix the compensation of the execu-
14 tive director and other personnel without regard to
15 the provisions of chapter 51 and subchapter III of
16 chapter 53 of title 5, United States Code, relating
17 to classification of positions and General Schedule
18 pay rates, except that the rate of pay for the execu-
19 tive director and other personnel may not exceed the
20 rate payable for level V of the Executive Schedule
21 under section 5316 of such title.

22 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
23 Federal Government employee shall be detailed to the
24 Commission without reimbursement, and such detail shall

1 be without interruption or loss of civil service status or
2 privilege.

3 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-
4 TENT SERVICES.—The Chairperson of the Commission
5 may procure temporary and intermittent services under
6 section 3109(b) of title 5, United States Code, at rates
7 for individuals which do not exceed the daily equivalent
8 of the annual rate of basic pay prescribed for level V of
9 the Executive Schedule under section 5316 of such title.

10 **SEC. 206. SUPPORT SERVICES.**

11 The Administrator of the General Services Adminis-
12 tration shall provide to the Commission on a reimbursable
13 basis such administrative support services as the Commis-
14 sion may request.

15 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated \$2,000,000
17 to the Commission as required by this title to carry out
18 the provisions of this title.

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