

116TH CONGRESS
1ST SESSION

H. R. 2933

To impose a moratorium on large agribusiness, food and beverage manufacturing, and grocery retail mergers, and to establish a commission to review large agriculture, food and beverage manufacturing, and grocery retail mergers, concentration, and market power.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2019

Mr. POCAN (for himself, Ms. DELAURO, Mr. KHANNA, Ms. PINGREE, Mr. RYAN, Mr. BLUMENAUER, and Ms. SCHAKOWSKY) 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, food and beverage manufacturing, and grocery retail mergers, and to establish a commission to review large agriculture, food and beverage manufacturing, and grocery retail 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 “Food and Agribusiness
5 Merger Moratorium and Antitrust Review Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Concentration in the food and agricultural
4 economy, including mergers, acquisitions, and other
5 combinations and alliances among suppliers, pack-
6 ers, integrators, other food processors, distributors,
7 and retailers has been accelerating at a rapid pace
8 since the 1980s, and particularly since the 2007
9 through 2009 recession.

10 (2) The trend toward greater concentration in
11 food and agriculture has important and far-reaching
12 implications not only for family farmers, but also for
13 food chain workers, the food we eat, the commu-
14 nities we live in, and the integrity of the natural en-
15 vironment upon which we all depend.

16 (3) In the past three decades, the top 4 largest
17 pork packers have seized control of 71 percent of the
18 market, up from 36 percent. Over the same period,
19 the top 4 beef packers have expanded their market
20 share from 32 percent to 85 percent. The top 4 flour
21 millers have increased their market share from 40
22 percent to 64 percent. The market share of the top
23 4 soybean crushers has jumped from 54 percent to
24 79 percent, and the top 4 wet corn processors con-
25 trol of the market has increased from 63 percent to
26 86 percent.

1 (4) Today the top 4 sheep, poultry, and fluid
2 milk processors now control 57 percent, 53 percent,
3 and 50 percent of the market, respectively.

4 (5) The top 4 grain companies today control as
5 much as 90 percent of the global grain trade.

6 (6) During the past 2 years there has been a
7 wave of consolidation among global seed and crop-
8 chemical firms, 3 companies now control nearly $\frac{2}{3}$
9 of the world's commodity crop seeds. Those same 3
10 companies now also control nearly 70 percent of all
11 agricultural chemicals and pesticides.

12 (7) In the United States, the 4 largest corn
13 seed sellers accounted for 85 percent of the market
14 in 2015, up from 60 percent in 2000. Over the past
15 20 years, the cost for an acre's worth of seeds for
16 an average corn farmer has nearly quadrupled, and
17 the cost of fertilizer has more than doubled. Yet
18 corn yields increased only 36 percent over that time,
19 and the price received for the sale of a bushel of
20 corn increased only 31 percent.

21 (8) A handful of firms dominate the processing
22 of every major commodity. Many of them are
23 vertically integrated, which means that they control
24 successive stages of the food chain, from inputs to
25 production to distribution. The growing number and

1 scale of cross-border agribusiness and food mergers
2 have put foreign firms, often with considerable gov-
3 ernment backing, into prominent and even dominant
4 positions in the United States beef, hog, poultry,
5 seed, fertilizer, and agrichemical sectors.

6 (9) 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, concentrated
10 agricultural commodity markets are stacked against
11 the farmer, with buyers of agricultural commodities
12 often possessing regional dominance in the form of
13 oligopsony or monopsony relative to sellers of such
14 commodities.

15 (10) The high concentration and consolidation
16 of buyers in agricultural markets has resulted in the
17 thinning of both cash and futures markets, thereby
18 allowing dominant buyers to leverage their market
19 shares to move those markets to the detriment of
20 family farmers and ranchers.

21 (11) Buyers with oligopsonistic or
22 monopsonistic power have incentives to engage in
23 unfair and discriminatory acts that cause farmers to
24 receive less than a competitive price for their goods.
25 At the same time, some Federal courts have incor-

1 rectly required a plaintiff to show harm to competition generally, in addition to harm to the individual farmer, when making a determination that an unfair, unjustly discriminatory, deceptive, or preferential act exists under the Packers and Stockyards Act of 1921.

7 (12) The farmer's share of every retail dollar
8 has plummeted from 41 percent in 1950, to less
9 than 15 percent today, while the profit share for
10 farm input, marketing, and processing companies
11 has risen.

12 (13) While agribusiness conglomerates are posting record earnings, farmers are facing desperate times. Since 2013, net farm income for United States farmers has fallen by more than half and median on-farm income was negative in 2017 and in 2018 and is expected to be negative again in 2019.

18 (14) The benefits of low commodity prices are not being passed on to American consumers. The gap between what shoppers pay for food and what farmers are paid is growing wider.

22 (15) The steadily rising price of food has outpaced growth in incomes for typical workers. Since the Great Recession, the annual growth of real

1 prices for food at the supermarket have risen nearly
2 3 times faster than typical earnings.

3 (16) There is growing consensus that economic
4 consolidation contributes to the widening gap in eco-
5 nomic opportunity in the United States and bigger,
6 more dominant firms are more likely to deliver prof-
7 its to investors than to raise wages or benefits.
8 Mega-mergers in the food and agribusiness indus-
9 tries can lead to growing monopsony power abuse re-
10 sulting in wage suppression, along with massive lay-
11 offs as companies shutter factories and facilities,
12 harming working families and communities.

13 (17) Concentration, low prices, anticompetitive
14 practices, and other manipulations and abuses of the
15 agricultural economy are driving small family farm-
16 ers out of business. Farmers are going bankrupt or
17 giving up, and few are taking their places; more
18 farm families are having to rely on other jobs to stay
19 afloat. Eighty-three percent of farm household in-
20 come is expected to come from off-farm work this
21 year, up from 53 percent in 1960.

22 (18) Eighty-one percent of America's farmed
23 cropland is now controlled by 15 percent of farms,
24 and the number of farmers leaving the land will con-

1 tinue to increase unless and until these trends are
2 reversed.

3 (19) The decline of small family farms under-
4 mines the economies of rural communities across
5 America; it has pushed Main Street businesses, from
6 equipment suppliers to small banks, out of business
7 or to the brink of insolvency.

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

15 (21) The decline of family farming poses a di-
16 rect threat to American families and family values,
17 by subjecting farm families to turmoil and stress.
18 Farm advocates across the country are reporting an
19 increase in farmer suicides over the past several
20 years.

21 (22) The decline of family farming causes the
22 demise of rural communities, as stores lose cus-
23 tomers, churches lose congregations, schools and
24 clinics become under-used, career opportunities for

1 young people dry up, and local inequalities of wealth
2 and income grow wider.

3 (23) These developments are not the result of
4 inevitable market forces. Its problems arise rather
5 from policies made in Washington, including farm,
6 antitrust, and trade policies.

7 (24) Past congressional action to remediate
8 market failure, such as enacting country-of-origin la-
9 beling to provide transparency for domestic farmers,
10 ranchers, and consumers regarding agricultural com-
11 modity origins, have been overturned for key com-
12 modities by oligopolistic conglomerates that use un-
13 differentiated imports to reduce domestic farm
14 prices.

15 (25) To restore competition in the agricultural
16 economy, and to increase the bargaining power and
17 enhance economic prospects for family farmers, the
18 trend toward concentration must be reversed.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) AGRICULTURAL INPUT SUPPLIER.—The
22 term “agricultural input supplier” means any person
23 (excluding agricultural cooperatives) engaged in the
24 business of selling, in interstate or foreign com-
25 merce, any product to be used as an input (including

1 seed, germ plasm, hormones, antibiotics, fertilizer,
2 and chemicals, but excluding farm machinery) for
3 the production of any agricultural commodity, except
4 that no person shall be considered an agricultural
5 input supplier if sales of such products are for a
6 value less than \$10,000,000 per year.

7 (2) BROKER.—The term “broker” means any
8 person engaged in the business of negotiating sales
9 and purchases of any agricultural commodity in
10 interstate or foreign commerce for or on behalf of
11 the vendor or the purchaser, except that no person
12 shall be considered a broker if the only sales of such
13 commodities are for a value less than \$10,000,000
14 per year.

15 (3) COMMISSION MERCHANT.—The term “com-
16 mission merchant” means any person engaged in the
17 business of receiving in interstate or foreign com-
18 merce any agricultural commodity for sale, on com-
19 mission, or for or on behalf of another, except that
20 no person shall be considered a commission mer-
21 chant if the only sales of such commodities are for
22 a value less than \$10,000,000 per year.

23 (4) DEALER.—The term “dealer” means any
24 person (excluding agricultural cooperatives) engaged
25 in the business of buying, selling, or marketing agri-

1 cultural commodities in interstate or foreign com-
2 merce, except that—

3 (A) no person shall be considered a dealer
4 with respect to sales or marketing of any agri-
5 cultural commodity of that person's own rais-
6 ing; and

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

10 (5) INTEGRATOR.—The term “integrator”
11 means an entity that contracts with farmers for
12 grower services to raise chickens or hogs to slaugh-
13 ter size and weight. The integrator owns the chick-
14 ens or hogs, supplies the feed, slaughterers, and fur-
15 ther processes the poultry or pork.

16 (6) PROCESSOR.—The term “processor” means
17 any person (excluding agricultural cooperatives) en-
18 gaged in the business of handling, preparing, or
19 manufacturing (including slaughtering and food and
20 beverage manufacturing) of an agricultural com-
21 modity, or the products of such agricultural com-
22 modity, for sale or marketing for human consump-
23 tion, except that no person shall be considered a
24 processor if the only sales of such products are for
25 a value less than \$10,000,000 per year.

1 (7) RETAILER.—The term “retailer” means any
2 person (excluding agricultural cooperatives, coopera-
3 tive retailers, and cooperative distributers) licensed
4 as a retailer under the Perishable Agriculture Com-
5 modities Act of 1930 (7 U.S.C. 499a(b)), except
6 that no person shall be considered a retailer if the
7 only sales of such products are for a value less than
8 \$10,000,000 per year.

9 **TITLE I—MORATORIUM ON**
10 **LARGE AGRIBUSINESS, FOOD**
11 **AND BEVERAGE MANUFAC-**
12 **TURING, AND GROCERY RE-**
13 **TAIL MERGERS**

14 **SEC. 101. MORATORIUM ON LARGE AGRIBUSINESS, FOOD**
15 **AND BEVERAGE MANUFACTURING, AND GRO-**
16 **CERY RETAIL MERGERS.**

17 (a) IN GENERAL.—

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

21 (A) no dealer, processor, commission mer-
22 chant, agricultural input supplier, broker, or
23 operator of a warehouse of agricultural com-
24 modities or retailer with annual net sales or
25 total assets of more than \$160,000,000 shall

1 merge or acquire, directly or indirectly, any vot-
2 ing securities or assets of any other dealer,
3 processor, commission merchant, agricultural
4 input supplier, broker, or operator of a ware-
5 house of agricultural commodities or retailer
6 with annual net sales or total assets of more
7 than \$16,000,000; and

8 (B) no dealer, processor, commission mer-
9 chant, agricultural input supplier, broker, or
10 operator of a warehouse of agricultural com-
11 modities or retailer with annual net sales or
12 total assets of more than \$16,000,000 shall
13 merge or acquire, directly or indirectly, any vot-
14 ing securities or assets of any other dealer,
15 processor, commission merchant, agricultural
16 input supplier, broker, or operator of a ware-
17 house of agricultural commodities or retailer
18 with annual net sales or total assets of more
19 than \$160,000,000 if the acquiring person
20 would hold—

21 (i) 15 percent or more of the voting
22 securities or assets of the acquired person;
23 or

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

(B) containing a section stating that the legislation is comprehensive legislation as provided in section 101 of the Food and Agriculture Merger Moratorium and Antitrust Review Act of 2019.

15 (b) WAIVER AUTHORITY.—The Attorney General
16 shall have authority to waive the moratorium imposed by
17 subsection (a) only under extraordinary circumstances,
18 such as insolvency or similar financial distress of one of
19 the affected parties.

20 (c) EXEMPTIONS.—The classes of transactions de-
21 scribed in section 7A(c) of the Clayton Act (15 U.S.C.
22 18a(c)) are exempt from subsection (a).

(d) AVOIDANCE.—Any transaction or other device entered into or employed for the purpose of avoiding the moratorium contained in subsection (a) shall be dis-

1 regarded, and the application of the moratorium shall be
2 determined by applying subsection (a) to the substance of
3 the transaction.

4 (e) RULEMAKING.—The Attorney General shall pro-
5 mulgate regulations that the Attorney General determines
6 are necessary to implement this section.

7 **TITLE II—AGRICULTURE CON-**
8 **CENTRATION AND MARKET**
9 **POWER REVIEW COMMISSION**

10 **SEC. 201. ESTABLISHMENT OF COMMISSION.**

11 (a) ESTABLISHMENT.—There is established a com-
12 mission to be known as the Food and Agriculture Con-
13 centration and Market Power Review Commission (here-
14 after in this title referred to as the “Commission”).

15 (b) PURPOSES.—The purpose of the Commission is
16 to—

17 (1) study the nature and consequences of con-
18 centration in America’s food and agricultural econ-
19 omy; and

20 (2) make recommendations on how to change
21 underlying antitrust laws and other Federal laws
22 and regulations to keep a fair and competitive agri-
23 culture marketplace for family farmers, other small
24 and medium-sized agriculture producers, generally,
25 and the communities of which they are a part.

1 (c) MEMBERSHIP OF COMMISSION.—

2 (1) COMPOSITION.—The Commission shall be
3 composed of 12 members as follows:4 (A) Three persons, 1 of whom shall be a
5 person currently engaged in farming or ranch-
6 ing, shall be appointed by the President pro
7 tempore of the Senate upon the recommenda-
8 tion of the majority leader of the Senate, after
9 consultation with the Chairs of the Committee
10 on Agriculture, Nutrition, and Forestry and of
11 the Committee on the Judiciary.12 (B) Three persons, 1 of whom shall be a
13 person currently engaged in farming or ranch-
14 ing, shall be appointed by the President pro
15 tempore of the Senate upon the recommenda-
16 tion of the minority leader of the Senate, after
17 consultation with the ranking minority member
18 of the Committee on Agriculture, Nutrition,
19 and Forestry and of the Committee on the Ju-
20 diciary.21 (C) Three persons, 1 of whom shall be a
22 person currently engaged in farming or ranch-
23 ing and 1 of whom shall be a representative of
24 organized labor, shall be appointed by the
25 Speaker of the House of Representatives, after

1 consultation with the Chairs of the Committee
2 on Agriculture and of the Committee on the Ju-
3 diciary.

4 (D) Three persons, 1 of whom shall be a
5 person currently engaged in farming or ranch-
6 ing, shall be appointed by the minority leader of
7 the House of Representatives, after consultation
8 with the ranking minority member of the Com-
9 mittee on Agriculture and of the Committee on
10 the Judiciary.

11 (2) **QUALIFICATIONS OF MEMBERS.—**

12 (A) **APPOINTMENTS.**—Persons who are ap-
13 pointed under paragraph (1) shall be persons
14 who—

15 (i) have experience in farming or
16 ranching, expertise in agricultural economics
17 and antitrust, or have other pertinent
18 qualifications or experience relating to food
19 and agriculture industries; and
20 (ii) are not officers or employees of
21 the United States.

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

7 (d) PERIOD OF APPOINTMENT; VACANCIES.—

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

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

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

19 (f) MEETINGS.—The Commission shall meet at the
20 call of the Chairperson.

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

1 (h) QUORUM.—A majority of the members of the
2 Commission shall constitute a quorum for the transaction
3 of business.

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

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

8 (a) IN GENERAL.—The Commission shall be respon-
9 sible for examining the nature, the causes, and con-
10 sequences of concentration in America's agricultural econ-
11 omy in the broadest possible terms.

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

14 (1) The nature and extent of concentration in
15 the food and agricultural sector, including food pro-
16 duction, manufacturing, transportation, processing,
17 distribution, marketing, retailing, and farm inputs
18 such as machinery, fertilizer, and seeds.

19 (2) Current trends in concentration of the food
20 and agricultural sector and what this sector is likely
21 to look like in the near and longer term future.

22 (3) The effects of rising concentration on sup-
23 pliers, workers and farmers, including independent
24 and contract farmers, with respect to—

- 1 (A) competition in markets for their prod-
2 ucts and services;
3 (B) income and benefit levels;
4 (C) income distribution;
5 (D) income volatility;
6 (E) other material benefits; and
7 (F) wages and benefits of employees.

8 (4) The impacts of this concentration upon
9 rural communities, rural economic development, and
10 the natural environment.

11 (5) The impacts of concentration in the seed in-
12 dustry on genetic diversity in farm fields and any re-
13 lated impacts on food security.

14 (6) The impacts of this concentration upon food
15 shoppers, including the reasons that low farm prices
16 have not resulted in corresponding drops in super-
17 market prices.

18 (7) Whether farming is approaching a scale
19 that is larger than necessary from the standpoint of
20 productivity.

21 (8) The effect of current laws and administra-
22 tive practices in supporting and encouraging this
23 concentration.

24 (9) Whether the existing antitrust laws provide
25 adequate safeguards against, and remedies for, the

1 impacts of concentration upon family farms, the
2 communities they comprise, and the food shoppers of
3 this Nation.

4 (10) Accurate and reliable data on the national
5 and international markets shares of multinational
6 agribusinesses, and the portion of their sales attrib-
7 utable to exports.

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

11 (12) The extent to which developments, such as
12 packer ownership of livestock, formula pricing, mar-
13 keting agreements, production contracting, forward
14 contracting, and vertical integration tend to give
15 processors, agribusinesses, integrators, and other
16 buyers of agricultural commodities additional market
17 power over farmers and suppliers in local markets.

18 (13) The extent to which mergers cause wage
19 suppression, layoffs, or reduced benefits to workers
20 in the food and agricultural sector.

21 (14) Such related matters as the Commission
22 determines to be important.

23 **SEC. 203. FINAL REPORT.**

24 (a) IN GENERAL.—Not later than 12 months after
25 the date of the initial meeting of the Commission, the

1 Commission shall submit to the President and Congress
2 a final report which contains—

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

5 (2) recommendations for addressing the prob-
6 lems identified as part of the Commission's analysis.

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

10 **SEC. 204. POWERS OF COMMISSION.**

11 (a) HEARINGS.—The Commission may hold such
12 hearings, sit and act at such times and places, take such
13 testimony, and receive such evidence as the Commission
14 may find advisable to fulfill the requirements of this title.

15 The Commission shall hold at least 1 or more hearings
16 in Washington, DC, and 4 in different agriculture regions
17 of the United States.

18 (b) INFORMATION FROM FEDERAL AGENCIES.—The
19 Commission may secure directly from any Federal depart-
20 ment or agency such information as the Commission con-
21 siders necessary to carry out the provisions of this title.

22 Upon request of the Chairperson of the Commission, the
23 head of such department or agency shall furnish such in-
24 formation to the Commission.

1 (c) POSTAL SERVICES.—The Commission may use
2 the United States mails in the same manner and under
3 the same conditions as other departments and agencies of
4 the Federal Government.

5 **SEC. 205. COMMISSION PERSONNEL MATTERS.**

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

13 (b) TRAVEL EXPENSES.—The members of the Com-
14 mission shall be allowed travel expenses, including per-
15 diem in lieu of subsistence, at rates authorized for employ-
16 ees of agencies under subchapter I of chapter 57 of title
17 5, United States Code, while away from their homes or
18 regular places of business in the performance of services
19 for the Commission.

20 (c) STAFF.—

21 (1) IN GENERAL.—The Chairperson of the
22 Commission may, without regard to the civil service
23 laws and regulations, appoint and terminate an exec-
24 utive director and such other additional personnel as
25 may be necessary to enable the Commission to per-

1 form its duties. The employment of an executive di-
2 rector shall be subject to confirmation by the Com-
3 mission.

4 (2) COMPENSATION.—The Chairperson of the
5 Commission may fix the compensation of the execu-
6 tive director and other personnel without regard to
7 the provisions of chapter 51 and subchapter III of
8 chapter 53 of title 5, United States Code, relating
9 to classification of positions and General Schedule
10 pay rates, except that the rate of pay for the execu-
11 tive director and other personnel may not exceed the
12 rate payable for level V of the Executive Schedule
13 under section 5316 of such title.

14 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any
15 Federal Government employee shall be detailed to the
16 Commission without reimbursement, and such detail shall
17 be without interruption or loss of civil service status or
18 privilege.

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

1 **SEC. 206. SUPPORT SERVICES.**

2 The Administrator of the General Services Adminis-
3 tration shall provide to the Commission on a reimbursable
4 basis such administrative support services as the Commis-
5 sion may request.

6 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated \$2,000,000
8 to the Commission as required by this title to carry out
9 the provisions of this title.

