

115TH CONGRESS  
2D SESSION

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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.

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IN THE SENATE OF THE UNITED STATES

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Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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## 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 Representatives 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 2018”.

6 **SEC. 2. FINDINGS.**

7       Congress finds the following:

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

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

14                  (3) In the past three decades, the top 4 largest  
15    pork packers have seized control of 71 percent of the  
16    market, up from 36 percent. Over the same period,  
17    the top 4 beef packers have expanded their market  
18    share from 32 percent to 85 percent. The top 4 flour  
19    millers have increased their market share from 40  
20    percent to 64 percent. The market share of the top  
21    4 soybean crushers has jumped from 54 percent to  
22    79 percent, and the top 4 wet corn processors con-  
23    trol of the market has increased from 63 percent to  
24    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  
5 nearly 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 has plummeted from 41 percent in 1950, to approximately 15 percent today, while the profit share for farm input, marketing, and processing companies 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 is expected to be negative in 2018.

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) Concentration, low prices, anticompetitive practices, and other manipulations and abuses of the agricultural economy are driving small family farmers out of business. Farmers are going bankrupt or

1 giving up, and few are taking their places; more  
2 farm families are having to rely on other jobs to stay  
3 afloat. Eighty-two percent of farm household income  
4 is expected to come from off farm work this year, up  
5 from 53 percent in 1960.

6 (16) Seventy-five percent of America's farmed  
7 cropland is now controlled by 12 percent of farms,  
8 and the number of farmers leaving the land will con-  
9 tinue to increase unless and until these trends are  
10 reversed.

11 (17) The decline of small family farms under-  
12 mines the economies of rural communities across  
13 America; it has pushed Main Street businesses, from  
14 equipment suppliers to small banks, out of business  
15 or to the brink of insolvency.

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

23 (19) The decline of family farming poses a di-  
24 rect threat to American families and family values,  
25 by subjecting farm families to turmoil and stress.

1       Farm advocates across the country are reporting an  
2       increase in farmer suicides over the past several  
3       years.

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

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

14          (22) Past congressional action to remediate  
15       market failure, such as enacting country-of-origin la-  
16       beling to provide transparency for domestic farmers,  
17       ranchers, and consumers regarding agricultural com-  
18       modity origins, have been overturned for key com-  
19       modities by oligopolistic conglomerates that use un-  
20       differentiated imports to reduce domestic farm  
21       prices.

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

**1 SEC. 3. DEFINITIONS.**

2 In this Act:

3                 (1) AGRICULTURAL INPUT SUPPLIER.—The  
4 term “agricultural input supplier” means any person  
5 (excluding agricultural cooperatives) engaged in the  
6 business of selling, in interstate or foreign com-  
7 mercial, any product to be used as an input (including  
8 seed, germ plasm, hormones, antibiotics, fertilizer,  
9 and chemicals, but excluding farm machinery) for  
10 the production of any agricultural commodity, except  
11 that no person shall be considered an agricultural  
12 input supplier if sales of such products are for a  
13 value less than \$10,000,000 per year.

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

22                 (3) COMMISSION MERCHANT.—The term “com-  
23 mission merchant” means any person engaged in the  
24 business of receiving in interstate or foreign com-  
25 mercial any agricultural commodity for sale, on com-  
26 mission, or for or on behalf of another, except that

1       no person shall be considered a commission mer-  
2       chant if the only sales of such commodities are for  
3       a value less than \$10,000,000 per year.

4                  (4) DEALER.—The term “dealer” means any  
5       person (excluding agricultural cooperatives) engaged  
6       in the business of buying, selling, or marketing agri-  
7       cultural commodities in interstate or foreign com-  
8       merce, except that—

9                      (A) no person shall be considered a dealer  
10       with respect to sales or marketing of any agri-  
11       cultural commodity of that person’s own rais-  
12       ing; and

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

16                  (5) INTEGRATOR.—The term “integrator”  
17       means an entity that contracts with farmers for  
18       grower services to raise chickens or hogs to slaugh-  
19       ter size and weight. The integrator owns the chick-  
20       ens or hogs, supplies the feed, slaughterers, and fur-  
21       ther processes the poultry or pork.

22                  (6) PROCESSOR.—The term “processor” means  
23       any person (excluding agricultural cooperatives) en-  
24       gaged in the business of handling, preparing, or  
25       manufacturing (including slaughtering and food and

1        beverage manufacturing) of an agricultural com-  
2        modity, or the products of such agricultural com-  
3        modity, for sale or marketing for human consump-  
4        tion, except that no person shall be considered a  
5        processor if the only sales of such products are for  
6        a value less than \$10,000,000 per year.

7              (7) RETAILER.—The term “retailer” means any  
8        person (excluding agricultural cooperatives) licensed  
9        as a retailer under the Perishable Agriculture Com-  
10        modities Act of 1930 (7 U.S.C. 499a(b)), except  
11        that no person shall be considered a retailer if the  
12        only sales of such products are for a value less than  
13        \$10,000 per year.

14 **TITLE I—MORATORIUM ON  
15        LARGE AGRIBUSINESS, FOOD  
16        AND BEVERAGE MANUFAC-  
17        TURING, AND GROCERY RE-  
18        TAIL MERGERS**

19 **SEC. 101. MORATORIUM ON LARGE AGRIBUSINESS, FOOD  
20        AND BEVERAGE MANUFACTURING, AND GRO-  
21        CERY RETAIL MERGERS.**

22        (a) IN GENERAL.—

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

1                         (A) no dealer, processor, commission mer-  
2                         chant, agricultural input supplier, broker, or  
3                         operator of a warehouse of agricultural com-  
4                         modities or retailer with annual net sales or  
5                         total assets of more than \$160,000,000 shall  
6                         merge or acquire, directly or indirectly, any vot-  
7                         ing securities or assets of any other dealer,  
8                         processor, commission merchant, agricultural  
9                         input supplier, broker, or operator of a ware-  
10                         house of agricultural commodities or retailer  
11                         with annual net sales or total assets of more  
12                         than \$16,000,000; and

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

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

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

11 (i) addressing the problem of market  
12 concentration in the food and agricultural  
13 sector; and

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

21       (b) WAIVER AUTHORITY.—The Attorney General  
22 shall have authority to waive the moratorium imposed by  
23 subsection (a) only under extraordinary circumstances,  
24 such as insolvency or similar financial distress of 1 of the  
25 affected parties.

1       (c) EXEMPTIONS.—The classes of transactions de-  
2 scribed in section 7A(c) of the Clayton Act (15 U.S.C.  
3 18a(c)) are exempt from subsection (a).

4       (d) AVOIDANCE.—Any transaction or other device en-  
5 tered into or employed for the purpose of avoiding the  
6 moratorium contained in subsection (a) shall be dis-  
7 regarded, and the application of the moratorium shall be  
8 determined by applying subsection (a) to the substance of  
9 the transaction.

10     (e) RULEMAKING.—The Attorney General shall pro-  
11 mulgate regulations that the Attorney General determines  
12 are necessary to implement this section.

13     **TITLE II—AGRICULTURE CON-**  
14     **CENTRATION AND MARKET**  
15     **POWER REVIEW COMMISSION**

16     **SEC. 201. ESTABLISHMENT OF COMMISSION.**

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

21     (b) PURPOSES.—The purpose of the Commission is  
22 to—

23           (1) study the nature and consequences of con-  
24 centration in America’s food and agricultural econ-  
25 omy; and

**7 (c) MEMBERSHIP OF COMMISSION.—**

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

1           culture, Nutrition, and Forestry and of the  
2           Committee on the Judiciary.

3           (C) Three persons, one of whom shall be a  
4           person currently engaged in farming or ranch-  
5           ing, shall be appointed by the Speaker of the  
6           House of Representatives, after consultation  
7           with the Chairs of the Committee on Agri-  
8           culture and of the Committee on the Judiciary.

9           (D) Three persons, one of whom shall be  
10          a person currently engaged in farming or  
11          ranching, shall be appointed by the Minority  
12          Leader of the House of Representatives, after  
13          consultation with the ranking minority member  
14          of the Committee on Agriculture, Nutrition,  
15          and Forestry and of the Committee on the Ju-  
16          diciary.

17          (2) QUALIFICATIONS OF MEMBERS.—

18           (A) APPOINTMENTS.—Persons who are ap-  
19          pointed under paragraph (1) shall be persons  
20          who—

21                (i) have experience in farming or  
22                ranching, expertise in agricultural econom-  
23                ics and antitrust, or have other pertinent  
24                qualifications or experience relating to ag-

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

(i) are representative of a broad cross-sector of agriculture and antitrust perspectives within the United States; and

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

14 (d) PERIOD OF APPOINTMENT; VACANCIES.—

15                   (1) IN GENERAL.—Members shall be appointed  
16                   not later than 60 days after the date of enactment  
17                   of this Act and the appointment shall be for the life  
18                   of the Commission.

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

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

1       (f) MEETINGS.—The Commission shall meet at the  
2 call of the Chairperson.

3       (g) CHAIRPERSON AND VICE CHAIRPERSON.—The  
4 members of the Commission shall elect a chairperson and  
5 vice chairperson from among the members of the Commis-  
6 sion.

7       (h) QUORUM.—A majority of the members of the  
8 Commission shall constitute a quorum for the transaction  
9 of business.

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

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

14      (a) IN GENERAL.—The Commission shall be respon-  
15 sible for examining the nature, the causes, and con-  
16 sequences concentration in America's agricultural econ-  
17 omy in the broadest possible terms.

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

20           (1) The nature and extent of concentration in  
21           the food and agricultural sector, including food pro-  
22           duction, manufacturing, transportation, processing,  
23           distribution, marketing, retailing, and farm inputs  
24           such as machinery, fertilizer, and seeds.

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

4                   (3) The effects of rising concentration on sup-  
5       pliers and farmers, including independent and con-  
6       tract farmers, with respect to—

7                   (A) competition in markets for their prod-  
8       ucts and services;

9                   (B) income and benefit levels;

10                  (C) income distribution;

11                  (D) income volatility; and

12                  (E) other material benefits.

13                  (4) The impacts of this concentration upon  
14       rural communities, rural economic development, and  
15       the natural environment.

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

19                  (6) The impacts of this concentration upon food  
20       shoppers, including the reasons that low farm prices  
21       have not resulted in corresponding drops in super-  
22       market prices.

23                  (7) Whether farming is approaching a scale  
24       that is larger than necessary from the standpoint of  
25       productivity.

1                   (8) The effect of current laws and administrative  
2                   practices in supporting and encouraging this  
3                   concentration.

4                   (9) Whether the existing antitrust laws provide  
5                   adequate safeguards against, and remedies for, the  
6                   impacts of concentration upon family farms, the  
7                   communities they comprise, and the food shoppers of  
8                   this Nation.

9                   (10) Accurate and reliable data on the national  
10                  and international markets shares of multinational  
11                  agribusinesses, and the portion of their sales attrib-  
12                  utable to exports.

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

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

23                  (13) Such related matters as the Commission  
24                  determines to be important.

**1 SEC. 203. FINAL REPORT.**

2       (a) IN GENERAL.—Not later than 12 months after  
3 the date of the initial meeting of the Commission, the  
4 Commission shall submit to the President and Congress  
5 a final report which contains—

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

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

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

**13 SEC. 204. POWERS OF COMMISSION.**

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

18 The Commission shall hold at least 1 or more hearings  
19 in Washington, D.C., and 4 in different agriculture re-  
20 gions of the United States.

21       (b) INFORMATION FROM FEDERAL AGENCIES.—The  
22 Commission may secure directly from any Federal depart-  
23 ment or agency such information as the Commission con-  
24 siders necessary to carry out the provisions of this title.  
25 Upon request of the Chairperson of the Commission, the

1 head of such department or agency shall furnish such in-  
2 formation to the Commission.

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

7 **SEC. 205. COMMISSION PERSONNEL MATTERS.**

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

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

22 (c) STAFF.—

23 (1) IN GENERAL.—The Chairperson of the  
24 Commission may, without regard to the civil service  
25 laws and regulations, appoint and terminate an exec-

1       utive director and such other additional personnel as  
2       may be necessary to enable the Commission to per-  
3       form its duties. The employment of an executive di-  
4       rector shall be subject to confirmation by the Com-  
5       mission.

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

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

21           (e) PROCUREMENT OF TEMPORARY AND INTERMIT-  
22      TENT SERVICES.—The Chairperson of the Commission  
23      may procure temporary and intermittent services under  
24      section 3109(b) of title 5, United States Code, at rates  
25      for individuals which do not exceed the daily equivalent

1 of the annual rate of basic pay prescribed for level V of  
2 the Executive Schedule under section 5316 of such title.

3 **SEC. 206. SUPPORT SERVICES.**

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

8 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated  
10 **[\$2,000,000]** to the Commission as required by this title  
11 to carry out the provisions of this title.