

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4321

To amend the Sherman Act, the Clayton Act, and the Packers and Stockyards Act, 1921 with respect of competition among wholesale purchasers; to establish a commission to review large agriculture mergers, concentration, and market power, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2000

Mr. MINGE (for himself, Mr. DEFAZIO, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, 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

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## A BILL

To amend the Sherman Act, the Clayton Act, and the Packers and Stockyards Act, 1921 with respect of competition among wholesale purchasers; to establish a commission to review large agriculture mergers, concentration, and market power, 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 “Antitrust Enforcement  
5 Improvement Act of 2000”.

1 **SEC. 2. AMENDMENTS TO THE SHERMAN ACT.**

2 (a) TRADE OR COMMERCE.—Sections 1 and 3 of the  
3 Sherman Act (15 U.S.C. 1, 3) are amended by inserting  
4 “(which may include trade or commerce of sellers, trade  
5 or commerce of wholesale purchasers, or trade or com-  
6 merce of both)” after “or commerce”.

7 (b) FINES.—Sections 1 and 3 of the Sherman Act  
8 (15 U.S.C. 1, 3) are amended by striking “\$10,000,000”  
9 and inserting “\$100,000,000”.

10 **SEC. 3. AMENDMENTS TO THE CLAYTON ACT.**

11 (a) CAUSE OF ACTION.—Section 7 of the Clayton Act  
12 (15 U.S.C. 18) is amended by adding at the end the fol-  
13 lowing:

14 “For purposes of this section, the term ‘competition’  
15 may include competition among sellers, competition among  
16 wholesale purchasers, or competition among both.”.

17 (b) DISCLOSURE OF INFORMATION REGARDING  
18 MERGERS.—Section 7A of the Clayton Act (15 U.S.C.  
19 18a) is amended—

20 (1) in subsection (e)(2)—

21 (A) by striking “20 days” and inserting  
22 “30 days”, and

23 (B) by striking “10 days” and inserting  
24 “15 days”, and

25 (2) in the 1st sentence of subsection (h) by in-  
26 serting “or as may be requested by the State attor-

1 ney general (as defined in section 4G)” before the  
2 period.

3 (c) FEES REQUIRED TO FILE NOTIFICATIONS OF  
4 MERGERS.—

5 (1) AMENDMENT.—Section 7A of the Clayton  
6 Act (15 U.S.C. 18a) is amended by adding at the  
7 end the following:

8 “(k)(1) To file a notification required by subsection  
9 (a), a person shall pay a filing fee to be assessed and col-  
10 lected by the Federal Trade Commission as follows:

11 “(A) \$25,000 if the aggregate total amount de-  
12 termined under subsection (a)(3)(B) is less than  
13 \$100,000,000.

14 “(B) \$50,000 if the aggregate total amount de-  
15 termined under subsection (a)(3)(B) is less than  
16 \$250,000,000 but not less than \$100,000,000.

17 “(C) \$100,000 if the aggregate total amount  
18 determined under subsection (a)(3)(B) is less than  
19 \$1,000,000,000 but not less than \$250,000,000.

20 “(D) \$150,000 if the aggregate total amount  
21 determined under subsection (a)(3)(B) is not less  
22 than \$1,000,000,000.

23 “(2) Filing fees collected under this subsection shall  
24 be divided equally between, and credited to, the then cur-  
25 rent appropriations for the salaries and expenses of the

1 Federal Trade Commission and the then current appro-  
2 priations for the salaries and expenses of the Antitrust  
3 Division of the Department of Justice. Collected fees in  
4 excess of such appropriations shall be deposited in the  
5 Treasury as general receipts.”.

6 (2) CONFORMING AMENDMENT.—Section 605  
7 of Public Law 101–162 (103 Stat. 1031; 15 U.S.C.  
8 18a note) is repealed.

9 (3) EFFECTIVE DATE AND APPLICATION OF  
10 AMENDMENTS.—The amendments made by this sub-  
11 section shall take effect on the 1st day of the 1st fis-  
12 cal year beginning after the date of the enactment  
13 of this Act and shall apply with respect to notifica-  
14 tions filed under section 7A of the Clayton Act on  
15 or after the date such amendments take effect.

16 (d) RECOVERY OF OVERCHARGES.—(1) The Clayton  
17 Act (15 U.S.C. 12 et seq.) is amended by inserting after  
18 section 4H the following:

19 “SEC. 4I. (a) Any indirect purchaser in the chain of  
20 manufacture, production, or distribution of goods or serv-  
21 ices shall, upon proof of payment of all or any part of  
22 any overcharge for such goods or services, be deemed to  
23 be injured within the meaning of section 4, 4A, or 4C,  
24 except that such indirect purchaser may recover damages

1 only with respect to the amount of the initial overcharge  
2 proved to be passed on to him.

3 “(b) Any indirect seller in the chain of manufacture,  
4 production, or distribution of goods or services shall, upon  
5 proof of receipt of all or any part of any underpayment  
6 for such goods or services, be deemed to be injured within  
7 the meaning of section 4, 4A, or 4C, except that such indi-  
8 rect seller may recover damages only with respect to the  
9 amount of the initial underpayment proved to be passed  
10 on to him.

11 “(c) In any action under section 4 or 4A, any defend-  
12 ant, as a partial or complete defense against a damage  
13 claim, shall be entitled to prove that—

14 “(1) a purchaser in the chain who paid any  
15 overcharge passed on all or any part of such over-  
16 charge to another purchaser in such chain; or

17 “(2) a seller in the chain who received any un-  
18 derpayment passed on all or any part of such under-  
19 payment to another seller in such chain.

20 “(d)(1) In any class action brought under section 4  
21 by purchasers or sellers, the fact of injury and the amount  
22 of damages sustained by or passed-on to or by the mem-  
23 bers of the class may be proven on a class-wide basis, with-  
24 out requiring proof of such matters by each individual  
25 member of the class. The percentage of total damages at-

1   tributable to a member of such class shall be the same  
2   as the ratio of such member’s purchases or sales to the  
3   purchases or sales of the class as a whole.

4       “(2) In any action under section 4C, the fact of in-  
5   jury and the amount of damages sustained by or passed-  
6   on to or by purchasers or sellers may be proven on a class-  
7   wide basis, without requiring proof of such matters with  
8   respect to each individual purchaser or seller. The percent-  
9   age of total damages attributable to a member of a class  
10  shall be the same as the ratio of such member’s purchases  
11  or sales to the purchases or sales of the class as a whole.

12       “(3) Except as provided in sections 4D and 4E, dam-  
13  ages shall not be assessed in the aggregate against a de-  
14  fendant but shall be assessed only on behalf of any person  
15  who makes a valid damage claim.

16       “(e)(1) Except as provided in paragraph (2), any  
17  damage award in a final judgment heretofore or hereafter  
18  rendered against any defendant in any action under sec-  
19  tion 4, 4A, or 4C shall be admissible as—

20               “(A) prima facie evidence against any plaintiff,

21               and

22               “(B) conclusive evidence against such defend-

23               ant,

24  in any other action under section 4, 4A, or 4C brought  
25  against such defendant, as to all fully and fairly litigated

1 matters regarding the amount of damages passed on  
2 which would be an estoppel as between the parties thereto.

3 “(2) This subsection shall not apply to consent judg-  
4 ments or decrees.

5 “(f) In any action by purchasers or sellers under sec-  
6 tion 4 which is brought or maintained as a class action,  
7 the court, before it approves a settlement of such action,  
8 shall, in the interests of justice, determine what portion  
9 of the settlement shall be distributed to the persons on  
10 whose behalf the action was brought or maintained and  
11 what portion shall be distributed to their attorneys, and  
12 in making such determination the court shall act as a fidu-  
13 ciary for those persons on whose behalf the action was  
14 brought or maintained.

15 “(g) In any action under section 4—

16 “(1) by, or on behalf of, any purchaser in the  
17 chain of manufacture, production, or distribution of  
18 goods or services alleging any overcharge for such  
19 goods or services, or

20 “(2) by, or on behalf of, any seller in the chain  
21 of manufacture, production, or distribution of goods  
22 or services alleging any underpayment for such  
23 goods or services,

24 the court may in its discretion award a reasonable attor-  
25 ney’s fee to the prevailing defendant upon a finding that

1 such purchaser or seller or his attorney acted in bad faith,  
2 vexatiously, wantonly, or for oppressive reasons.”.

3 (2) The Clayton Act is amended by inserting before  
4 the period in section 4 the following: “, except that this  
5 section shall not authorize suits by a foreign sovereign  
6 government, a department or agency thereof”.

7 (3) Section 1407(h) of title 28, United States Code,  
8 is amended by striking “section 4C of”.

9 **SEC. 4. AMENDMENTS TO THE PACKERS AND STOCKYARDS**

10 **ACT, 1921.**

11 (a) DEFINITIONS.—Section 2 of the Packers and  
12 Stockyards Act, 1921 (7 U.S.C. 182) is amended by add-  
13 ing at the end the following:

14 “(12) The term ‘undue or unreasonable preference or  
15 advantage’—

16 “(A) except as provided in subparagraph (B),  
17 includes using any practice or device to purchase or  
18 acquire, directly or indirectly, livestock from a pro-  
19 ducer of livestock on terms that are not offered to  
20 producers of smaller volumes of similar livestock but  
21 excludes a purchase or acquisition that occurs less  
22 than 2 weeks before slaughter and in a public mar-  
23 ket based on a competitive bidding process; and

24 “(B) does not include the payment of—



1           “(i) a price premium based on standards  
2           for product grade and quality, or for a produc-  
3           tion method, that enhance the value of the meat  
4           if such premium is offered in a manner that  
5           does not discriminate against producers of  
6           smaller volumes of similar livestock who meet  
7           such standards; or

8           “(ii) different prices to reflect differences  
9           in the cost of handling livestock.

10          “(13) The term ‘public market based on a competitive  
11          bidding process’ means a market in which—

12                 “(A) potential buyers and sellers have access;

13                 “(B) multiple blind bids can be made; and

14                 “(C) there is contemporaneous transparency.”.

15          (b) **COMMERCE.**—Section 202(e) of the Packers and  
16          Stockyards Act, 1921 (7 U.S.C. 192(e)) is amended by  
17          inserting “(which may include trade or commerce of sell-  
18          ers, trade or commerce of wholesale purchasers, or trade  
19          or commerce of both)” after “commerce”.

20          **SEC. 5. ESTABLISHMENT OF COMMISSION.**

21          (a) **ESTABLISHMENT.**—There is established a com-  
22          mission to be known as the Agriculture Concentration and  
23          Market Power Review Commission (hereafter in this sec-  
24          tion referred to as the “Commission”).

1 (b) PURPOSES.—The purpose of the Commission is  
2 to—

3 (1) study the nature and consequences of con-  
4 centration and vertical integration in America’s agri-  
5 cultural economy; and

6 (2) make recommendations on how to change  
7 underlying antitrust laws and other Federal laws  
8 and regulations to keep a fair and competitive agri-  
9 culture marketplace for family farmers, other small  
10 and medium sized agriculture producers, generally,  
11 and the communities of which they are a part.

12 (c) MEMBERSHIP OF COMMISSION.—

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

15 (A) Three persons, one of whom shall be a  
16 person currently engaged in farming or ranch-  
17 ing, shall be appointed by the President pro  
18 tempore of the Senate upon the recommenda-  
19 tion of the Majority Leader of the Senate, after  
20 consultation with the Chairman of the Com-  
21 mittee on Agriculture, Nutrition, and Forestry.

22 (B) Three persons, one of whom shall be  
23 a person currently engaged in farming or  
24 ranching, shall be appointed by the President  
25 pro tempore of the Senate upon the rec-

1 commendation of the Minority Leader of the  
2 Senate, after consultation with the ranking mi-  
3 nority member of the Committee on Agri-  
4 culture, Nutrition, and Forestry.

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

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

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-  
25 riculture and agriculture industries; and

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

3                   (B) OTHER CONSIDERATION.—In appoint-  
4                   ing Commission members, every effort shall be  
5                   made to ensure that the members—

6                   (i) are representative of a broad cross  
7                   sector of agriculture and antitrust perspec-  
8                   tives within the United States; and

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

12                  (d) PERIOD OF APPOINTMENT; VACANCIES.—

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

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

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

24                  (f) MEETINGS.—The Commission shall meet at the  
25                  call of the Chairperson.

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

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

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

11 (j) DUTIES OF THE COMMISSION.—The Commission  
12 shall be responsible for examining the nature, the causes,  
13 and consequences concentration in America’s agricultural  
14 economy in the broadest possible terms.

15 (k) ISSUES TO BE ADDRESSED.—The study shall in-  
16 clude an examination of the following matters:

17 (1) The nature and extent of concentration in  
18 the agricultural sector, including food production,  
19 transportation, processing, distribution and mar-  
20 keting, and farm inputs such as machinery, fer-  
21 tilizer, and seeds.

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

1           (3) The effect of this concentration on farmer  
2 income.

3           (4) The impacts of this concentration upon  
4 rural communities, rural economic development, and  
5 the natural environment.

6           (5) The impacts of this concentration upon food  
7 shoppers, including the reasons that Depression-level  
8 farm prices have not resulted in corresponding drops  
9 in supermarket prices.

10          (6) The productivity of family-based farm units,  
11 compared with corporate based agriculture, and  
12 whether farming is approaching a scale that is larg-  
13 er than necessary from the standpoint of produc-  
14 tivity.

15          (7) The effect of current laws and administra-  
16 tive practices in supporting and encouraging this  
17 concentration.

18          (8) Whether the existing antitrust laws provide  
19 adequate safeguards against, and remedies for, the  
20 impacts of concentration upon family-based agri-  
21 culture, the communities they comprise, and the  
22 food shoppers of this Nation.

23          (9) Accurate and reliable data on the national  
24 and international markets shares of multinational

1 agribusinesses, and the portion of their sales attrib-  
2 utable to exports.

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

6 (11) The extent to which developments, such as  
7 formula pricing, marketing agreements, and forward  
8 contracting tend to give processors, agribusinesses,  
9 and other buyers of agricultural commodities addi-  
10 tional market power over producers and suppliers in  
11 local markets.

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

14 (l) FINAL REPORT.—(1) Not later than 12 months  
15 after the date of the initial meeting of the Commission,  
16 the Commission shall submit to the President and Con-  
17 gress a final report which contains—

18 (A) the findings and conclusions of the Com-  
19 mission described in subsection (b); and

20 (B) recommendations for addressing the prob-  
21 lems identified as part of the Commission's analysis.

22 (2) Any member of the Commission may submit addi-  
23 tional findings and recommendations as part of the final  
24 report.

25 (m) POWERS OF COMMISSION.—

1           (1) HEARINGS.—The Commission may hold  
2 such hearings, sit and act at such times and places,  
3 take such testimony, and receive such evidence as  
4 the Commission may find advisable to fulfill the re-  
5 quirements of this section. The Commission shall  
6 hold at least 1 or more hearings in Washington,  
7 D.C., and 4 in different agriculture regions of the  
8 United States.

9           (2) INFORMATION FROM FEDERAL AGENCIES.—  
10 The Commission may secure directly from any Fed-  
11 eral department or agency such information as the  
12 Commission considers necessary to carry out the  
13 provisions of this section. Upon request of the Chair-  
14 person of the Commission, the head of such depart-  
15 ment or agency shall furnish such information to the  
16 Commission.

17           (3) POSTAL SERVICES.—The Commission may  
18 use the United States mails in the same manner and  
19 under the same conditions as other departments and  
20 agencies of the Federal Government.

21           (n) COMMISSION PERSONNEL MATTERS.—

22           (1) COMPENSATION OF MEMBERS.—Each mem-  
23 ber of the Commission shall be compensated at a  
24 rate equal to the daily equivalent of the annual rate  
25 of basic pay prescribed for level IV of the Executive



1 Schedule under section 5315 of title 5, United  
2 States Code, for each day (including travel time)  
3 during which such member is engaged in the per-  
4 formance of the duties of the Commission.

5 (2) TRAVEL EXPENSES.—The members of the  
6 Commission shall be allowed travel expenses, includ-  
7 ing per diem in lieu of subsistence, at rates author-  
8 ized for employees of agencies under subchapter I of  
9 chapter 57 of title 5, United States Code, while  
10 away from their homes or regular places of business  
11 in the performance of services for the Commission.

12 (3) STAFF.—

13 (A) IN GENERAL.—The Chairperson of the  
14 Commission may, without regard to the civil  
15 service laws and regulations, appoint and termi-  
16 nate an executive director and such other addi-  
17 tional personnel as may be necessary to enable  
18 the Commission to perform its duties. The em-  
19 ployment of an executive director shall be sub-  
20 ject to confirmation by the Commission.

21 (B) COMPENSATION.—The Chairperson of  
22 the Commission may fix the compensation of  
23 the executive director and other personnel with-  
24 out regard to the provisions of chapter 51 and  
25 subchapter III of chapter 53 of title 5, United

1 States Code, relating to classification of posi-  
2 tions and General Schedule pay rates, except  
3 that the rate of pay for the executive director  
4 and other personnel may not exceed the rate  
5 payable for level V of the Executive Schedule  
6 under section 5316 of such title.

7 (4) DETAIL OF GOVERNMENT EMPLOYEES.—  
8 Any Federal Government employee shall be detailed  
9 to the Commission without reimbursement, and such  
10 detail shall be without interruption or loss of civil  
11 service status or privilege.

12 (5) PROCUREMENT OF TEMPORARY AND INTER-  
13 MITTENT SERVICES.—The Chairperson of the Com-  
14 mission may procure temporary and intermittent  
15 services under section 3109(b) of title 5, United  
16 States Code, at rates for individuals which do not  
17 exceed the daily equivalent of the annual rate of  
18 basic pay prescribed for level V of the Executive  
19 Schedule under section 5316 of such title.

20 (o) SUPPORT SERVICES.—The Administrator of the  
21 General Services Administration shall provide to the Com-  
22 mission on a reimbursable basis such administrative sup-  
23 port services as the Commission may request.

1 (p) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated \$2,000,000 to the Com-  
3 mission as required by this title to carry out this section.

4 **SEC. 6. OFFICE OF SPECIAL COUNSEL FOR AGRICULTURE.**

5 The Attorney General shall establish in the Depart-  
6 ment of Justice an Office of Special Counsel for Agri-  
7 culture. The individual appointed by the Attorney General  
8 to head such Office shall handle agricultural antitrust  
9 issues and related matters, as determined by the Attorney  
10 General.

11 **SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 (a) EFFECTIVE DATE.—Except as provided in sub-  
13 section (b), this Act and the amendments made by this  
14 Act shall take effect on the date of the enactment of this  
15 Act.

16 (b) APPLICATION OF AMENDMENTS.—The amend-  
17 ments made by this Act shall not apply with respect to  
18 conduct occurring before the date of the enactment of this  
19 Act.

○