

106TH CONGRESS
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S. 2411

To enhance competition in the agricultural sector and to protect family farms and ranches and rural communities from unfair, unjustly discriminatory, or deceptive practices by agribusinesses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2000

Mr. DASCHLE (for himself, Mr. LEAHY, Mr. HARKIN, Mr. CONRAD, Mr. DORGAN, Mr. JOHNSON, Mr. FEINGOLD, Mr. KOHL, Mr. KERREY, Mr. BAUCUS, Mr. ROCKEFELLER, Mr. WELLSTONE, Mr. LEVIN, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To enhance competition in the agricultural sector and to protect family farms and ranches and rural communities from unfair, unjustly discriminatory, or deceptive practices by agribusinesses, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Farmers and Ranchers Fair Competition Act of 2000”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings and purposes.
 Sec. 3. Definitions.
 Sec. 4. Prohibitions against unfair practices in transactions involving agricultural commodities.
 Sec. 5. Reports of the Secretary on potential unfair practices.
 Sec. 6. Plain language and disclosure requirements for contracts.
 Sec. 7. Report on corporate structure.
 Sec. 8. Mandatory funding for staff.
 Sec. 9. General Accounting Office study.
 Sec. 10. Authority to promulgate regulations.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
 3 ings:

4 (1) Congressional Joint Economic Committee
 5 data suggests that over the last 15 years, agri-
 6 business profits have come almost exclusively out of
 7 producer income, rather than from increased retail
 8 prices. Given the lack of market power of producers,
 9 this data raises the question of whether the trend
 10 has been a natural market development or is instead
 11 a sign of market failure.

12 (2) Most economists agree that in the last 15
 13 years the real market price for a market basket of
 14 food has increased by approximately 3 percent, while
 15 the farm value of that food has fallen by approxi-
 16 mately 38 percent. Over that period, marketing costs
 17 have decreased by 15 percent, which should have
 18 narrowed rather than widened the gap.

19 (3) There is significant concern that increas-
 20 ingly vertically integrated multinational corporations,

1 especially those that own broad biotechnology pat-
2 ents, may be able to exert unreasonable and exces-
3 sive market power in the future by acquiring compa-
4 nies that own other broad biotechnology patents.

5 (4) The National Association of Attorneys Gen-
6 eral is very concerned with the high degree of eco-
7 nomic concentration in the agricultural sector and
8 the great potential for anticompetitive practices and
9 behavior. They estimate the top 4 meat packing
10 firms control over 80 percent of steer and heifer
11 slaughter, over 55 percent of hog slaughter, and over
12 65 percent of sheep slaughter. Increased concentra-
13 tion in the dairy procurement and processing sector
14 is also raising significant concerns.

15 (5) In the grain industry, United States De-
16 partment of Agriculture reports that the top 4 firms
17 controlled 56 percent of flour milling, 73 percent of
18 wet corn milling, 71 percent of soybean milling, and
19 62 percent of cotton seed oil milling.

20 (6) Moreover, the figures in paragraphs (4) and
21 (5) underestimate true levels of concentration and
22 potential market power because they fail to reflect
23 the web of unreported and difficult to trace joint
24 ventures, strategic alliances, interlocking direc-

1 torates, and other partial ownership arrangements
2 that link many large corporations.

3 (7) Concentration of market power also has the
4 effect of increasing the transfer of investment, cap-
5 ital, jobs, and necessary social services out of rural
6 areas to business centers throughout the world.
7 Many individuals representing a wide range of ex-
8 pertise have expressed concern with the potential im-
9 plications of this trend for the greater public good.

10 (8) The recent increase in contracting for the
11 production or sale of agricultural commodities, such
12 as livestock and poultry, is a cause for concern be-
13 cause of the significant bargaining power the buyers
14 of these products or services wield over individual
15 farmers and ranchers.

16 (9) Transparent, freely accessible, and competi-
17 tive markets are being supplanted by transfer prices
18 set within vertically integrated firms and by the in-
19 creasing use of private contracts.

20 (10) Agribusiness firms are showing record
21 profits at the same time that farmers and ranchers
22 are struggling to survive an ongoing price collapse
23 and erratic price trends.

24 (11) The efforts of farmers and ranchers to im-
25 prove their market position is hampered by—

1 (A) extreme disparities in bargaining
2 power between agribusiness firms and the hun-
3 dreds of thousands of individual farmers and
4 ranchers that sell products to them;

5 (B) the rapid increase in the use of private
6 contracts that disrupt price discovery and can
7 unfairly disadvantage producers;

8 (C) the extreme market power of agri-
9 business firms and alleged anticompetitive prac-
10 tices in the industry;

11 (D) shrinking opportunities for market ac-
12 cess by producers; and

13 (E) the direct and indirect impact these
14 factors have on the continuing viability of thou-
15 sands of rural communities across the country.

16 (b) PURPOSES.—The purposes of this Act are to—

17 (1) enhance fair and open competition in rural
18 America, thereby fostering innovation and economic
19 growth;

20 (2) permit the Secretary to take actions to en-
21 hance the bargaining position of family farmers and
22 ranchers, and to promote the viability of rural com-
23 munities nationwide;

24 (3) protect family farms and ranches from—

1 (A) unfair, unjustly discriminatory, or de-
2 ceptive practices or devices;

3 (B) false or misleading statements;

4 (C) retaliation related to statements law-
5 fully provided; and

6 (D) other unfair trade practices employed
7 by processors and other agribusinesses; and

8 (4) permit the Secretary to take actions to en-
9 hance the viability of rural communities nationwide.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) **AGRICULTURAL COMMODITY.**—The term
13 “agricultural commodity” has the meaning given the
14 term in section 102 of the Agricultural Trade Act of
15 1978 (7 U.S.C. 5602).

16 (2) **AGRICULTURAL COOPERATIVE.**—The term
17 “agricultural cooperative” means an association of
18 persons engaged in the production, marketing, or
19 processing of an agricultural commodity that meets
20 the requirements of the Act of February 18, 1922,
21 “An Act to authorize association of producers of ag-
22 ricultural products” (7 U.S.C. 291 et seq.; 42 Stat.
23 388) (commonly known as the “Capper-Volstead
24 Act”).

1 (3) BROKER.—The term “broker” means any
2 person engaged in the business of negotiating sales
3 and purchases of any agricultural commodity in
4 interstate or foreign commerce for or on behalf of
5 the vendor or the purchaser, except that no person
6 shall be considered a broker if the person’s sales of
7 such commodities are not in excess of \$1,000,000
8 per year.

9 (4) COMMISSION MERCHANT.—The term “com-
10 mission merchant” means any person engaged in the
11 business of receiving in interstate or foreign com-
12 merce any agricultural commodity for sale, on com-
13 mission, or for or on behalf of another, except that
14 no person shall be considered a commission mer-
15 chant if the person’s sales of such commodities are
16 not in excess of \$1,000,000 per year.

17 (5) DEALER.—The term “dealer” means—

18 (A) any person (except an agricultural co-
19 operative) engaged in the business of buying,
20 selling, or marketing agricultural commodities
21 in wholesale or jobbing quantities, as deter-
22 mined by the Secretary, in interstate or foreign
23 commerce, except—

24 (i) no person shall be considered a
25 dealer with respect to sales or marketing of

1 any agricultural commodity of that per-
2 son's own raising provided such sales or
3 marketing of such agricultural commodities
4 do not exceed \$10,000,000 per year; and

5 (ii) no person shall be considered a
6 dealer who buys, sells, or markets less than
7 \$1,000,000 per year of such commodities;
8 and

9 (B) an agricultural cooperative which sells
10 or markets agricultural commodities of its
11 members' own production if such agricultural
12 cooperative sells or markets more than
13 \$1,000,000 of its members' production per year
14 of such commodities.

15 (6) PROCESSOR.—The term “processor”
16 means—

17 (A) any person (except an agricultural co-
18 operative) engaged in the business of handling,
19 preparing, or manufacturing (including slaugh-
20 tering) of an agricultural commodity or the
21 products of such agricultural commodity for
22 sale or marketing in interstate or foreign com-
23 merce for human consumption except—

24 (i) no person shall be considered a
25 processor with respect to the handling, pre-

1 paring, or manufacturing (including
2 slaughtering) of an agricultural commodity
3 of that person's own raising provided such
4 sales or marketing of such agricultural
5 commodities do not exceed \$10,000,000
6 per year; and

7 (ii) no person who handles, prepares,
8 or manufactures (including slaughtering)
9 an agricultural commodity in an amount
10 less than \$1,000,000 per year shall be con-
11 sidered a processor; and

12 (B) an agricultural cooperative which proc-
13 esses agricultural commodities of its members'
14 own production if such agricultural cooperative
15 processes more than \$1,000,000 of its mem-
16 bers' production of such commodities per year.

17 (7) SECRETARY.—The term "Secretary" means
18 the Secretary of Agriculture.

19 **SEC. 4. PROHIBITIONS AGAINST UNFAIR PRACTICES IN**
20 **TRANSACTIONS INVOLVING AGRICULTURAL**
21 **COMMODITIES.**

22 (a) PROHIBITIONS.—It shall be unlawful in, or in
23 connection with, any transaction in interstate or foreign
24 commerce for any dealer, processor, commission merchant,
25 or broker—

1 (1) to engage in or use any unfair, unreason-
2 able, unjustly discriminatory, or deceptive practice
3 or device in the marketing, receiving, purchasing,
4 sale, or contracting for the production of any agri-
5 cultural commodity;

6 (2) to make or give any undue or unreasonable
7 preference or advantage to any particular person or
8 locality or subject any particular person or locality
9 to any undue or unreasonable disadvantage in con-
10 nection with any transaction involving any agricul-
11 tural commodity;

12 (3) to make any false or misleading statement
13 in connection with any transaction involving any ag-
14 ricultural commodity that is purchased or received in
15 interstate or foreign commerce, or involving any pro-
16 duction contract, or to fail, without reasonable
17 cause, to perform any specification or duty, express
18 or implied, arising out of any undertaking in connec-
19 tion with any such transaction or production con-
20 tract;

21 (4) to retaliate against or disadvantage, or to
22 conspire to retaliate against or disadvantage, any
23 person because of statements or information lawfully
24 provided by such person to any person (including to
25 the Secretary or to a law enforcement agency) re-

1 garding alleged improper actions or violations of law
2 by such dealer, processor, commission merchant, or
3 broker (unless such statements or information are
4 determined to be libelous or slanderous under appli-
5 cable State law);

6 (5) to include as part of any new or renewed
7 agreement or contract a right of first refusal, or to
8 make any sale or transaction contingent upon the
9 granting of a right of first refusal, until 180 days
10 after the General Accounting Office study under sec-
11 tion 8 is complete; or

12 (6) to offer different prices contemporaneously
13 for agricultural commodities of like grade and qual-
14 ity (except commodities regulated by the Perishable
15 Agricultural Commodities Act (7 U.S.C. 181 et
16 seq.)) unless—

17 (A) the commodity is purchased in a public
18 market through a competitive bidding process
19 or under similar conditions which provide op-
20 portunities for multiple competitors to seek to
21 acquire the commodity;

22 (B) the premium or discount reflects the
23 actual cost of acquiring a commodity prior to
24 processing; or

1 (C) the Secretary has determined that
2 such types of offers do not have a discrimina-
3 tory impact against small volume producers.

4 (b) VIOLATIONS.—

5 (1) COMPLAINTS.—Whenever the Secretary has
6 reason to believe that any dealer, processor, commis-
7 sion merchant, or broker has violated any provision
8 of subsection (a), the Secretary shall cause a com-
9 plaint in writing to be served on that person or per-
10 sons, stating the charges in that respect, and requir-
11 ing the dealer, processor, commission merchant, or
12 broker to attend and testify at a hearing to be held
13 not sooner than 30 days after the service of such
14 complaint.

15 (2) HEARING.—

16 (A) IN GENERAL.—The Secretary may
17 hold hearings, sign and issue subpoenas, admin-
18 ister oaths, examine witnesses, receive evidence,
19 and require the attendance and testimony of
20 witnesses and the production of such accounts,
21 records, and memoranda, as the Secretary
22 deems necessary, for the determination of the
23 existence of any violation of this subsection.

24 (B) RIGHT TO HEARING.—A dealer, proc-
25 essor, commission merchant, or broker may re-

1 quest a hearing if the dealer, processor, com-
2 mission merchant, or broker is subject to pen-
3 alty for unfair conduct, under this subsection.

4 (C) RESPONDENTS RIGHTS.—During a
5 hearing the dealer, processor, commission mer-
6 chant, or broker shall be given, pursuant to reg-
7 ulations issued by the Secretary, the
8 opportunity—

9 (i) to be informed of the evidence
10 against such person;

11 (ii) to cross-examine witnesses; and

12 (iii) to present evidence.

13 (D) HEARING LIMITATION.—The issues of
14 any hearing held or requested under this sec-
15 tion shall be limited in scope to matters directly
16 related to the purpose for which such hearing
17 was held or requested.

18 (3) REPORT OF FINDING AND PENALTIES.—

19 (A) IN GENERAL.—If, after a hearing, the
20 Secretary finds that the dealer, processor, com-
21 mission merchant, or broker has violated any
22 provisions of subsection (a), the Secretary shall
23 make a report in writing which states the find-
24 ings of fact and includes an order requiring the
25 dealer, processor, commission merchant, or

1 broker to cease and desist from continuing such
2 violation.

3 (B) CIVIL PENALTY.—The Secretary may
4 assess a civil penalty not to exceed \$100,000
5 for each such violation of subsection (a).

6 (4) TEMPORARY INJUNCTION AND FINALITY
7 AND APPEALABILITY OF AN ORDER.—

8 (A) TEMPORARY INJUNCTION.—At any
9 time after a complaint is filed under paragraph
10 (1), the court, on application of the Secretary,
11 may issue a temporary injunction, restraining
12 to the extent it deems proper, the dealer, proc-
13 essor, commission merchant, or broker and such
14 person's officers, directors, agents, and employ-
15 ees from violating any of the provisions of sub-
16 section (a).

17 (B) APPEALABILITY OF AN ORDER.—An
18 order issued pursuant to this subsection shall
19 be final and conclusive unless within 30 days
20 after service of the order, the dealer, processor,
21 commission merchant, or broker petitions to ap-
22 peal the order to the court of appeals for the
23 circuit in which such person resides or has its
24 principal place of business or the District of Co-
25 lumbia Circuit Court of Appeals.

1 (C) DELIVERY OF PETITION.—The clerk of
2 the court shall immediately cause a copy of the
3 petition filed under subparagraph (B) to be de-
4 livered to the Secretary and the Secretary shall
5 thereupon file in the court the record of the
6 proceedings under this subsection.

7 (D) PENALTY FOR FAILURE TO OBEY AN
8 ORDER.—Any dealer, processor, commission
9 merchant, or broker which fails to obey any
10 order of the Secretary issued under the provi-
11 sions of this section after such order or such
12 order as modified has been sustained by the
13 court or has otherwise become final, shall be
14 fined not less than \$5,000 and not more than
15 \$100,000 for each offense. Each day during
16 which such failure continues shall be deemed a
17 separate offense.

18 (5) RECORDS.—

19 (A) IN GENERAL.—Every dealer, proc-
20 essor, commission merchant, and broker shall
21 keep for a period of not less than 5 years such
22 accounts, records, and memoranda (including
23 marketing agreements, forward contracts, and
24 formula pricing arrangements) and fully and
25 correctly disclose all transactions involved in the

1 business of such person, including the true own-
2 ership of the business.

3 (B) FAILURE TO KEEP RECORDS OR
4 ALLOW THE SECRETARY TO INSPECT
5 RECORDS.—Failure to keep, or allow the Sec-
6 retary to inspect records as required by this
7 paragraph shall constitute an unfair practice in
8 violation of subsection (a)(1).

9 (C) INSPECTION OF RECORDS.—The Sec-
10 retary shall have the right to inspect such ac-
11 counts, records, and memoranda (including
12 marketing agreements, forward contracts, and
13 formula pricing arrangements) of any dealer,
14 processor, commission merchant, and broker as
15 may be material to the investigation of any al-
16 leged violation of this section or for the purpose
17 of investigating the business conduct or prac-
18 tices of an organization with respect to such
19 dealer, processor, commission merchant or
20 broker.

21 (c) COMPENSATION FOR INJURY.—

22 (1) ESTABLISHMENT OF THE FAMILY FARMER
23 AND RANCHER CLAIMS COMMISSION.—

24 (A) IN GENERAL.—The Secretary shall ap-
25 point 3 individuals to a commission to be

1 known as the “Family Farmer and Rancher
2 Claims Commission” (in this subsection re-
3 ferred to as the “Commission”) to review claims
4 of family farmers and ranchers who have suf-
5 fered financial damages as a result of any viola-
6 tion of this section as determined by the Sec-
7 retary pursuant to subsection (b)(3).

8 (B) TERM OF SERVICE.—The member of
9 the Commission shall serve 3-year terms which
10 may be renewed. The initial members of the
11 Commission may be appointed for a period of
12 less than 3 years, as determined by the Sec-
13 retary.

14 (2) REVIEW OF CLAIMS.—

15 (A) SUBMISSION OF CLAIMS.—Family
16 farmers and ranchers damaged as a result of a
17 violation of this section as determined by the
18 Secretary, pursuant to subsection (c)(3) may
19 preserve the right to claim financial damages
20 under this section by filing a claim pursuant to
21 regulations promulgated by the Secretary.

22 (B) DETERMINATION.—Based on a review
23 of such claims, the Commission shall determine
24 the amount of damages to be paid, if any, as
25 a result of the violation.

1 (C) REVIEW.—The decisions of the Com-
2 mission under this paragraph shall not be sub-
3 ject to judicial review except to determine that
4 the amount of damages to be paid is consistent
5 with the published regulations of the Secretary
6 that establish the criteria for implementing this
7 subsection.

8 (3) FUNDING.—

9 (A) IN GENERAL.—Funds collected from
10 civil penalties pursuant to this section shall be
11 transferred to a special fund in the Treasury,
12 shall be made available to the Secretary without
13 further appropriation, and shall remain avail-
14 able until expended to pay the expenses of the
15 Commission and the claims described in this
16 subsection.

17 (B) AUTHORIZATION OF APPROPRIA-
18 TION.—In addition to the funds described in
19 subparagraph (A), there are authorized to be
20 appropriated such sums as may be necessary to
21 carry out this section.

22 (4) NO PRECLUSION OF PRIVATE CLAIMS.—By
23 filing an action under this subsection, a family farm-
24 er or rancher is not precluded from bringing a cause
25 of action against a dealer, processor, commission,

1 merchant, or broker in any court of appropriate ju-
2 risdiction.

3 (d) **AUTHORITY OF THE SECRETARY.**—Not later
4 than 180 days after the date of enactment of this section,
5 the Secretary and the Attorney General shall develop and
6 implement a plan to enable, where appropriate, the Sec-
7 retary to file civil actions, including temporary injunctions,
8 to enforce orders issued by the Secretary under this Act.

9 **SEC. 5. REPORTS OF THE SECRETARY ON POTENTIAL UN-**
10 **FAIR PRACTICES.**

11 (a) **FILING PREMERGER NOTICES WITH THE SEC-**
12 **RETARY.**—No dealer, processor, commission merchant,
13 broker, operator of a warehouse of agricultural commod-
14 ities, or other agricultural related business shall merge or
15 acquire, directly or indirectly, any voting securities or as-
16 sets of any other dealer, processor, commission merchant,
17 broker, operator of a warehouse of agricultural commod-
18 ities, or other agricultural related business unless both
19 persons (or in the case of a tender offer, the acquiring
20 person) file notification pursuant to rules promulgated by
21 the Secretary if—

22 (1) any voting securities or assets of the dealer,
23 processor, commission merchant, broker, operator of
24 a warehouse of agricultural commodities or other ag-
25 ricultural related business with annual net sales or

1 total assets of \$10,000,000 or more are being ac-
2 quired by a dealer, processor, commission merchant,
3 broker, or operator of a warehouse of agricultural
4 commodities, or other agricultural related business
5 which has total assets or annual net sales of
6 \$100,000,000 or more; and

7 (2) any voting securities or assets of a dealer,
8 processor, commission merchant, broker, operator of
9 a warehouse of agricultural commodities, or other
10 agricultural related business with annual net sales or
11 total assets of \$100,000,000 or more are being ac-
12 quired by any dealer, processor, commission mer-
13 chant, broker, operator of a warehouse of agricul-
14 tural commodities, or agriculture related business
15 with annual net sales or total assets of \$10,000,000
16 or more and as a result of such acquisition, if the
17 acquiring person would hold—

18 (A) 15 percent or more of the voting secu-
19 rities or assets of the acquired person; or

20 (B) an aggregate total amount of the vot-
21 ing securities and assets of the acquired person
22 in excess of \$15,000,000.

23 (b) REVIEW OF THE SECRETARY.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the Secretary may conduct a review of

1 any merger or acquisition described in subsection
2 (a).

3 (2) EXCEPTION.—The Secretary shall conduct
4 a review of any merger or acquisition described in
5 subsection (a) upon a request from a member of
6 Congress.

7 (c) ACCESS TO RECORDS.—The Secretary may re-
8 quest any information including any testimony, documen-
9 tary material, or related information from a dealer, proc-
10 essor, commission merchant, broker, or operator of a
11 warehouse of agricultural commodities, or other agricul-
12 tural related business, pertaining to any merger or acqui-
13 sition of any agriculture related business.

14 (d) PURPOSE OF REVIEW.—

15 (1) FINDINGS.—The review described in sub-
16 section (a) shall make findings whether the merger
17 or acquisition could—

18 (A) be significantly detrimental to the
19 present or future viability of family farms or
20 ranches or rural communities in the areas af-
21 fected by the merger or acquisition, pursuant to
22 standards established by the Secretary; or

23 (B) lead to a violation of section 4(a) of
24 this Act.

1 (2) REMEDIES.—The review may include a de-
2 termination of possible remedies regarding how the
3 parties of the merger or acquisition may take steps
4 to modify their operations to address the findings
5 described in paragraph (1).

6 (e) REPORT OF REVIEW.—

7 (1) PRELIMINARY REPORT.—After conducting
8 the review described in this section, the Secretary
9 shall issue a preliminary report to the parties of the
10 merger or acquisition and the Attorney General or
11 the Federal Trade Commission, as appropriate,
12 which shall include findings and any remedies de-
13 scribed in subsection (d)(2).

14 (2) FINAL REPORT.—After affording the par-
15 ties described in paragraph (1) an opportunity for a
16 hearing regarding the findings and any proposed
17 remedies in the preliminary report, the Secretary
18 shall issue a final report to the President and Attor-
19 ney General or the Federal Trade Commission, as
20 appropriate, with respect to the merger or acquisi-
21 tion.

22 (f) IMPLEMENTATION OF THE REPORT.—Not later
23 than 120 days after the issuance of a final report de-
24 scribed in subsection (e), the parties of the merger or ac-
25 quisition affected by such report shall make changes to

1 their operations or structure to comply with the findings
2 and implement any suggested remedy or any agreed upon
3 alternative remedy and shall file a response demonstrating
4 such compliance or implementation.

5 (g) CONFIDENTIALITY OF INFORMATION.—Informa-
6 tion used by the Secretary to conduct the review pursuant
7 to this section provided by a party of the merger or acqui-
8 sition under review or by a government agency shall be
9 treated by the Secretary as confidential information pur-
10 suant to section 1770 of the Food Security Act of 1985
11 (7 U.S.C. 2276), except that the Secretary may share any
12 information with the Attorney General, the Federal Trade
13 Commission, and a party seeking a hearing pursuant to
14 subsection (e)(2) with respect to information relating to
15 such party. The report issued under subsection (e) shall
16 be available to the public consistent with the confiden-
17 tiality provisions of this subsection.

18 (h) PENALTIES.—

19 (1) IN GENERAL.—After affording the parties
20 an opportunity for a hearing, the Secretary may as-
21 sess a civil penalty not to exceed \$300,000 for the
22 failure of a person to comply with the requirements
23 of subsections (a) and (f). Such hearing shall be lim-
24 ited to the issue of the amount of the civil penalty.

1 (2) FAILURE TO FOLLOW AN ORDER.—If after
2 being assessed a civil penalty in accordance with
3 paragraph (1) a person continues to fail to meet the
4 applicable requirements of subsections (a) and (f),
5 the Secretary may, after affording the parties an op-
6 portunity for a hearing, assess a further civil penalty
7 not to exceed \$100,000 for each day such person
8 continues such violation. Such hearing shall be lim-
9 ited to the issue of the additional civil penalty as-
10 sessed under this paragraph.

11 **SEC. 6. PLAIN LANGUAGE AND DISCLOSURE REQUIRE-**
12 **MENTS FOR CONTRACTS.**

13 (a) IN GENERAL.—Any contract between a family
14 farmer or rancher and a dealer, processor, commission
15 merchant, broker, operator of a warehouse of agricultural
16 commodities, or other agricultural related business shall—

17 (1) be written in a clear and coherent manner
18 using words with common and everyday meanings
19 and shall be appropriately divided and captioned by
20 various sections;

21 (2) disclose in a manner consistent with para-
22 graph (1)—

23 (A) contract duration;

24 (B) contract termination;

25 (C) renegotiation standards;

1 (D) responsibility for environmental dam-
2 age;

3 (E) factors to be used in determining per-
4 formance payments;

5 (F) which parties shall be responsible for
6 obtaining and complying with necessary local,
7 State, and Federal government permits; and

8 (G) any other contract terms the Secretary
9 determines is appropriate for disclosure; and

10 (3) not contain a confidentiality requirement
11 barring a party of a contract from sharing terms of
12 such contract (excluding trade secrets as applied in
13 the Freedom of Information Act (5 U.S.C. 552 et
14 seq.)) for the purposes of obtaining legal or financial
15 advice or for the purpose of responding to a request
16 from Federal or State agencies.

17 (b) PENALTIES.—

18 (1) IN GENERAL.—After affording the parties
19 an opportunity for a hearing, the Secretary may as-
20 sess a civil penalty not to exceed \$100,000 for the
21 failure of a person to comply with the requirements
22 of this section. Such hearing shall be limited to the
23 issue of the amount of the civil penalty.

24 (2) FAILURE TO FOLLOW AN ORDER.—If after
25 being assessed a civil penalty in accordance with

1 paragraph (1), a person continues to fail to meet the
2 applicable requirements of this section, the Secretary
3 may, after affording the parties an opportunity for
4 a hearing, assess a further civil penalty not to ex-
5 ceed \$100,000 for each day such person continues
6 such violation. Such hearing shall be limited to the
7 issue of the amount of the additional civil penalty
8 assessed under this paragraph.

9 (c) IMPLEMENTATION.—The requirements imposed
10 by this section shall be applicable to contracts entered into
11 or renewed 60 days or subsequently after the date of en-
12 actment of this Act.

13 **SEC. 7. REPORT ON CORPORATE STRUCTURE.**

14 (a) IN GENERAL.—A dealer, processor, commission
15 merchant, or broker with annual sales in excess of
16 \$100,000,000 shall annually file with the Secretary, a re-
17 port which describes, with respect to both domestic and
18 foreign activities; the strategic alliances; ownership in
19 other agribusiness firms or agribusiness-related firms;
20 joint ventures; subsidiaries; brand names; and interlocking
21 boards of directors with other corporations, representa-
22 tives, and agents that lobby Congress on behalf of such
23 dealer, processor, commission merchant, or broker, as de-
24 termined by the Secretary. This subsection shall not be
25 construed to apply to contracts.

1 (b) PENALTIES.—

2 (1) IN GENERAL.—After affording the parties
3 an opportunity for a hearing, the Secretary may as-
4 sess a civil penalty not to exceed \$100,000 for the
5 failure of a person to comply with the requirements
6 of this section. Such a hearing shall be limited to the
7 issue of the amount of the civil penalty

8 (2) FAILURE TO FOLLOW AN ORDER.—If after
9 being assessed a civil penalty in accordance with
10 paragraph (1) a person continues to fail to meet the
11 applicable requirements of this section, the Secretary
12 may, after affording the parties an opportunity for
13 a hearing, assess a further civil penalty not to ex-
14 ceed \$100,000 for each day such person continues
15 such violation. Such hearing shall be limited to the
16 amount of the additional civil penalty assessed under
17 this paragraph.

18 **SEC. 8. MANDATORY FUNDING FOR STAFF.**

19 Out of the funds in the Treasury not otherwise appro-
20 priated, the Secretary of Treasury shall provide to the Sec-
21 retary of Agriculture \$7,000,000 in each of fiscal years
22 2002 through 2006, to hire, train, and provide for addi-
23 tional staff to carry out additional responsibilities under
24 this Act, including a Special Counsel on Fair Markets and
25 Rural Opportunity, additional attorneys for the Office of

1 General Counsel, investigators, economists, and support
2 staff. Such sums shall be made available to the Secretary
3 without further appropriation and shall be in addition to
4 funds already made available to the Secretary for the pur-
5 poses of this section.

6 **SEC. 9. GENERAL ACCOUNTING OFFICE STUDY.**

7 The Comptroller General of the United States, in
8 consultation with the Attorney General, the Secretary, the
9 Federal Trade Commission, the National Association of
10 Attorney's General, and others, shall—

11 (1) study competition in the domestic farm
12 economy with a special focus on protecting family
13 farms and ranches and rural communities and the
14 potential for monopsonistic and oligopsonistic effects
15 nationally and regionally; and

16 (2) provide a report to the appropriate commit-
17 tees of Congress not later than 1 year after the date
18 of enactment of this Act on—

19 (A) the correlation between increases in
20 the gap between retail consumer food prices
21 and the prices paid to farmers and ranchers
22 and any increases in concentration among proc-
23 essors, manufacturers, or other firms that buy
24 from farmers and ranchers;

1 (B) the extent to which the use of formula
2 pricing, marketing agreements, forward con-
3 tracting, and production contracts tend to give
4 processors, agribusinesses, and other buyers of
5 agricultural commodities unreasonable market
6 power over their producer/suppliers in the local
7 markets;

8 (C) whether the granting of process pat-
9 ents relating to biotechnology research affecting
10 agriculture during the past 20 years has tended
11 to overly restrict related biotechnology research
12 or has tended to overly limit competition in the
13 biotechnology industries that affect agriculture
14 in a manner that is contrary to the public inter-
15 est, or could do either in the future;

16 (D) whether acquisitions of companies that
17 own biotechnology patents and seed patents by
18 multinational companies have the potential for
19 reducing competition in the United States and
20 unduly increasing the market power of such
21 multinational companies;

22 (E) whether existing processors or agri-
23 business have disproportionate market power
24 and if competition could be increased if such
25 processors or agribusiness were required to di-

1 vest assets to assure that they do not exert this
2 disproportionate market power over local mar-
3 kets;

4 (F) the extent of increase in concentration
5 in milk processing, procurement and handling,
6 and the potential risks to the economic well-
7 being of dairy farmers, and to the National
8 School Lunch program, and other Federal nu-
9 trition programs of that increase in concentra-
10 tion;

11 (G) the impact of mergers, acquisitions,
12 and joint ventures among dairy cooperatives on
13 dairy farmers, including impacts on both mem-
14 bers and nonmembers of the merging coopera-
15 tives;

16 (H) the impact of the significant increase
17 in the use of stock as the primary means of ef-
18 fectuating mergers and acquisitions by large
19 companies;

20 (I) the increase in the number and size of
21 mergers or acquisitions in the United States
22 and whether some of such mergers or acquisi-
23 tions would have taken place if the merger or
24 acquisition had to be consummated primarily
25 with cash, other assets, or borrowing; and

1 (J) whether agricultural producers typi-
2 cally appear to derive any benefits (such as
3 higher prices for their products or any other ad-
4 vantages) from right-of-first-refusal provisions
5 contained in purchase contracts or other deals
6 with agribusiness purchasers of such products.

7 **SEC. 10. AUTHORITY TO PROMULGATE REGULATIONS.**

8 The Secretary of Agriculture shall have the authority
9 to promulgate regulations to carry out the responsibilities
10 of the Secretary under this Act.

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