

# CRS Report for Congress

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## Livestock Mandatory Price Reporting

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### Summary

On April 2, 2001, the U.S. Department of Agriculture (USDA) implemented the Livestock Mandatory Price Reporting (LMPR) law. LMPR was passed as part of USDA's FY2000 appropriations law (P.L. 106-78), to address the concerns of some livestock producers about low prices, increasing industry concentration, and the availability of price information. Under the previous, voluntary system, USDA reported data provided on a voluntary basis by meat packers and processors on the prices they pay for animals. The new law requires large packers to report not only negotiated sales, but also forward contract and formula arrangement transactions. Since implementation, LMPR has provided new information and further disclosure on pricing, but the system has experienced problems. On May 14, USDA announced an error in the computer program, which incorrectly calculated published prices. Since then, USDA has announced corrections. On August 3, USDA announced a new confidentiality rule, to go in effect on August 20. (This report will be updated as needed.)

### Background

Under the broad authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), AMS has long collected livestock and meat price and related market information, on a voluntary basis. The agency's trained market reporters attend public livestock auctions, visit feedlots and packing plants, personally contact many individual buyers and sellers, and consult with trade associations to develop data so buyers and sellers all have access to accurate and objective information from major markets throughout the country. The information is disseminated through daily, weekly, monthly, and annual written and electronic reports covering sales of live cattle, hogs, and sheep, and of the wholesale meat products from these animals.

In recent years more and more animals have been sold under private marketing arrangements where prices were not publicly disclosed or reported. Some agricultural producers, believing such arrangements made it difficult or impossible for them to determine "fair" market prices for their livestock, called for mandatory price reporting

(MPR) requirements for packers and others who process and market meat. Opponents of MPR, including some meat packers, and other farmers and ranchers, argued that MPR would impose costly new burdens on the industry and could cause the release of confidential company information.

MPR attracted interest in Congress in 1999, as Members sought ways to help producers coping with low cattle, hog, and sheep prices. Also fueling interest were concerns about the increasing concentration of the livestock industry into larger and fewer entities, and the impact of these changes on “price transparency” —that is, the ability of producers to obtain accurate, timely price information and open competition.

In the 106<sup>th</sup> Congress, the House and Senate Agriculture Committees held hearings on April 29 and May 26, 1999, respectively, on MPR. The Senate committee then marked up and approved an original bill (S. 1672; S.Rept. 106-168) on July 29, 1999, to amend the Agricultural Marketing Act of 1946, to require mandatory price reporting. S. 1672 was the culmination of a long period of intensive negotiations involving meat packing companies and livestock producers to design a comprehensive price reporting law acceptable to both segments of the industry. Although the full Senate did not vote on the proposal, a similar one was added to the conference version of USDA's FY2000 appropriations (H.R. 1906; H.Rept. 106-354). Congress cleared the conference measure in early October, and the President signed it into law (P.L. 106-78) on October 22, 1999.

## **Mandatory Price Reporting**

### **Provisions of the Plan<sup>1</sup>**

The new LMPCR plan is in effect for five years. Besides preempting state laws, the measure subjects packers to civil penalties of up to \$10,000 for each violation of not reporting, and requires USDA to collect and publish at least monthly information on retail prices for meat and poultry products. The law also increases the number of required reports to 91. New reports under LMPCR include the prior day's swine market; forward contract and formula marketing arrangement cattle purchases; packer-owned cattle and sheep information; sales and purchases of imported boxed lamb cuts; and live lamb premiums and discounts. (AMS continues to collect information under the voluntary system. However, only data not published under the mandatory system is still published under the voluntary system.)

The law further contains the following species-specific provisions:

**Cattle Provisions.** Cattle plants that slaughter at least 125,000 head annually must report (delineated by domestic and import market purchases) twice a day on all cattle purchased on a live or dressed weight basis. Packers must report weekly on all cattle not purchased on cash (spot) markets, such as through forward contracts or formula marketing agreements. They also are required to report their sales of boxed beef, by price, volume,

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<sup>1</sup> For further information on LMPCR, please see the AMS page at: [<http://www.ams.usda.gov/lsg/price.htm>].

grade, and whether for domestic or export sale. USDA, in turn, is required to compile and publish the data in detailed form at regular, statutorily-prescribed intervals —some of it several times per day.

**Pork Provisions.** Federally-inspected pork plants that slaughter at least 100,000 head annually must report daily all prices (also reflecting any premiums, discounts, and merit adjustments), plus volumes and terms of sale, for domestic hog purchases from the previous business day. Packers also must report hogs they have committed to purchase for the next 14 days. USDA in turn is required to publish detailed reports on hog purchases and slaughter twice daily, plus separate weekly reports distinguishing between barrow and gilt slaughter, and a monthly rather than quarterly hogs and pigs inventory report. USDA also must maintain an electronic library on open hog marketing contracts offered by packers and a monthly report of contracted swine numbers.

**Lamb Provisions.**<sup>2</sup> A federally inspected lamb packer that processes at least 75,000 head annually must report daily on lamb purchases and sales of boxed lamb. USDA will publish the information at least once daily. Packers also must report weekly on lambs not purchased on cash (spot) markets, such as through forward contracts or formula marketing agreements, which USDA will publish weekly. A lamb importer who imports 5,000 metric tons of lamb meat must report once a week on prices received for imported meat sold domestically.

Packers and importers must report purchases within the following time frames: swine reported three times each day; cattle and lambs reported twice each day; domestic and export sales of boxed beef cuts, including branded boxed beef cuts, reported twice each day. Sales and purchases of lamb carcasses and boxed lamb cuts, including branded boxed lamb cuts, must be reported daily and sales of imported lamb cuts weekly. AMS, in turn, must collect, assemble, analyze, and report the data within one hour of receiving the data.

## Implementing MPR

USDA published a proposed rule in the *Federal Register* on March 17, 2000, with a 30-day comment period. A final rule was published on December 1, 2000, with the starting date for LMPR set at January 30, 2001. In order to give AMS more time to test a new electronic information system, the implementation date was moved to April 2, 2001. LMPR currently is in operation.

On May 14, 2001, AMS discovered a technical error in the computer program for MPR. The error affected the cutout values for beef carcasses and primals (the major components of carcasses). USDA aggregates individual meat cut prices to construct a carcass value. Individual meat cuts reported by packers were reported accurately, but due to the programming error, the calculated carcass values were incorrect. The program inadvertently was set up to also include “no-roll” cuts (USDA inspected, but not graded) in the calculations of both the Choice and the Select. This had the effect of lowering the value of Choice and Select cutouts. The problem became apparent only when AMS

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<sup>2</sup> Although the Act did not specify requirements for establishing a lamb reporting program, the Secretary was given the authority to mandate such a program if it is determined one is needed.

observed that Choice cutout values were decreasing while Choice cut prices were increasing. In addition, reporters did not observe usual seasonal price patterns that normally result in a widening spread between Choice and Select carcasses in reported boxed beef carcass and primal cutout values. These observations alerted reporters to a potential problem. Once the problem was identified, AMS immediately suspended publication of boxed beef reports pending review of the situation. AMS discovered the source of the problem on May 16. Arrangements were made to report data under the voluntary system in the interim.

On May 25, AMS released corrected Choice and Select boxed beef cutout and primal cut values for April 3 through May 11. Corrected calculations for the daily Select cutout values for the period April 3 through May 11 averaged \$0.71 or 0.60 percent higher per hundredweight than the values originally reported, ranging from a one-day low of -\$1.10 to a one-day high of \$1.72. The corrected Choice cutout values averaged \$2.85 or 2.26 percent per hundredweight higher, ranging from a one-day low of \$0.73 to a one-day high of \$7.69. Choice and Select boxed beef cutout and primal cut values reported since May 16, have been correct, according to USDA.

On May 18, Secretary Veneman appointed a Review Team headed by Keith Collins, USDA's chief economist, to evaluate the MPR program and to assess the economic impact the misreported data may have had on livestock producers. As part of its activities, the Review Team met with representatives of the livestock and meat packing industries, Congress, AMS, and contractor officials. (The review team's report is available at [<http://www.usda.gov/oce/mp-report/index.htm>].)

The Review Team found (1) testing conducted by AMS was inadequate to ensure that the MPR system was accurately calculating reported data; (2) AMS' plan to implement an audit surveillance plan is behind schedule; (3) confidentiality provisions of the program are preventing the release of a significant quantity of information under mandatory reporting, undermining the objective of the authorizing legislation.

The Review Team recommended (1) further testing of the system, including periodic tests that use more realistic test data from industry; (2) attracting more candidates or seeking personnel details or reimbursable agreements with other agencies to obtain the needed expertise in order to perform audits; (3) developing alternative standards that would be applied over a multi-day reporting period, incorporate measures that ensure adequate frequency of reporting by firms to maintain confidentiality, and be appropriately reviewed.

Additionally, the Review Team estimated that cattle producers lost \$15 to \$25 million in sales revenue due to the reporting error. The National Cattlemen's Beef Association (NCBA) estimated cattle producers may have lost \$42-\$54 million, based on studies done by Virginia Tech and Kansas State University. A precise determination of losses is difficult given the complexity of the market, difficulty determining exactly when reporting of incorrect data began and ended, and the chosen method of analysis. In some cases, producers and packers use the price reports to negotiate deals, with some contracts pegged directly to the price reports. According to USDA, it would be almost impossible to specify any losses to an individual producer, given the complexities. The Review Team examined three avenues for compensation to livestock market participants and concluded (1) producers could not sue USDA for compensation; (2) USDA does not have authority

to make direct compensation; and, (3) USDA not support legislation allowing for such authority.

USDA announced on July 2, that it was implementing the changes recommended by the Review Team and was looking at ways to change reporting confidentiality while improving the reporting of data.

## **Confidentiality of Published Information**

**3/60 Rule.** To preserve confidentiality and the identities of reporting processors, a “3/60” rule was adopted at the request of the Office of Management and Budget. Under the 3/60 rule, USDA collects but does not report data from markets where there are fewer than three reporting entities, or where any entity handles more than 60% of the total volume within a particular area. The 3/60 rule is a guideline used by other federal agencies as well, and is not a statutory requirement. Several other federal agencies follow the 3/60 rule, sometimes with variants of 3/50-3/80. Since implementation of LMPR, the 3/60 rule has prevented a significant amount of information from being released. According to USDA, between April 2, and June 15, 894 daily reports out of a potential of 3,740 reports (24%) and 46 weekly reports out of a potential of 230 reports (20%) were not issued as a result of confidentiality provisions. For lambs, significantly less information is being made available to the public under LMPR than was available under the voluntary system. In addition to the reports not released, many of the released reports contain lines that do not have data because of confidentiality problems.

**3/70/20 Rule.** On August 3, USDA proposed a 3/70/20 rule, to take effect August 20. The 3/70/20 rule means that over a 60-day period (1) at least three entities have to submit data at least 50% of the time; (2) no one entity can account for more than 70% of the data for a report; and, (3) the same firm cannot be the only reporting entity more than 20% of the time.

The new rule is expected to increase the percent of market information reported. USDA estimates that between April 2 and June 14, 30% of daily swine and cattle reports were withheld for confidentiality reasons under the 3/60 rule. If the 3/70/20 rule had been applied over that same period, fewer than 2% would have been withheld. The new rule would mean there may be days when only one packer reports live cattle prices, although confidentiality will be maintained. According to AMS, it is difficult for anyone other than the buyer and the seller to know the identity of the buyer. However, AMS recognizes that too many successive days with only one and the same firm reporting could increase the chance that market participants could identify the reporting firm.

The National Meat Association (NMA), a trade association representing meat processors, is concerned about the possibility of a published report containing information from only one entity. In a letter to Secretary Veneman on July 5, NMA argued the new rule will make small and medium-sized packers vulnerable to their competitors “and that it will violate the First Amendment to the United States Constitution by disclosing information about a single firm when that disclosure is not only contrary to the firm’s interest but also not in the public’s interest.” The MPR law further directs USDA to protect the identity and proprietary information of reporting parties, which, NMA argues, the 3/70/20 rule will not do. The NCBA and the American Meat Institute (AMI) have

come out in support of the 3/70/20 rule, stating it will provide further market information to producers, while maintaining confidentiality.

Additional concerns have been raised about having only one or two packers in the market, who then might use MPR to “set” prices. The 3/70/20 rule could allow two packers to communicate through publicly reported information, creating the possibility of collusion and price fixing. Another concern raised about reporting over a longer period of time states that such a change would risk concealing current market information by blending it with historical data of the previous days’ markets.

Other suggestions for increasing published information while maintaining confidentiality include lowering packer size from 125,000 head slaughtered per year to 50,000, thereby increasing the number of packers required to report.

## **Potential Legislative Changes**

One potential issue for legislative change is the legislated time-frames for reporting data to USDA. USDA’s Review Team identified at least one report with a reporting deadline that occurs before the reporting firms have all the information on slaughtered cattle needed for the report. Another issue is the legislated time-frames for issuing reports. If alternative standards for confidentiality cannot be found that also substantially increase reported data, USDA recommends consideration should be given to altering reporting time-frames. This change might eliminate reports that cannot be completed in the time-window, and establish time-frames that ensure accurate and complete reports while maintaining confidentiality.

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