

# CRS Report for Congress

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## Livestock Price Reporting: Background

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### Summary

Livestock Mandatory Price Reporting (LMPR) was first passed in 1999 to address some producers' concerns about low livestock prices, increasing industry concentration, and the availability of pricing information. LMPR expires on September 30, 2005. At issue in the 109th Congress are whether to reauthorize LMPR, for how long, and what if any changes are needed in the program. Taking differing approaches, the House has approved a bill (H.R. 3408) to extend LMPR for five years and to amend hog reporting provisions, while the Senate has approved a simple one-year extension (S. 1613). This report will be updated.

### Background

Under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), USDA's Agricultural Marketing Service (AMS) has long collected livestock and meat price and related market information, on a voluntary basis. The agency's trained market reporters have attended public livestock auctions, visited feedlots and packing plants, personally contacted many individual buyers and sellers, and consulted with trade associations to develop data. The information (along with similar types of data covering other major commodities such as grains, dairy, and produce) has been disseminated through hundreds of daily, weekly, monthly, and annual written and electronic reports on sales of live cattle, hogs, and sheep, and wholesale meat products from these animals. The goal has been to provide all buyers and sellers with accurate and objective market information.

By the 1990s, the livestock industry had undergone many sweeping changes, including increased concentration within meat packing and animal feeding, more production specialization, and more vertical coordination. For example, animals were more frequently being sold under private marketing arrangements (e.g., formula sales, value-based pricing) with prices not publicly disclosed or reported. Some livestock producers, believing such arrangements made it difficult or impossible for them to determine "fair" market prices, called for mandatory price reporting for packers and others who process and market meat. USDA estimated in 2000 that the former voluntary system was not reporting 35%-40% of cattle, 75% of hog, and 40% of lamb transactions.

Prior to the 1999 enactment of livestock mandatory price reporting (LMPR), opponents, including some meat packers and other farmers and ranchers, had argued that a mandate would impose costly new burdens on the industry and could cause the release of confidential company information. Some had argued that voluntary reporting was more effective because those in the industry were willing, not compelled, participants. It was also argued that if certain desired information was lacking, it might be better remedied by providing more resources to AMS (i.e., funding and staff) to improve the voluntary program.

Nonetheless, some of these earlier opponents decided to support a “consensus” LMPR law. These included the National Cattlemen’s Beef Association (NCBA) and National Pork Producers Council (NPPC), many of whose members had been hit by extremely low prices in the late 1990s. Some meat packers also decided to support a national consensus bill at least partly to preempt what they viewed as an emerging “patchwork” of state price reporting laws as well as the specter of a more onerous national law. Congress responded in 1999 by enacting LMPR as Title IX of P.L. 106-78, USDA’s FY2000 appropriations law. LMPR authority had lapsed briefly on October 22, 2004, but President Bush signed legislation (P.L. 108-444) extending the program through September 30, 2005.

## **LMPR Provisions**

AMS published a final rule implementing LMPR on December 1, 2000.<sup>1</sup> The mandatory program includes the following elements:

- Detailed market information must be reported to AMS by packers, processors and importers who annually slaughter an average of at least 125,000 cattle, 100,000 hogs, or 75,000 lambs, and by importers with average annual imports of at least 2,500 metric tons of lamb meat.
- Swine purchases must be reported three times daily; cattle purchases twice daily; domestic and export sales of boxed beef cuts twice daily; lamb carcasses and boxed lamb cuts once daily; and imported lamb cuts once weekly.
- USDA in turn must publish frequent, detailed reports on these transactions. The law requires USDA to collect and publish at least monthly information on retail prices for meat and poultry products, and increases the number of required reports. Mandatory news reports include the current and prior day’s swine market; forward contract and formula marketing arrangement cattle purchases; packer-owned cattle and sheep information; sales of imported boxed lamb cuts; and live lamb premiums and discounts.
- The LMPR law preempts state laws, and subjects packers to civil penalties of up to \$10,000 for each violation of not reporting.

The program currently receives some 500,000 pieces of data each day; more than 100 packers and importers are required to report. USDA in turn makes the data public through more than 100 daily, weekly, or monthly reports. Required to report this information are

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<sup>1</sup> 65 *Federal Register* 75464-75542.

116 packers and importers. The program now captures information from 85-90% of the boxed beef market, 75% of the lamb meat market, 75-80% of the steer and heifer cattle market, 60% of the lamb market, and 95% of the hog market.<sup>2</sup>

AMS operates LMPR with a staff of 50 and an annual budget of nearly \$8 million. Some voluntary price reporting also continues, but AMS only collects data under the voluntary program that are not covered under the newer, mandatory program. (AMS's total market news budget for all commodities is approximately \$30 million per year.)

## **Status of Reauthorization**

The House Agriculture Committee on July 27, 2005, approved by a bill (H.R. 3408) to extend LMPR for five years (through September 30, 2010) and also to expand the information collected for certain types of pork products (see below for explanation). The measure passed the full House on September 14, 2005, under a suspension of the rules.

Taking a different approach, the full Senate on September 13, 2005, approved by unanimous consent a simple one-year extension (S. 1613). At a Senate Agriculture Committee hearing on the program, held June 22, 2005, disagreement had emerged over the length of any proposed extension. Some Senators on the panel expressed support for a shorter renewal in order to await the results of a Government Accountability Office (GAO) review of LMPR. GAO is examining among other things the accuracy, timeliness, and completeness of the AMS reports, and the extent of coordination with USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA).<sup>3</sup> A final report was not expected until late 2005. Those calling for a longer reauthorization argued that modifications could be made later in response to any future GAO recommendations.

A number of national farm organizations and the American Meat Institute (AMI) have been pushing for the five-year extension. "Mandatory price reporting makes markets more transparent and offers new market information with respect to pricing, contracting for purchase and supply, and demand conditions for cattle, hogs, and sheep," five organizations wrote in a May 6, 2005, letter to House Agriculture Committee leaders. The letter noted that the pork industry recommends three industry-specific amendments: broadening the scope of packers required to report to more accurately reflect sales and prices paid in the sow market; altering data reporting deadlines to better balance USDA's workload and increase report accuracy and efficiency; and enabling USDA to publish price distributions for net prices to provide more useful information than is now provided by statutorily prescribed price ranges.

If any other amendments are adopted that lack their prior agreement, the five groups said they will oppose the reauthorization package. AMI, NPPC, NCBA, the American Sheep Industry Association, and the American Farm Bureau Federation signed the letter. Their goal has been to forge and maintain a consensus on an extension bill to help ensure

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<sup>2</sup> Testimony of Kenneth Clayton, AMS Acting Director, before the Senate Agriculture Committee, June 22, 2005.

<sup>3</sup> Among GIPSA's major responsibilities is maintaining fair livestock marketing practices; for example, GIPSA conducts livestock procurement investigations that examine firms' compliance with the Packers and Stockyards Act, including their payment and pricing practices.

its passage without additional amendments that could prove divisive and controversial, according to several industry lobbyists. An AMI spokesman said its members, although skeptical of the value of mandatory reporting, support a simple extension because they already have made the investments needed to comply with the law.

At its 2005 annual convention in Kentucky, the National Farmers Union (NFU) endorsed a policy that Congress should renew and make permanent the mandatory reporting law. The NFU policy also calls on USDA to eliminate the so-called 3/60 rule, to require open reporting to occur at least twice daily by region, and to provide transparent information without exemptions to farmers and ranchers.<sup>4</sup>

## Selected Issues

It was anticipated that last year's simple extension would provide lawmakers with additional time to consider a number of possible LMPR issues. These include whether the program has in fact brought more transparency to livestock markets, and is more effective at transmitting price information, than voluntary reporting; and whether the cost and administrative burdens outweigh LMPR benefits. Some critics contend that the LMPR information has not been as widely used as it could be, despite USDA's continuing efforts to improve its clarity, accessibility, and timeliness.

Two 2003 papers discuss the impacts and effectiveness of LMPR, and various reauthorization issues that might be examined.<sup>5</sup> The two papers observe that mandatory price reporting resulted not only in gains in available information, but also in losses. For example, LMPR does not provide the same timeliness or frequency of reports as under the voluntary system, and the need to protect confidentiality of those reporting may cause less transparency, they conclude. LMPR has resulted in less local information on terms of cattle trade for those regions once covered by voluntary reporting but no longer included in regional daily and weekly mandatory reports.<sup>6</sup> On the other hand:

At the national level, it is now possible to compare prices across purchasing methods, the short run supply situation is more transparent, packer ownership and captive supply can be observed and price impacts of such examined, and, perhaps most notable, the Act ensures that data available to and used by market participants are representative of actual market transactions.<sup>7</sup>

Schroeder and Wachenheim raise several questions for further study, such as:

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<sup>4</sup> Under the "3/60" rule, USDA was to collect but not report data from markets with fewer than three reporting entities or where any one entity handles more than 60% of the total volume in a particular area. Although not required by the law, the rule was sought by the White House Office of Management and Budget to preserve firm confidentiality. USDA in 2001 modified this rule; see page 5.

<sup>5</sup> Wachenheim, C.J., *The Livestock Mandatory Reporting Act of 1999*. Also, Schroeder, Ted C., *Livestock Mandatory Price Reporting in the Beef Industry*. Although these papers were prepared prior to the first (one-year) extension of LMPR in 2004, much of their discussions may be relevant.

<sup>6</sup> Schroeder. See also explanation of the 3/60 rule in footnote 4.

<sup>7</sup> Wachenheim.

- What exactly is the added cost to packers (and to taxpayers) compared with the voluntary system, which would be helpful in assessing the mandatory program's net value?<sup>8</sup>
- How important was the price data that is no longer being reported?
- Who supports LMPR, and how are they using the information? How is it facilitating decision making? How might LMPR influence industry conduct and performance? Could it be made more useful to market participants?
- Has the LMPR law increased the opportunity for packer collusion?

After initiation of LMPR in April 2001, the so-called 3/60 rule, which was aimed at protecting confidentiality (see footnote 4), was causing USDA/AMS to withhold a substantial amount of data from the public. So, AMS replaced this rule in August 2001 with new "3/70/20" guidelines. They specified that for 60 days prior to a report, at least three entities had to provide data at least half the time; no single entity could provide more than 70% of the report's data; and no single entity could be the sole reporting source for a report more than 20% of the time. As a result, AMS releases of the regional fed cattle morning reports increased from 24% to 77%, according to the department.<sup>9</sup>

USDA observed: "Confidentiality guidelines present a difficult challenge for USDA. Note that LMPR imposes the reporting requirement on packers. Cattle slaughter is so concentrated — in many regions, only three or four packers may be active — that confidentiality guidelines designed to protect the information of individual reporting entities may often apply, restricting the release of market news." It added that the issue is of less concern in hog slaughter.<sup>10</sup>

In a more recent (September 2005) report, USDA evaluates the LMPR to determine whether it has improved the amount and quality of information available in fed cattle markets, compared with the previous voluntary program. The report concludes that prices received under formula purchasing arrangements, which were not comprehensively reported under the voluntary system, appear to closely match prices received with negotiated purchases. It observes that the trend toward formula purchases has slowed since implementation of LMPR, and the volume of cattle under negotiated purchases has increased — although other market factors like lower cattle inventories and the discovery of BSE in North America may also have influenced this shift.<sup>11</sup>

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<sup>8</sup> The Congressional Budget Office (CBO) has estimated that total federal costs of the proposed program approved by the House Agriculture Committee (in H.R. 3408) would be \$8 million to \$9 million annually; aggregate compliance costs for packers would amount to \$1 million to \$3 million annually. These estimates can be found via the CBO website at [<http://www.cbo.gov/>].

<sup>9</sup> USDA, Economic Research Service (ERS), *Contracts, Markets, and Prices: Organizing the Production and Use of Agricultural Commodities* (AER-837), November 2004.

<sup>10</sup> Ibid.

<sup>11</sup> USDA, ERS. *Did the Mandatory Requirement Aid the Market?* (LDP-M-135-01), September 2005.