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Animal Agriculture: 2007 Farm Bill Issues

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Summary

With a few exceptions (such as milk), the products of animal agriculture are not eligible for the price and income supports that Congress historically has written into farm bills for major row crops such as grains, cotton, and oilseeds. However, the meat and poultry industries do look to the federal government for leadership and support in promoting their exports, resolving trade disputes, and reassuring markets that their products are safe, of high quality, and disease-free. Farm bills can contain policy guidance and resources to help achieve these objectives.

Also, animal producers closely follow the development of a new farm bill because of its potential impact on their production marketing costs. For example, policies promoting crop-based alternative fuels like ethanol already have raised the prices of corn and soybeans, both important animal feedstuffs. Where additional biofuels policy incentives are being considered for inclusion in a 2007 farm bill, cattle, hog, and poultry producers have been urging restraint and/or encouraging more use of non-feed crops like grasses and field wastes. Other potential farm bill issues of interest include proposals from animal welfare groups to regulate on-farm care of animals; and from some farmer-rancher coalitions to address perceived anti-competitive market behavior by large meat and poultry processing companies.

The market value of animal production on U.S. dairy, livestock, and poultry farms was more than $105 billion in 2002, more than half the total value of all U.S. agricultural production (2002 Census of Agriculture). Producers continue to face intense pressures to become larger, more specialized, and more cost-efficient in an increasingly global marketplace.

In the 110th Congress, the chairman of the Senate Agriculture Committee has introduced wide-ranging legislation (S. 622) to be the basis for a new "competition" title in the next farm bill; it would strengthen producer rights when contracting with meat and poultry processors; expand the U.S. Department of Agriculture's (USDA's) responsibilities to enforce competitive behavior; and extend to many crop markets some of the antitrust rules that now apply to meat packers. S. 305, S. 221, and S. 786 also propose new regulations for various farm animal buyers and/or processors.

Other bills would require USDA to implement mandatory country-of-origin labeling on meats by September 30, 2007, instead of the currently set deadline of September 30, 2008 (H.R. 357; S. 404); prohibit USDA from carrying out a mandatory animal identification program (H.R. 1018); ban the slaughter of horses for food (H.R. 503, S. 311); require that nonambulatory livestock be euthanized and not used for food (H.R. 661, S. 394); and impose animal care standards on suppliers of food to the federal government (H.R. 1726). Some of these also might be offered for consideration in a new farm bill.

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Overview

Most of the products of animal agriculture are not eligible for the price and income support programs that Congress has written into farm bills for major crops such as grains, cotton, and oilseeds.[1] Nor have meat and poultry producers generally sought such assistance, except *ad hoc* aid to recover losses caused by natural disasters such as droughts and hurricanes.[2] They also do not qualify for federal crop insurance, which covers a portion of the value of production lost to natural disasters. Some cattle and hog producers in a limited number of states do participate in livestock revenue insurance programs being administered by USDA's Risk Management Agency (RMA), which provides protection from revenue losses whether due to natural causes or economic conditions.

Animal agriculture looks to the federal government to resolve trade disputes, establish transparent, science-based rules for importing and exporting animal products, and reassure domestic and foreign buyers alike that these products are safe, of high quality, and disease-free. Omnibus farm legislation can contain policy guidance and resources related to these objectives.

Much is at stake economically: the farm value of animal production was more than $105 billion in 2002, more than half the total value of all U.S. agricultural production (2002 Census of Agriculture). Approximately 1.1 million of the nation's more than 2.1 million farms were classified by the 2002 Census as primarily animal production operations (see **Table 1**).

Producers face much pressure to become larger, more specialized, and more cost-efficient, in order to compete in the increasingly global marketplace. Transactions today are moving away from live cash markets and toward contractual relationships that can provide a guaranteed supply of live animals at predetermined prices and consistent qualities. More of these animals are being supplied to feeding operations and meat slaughtering/processing plants by Canada (beef cattle, sows and pigs) and Mexico (beef calves), as the beef, pork, and poultry industries of the three

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[1] Milk, honey, and wool are notable exceptions. See CRS Report RL33037, *Previewing a 2007 Farm Bill*, by Jasper Womach et al.

[2] For example, the agricultural disaster provisions in the pending FY2007 Iraq war supplemental bills (H.R. 1591 and S. 965) include sums necessary to fund a Livestock Compensation Program that would reimburse livestock growers for feed losses caused by certain natural disasters, and to fund a Livestock Indemnity Program that would partially reimburse producers for replacing livestock killed by a natural disaster. See CRS Report RS21212, *Agricultural Disaster Assistance*, by Ralph M. Chite.

North American countries have become more economically integrated over the past two decades.[3]

These trends are occurring at a time when feed costs have begun to rise significantly due largely to the government's promotion of ethanol (now largely corn-based) as an alternative fuel. Other longstanding public policy concerns include animal agriculture's obligations with respect to environmental protection, food safety, and animal welfare.

Table 1. U.S. Animal Production, 2002

U.S. Farms by Primary Classification		Value of U.S. Sales
	Number[a]	$1,000[b]
Total farms	2,128,982	200,646,355
Total crop farms	986,625	95,151,954
Total animal farms	1,142,357	105,494,401
Beef cattle ranches and farms	*664,431*	
Cattle feedlots	*55,472*	
Cattle and calves		*45,115,184[c]*
Dairy farms	*72,537*	
Milk and products		*20,281,166*
Hogs and pigs	*33,655*	*12,400,977*
Poultry meat and eggs	*44,219*	*23,972,333*
Sheep and goats	*43,891*	*541,745*
Horses and other equines	*174,441*	*1,328,733*
Other animal production	*53,711*	*1,854,262*

Source: U.S. Census of Agriculture, 2002.
a. Based on North American Industry Classification System (NAICS).
b. Market value of agricultural products sold (and government payments) from all farms regardless of primary (i.e., NAICS) classification.
c. Represents sales of beef cattle (including from feedlots, farms, and ranches) and of dairy cattle.

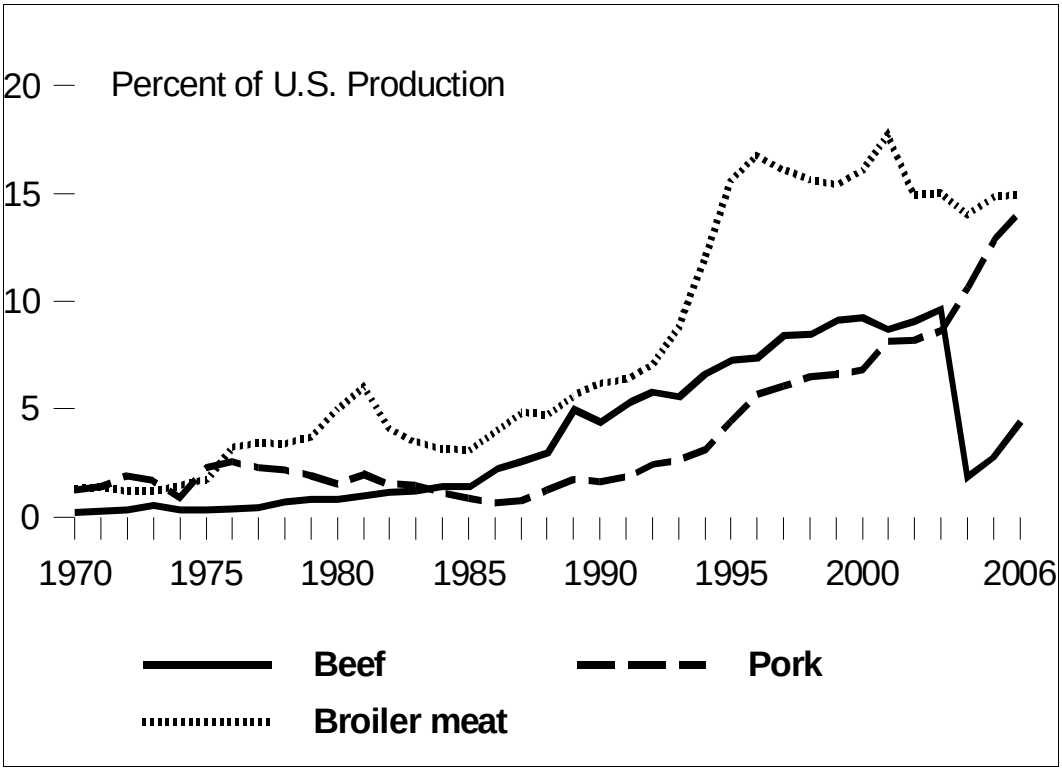
[3] See William F. Hahn et al., *Market Integration of the North American Animal Products Complex* (LDP-M-131-01), USDA, Economic Research Service, May 2005.

Importance of Trade

The United States is a world leader in the production, consumption, and export of meat and poultry products. One indicator of the increasing reliance of the animal sector on international trade is the share of U.S. domestic production that is exported, a figure that has increased significantly over the past 35 years.

Broiler meat exports have grown from 1.3% of production in 1970 to 14.9% of production in 2006. Pork exports climbed from 1.3% to 14.2% over the same period (see **Figure 1**). Beef exports also climbed, from 0.2% of domestic production in 1970 to 9.6% in 2003. When most countries were closed to U.S. beef after a Canadian-born cow with bovine spongiform encephalopathy (BSE) was discovered in Washington state late in 2003, exports dropped precipitously to 1.9% of production in 2004. Two more BSE cases have been found in U.S.-born cattle subsequently by a more intensive surveillance program, but beef exports are again rebuilding gradually.

Figure 1. Selected Meat and Poultry Exports



Source: Various USDA data series.

The United States has long been a dominant world player, but increasing reliance on exports also has brought new challenges. Other countries are competing vigorously for the same country markets. **Table 2** on the following page discusses the relative position of the United States in world trade of beef and veal, pork, broilers, and turkey.

Many years of effort to build export sales can be reversed abruptly due to an animal disease outbreak. When other countries restrict U.S. meat or poultry

products, whether due to the discovery of BSE, an outbreak of avian influenza, or other problems, it often takes many additional years for the United States to regain those markets, as has occurred in Japan and Korea, the first and third most important destinations, respectively, for U.S. beef prior to the occurrence of BSE here.

Sometimes a country may impose sanitary or phytosanitary (SPS) standards that affect U.S. imports and that the United States contends are not based on scientific principles or otherwise violate international trade rules. Examples include Japan's and Korea's years of delays in reopening their borders to U.S. beef even though the United States follows what it argues are internationally recognized safeguards. Another example has been the European Union's (EU's) refusal to accept U.S. beef treated with approved growth hormones, despite an international panel siding with the United States when it determined that the EU position was scientifically indefensible. Most animal agriculture organizations expect U.S. agricultural and trade agency officials to lead efforts in resolving such problems and in trying to ensure that they do not arise unexpectedly.[4]

Table 2. U.S. Role in Selected Meat and Poultry Trade

	United States Rank (2006)	The Competition
Beef and veal	No. 1 producer, consumer, and importer; dropped from no. 2 exporter to no. 8 after 2003 BSE case. Is a net importer.	Australia, long the leading exporter, was surpassed in 2004 by Brazil.
Pork	No. 3 producer, consumer, and importer; no. 2 exporter. Is a net exporter.	EU-25 and Canada also in top 3 exporters. Brazil is no. 4.
Broiler meat	No. 1 producer and consumer; no. 2 exporter. Few imports.	Brazil overtook U.S. as no. 1 exporter in 2004.
Turkey	No. 1 producer, consumer, exporter. Few imports.	No. 2 exporter Brazil is gaining market share.

Source: USDA, FAS, *Livestock and Poultry: World Markets and Trade*, March 2006.

Prospective Issues and Options

Feed Prices

Background. Feed is the single largest cost for cattle feeders and dairy, hog, and poultry producers, who are wary of government policies that can raise feed prices. These include crop supply control programs to bolster farm prices (rarely used now) and conservation programs like the Conservation Reserve Program (CRP), which pays landowners to retire environmentally sensitive cropland for long periods.

[4] See CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*, by Geoffrey S. Becker.

More recently, strong energy prices and a variety of government incentives have fostered rapid expansion of the U.S. ethanol industry, with national production increasing from 1.8 billion gallons in 2001 to 4.9 billion in 2006. Corn accounts for about 98% of the feedstocks currently used in ethanol production in the United States. USDA estimates that 2.15 billion bushels of corn (or 20% of the 2006 corn crop) will be used to produce ethanol during the September 2006 to August 2007 corn marketing year.[5]

The ethanol-driven surge in corn demand has contributed to a sharp rise in corn prices. For example, the futures contract for March 2007 corn on the Chicago Board of Trade rose from $2.50 per bushel in September 2006 to a contract high of over $4.16 per bushel in January 2007 (a rise of 66%). The rapid growth in ethanol capacity has been fueled by a federal tax credit of 51 cents per gallon of ethanol blended with gasoline; a Renewable Fuel Standard (RFS) that mandates a renewable fuels blending requirement for gasoline suppliers that grows annually from 4 billion gallons in 2006 to 7.5 billion gallons in 2012; and a 54-cent per gallon duty on most imported ethanol.[6]

Prolonged higher corn prices could have significant consequences for traditional feed markets and the livestock industries that depend on those markets. Corn has traditionally represented about 57% of feed concentrates and processed feedstuffs fed to animals in the United States.[7] As corn-based ethanol production increases, so do total corn demand and corn prices. Dedicating an increasing share of the U.S. corn harvest to ethanol production could lead to higher prices for all grains and oilseeds that compete for the same land, resulting in higher feed costs for cattle, hog, and poultry producers.

In addition, supply distortions could develop in protein-meal markets related to expanding production of the ethanol processing by-product distiller's dried grains (DDG), which averages about 30% protein content and can substitute in certain feed and meal markets. While DDG use would substitute for some of the lost feed value of corn used in ethanol processing, about 66% of the original weight of corn is consumed in producing ethanol and is no longer available for feed. Further, not all livestock species are well adapted to dramatically increased consumption of DDG in their rations — dairy cattle appear to be best suited to expanding DDG's share in feed rations; poultry and pork are much less able to adapt. DDG must be dried before it can be transported long distances, adding to feed costs. There may be some potential for large-scale livestock producers to relocate near new feed sources, but such relocations would likely have important regional economic effects.

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[5] USDA, World Agricultural Oulook Board, W*orld Agricultural Supply and Demand Estimates (WASDE)* Report, Jan. 12, 2007. Available at [http://www.usda.gov/oce/].

[6] Much of this section is adapted from CRS Report RL33928, *Ethanol and Biofuels: Agriculture, Infrastructure, and Market Constraints Related to Expanded Production*, by Brent D. Yacobucci and Randy Schnepf. For more information on incentives (both tax and non-tax) for ethanol, see also CRS Report RL33572, *Biofuels Incentives: A Summary of Federal Programs*, by Brent D. Yacobucci.

[7] USDA, ERS, *Feed Situation and Outlook Yearbook*, FDS-2003, April 2003.

A Tufts University study has offered another perspective on feed prices, noting: "Any discussion of today's high prices should take into account the extent to which these same firms [i.e., leading U.S. meat companies] have benefitted from many years of feed that was priced well below what it cost to produce. In the nine years that followed the passage of the 1996 Farm Bill [including the first several years of the 2002 farm bill] (1997-2005), corn was priced 23% below average production costs, while soybean prices were 15% below farmers' costs," the authors of the study concluded. This resulted in substantial savings to the poultry and hog industries, and an implicit subsidy over the nine years of $11.5 billion to the broiler industry and $8.5 billion to what the authors termed "industrial" hog operations. Thus, "the leading firms gained a great deal during those years from U.S. agricultural policies that helped lower the prices for many agricultural commodities."[8]

Congressional Consideration. The House Agriculture Subcommittee on Livestock, Dairy, and Poultry held a hearing to review the impact of feed costs on March 8, 2007. Among recommendations by livestock industry witnesses were: allowing the 51-cent ethanol tax credit for blenders to expire after 2010 and the 54-cent tariff on imported ethanol to expire after 2008; increasing incentives such as research funds for other types of renewable fuels like cellulosic based biofuels and methane recapture; and bringing some CRP acres back into crop production.

Although dozens of bills and resolutions relating to renewable energy had been introduced in the early months of the 110th Congress, only a few of them, including H.Con.Res. 26/S.Con.Res. 3, H.R. 80, H.R. 1551, H.R. 1766, and S. 828, were referred to the Agriculture Committees. Not all would necessarily impact feed prices. The chairman of the House Agriculture Committee has noted that a 2007 farm bill could conceivably address research and conservation-related policy options, but that other panels have jurisdiction over tax and tariff policies.

Market Competition and Packer Concentration

Background. The past several decades have seen rapid changes in the structure and business methods of animal agriculture (see **Table 3**). Production and marketing have been moving toward fewer and larger operations, although the pace of these changes has varied widely across the sectors.

Beef. For example, smaller (i.e., fewer than 100-head) cow-calf operations (where beef cows are bred and born) represent a majority of such operations and hold nearly half of all U.S. cattle. On the other hand, larger (i.e., 1,000-head plus capacity) feedlots, which fatten cattle to slaughter weight, represent a small fraction of total U.S. feedlots but market the majority of fed cattle.[9] Cattle feeding is now

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[8] Wise, Timothy A., and Elanor Starmer, *Industrial Livestock Companies' Gains from Low Feed Prices, 1997-2005*, Tufts University, Global Development and Environmental Institute, Feb. 26, 2007, at [http://ase.tufts.edu/gdae]. Bracketed text was added by CRS for clarification.

[9] *Animal Production and Marketing Issues: Questions and Answers*, USDA, Economic Research Service Briefing Rooms, at [http://www.ers.usda.gov/Briefing/AnimalProducts/

(continued...)

concentrated in the middle part of the country, where five states marketed 75% of all fed cattle: Kansas, Nebraska, Texas, Oklahoma, and Colorado. Although more widely dispersed, 75% of all U.S. beef cows also reside in the middle states, stretching, approximately, west to east from Colorado and Utah to Kentucky and Tennessee, and from the Canadian to the Mexican borders.[10]

Pork. Live hog production has seen sweeping changes over the past 25 years. The number of U.S. farms with hogs declined from 667,000 in 1980 to to 67,000 in 2005; those remaining have become much larger and less diversified. Operations with at least 10,000 hogs now represent less than 1% of all producers but more than half of total U.S. hog output, USDA reports. The average 1980 farm with hogs had less than 100 head and likely raised them from birth to slaughter weight as part of a more diversified crop-livestock operation. In 2005, the average hog farm had more than 900 head and might typically specialize in a single stage of hog production, such as finishing, according to USDA. In fact, the hog production segment of the industry now has about 30 key firms, plus several hundred additional "significant" operators.[11] Much of the U.S. hog population is in Iowa, southern Minnesota, and North Carolina.

Table 3. Selected U.S. Livestock Data

	1980	2005
Beef:		
Total cattle marketed	23.2 million	25.8 million
Beef cow farms & ranches	1,032,592[a]	770,170
Pct. with 500 or more head	*<1%*	*<1%*
U.S. beef cow inventory	35.2 million	33.8 million
Pct. on operations with 500 or more head	*14%*	*15%*
Cattle feedlots	113,326	88,198
Pct. with 1,000 or more head	*2.1%*	*2.5%*
Pct. marketed from operations with 1,000 or more head	*70%*	*86%*
Hogs/pigs:		
U.S. hog/pig inventory	62.3 million	60.7 million
Hog/pig farms	667,000	67,000
Average no. of head per farm	*93*	*906*

Source: Various USDA data reports. Data on farm numbers differ from those shown in Table 1 due to use of differing years and farm classifications.
a. 1978 data.

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[9] (...continued)
questions.htm#question2].

[10] *Cattle-Fax Update*, Dec. 15, 2006.

[11] Informa Economics, *Special Report: The Changing U.S. Pork industry*, November 1, 2004, at [http://www.informaecon.com/LVNov1.pdf].

Cattle and hog producers now sell to fewer packers as well (see **Table 4**). Recent concentration numbers approach those of the early 1900s when 50% to 70% of the market was dominated by five firms which slaughtered several different species of livestock.[12]

Table 4. Red Meat Packer Concentration, 1985 and 2005

Type	Percent Slaughtered by Top 4 Firms	
	1985	2005
Hogs	32%	63%
Steers & Heifers	50%	80%
All Cattle	39%	71%

Source: USDA and *Cattle Buyers Weekly*.

Vertical Marketing Relationships. Ownership or tight control of multiple production and marketing steps by a single firm (known as vertical integration or vertical coordination, respectively) is more common in the livestock and poultry sectors today than in the past. A 2001 article described this characteristic as "supply chains — tightly orchestrated production, processing, and marketing arrangements stretching from genetics to grocery. Supply chains bypass traditional commodity markets and rely on contractual arrangements among the chain participants to manage the transformation of livestock on the farm to meat in the cooler."[13]

This business model was pioneered in agriculture by the poultry industry, which began to integrate shortly after World War II. Poultry producers were "the clear leader" in delivering nutritional and convenient products to consumers while at the same time sharply controlling costs, according to Barkema. The hog industry has been following poultry's footsteps. Now typical are contract production arrangements with large integrators who may provide the genetics, piglets and other inputs, and a contracting producer (farmer) who provides facilities and labor.

For those who raise livestock, all of these changes have meant fewer cash transactions at auction barns or other open markets, and more frequent, often longer-term business arrangements with buyers and/or processors. Often these arrangements take the form of agricultural contracts, which USDA defines as agreements between farmers and their commodity buyers that are reached before the completion of production. Other alternative marketing arrangements also are used by producers and processors (see "GIPSA Study," below).

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[12] USDA, ERS. *U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration*. Technical Bulletin No. 1874, April 1999.

[13] Barkema, Alan, and others, "The New U.S. Meat Industry," *Economic Review* of the Federal Reserve Bank of Kansas City, Second Quarter 2001.

In 2003, contracts (production or marketing) covered 47% of all livestock production value, up from 33% in 1991-93. This compares with 31% of all crop production in 2003 and 25% in 1991-93, according to USDA.

GIPSA Study. A comprehensive study of livestock transaction methods, released recently by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA), describes a number of "alternative marketing arrangements" (AMAs). The study defines AMAs as all alternatives to the cash market, including forward contracts, marketing agreements, procurement or marketing contracts, production contracts, packer ownership, custom feeding, and custom slaughter. By contrast, cash transactions are those that occur immediately or "on the spot."

The study, conducted by the private contracting firm RTI International, determined that all types of AMAs accounted for an estimated 38% of fed (slaughter-ready) beef cattle volume, 89% of finished hog volume, and 44% of lamb volume sold to packers between October 2002 and March 2005, the period studied. Within the beef sector, the 29 largest beef packing plants had obtained 62% of their cattle on the cash or spot market; 29% through marketing agreements; 4.5% through forward contracts; and 5% through packer ownership or other unknown methods. The use of one type of AMA — that is, packer ownership of the livestock they intend to slaughter — accounted for 5% or less of all beef and lamb transactions, but 20% to 30% of all pork transactions, the study found.[14]

However, the report observed: "Cash market transactions serve an important purpose in the industry, particularly for small producers and small packers." Reported cash prices also are frequently used as the base for formula pricing for cash market and AMA purchases of livestock and meat, RTI reported.

Critics assert that these types of trends in consolidation and vertical control have enabled a relative handful of industry players to dominate markets and have undermined the traditional U.S. system of smaller-scale, independent, family-based farming. Farmers and ranchers now have weakened negotiating power, lower prices, and no choice but to "get larger or get out" of agriculture, they add. Others counter that structural changes in animal agriculture, processing, and marketing are a desirable outgrowth of factors such as technological and managerial improvements, changing consumer demand for a wider range of low-cost, convenient products, and expanding international trade.

Federal Competition Laws. A number of federal laws and agencies are responsible for ensuring that markets are open and competitive. For example, the **Packers and Stockyards Act** (P&S Act) of 1921, as amended (7 U.S.C. §181 *et seq.*) prohibits meat packers and poultry dealers from a variety of anti-competitive and antitrust practices such as engaging in any unfair, unjustly discriminatory or deceptive marketing; or apportioning supplies or manipulating prices to create a

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[14] GIPSA, "Livestock and Meat Marketing Study," accessed April 9, 2007, at [http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=lmp&topic=ir-mms]. The study was funded by a $4.5 million provision in the consolidated appropriations measure for FY2003 (P.L. 108-7).

monopoly. GIPSA administers the P&S Act. The **Agricultural Fair Practices Act** (AFPA; 7 U.S.C. 2301 *et seq*.) was enacted in 1967 to protect farmers from retaliation by handlers (buyers of their products) because the farmers are members of a cooperative. The act, administered by USDA's Agricultural Marketing Service (AMS), permits farmers, if they believe their rights under the law have been violated, to file complaints with USDA, which can then institute court proceedings.

The **Sherman Act** (15 U.S.C. §§1-8) and **Clayton Act** (15 U.S.C. §12 *et seq.*), which cover but are not specific to agriculture, prohibit certain activities such as mergers and acquisitions that may restrict market access or suppress competition. The U.S. Department of Justice and Federal Trade Commission are primarily responsible for administration of these laws. The **Capper-Volstead Act** (7 U.S.C. §§291-292) confers limited exemption for antitrust liability to farmer cooperatives.

Congressional Consideration. Small farm advocates have brought several closely-watched lawsuits, under the P&S Act and several other laws, challenging the contracting and marketing practices of larger packers and/or integrators. These efforts generally have not been successful in the courts, adding impetus to calls for including a so-called competition title in an omnibus 2007 farm bill. Advocates want lawmakers to strengthen existing antitrust authorities, to impose more mandates on the executive branch to enforce these authorities, and to provide new contract protections for farmers, among other options.

Some of these options have been considered previously. In legislative activity leading to enactment of the last major (2002) farm bill, the Senate Agriculture Committee voted in November 2001 to delete a competition title from the omnibus farm bill (S. 1628) proposed by its chairman, Senator Harkin. During subsequent floor action on the bill, the Senate did approve a number of individual "competition" amendments. Two such amendments were retained by House-Senate conferees in early 2002 in the final version of the bill (H.Rept. 107-424). One gives producers the right to discuss their contracts with family members and advisors. The other extends some new P&S Act protections to swine producers with production contracts.

Early in the 110th Congress, Senator Harkin introduced a wide-ranging bill (S. 622) that, he said, would be "the basis for developing a proposed competition title in the new farm bill this year."[15] S. 622 contains provisions establishing a new Office of Special Counsel at USDA to investigate and prosecute violations of competition laws; making it easier for producers to prove unfair treatment under the P&S Act; strengthening P&S Act enforcement in the poultry industry; and rewriting the AFPA to provide many crop producers with P&S Act-type protections and to set new requirements for contracts between producers and processors.

Packer Ownership/Captive Supply. Producers facing fewer buyers for their livestock frequently express concerns about "captive supply," a reference to animals that are either owned by, or committed to, a meat packer except for just before slaughter. When packers buy fewer animals on the spot (open cash) market,

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[15] Senator Harkin's statement on S. 622 is in the Feb. 15, 2007, *Congressional Record*, pp. S2052-S2053.

reported prices may no longer accurately reflect the preponderance of prices paid, it is argued. Reduced transparency (i.e., prices and terms that all market players can view equally) works to the disadvantage of the far larger number of producers trying to sell their livestock to the relatively few packers who buy them, it is argued.

Senator Grassley has introduced a bill (S. 305) in the 110th Congress, amending the P&S Act to prohibit meat packers from owning or feeding livestock "directly, through a subsidiary, or through an arrangement that gives the packer operational, managerial, or supervisory control over the livestock, or over the farming operation that produces the livestock, to such an extent that the producer is no longer materially participating in the management of the operation..." Exceptions would be for arrangements made within seven days before slaughter; for producer-owned cooperatives that also slaughter their livestock; for packers that either slaughter only at one plant or that fall below a specified size.

Opponents of a packer ownership ban counter that evidence of price manipulation is lacking, that a ban could reverse many of the efficiency gains made by the livestock industry in recent years through closer packer-producer alliances, and that it would limit producers' marketing options. They also cite the results of the recently-released RTI study of marketing practices (see above).

Changes to the Agricultural Fair Practices Act. Several bills in the 110th Congress would amend the AFPA to address what their sponsors view as inequities in contracting between agricultural producers and those who buy their commodities. The Harkin bill (S. 622) would prohibit the use of confidentiality clauses in contracts; require them to more clearly spell out producer obligations; give the producer three days to review or cancel a contract; and limit a processor's right to terminate a contract where the producer had made a capital investment of $100,000 or more in order to satisfy contract requirements. Both S. 622 and a separate Grassley bill (S. 221) would allow the use of arbitration to settle contract disputes only if both parties consent to it in writing. Sponsors have argued that such amendments to the AFPA are needed because agricultural consolidation has left producers with so few processor-buyers that some of these processor-buyers can and do impose unfavorable contract terms on the producers, forcing them to either accept them or go out of business.

Opponents of the various P&S Act and AFPA proposals have asserted that buyers use these and other contracting arrangements to ensure a steady supply of animals (or other agricultural commodities) to keep high-capacity plants operating efficiently; such arrangements also allow for necessary price adjustments for quality, grade, or other market-prescribed factors. The recent proposals would hurt producers too, because many of them use contracts or other marketing agreements with packers to limit their own exposure to price volatility and to obtain capital, opponents added, again citing the result of the recent RTI study.

The Harkin bill (S. 622) also would significantly alter the AFPA so that it would cover many crops in much the same way livestock is covered under the P&S Act. More specifically, it would be unlawful under the AFPA for any covered person (i.e., a dealer, handler, contractor, processor or commission merchant) to engage in "[a]ny unfair, unjustly discriminatory, or deceptive act, device, or anti-competitive practice

in or affecting the marketing, receiving, purchasing, sale, or contracting for the production of any agricultural commodity." Many of the same types of individual practices now cited under the P&S Act as unlawful for livestock buyers would also be explicitly cited as unlawful for crop buyers, under the proposed new AFPA.[16]

Enhanced USDA Enforcement and Management. S. 622 would require a new USDA Office of Special Counsel for Competition Matters to investigate and prosecute violations of the AFPA and of the P&S Act. The new Special Counsel, who would have to be confirmed by the Senate, also would have to consult with the Department of Justice and the Federal Trade Commission on competition matters affecting food and agriculture. S. 622 also contains language intended to make it easier for producers to prove in a court of law that they were treated unfairly by packers.

Sponsors of this proposal say that stronger enforcement authorities are needed in part because GIPSA officials have largely failed to enforce existing laws. They point to a recent report by the Department's Office of Inspector General (OIG), which concluded that GIPSA has not adequately overseen and managed its investigative activities. GIPSA had difficulties defining and tracking investigations, planning and conducting complex investigations, and making agency policy, OIG found. USDA's general counsel had not filed an administrative complaint on anti-competitive practices since 1999, due to GIPSA's failure to refer cases, although agency staff were considering dozens of investigations at the time, OIG concluded.[17]

Livestock Mandatory Price Reporting

Background. Under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), AMS has long collected livestock and meat price and related market information (along with data on commodities such as grains, dairy, and produce). Under the voluntary program, this information has been disseminated by AMS through hundreds of daily, weekly, monthly, and annual written and electronic reports. The goal has been to provide all buyers and sellers with accurate and objective market information.

In 1999, Congress passed the Livestock Mandatory Price Reporting (LMPR) Act as Title IX of USDA's FY2000 appropriations act (P.L. 106-78). Its aim was to address some livestock producers' concerns that this voluntary system was no longer working, at a time when animals were more frequently being sold under private marketing arrangements, with prices not publicly disclosed or reported. These producers had asserted that such arrangements made it difficult or impossible for them to determine "fair" market prices. Other producers, and many firms who bought their animals, at first had opposed a mandatory law, arguing that it would impose costly new reporting burdens on the industry and could cause the release of confidential company information, among other concerns. Nonetheless, they

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[16] S. 622 would not cover crops regulated under the Perishable Agricultural Commodities Act (7 U.S.C. 499a *et seq.*), i.e., fresh and fresh frozen fruits and vegetables.

[17] *Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs*, OIG Audit Rept. No. 30601-01-Hy, January 2006.

eventually accepted a new "consensus" law and generally have supported its continuation.

LMPR contains a variety of reporting requirements. For example, 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 (Reportedly a total of more than 100 packers or importers are covered.) There are penalties for not reporting. The program has received some 500,000 pieces of data each day; USDA in turn has made the data public through more than 100 daily, weekly, or monthly reports. The program has captured 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, USDA officials testified in 2005.

The original authority had lapsed several times — but the "mandatory" program continued on a "voluntary" basis" — before the Senate, on September 2006, agreed to a House-passed version (H.R. 3408) extending LMPR with relatively minor changes through September 30, 2010. This measure was signed into law (P.L. 109-296) on October 5, 2006. Some Senators had wanted a shorter extension in order to consider more substantive amendments to the law.[18]

Congressional Consideration. A few Members of Congress have indicated the need for further changes in LMPR; these could be debated in the context of the farm bill. Meanwhile, Senator Grassley has introduced S. 786, which would amend the Agricultural Marketing Act of 1946 to require certain meat packers to obtain at least 25 percent of the animals they slaughter each day from the spot (cash) market. Packers that would have to comply are those now covered by LMPR (see above).

Country-of-Origin Labeling

Background. Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. Some types of products have long been exempted from this requirement, including raw agricultural products such as live animals, meat, poultry, fruits and vegetables, for example — although their outer containers must contain such labeling.

Title X of the 2002 farm bill was to change this, by requiring retailers to provide country-of-origin labeling for fresh beef, pork, and lamb (Section 10816 of Subtitle I).[19] First adopted on the Senate floor in late 2001, mandatory country-of-origin labeling (COOL) for meat was to be in place on September 30, 2004, but language in the FY2004 consolidated appropriations act (P.L. 108-199) delayed implementation for meats, produce and peanuts, but not seafood, for two years, until

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[18] See CRS Report RS21994, *Livestock Price Reporting: Background*, by Geoffrey S. Becker.

[19] The mandatory COOL provision also covers seafood, fruits and vegetables, and peanuts.

September 30, 2006. Debate over COOL carried into the 109th Congress, which (in USDA's FY2006 appropriation, P.L. 109-97) postponed implementation for an additional two years, until September 30, 2008. This highly contentious program could again be on the farm bill agenda of the 110th Congress.[20]

The delays reflect the continuing divergence of opinion among lawmakers over whether a federally-mandated labeling program is needed. Some contend that mandatory COOL will provide U.S. products with a competitive advantage over foreign products because U.S. consumers, if offered a clear choice, prefer fresh foods of domestic origin, thereby strengthening demand and prices for them. Moreover, proponents — including producer groups like the National Farmers Union and R-CALF USA (Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America), and consumer advocacy organizations — argue that U.S. consumers have a right to know the origin of their food, particularly at a time when U.S. food imports are increasing, and whenever particular health and safety problems arise. They cite, as one prominent example, concerns about the safety of some foreign beef arising from the discoveries of BSE in a number of Canadian-born cows (and two U.S. cows) since 2003. Supporters of the COOL law argue that it is unfair to exempt meats and produce from the longstanding country labeling already required of almost all other imported consumer products, from automobiles to most other foods. They also note that many foreign countries already impose their own country-of-origin labeling.

Opponents of mandatory COOL — which include the American Meat Institute representing many in the packing industry, the Food Marketing Institute representing many retail stores, and producer groups like the National Cattlemen's Beef Association and National Pork Producers Council — counter that studies do not provide evidence that consumers want such labeling. They believe COOL is a thinly disguised trade barrier intended to increase importers' costs and to foster the unfounded perception that imports may be inherently less safe (or of lower quality) than U.S. products. Some argue that food safety problems can as likely originate in domestic supplies as in imports, as evidenced by the more than 30 recalls of U.S. meat and poultry products announced by USDA in 2006 alone. Opponents point out that all food imports already must meet equivalent U.S. safety standards, which are enforced by U.S. officials at the border and overseas; scientific principles, not geography, must be the arbiter of safety. Industry implementation and recordkeeping costs, estimated by USDA to be as high as $3.9 billion in the first year and $458 million per year after that, would far outweigh any economic benefits, critics add, noting that the law does not cover red meats that are processed or sold in restaurants, or any type of poultry, a competing product.[21] (COOL proponents assert that USDA exaggerated the implementation costs.)

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[20] AMS is responsible for implementing the rules, and maintains an extensive website on COOL (at [http://www.ams.usda.gov/cool/]), with links to voluntary COOL guidelines, the seafood rule, the proposed mandatory rule for the other covered commodities, and a cost-benefit analysis.

[21] USDA's cost estimates are from 68 *Federal Register* 61955-61974.

Congressional Consideration. Bills in the 109th Congress would have made COOL voluntary for meats (including H.R. 2068, S. 1300, and S. 1333). Still others (e.g., S. 135, S. 1331) would have expanded COOL requirements and/or accelerated its current implementation date. None was adopted by Congress.

In the 110th Congress, supporters have introduced bills (H.R. 357; S. 404) to mandate COOL by September 30, 2007. The House Agriculture Committee Chairman reportedly has stated that an acceleration of the current implementation date may not be feasible and that some changes in the mandatory program should be considered — although not necessarily in the farm bill. He has also speculated on whether COOL and a universal animal identification system, the latter to address animal health problems, might be combined into a single program (see next section).[22]

Animal Identification for Health Protection

Background. One aspect of the COOL debate has been whether animal producers would have to keep detailed records on their animals' identity and whereabouts so that the government or retailers could properly verify country of origin. Many producers do not believe that USDA should extend such requirements to the farm level, arguing they are intrusive, costly, and unnecessary in meeting the intent of the law. (In fact, the mandatory COOL law prohibits mandatory animal ID for COOL purposes.) At the same time, a growing number of producers seems to agree that some type of universal animal identification (ID) program would be a beneficial tool in addressing animal disease problems.

Outbreaks of animal diseases like avian influenza (AI), foot and mouth disease (FMD), brucellosis, and tuberculosis are seen as perhaps the greatest potential threats to animal production. Even where U.S. cases have been few (as with BSE) or quickly contained (as with various strains of AI), the impacts can be devastating economically, causing production losses, the closure of export markets, and a decline in consumer confidence. Some like AI and BSE have the potential to harm humans.

USDA's Animal and Plant Health Inspection Service (APHIS) has lead responsibility on matters of animal health, including animal ID. APHIS has been working on such a program, indicating that it has the legislative authority to implement an animal ID program under the comprehensive Animal Health Protection Act, which was adopted as Subtitle E of Title X of the 2002 farm bill. This subtitle updated and consolidated a number of longstanding statutes that had been used to monitor, control, and eradicate animal diseases.[23]

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[22] See for example "Mandatory Country-of-Origin Labels May Have to Wait a Year After All," *The Webster Agricultural Letter*, Mar. 16, 2007; "Does animal ID + COOL = marriage made in heaven?" *Food Chemical News*, Mar. 26, 2007. Also see CRS Report 97-508, *Country-of-Origin Labeling for Foods*, by Geoffrey S. Becker.

[23] See CRS Report RL32012, *Animal Identification and Meat Traceability*, by Geoffrey S. Becker.

Despite several years of effort on the part of USDA, as well as industry groups, and states — and public funding totaling an anticipated $118 million through FY2007 — a universal U.S. system is not expected to be in place for some time, as policymakers attempt to resolve numerous questions about its design and purpose. Should animal ID be mandated? (USDA currently envisions a voluntary universal system.) What types of information should be collected, on what animal species, and who should hold it, government or private entities? To what extent should producer records be shielded from the public and other government agencies? Should animal ID be expanded to traceability of meat and poultry products from farm to the consumer, or used for other purposes such as food safety or certification of labeling claims? How much will it cost, and who should pay?

Congressional Consideration. Past bills to establish differing animal health-oriented ID systems, and others to require more extensive systems tracing products through the marketing chain, may re-emerge in the 110th Congress, possibly as a farm bill item. As of early April 2007, one bill, H.R. 1018, had been introduced on the topic; it would prohibit USDA from carrying out a mandatory animal ID program and also would seek to protect the privacy of producer information under a voluntary system.

Animal Welfare

Background. Farm animals are not covered by the Animal Welfare Act (AWA; 9 U.S.C. §2131 *et seq*.), which requires minimum care standards for most types of warm-blooded animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. The Animal Care Division of APHIS has primary responsibility for enforcing the AWA and several other animal welfare statutes, including the Horse Protection Act (15 U.S.C. §1821 *et seq*.)

Farm animals are subject to the Humane Methods of Slaughter Act (7 U.S.C. 1901 *et seq*.), enforced by USDA's Food Safety and Inspection Service (FSIS). The act governs the humane slaughter and handling of livestock (but not poultry) at packing plants. Also, under the so-called Twenty-Eight Hour Law (49 U.S.C. 80502, last amended in 1994), commercial carriers may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

Generally, many members of the House and Senate Agriculture Committees have expressed a preference for voluntary approaches to humane methods of farm animal care. They state that major food industry players have been developing humane animal care guidelines, and imposing them on their suppliers, in response to a growing number of customers who ask about animal treatment. They cite such changes at McDonald's and Burger King, for example. In January 2007, Smithfield, the nation's largest pork producer, announced that its Murphy-Brown subsidiary would phase out over a 10-year period the use of individual gestation stalls for sows, replacing them with group housing.[24]

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[24] "Smithfield Foods Makes Landmark Decision Regarding Animal Management," January
(continued...)

Animal activists have continued to challenge current production practices. They periodically seek new legislation that would further regulate on-farm or other animal activities, such as bills to prohibit the slaughter of horses for human food (which passed the House as H.R. 503 in September 2006); to require the federal government to purchase products derived from animals only if they were raised according to specified care standards; and to prohibit the slaughter for food of disabled livestock, among others. Agricultural interests recognize that animal welfare advocacy organizations, like the Humane Society of the United States and others, have large constituencies in many Members' districts, and these organizations have claimed some successes in recent years in winning animal care initiatives in several states and in several lawsuits.

Congressional Consideration. Animal welfare provisions are, on occasion, placed in farm bills. Title XVII, Subtitle F of the 1985 farm bill (P.L. 99-198) directed the Secretary to set new minimum standards of (nonfarm animal) care for handling, housing, feeding, water, sanitation, ventilation, and so forth; and increase penalties for AWA violations, among other things. Section 2503 of the 1990 farm bill (P.L. 101-624) extended certain pet protections. The amendments also increased civil and criminal penalties for AWA violations. Title X of the 2002 farm bill (P.L. 107-171): called on USDA to fully enforce the Humane Methods of Slaughter Act (§10305); excluded birds, rats and mice, and horses not used for research, from AWA coverage (§10301); delineated prohibitions on interstate movement of animals for fighting (§1302); and required USDA to report on the humane treatment of nonambulatory livestock (§10815).

Pending in the 110th Congress are companion bills (H.R. 503, S. 311) to ban the slaughter of horses for food, even though court actions by advocates have forced the closing of the two foreign-owned plants in Texas and one in Illinois that were processing horses for export markets.[25] Also pending are bills (S. 394 and H.R. 661) that would require that all nonambulatory livestock (i.e., those that are unable to stand up and walk) be humanely euthanized and banned from food use. USDA now prohibits, but by regulation, the slaughter for food of nonambulatory cattle only, as a safeguard against the possibility of introducing BSE into the food supply. Another bill (H.R. 1726) would require those who supply meat, dairy products, or eggs to federal programs like the military, school lunch and federal prisons to meet basic animal welfare requirements, including housing standards. Whether these or other legislative proposals might be offered during debate on a new farm bill remains to be seen, but such action would be more likely to occur on the House and Senate floors than in the Agriculture Committees.

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[24] (...continued)
25, 2007 press release, at [http://www.smithfieldfoods.com/Enviro/Press/press_view.asp?ID=394].

[25] "Ruling effectively bans slaughtering horses for export," *The Courier-Journal*, Louisville, KY, Mar. 31, 2007. USDA's Food Safety and Inspection Service confirmed in an Apr. 9, 2007 e-mail that the three plants are no longer slaughtering horses for human consumption.

Environmental Issues

Background. Questions about the applicability of federal environmental laws to livestock and poultry operations have drawn congressional attention. As animal agriculture increasingly concentrates into larger, more intensive production units, interest arises about impacts on the environment, including surface water, groundwater, soil, and air. Some environmental laws specifically exempt agriculture from regulatory provisions, and some are designed so that farms escape most, if not all, of the regulatory impact. The primary regulatory focus for large feedlots is the Clean Water Act (33 U.S.C. §1251 *et seq*.), since contaminants from manure, if not properly managed, also affect both water quality and human health.

Operations that emit large quantities of air pollutants may be subject to Clean Air Act (42 U.S.C. §§7401-7671q) regulation. In addition, concerns about applicability of Superfund (the Comprehensive Environmental Response, Compensation, and Liability Act (the Superfund law, 42 U.S.C. §§9601-9675) to livestock and poultry operations are of growing interest.

Congressional Consideration. Bills (S. 807; H.R. 1398) to exempt animal manure from federal Superfund requirements have re-emerged in the 110th Congress. These bills were referred, respectively, to the Senate Committee on Environment and Public Works, and the House Committees on Energy and Commerce and on Transportation and Infrastructure. The House and Senate Agriculture Committees do not have direct jurisdiction over federal environmental law, but they do have a role in the issue. For example, under the conservation title of recent farm bills, the Environmental Quality Incentives Program (EQIP) has provided financial and technical assistance to farmers to protect surrounding resources; livestock receives 60% of the funds. It is also conceivable that supporters of S. 807 and H.R. 1398, or similar measures, could seek their inclusion in either an omnibus farm bill or other agricultural bill in the 110th Congress.[26]

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[26] Also see CRS Report RL31851, *Animal Waste and the Environment: EPA Regulation of Concentrated Animal Feeding Operations (CAFOs)*; CRS Report RL32948, *Air Quality Issues and Animal Agriculture: A Primer*; and CRS Report RL33691, *Animal Waste and Hazardous Substances: Current Laws and Legislative Issues*, all by Claudia Copeland.