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Animal Agriculture: Selected Issues in the 108th Congress

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Geoffrey S. Becker
Specialist in Agricultural Policy
Resources, Science, and Industry Division

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Summary

Animal agriculture accounts for a significant segment of U.S. agriculture: in 2002, for example, U.S. farmers and ranchers received \$94 billion from the sale of animal products, or about half of all U.S. farm cash receipts.

Various issues important to animal agriculture have generated interest among lawmakers in the first session of the 108th Congress. For example, under the 2002 farm bill (P.L. 107-171) many food stores in 2004 must provide country-of-origin labeling (COOL) on ground and fresh cuts of beef, pork, and lamb. The House-passed USDA appropriation for FY2004 (H.R. 2673) would block funding to implement COOL for meats. The Senate committee version (S. 1427) lacks the ban.

Elsewhere, lawmakers are keenly interested in the effectiveness of U.S. food safety and animal health programs — particularly after Canada announced, on May 20, 2003, that one of its cows had “mad cow disease” (bovine spongiform encephalopathy, or BSE). The United States responded by banning all imports from Canada of live ruminants and their products. On August 8, 2003, USDA announced steps to begin lifting the ban on some meat products, based on what it said was a scientific assessment of risk. USDA also unveiled a voluntary “Beef Export Verification” program aimed at satisfying a related demand by Japan, the top market for U.S. beef (and pork), for verification that U.S. beef imports are not of Canadian origin. The COOL and BSE issues have rekindled interest in whether the United States should move more quickly toward a universal animal identification (and, possibly, meat traceability) system. Among other issues of interest to lawmakers:

- Consolidation and concentration continue to fuel congressional interest in the structure and business methods of agriculture in general and animal production in particular, and in their impacts on producers and consumers.
- Large animal production units have stirred concerns about impacts on the environment, including surface water, groundwater, soil, and air.
- Meat and poultry products, among the fastest-growing components of U.S. agricultural exports, have encountered foreign trade barriers that disrupt markets and heighten trade tensions. At the same time, the Administration is negotiating new trade agreements that would impact animal product exports.
- Court challenges to the national beef and pork promotion (“check-off”) programs have clouded the future of these efforts.

Among the bills affecting animal agriculture are: H.R. 719, H.R. 857, H.R. 2203, H.R. 2270, H.R. 2273, H.R. 2519, H.R. 2932, H.R. 3022, H.R. 3083, S. 27, S. 325, S. 1044, S. 1103, S. 1187, S. 1202, S. 1298, S. 1407, S. 1460, S. 1626, and S. 1644. This report will not be updated; see the CRS Electronic Briefing Book on *Agriculture Policy*, at [<http://www.congress.gov/brbk/html/ebagr1.shtml>], for recent developments.

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Animal Agriculture: Selected Issues in the 108th Congress

Introduction

A variety of issues important to animal agriculture have generated interest among lawmakers in the first session of the 108th Congress, many similar to matters considered by previous Congresses. They include farm prices; weather-related concerns such as lingering drought in some parts of the country; trade negotiations and disputes affecting meat and poultry exports; and the environmental impacts of large animal feeding operations. Among other issues of concern are government oversight of meat and poultry product safety; protection of animal health, including protection against diseases with potentially serious economic consequences; and guarding against threats of bioterrorism. The May 2003 announcement that a Canadian cow had “mad cow disease” (bovine spongiform encephalopathy, or BSE) illustrated the potential for such consequences (see page 27).

Of ongoing interest are the continuing changes occurring in the livestock and meat markets, including concentration and consolidation in livestock production. Another issue is increasing globalization, which not only has expanded export opportunities for U.S. producers but also exposed them to more competition from imports. Producer groups, meat packers, and others have brought their perspectives on the impacts — both positive and negative — to the attention of lawmakers, who have debated and in some cases passed legislation to address these issues. For example, the U.S. Department of Agriculture (USDA) oversees a law on mandatory price reporting for large meat packers, and it is now implementing a law requiring that all red meat muscle cuts and ground products (along with fresh fruits and vegetables, peanuts, and seafood) carry country of origin information for the retail consumer, effective September 30, 2004. Legislation limiting packer ownership or control of animals before slaughter, and providing USDA with more tools to address competitiveness issues in the industry re-emerged in the 108th Congress as well.

U.S. beef, pork, and poultry producers have long prided themselves as self-reliant industries that have operated with few if any federal subsidies. Yet in recent years, government payments have become more commonplace, at least for livestock producers — particularly in the form of disaster aid and environmental technical and cost-sharing support. On the other hand, such assistance is significantly less than the billions of dollars annually provided to crop and milk producers. Moreover, animal agriculture can be impacted by a variety of government policies like environmental regulation, food safety laws, and trade disputes and negotiations.

Industry Overview

Economic Situation. Animal production is a significant segment of U.S. agriculture. In 2002, for example, U.S. farmers and ranchers received \$94 billion from the sale of animal products, or about half of all U.S. farm cash receipts. In 2000 and 2001, they received \$100 billion and \$106 billion, respectively. Cash receipts from feed crops add another \$20-\$25 billion to the value of the sector (not including soybeans and other oilseeds, which also are often fed to animals).

The fall in cash receipts in 2002 was due to a number of unfavorable conditions. At USDA's Agricultural Outlook Forum 2003, a livestock analyst summarized:

The livestock and poultry sectors experienced a stressful year in 2002 as a confluence of weather, disease and trade disturbances affected markets. Drought gripped much of the nation, diminishing forage and increasing grain costs. As a result, economic conditions which might have been favorable for cow/calf producers to hold back heifers to add to the breeding herd were overshadowed by the continued inability of the forage base to maintain the existing herd and the cattle cycle entered its 7th year of liquidation. Hog producers expanded farrowings by about 3 percent in the first half of 2002 but as hog prices dropped in mid 2002 and grain prices rose to 5 year highs, producers began liquidating sows and reduced farrowings below year earlier levels. As a result, inventories which were 3 percent above 2001 on June 1, finished the year 1 percent below 2001. The poultry sector was hit with several outbreaks of disease which although having limited impacts on aggregate production, resulted in disruptions of trade flows. Coupled with ongoing disputes with Russia on poultry imports, exports fell sharply and pushed large supplies on the domestic market. Faced with poor returns, the broiler industry began a sustained production cutback in the fall of 2002.

As the sector moves into 2003, prospects for livestock and poultry are somewhat improved. Although grain prices are higher than a year ago, a return to normal weather may insure adequate forage supplies for the reduced inventory. Tighter inventories should help support livestock and poultry prices during the year, setting the stage for an expansion in inventories in the next years. Hog inventories may begin increasing next year and cattle, the year beyond. Trade prospects are improved. Although several countries have instituted barriers which may limit growth in exports to those countries, it is hoped that they will bring a degree of normalcy to trade patterns. However, a number of uncertainties overhang any forecast in 2003. The economy remains sluggish and any economic disruption could limit meat demand. Disease and food safety concerns are increasing and could derail any expansion if foreign or domestic consumers shy away from meat consumption.¹

Table 1 contains more recent outlook data for meat and poultry. These newer USDA data serve to illustrate that externalities like trade problems and animal disease outbreaks can alter forecasts (see "Trade," below). For example, the Canadian BSE outbreak contributed, along with other factors, to record-high cattle

¹Shagam, Shayle D. World Agricultural Outlook Board, USDA. February 21, 2003.

prices in the fall of 2003. These types of changing conditions help to form the backdrop for animal agriculture issues in Congress.

Table 1. Meat & Poultry: Selected Industry Data

	2001	2002	2003*	2004*
Beef				
Production (million lbs.)	26,107	27,090	26,649	25,375
Fed steer prices (\$/100 lbs.)	72.71	67.04	81.35	79-86
Feeder steer prices (\$/100 lbs.)	88.20	80.04	87-88	87-96
Consumption (lbs. per cap.)	66.2	67.6	65.2	62.2
Beef/veal exports (million lbs.)	2,269	2,447	2,628	2,660
Beef/veal imports (million lbs.)	3,164	3,218	2,891	3,430
Pork				
Production (million lbs.)	19,138	19,664	19,668	19,775
Hog prices (\$/100 lbs.)	45.81	34.92	39.73	38-42
Consumption (lbs. per cap.)	50.2	51.5	51.2	50.3
Pork exports (million lbs.)	1,560	1,611	1,681	1,695
Pork imports (million lbs.)	951	1,070	1,250	1,375
Broilers				
Production (million lbs.)	31,266	31,895	32,210	32,894
Broiler prices (cts./lb.)	59.10	55.60	61.30	58-63
Consumption (lbs. per cap.)	76.6	80.5	80.6	81.2
Broiler exports (million lbs.)	5,555	4,807	4,916	5,100
Broiler imports (million lbs.)	14	12	13	12
Turkeys				
Production (million lbs.)	5,562	5,713	5,717	5,790
Prices (cts./lb.)	66.30	64.50	61.20	61-66
Consumption (lbs. per cap.)	17.5	17.7	17.7	17.8
Turkey exports (million lbs.)	487	439	452	465
Turkey imports (million lbs.)	1	1	1	1

Source: USDA/ERS, *Livestock, Dairy & Poultry Outlook*, various issues; USDA, *World Agricultural Supply and Demand Estimates*, various issues.

* Forecast.

Trade. The United States is the world's leading producer, consumer, and importer of beef, and the second leading exporter, holding 20% or more of the world export share, according to USDA. The United States is the third leading pork producer, consumer, importer and exporter, also with an approximately 20% market share. It is also the leading consumer, producer, and exporter of poultry meat,

dominating global exports with about 45% of market share. Total red and poultry meat exports experienced strong annual gains for 16 years through 2001, reaching nearly 5 million metric tons (MMT) valued at \$7.4 billion, before declining in 2002. Both red meat and poultry meat exports were expected increase in 2003, USDA reports.

USDA analysts note that, while trade prospects look brighter, a number of uncertainties have affected foreign (and domestic) demand, including sluggish economic conditions, and animal disease and food safety concerns in some markets. For example, beef demand in Japan, the number one foreign market for U.S. beef, was disrupted when that country in September 2001 reported its first cases of bovine spongiform encephalopathy (BSE or “mad cow disease”). Then, the discovery of BSE in a Canadian cow in 2003 led to a demand by Japan (and South Korea) that U.S. beef shipments begin to carry verification that they are of U.S. origin.²

After assessing the risks of reopening the border, U.S. officials began admitting some (low-risk) Canadian beef products in September 2003. Officials are currently working on a proposal that might allow younger Canadian cattle to enter, perhaps starting in 2004. Meanwhile, USDA and trade reports indicate that, as a result of the 2003 import suspensions and other factors, U.S. cattle supplies were the lowest in a number of years, contributing to the dramatic increases in U.S. cattle prices.

Separately, Japan has increased tariffs on beef imports, including from the United States (see page 18 for an explanation). Existing or impending foreign-imposed import barriers in other key export markets, which U.S. trade officials are working to reduce or eliminate, also add to uncertainties.

Industry Structure. Consolidation and concentration have fueled ongoing congressional interest in the structure and business methods of agriculture. Animal production and marketing in particular have been moving toward fewer and larger operations in recent years. Ownership or tight control of more than one phase of production and marketing by a single firm (known as vertical integration or coordination) also is more common.

Consolidation and concentration have occurred at varying paces within the animal production, processing, and marketing sectors. The most dramatic changes in recent years have occurred in the hog industry. Twenty-five years ago, the industry had many more smaller operations that often were part of traditional crop-livestock farms, where every phase from conception through finishing took place. Today, U.S. hog production is characterized by a fewer number of operations that are very large and likely specialize in only one or two production steps. Large firms more typically own the pigs, contract their production among many growers, and likely control or coordinate slaughter, processing, and marketing.

²In early October 2003 U.S. officials were trying to learn the details about a Japanese bull that recently may have tested positive for BSE. See CRS Electronic Briefing Book, *Agriculture Policy*, at [<http://www.congress.gov/brbk/html/ebagr1.shtml>], page on “‘Mad Cow’ Disease,” for details.

Between 1994 and 2001, the number of hog farms declined from over 200,000 to approximately 80,000. However, the hog population has remained relatively stable at an average of 60 million head due to consolidation on larger farms: the percent of hogs on farms with 2,000 or more head increased from 37% in 1994 to nearly 75% in 2001, according to USDA. As of 2002, nearly half of the U.S. hog inventory was owned by operations with more than 50,000 head.³ Post-production, the four largest firms' share of hog slaughter climbed from 40% in 1990 to 45% in 1994 to 57% in 2001, according to industry trade data. These packers now purchase at most a quarter of their hogs on the spot market, compared with nearly 90% a decade earlier, according to one survey by university agricultural economists.

By contrast, poultry production and processing has been vertically integrated for decades, almost from its start as a commercial industry.

Structural changes in the beef industry generally have not been as dramatic in recent years as for pork. Small operations still produce the majority of beef cattle in the United States, and three quarters of the nation's beef cattle spend at least some portion of their life on a small farm, according to USDA.⁴ Nonetheless, the cattle feeding industry (the phase after cow-calving and before slaughter) continues to shift toward a small number of very large specialized feedlots that are increasingly vertically integrated with the cow-calf and processing sectors. Feedlots with 1,000 head or more comprised 2% of the feedlots but marketed 85% of the fed (slaughter-ready) cattle. Feedlots with 32,000 head marketed 40% of the fed cattle.⁵ The four largest beef packers accounted for 68% of all slaughter in 2001, about the same as in 1994 but up from 59% in 1990, according to industry trade statistics.⁶

Debate has revolved around the impacts — negative and positive — of industry structural changes on livestock prices, on the traditional system of smaller-sized, independent, family-based farms and ranches, and on the rural communities where they live and do business. Also at issue are implications for consumers, for trade in a global economy, and what role government should play in monitoring and regulating agricultural markets. Policy makers are examining whether current laws for ensuring competition and antitrust still are appropriate — and are properly enforced — as well as whether new policy approaches might be considered.

³USDA, Economic Research Service (ERS). *Economic and Structural Relationships in U.S. Hog Production* (Agricultural Economic Report No. 818), February 2003.

⁴ERS, "Where's the Beef? Small Farms Produce Majority of Cattle," *Agricultural Outlook*, December 2002. The article provides a definition of a small cattle operation, which differs depending upon whether it is full-time or part-time.

⁵ERS briefing room on cattle at [<http://www.ers.usda.gov/Briefing/Cattle/Background.htm>].

⁶The large farmer-owned cooperative Farmland Industries, which was the fourth-largest cattle slaughter firm and the fifth-largest hog slaughter firm (source: *Cattle Buyers Weekly*), declared bankruptcy protection in 2002. Smithfield Foods, the largest U.S. hog slaughter firm, is moving to acquire Farmland Food, the cooperative's hog business, which would increase Smithfield's market share from 20% to 27%. See: Tweeten, Luther, July 23, 2003, testimony before the Senate Judiciary Committee. Tweeten's testimony argues that the pending acquisition will bring greater benefits than costs. It can be viewed at [<http://judiciary.senate.gov/hearing.cfm?id=869>].

Market Oversight. USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) is charged with oversight of animal markets, primarily under the Packers and Stockyards Act (P&S Act) of 1921, as amended (7 USC §192). However, the agency does not have direct antitrust authority. Rather, its role is to maintain fair competition rules. Specifically, the P&S Act makes it illegal for a meat packer or poultry dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; give undue/unreasonable preference/advantage to persons or localities; apportion supply among packers in restraint of commerce; trade in articles to manipulate or control prices, or to create a monopoly; or conspire to apportion territory, or sales, or to manipulate or control prices. GIPSA is authorized to investigate alleged violations in the livestock industry but not the poultry industry.

The Department of Justice (DOJ) has the authority under several statutes to prosecute anti-competitive acts generally, including violations of the P&S Act upon referral by GIPSA.⁷ Generally, the goal of antitrust regulation is to protect competition for the benefit of consumers. Regulations are not intended to keep existing competitors (producers) in the market, but rather to protect the market from unlawful anti-competitive behavior. USDA has undertaken a number of actions intended to address concentration and to promote competition, including: (1) enhanced reporting of livestock prices and other marketing data, (2) expanded investigations of procurement and pricing practices in the fed cattle, hog, and lamb sectors, and of poultry companies' contracts with growers, and (3) an overhaul of GIPSA to strengthen its ability to investigate and pursue prosecution of anti-competitive practices

Several initiatives have been aimed at strengthening USDA's oversight of livestock markets and/or studying them. A September 2000 report by the General Accounting Office (GAO) determined that GIPSA lacks the staff, the budget, and the expertise to investigate anti-competitive behavior in the livestock industry.⁸ GAO's recommendations included calls for an earlier integration of attorneys in the planning and review of investigations, and for closer consultation between GIPSA, DOJ, and the Federal Trade Commission (FTC) during investigations. A requirement that USDA implement GAO's recommendations for improving the administration of the P&S Act was signed into law on November 9, 2000 (P.L. 106-472).

Examples of other federal agencies that exert various regulatory or oversight authorities over animal industry are USDA's Agricultural Marketing Service (e.g., market price reporting and country of origin labeling); USDA's Food Safety and Inspection Service (meat and poultry food safety); USDA's APHIS (animal health protection); the Environmental Protection Agency (regulation of discharges from large animal feeding operations); and the Food and Drug Administration (animal drug regulation).

⁷For a more detailed description of the various authorities and agencies involved, see CRS Report RS20562, *Merger and Antitrust Issues in Agriculture: Statutes and Agencies*.

⁸U.S. Government Accounting Office. RCED-00-242: *Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices*. September 2000.

Packer Ownership

Issue

More packers today are feeding animals that they own in advance of slaughter, or are using contracts with producers to obtain their animals. Critics contend that, as packers buy fewer animals on the spot (open or public) market, they gain excessive market power, in part through less price transparency. They want Congress to enact legislation that would ban packer ownership and control of livestock.

Background

Many animal producers believe that the increasing concentration and other changes in their industries have resulted in a less competitive market environment and contributed to lower prices than they otherwise could receive. They argue that, as meat packers (those who slaughter and process animals) acquire more of their production needs through direct ownership, through closed contracts with animal feeders, or through other marketing arrangements, these packers purchase fewer animals on the spot market. The resulting reduction in price transparency works to their increasing disadvantage, they argue, because packers have more access to pricing information (and the ability to use it advantageously) than do producers.

USDA and private market analysts believe other factors, like imbalances in supply and demand, are the most significant factors in price determination. Those who defend marketing contracts say they provide more stable producer prices than the spot market. Opponents of a packer ban also argue that it would undermine production efficiency gains made in recent years. They contend that production and processing firms must become larger in order to capture lower per-unit costs when operating at or near capacity. They argue that vertical coordination and the use of advance marketing arrangements ensure a steady supply to fill this capacity. Such arrangements also are a reflection of today's agricultural markets, which are shifting from the production of a few homogenous commodities (e.g., cattle, hogs) without a particular market in mind, to creation of a wider variety of specific, consistently high-quality products in response to consumer signals, they assert.

Past government-sponsored studies have been inconclusive on the relationship between agribusiness consolidation and farm prices. One, *Concentration in Agriculture: A Report of the USDA Advisory Committee* (June 1996), confirmed widespread producer distrust of cattle pricing and procurement by packers. Among its recommendations were improved market data collection (to reflect modern marketing practices), better access to the data by all segments of the industry, and more vigorous enforcement of existing antitrust laws. (Also see CRS Report RL31553, *Livestock: A Ban on Packer Ownership*.)

Role of Congress

In the 107th Congress, the Senate farm bill (S. 1731; H.R. 2646 as amended) contained a provision (Johnson amendment) that would have prohibited packers from owning, feeding, or controlling livestock for more than 14 days prior to slaughter.

Livestock producer-owned cooperatives and entities owned by such cooperatives, and producer-owned packers that slaughter less than 2% of U.S. totals were exempted from the ban. The provision was not in the House-passed farm bill (H.R. 2646), and was deleted by House-Senate conferees from the final legislation (P.L. 107-171). Conferees instead promised to conduct a comprehensive examination of U.S. livestock markets and potential legislative solutions. The chairman of the House Agriculture Committee, in August 2002, sent a letter to producer groups, economists, packers, and others asking for answers to more than 20 detailed questions on the current state of the markets.

The 108th Congress provided, in the consolidated appropriations act (P.L. 108-7) covering FY2003 funding for USDA, \$4.5 million for a broad, 2-year study of the market and economic implications of laws that would prohibit packer control of livestock. GIPSA, which is responsible for the study, was directed in report language to tap those with industrial organization and business expertise (i.e., beyond traditional agricultural economics).

GIPSA proposed, in its next (FY2004) budget request, an increase of \$1 million to implement a new pilot program to audit the top four steer and heifer meat packers. Such audits, which USDA said have never been conducted, are aimed at assessing the integrity of the packers' financial records. However, the House-passed USDA appropriation (H.R. 2673; H.Rept. 108-193) does not include this funding. The Senate Appropriations Committee version (S. 1427; S.Rept. 108-107) was awaiting floor action after the August recess. Also in the FY2004 GIPSA budget proposal is a \$500,000 request to conduct a "comprehensive, industry-wide review" of the P&S Act and its regulations, which has not occurred since its passage in 1921, even though "the industries it regulates have undergone dramatic structural changes," USDA's budget summary states.

Meanwhile, companion bills banning packer ownership re-emerged in 2003 in the Senate (S. 27 by Senator Grassley) and House (H.R. 719 by Representative Boswell). These measures would prohibit packers from owning, feeding, or controlling livestock for more than 7 days prior to slaughter. Farmer cooperative-owned packers exempted from the ban would be those that process fewer than 100,000 hogs or 125,000 cattle per year. This number would be consistent with the exemption level in the livestock mandatory price reporting law, now in place under P.L. 106-78 (see page 9). Senator Grassley also introduced S. 325, to require large packers to buy 25% of their daily slaughter needs from the spot market; and S. 1644, to prohibit packers with annual slaughter capacity of more than 20 million swine from slaughtering more than 10 million packer-owned swine in a calendar year. Senator Enzi introduced a bill (S. 1044) that, among things, would require forward contracts (also defined as those providing for delivery more than 7 days after the contract date) to have a fixed based price on the day the contract is signed, and to limit the size of each contract to no more than 40 cattle or 30 swine.

On July 23, 2003, the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights held a hearing "Agricultural Consolidation and the Smithfield/Farmland Deal," where the packer ownership issue was a major topic of debate. The packer ban was the subject of a June 21, 2003, field hearing in Nebraska held by the House Agriculture Subcommittee on Livestock and Horticulture.

Mandatory Price Reporting

Issue

The Livestock Mandatory Price Reporting (LMPR) law, implemented in 2001 by USDA, is due to expire in October 2004, near the end of the 108th Congress. LMPR was passed as part of USDA's FY2000 appropriation (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.

Background and Analysis

Under the broad authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), USDA's Agricultural Marketing Service (AMS) had long collected livestock and meat price and related market information, on a voluntary basis. The agency's trained market reporters attended public livestock auctions, visited feedlots and packing plants, personally contacted many individual buyers and sellers, and consulted with trade associations to develop data so buyers and sellers all would have access to accurate and objective information from major markets throughout the country. The information was 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 more recent years, growing numbers of animals have been sold under private marketing arrangements where prices have not been 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.

LMPR requires the reporting of market information by meatpackers who slaughter an average of at least 125,000 cattle, 100,000 hogs, or 75,000 lambs per year and by importers with annual imports of 5,000 tons of lamb. USDA in turn must publish frequent, detailed reports on these transactions. 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. New reports under LMPR 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 are still published under the voluntary system.)

Role of Congress

The 108th Congress could be asked to consider legislation extending mandatory price reporting. If so, among the issues likely to arise are: whether the program has in fact brought more transparency to livestock markets, and is more effective at transmitting price information, than the longstanding voluntary system; whether the cost and administrative burdens outweigh benefits; and whether price data problems that arose with USDA's implementation of the program have since been fixed, as officials assert. (See also CRS Report RS20079, *Livestock Mandatory Price Reporting*.)

Country-of-Origin Labeling

Issue

Federal law requires most imports, including many food items, to bear labels informing the “ultimate purchaser” of their country of origin. Various raw agricultural products generally have been exempt. The 2002 farm bill (P.L. 107-171) contains a requirement that many retailers provide, starting on September 30, 2004, country-of-origin labeling (COOL) on fresh fruits and vegetables, red meats, seafood, and peanuts. The program is voluntary until then. Some food industry and producer groups want Congress to override the mandate; such language (banning funds for implementation of COOL for meats only) is in the House-passed version of the FY2004 USDA appropriation (H.R. 2673). Other producer groups are seeking retention of the mandate.

Background and Analysis

In the 107th Congress, the House-passed farm bill (H.R. 2646) had included COOL for fresh produce only. The Senate-passed version extended it also to meats, peanuts, and seafood. Conferees in 2002 essentially accepted the Senate coverage.

Proponents have argued that COOL will help U.S. farmers and ranchers because consumers, if offered a clearer choice, would choose domestic over foreign farm products. They argue that the economic benefits to U.S. producers will outweigh implementation costs, which, they believe, have been grossly overestimated by USDA and other opponents. Supporters maintain that consumers have a right to know where their food is from, particularly in light of recent animal health and food safety concerns such as outbreaks of bovine spongiform encephalopathy (BSE, or “mad cow disease”) in some other countries — many of which, they add, have their own COOL requirements.

Critics counter that COOL is a thinly disguised trade barrier intended to increase the costs of imports, and that it will undermine the United States’ own efforts to reduce foreign trade barriers and expand markets for U.S. producers. Critics argue that implementation burdens will far outweigh any economic benefits to U.S. producers and those who market their commodities; and that the U.S. meat industry in particular will be less competitive with poultry, which is not covered by COOL. Opponents also maintain that mandatory COOL does not increase food safety and public health (nor does it protect animal health); they contend that scientifically based protection programs, not geographical labels, are the answer.

Role of Congress

The House Appropriations Committee in June 2003 reported the FY2004 USDA appropriation (H.R. 2673; H.Rept. 108-193) with language prohibiting the use of funds for implementing mandatory COOL for meats only. On July 14, 2003, the House defeated a floor amendment to delete the committee-approved prohibition, 208-193, before clearing the entire bill. In the Senate, the committee-reported version (S. 1427; S.Rept. 108-107) lacks the spending ban. Several proposals to

amend COOL have been offered. One bill (H.R. 2270) would extend the COOL requirement to poultry and goat meat, and would permit animals born prior to October 1, 2004, to be exempt from coverage. Another proposal (H.R. 3083) is intended to ease producer recordkeeping requirements, delete the current law's prohibition against a USDA-imposed mandatory animal identification system, and eliminate third-party audit provisions.

The Senate Agriculture Subcommittee on Marketing, Inspection, and Product Promotion held a field hearing on COOL on April 22, 2003 in Joplin, Missouri. The House Agriculture Committee held a hearing to review COOL on June 26, 2003, and its subcommittee on Livestock and Horticulture held another (mainly on non-meat commodities) on October 1, 2003.

(For more information see CRS Report 97-508, *Country-of-Origin Labeling for Foods*; and CRS Report RL32012, *Animal Identification and Meat Traceability*. Also, the General Accounting Office recently issued a report examining the cost impacts and other aspects of COOL. See GAO-03-780, *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law*.)

Disaster Aid and Economic Assistance

Issue

Early in the 108th Congress, lawmakers passed a consolidated FY2003 appropriations measure (P.L. 108-7) that includes a \$3.1 billion agricultural disaster assistance package. A portion of the funds is earmarked for livestock producers, supplementing actions taken earlier by the Administration to help compensate them for losses due to more than 2 years of drought. Continuing weather-related and/or revenue losses could create pressure for additional legislative action.

Background and Analysis

Severe drought adversely impacted crop and livestock production throughout the U.S. farm belt in 2001 and 2002; it continued in some areas in 2003. The 107th Congress debated, and the 108th Congress ultimately provided, *ad hoc* assistance for producers suffering disaster-related losses during the period. Proponents of the additional assistance had argued that ongoing programs for natural disaster assistance like crop insurance, the noninsured assistance program, and emergency disaster loans were inadequate, particularly for livestock producers. Others raised concerns about the cost of such additional aid, particularly in the face of a large federal budget deficit.

Of the \$3.1 billion in P.L. 108-7 for emergency farm assistance, \$250 million is specifically provided to compensate livestock producers for 2001 or 2002 forage or feed losses caused by natural disaster. The program is being administered like the *ad hoc* 1999 livestock assistance program (LAP). To receive LAP aid, a producer must be in a county declared a disaster by the President or Secretary of Agriculture, and must choose between either 2001 or 2002 losses. USDA announced that program signup will run from August 6 through October 24, 2003. It is intended to address the needs of producers not adequately covered by the livestock compensation program (LCP) (see below). Producers cannot, however, receive payments under both programs.⁹

P.L. 108-7 also removes date restrictions for LCP eligibility. USDA implemented this program administratively on October 1, 2002, to provide direct payments to producers of cattle, sheep, goats and buffalo who were in a county declared a disaster area by the Secretary between January 1, 2001, and September 19, 2002. Payments were set at \$18 per adult beef cattle, \$13.50 for certain livestock over 500 pounds, and \$4.50 per sheep or goat, with per person payment limits of \$40,000. Those with qualifying gross income over \$2.5 million were ineligible.

P.L. 108-7, extended LCP to eligible producers in any county declared a disaster area between January 1, 2001, and February 20, 2003 and who did not already receive LCP assistance. Signup for the expanded program was April 1 through June 2003. Catfish producers also are now eligible for a total of \$34 million in program

⁹Information and updates on these programs can be found at [<http://disaster.fsa.usda.gov/>].

funds, to be provided through state agencies. The original LCP was estimated by USDA to cost \$752 million. In early December 2002, USDA administratively made available another \$185 million, bringing available funding to \$937 million. As of August 7, 2003, USDA had made more than \$1 billion in LCP payments.

Funding for the program originally was provided through USDA Section 32 funds, which originate from a portion of Customs receipts and which typically are used to buy surplus agricultural commodities for distribution to domestic nutrition programs. Payments to producers in newly qualified counties will be funded through USDA's Commodity Credit Corporation (CCC). P.L. 108-7 also provided \$250 million in CCC funds to compensate Section 32 for a portion of the past payments.¹⁰

USDA also has exercised its standing authority to release other disaster-related livestock assistance. For example, in fall 2002, it released more than 250 million pounds of nonfat dry milk (NDM) that it had acquired earlier under the dairy price support program. The stocks were provided to mills where eligible livestock producers could use vouchers to buy feed, valued at \$150 million, made from the NDM. In early April 2003, the Secretary of Agriculture announced the release of more NDM stocks to approximately 100 counties in nine states where extreme drought persisted: Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, South Dakota, Utah, and Wyoming. In mid-June, the program was expanded to a total of 134 counties in 10 states (Idaho was added). In other administrative actions USDA by late summer 2003:

- Had been issuing more than \$16 million in refunds to eligible producers in 28 states whose Conservation Reserve Program payments were reduced last year for haying and grazing on CRP lands;
- Had created a Drought Coordinating Council to monitor ongoing conditions and to coordinate responses;
- Had announced pilot programs extending revenue insurance to fed or feeder cattle producers in 11 states (these are risk management pilots that will provide price protection coverage from 70-95% of expected ending value, with the Federal Crop Insurance Corporation subsidizing 13% of a producer's premiums). A similar pilot for slaughter hog producers is entering its second year.

Role of Congress

Whether the 108th Congress will determine a need for additional disaster aid in 2003 and/or 2004 remains to be seen. For example, S. 1626 is a proposed emergency aid bill that would include coverage for livestock-related losses. Deliberations on this or other measures will be influenced by, among other things, weather and economic conditions in farm states, federal spending constraints, and electoral politics. Underlying such deliberations are not only the effectiveness of current federal emergency disaster aid, but also what role, if any, the government should play in helping farmers and ranchers manage risk.

¹⁰See CRS Report RS20235, *Farm and Food Support Under USDA's Section 32 Program*.

Commodity Promotion Programs (Check-Offs)

Issue

Over the past 35 years, Congress has enacted laws authorizing generic promotion (“check-off”) programs for various farm products. Supporters view the programs, which fund advertising, research and other market-enhancing activities, as self-help; government involvement and cost are minimal. Producers and, often, importers, are required to fund them through assessments, usually deducted from revenue at time of sale (thus the name check-off). The U.S. Department of Agriculture’s (USDA’s) role is largely limited to administrative and oversight duties.

Both beef and pork are among the 15 or so agricultural commodities subject to federally-mandated assessments under free-standing research and promotion programs. A vocal segment of these industries has been challenging the mandatory aspects of check-offs, which, they contend, are “taxes” for activities they would not underwrite voluntarily. Groups representing beef and pork producers have mounted legal actions in the federal courts. Supreme Court rulings on two similar cases involving mushrooms, and peaches and nectarines, provide some precedent for the current pork and beef cases. These legal actions have created much uncertainty about the check-off programs’ future.

Background and Analysis

In 1997, the Supreme Court ruled (in *Glickman v. Wileman Bros. & Elliot, Inc.*) that check-offs for peaches and nectarines did not violate plaintiffs’ First Amendment rights. However, in 2001 the Court found (in *United States v. United Foods, Inc.*) that the mushroom check-off was a violation of the First Amendment and therefore unconstitutional because it forced producers to pay for commercial speech. The Court reasoned that, unlike the 1997 case, the mushroom check-off is a stand-alone program whose principal objective was advertising. The peach and nectarine order, on the other hand, rather than a stand-alone promotion program, is part of a more comprehensive regulatory scheme, i.e., one of the marketing orders authorized by the Agricultural Marketing Agreement Act of 1937 as amended. (For an explanation see CRS Report RS20512, *Federal Marketing Orders for Fruits, Vegetables, and Specialty Crops.*)

These Supreme Court decisions loom over legal challenges of the beef and pork check-off programs. On June 21, 2002, a U.S. District Court in South Dakota agreed that the national beef check-off (which began in 1986 and has funded, among other things, the “Beef — it’s what’s for dinner” campaign) also violates the First Amendment. The court ordered all beef assessments (amounting to a total of more than \$80 million annually) to halt by July 15, 2002, but the order was stayed while the U.S. Government appeals the ruling. A panel of the Eighth Circuit Court of Appeals, on July 8, 2003, upheld the lower court’s ruling. On the other hand, on November 1, 2002, a U.S. District Court in Montana ruled in a separate case that the beef check-off law is constitutional.

On October 25, 2002, a U.S. District Court in Michigan ruled that the pork check-off law (the program began in 1986) also is unconstitutional because it violates complainants' rights of free speech and association; this ruling also was stayed pending appeal. The pork program collects a total of about \$55-\$60 million annually. The Supreme Court ultimately could again be called upon to resolve both the beef and pork cases.

Also pursuing regulatory avenues, pork check-off opponents coordinated by the Campaign for Family Farms requested that USDA conduct a producer referendum on whether or not to continue the program. In August-September 2000, USDA conducted a non-binding referendum, which, the Department determined, garnered enough votes to end the check-off. However, the National Pork Producers Council (NPPC) led a court challenge to block a final termination rule. Subsequently, USDA on February 28, 2001, announced a settlement with the suit's plaintiffs allowing the program to continue with modifications. The agreement is aimed at ensuring that the national pork promotion board operates separately from NPPC, and that the board will be more responsive to producers' concerns about its activities. In addition, USDA is to conduct a survey no earlier than June 2003, and if 15% of producers and importers favor a binding referendum, it must be held within one year.

Role of Congress

Other than passing authorizations enabling producer groups to set up check-off programs, and periodically conducting oversight, lawmakers have not become deeply involved in the programs — in contrast to their work on major farm subsidies, where high taxpayer costs and other issues have made the policies more visible. That could change if check-offs continue to stir controversy and the courts overturn their legality. (See CRS Report 95-353, *Federal Farm Promotion (“Check-off”) Programs*. USDA's Agricultural Marketing Service also has information about the check-off programs on its website at [<http://www.ams.usda.gov/lsg/mpb/l srp.htm>].)

Meat and Poultry Trade Disputes

Issue

The United States is one of the world's leaders in meat and poultry trade (see page 3). Meat and poultry products are among the fastest growing components of U.S. agricultural exports. However, at the same time that the industries' reliance on foreign markets is increasing, some countries have instituted barriers that have disrupted exports, threatened future growth, and heightened trade tensions.

Background and Analysis

Russia. Russia announced that it was imposing import quotas on poultry and tariff-rate quotas on beef and pork, effective April 1, 2003. U.S. exports of poultry to Russia, by far our largest poultry customer, already had declined by approximately a third in 2002 (from a USDA-reported record of approximately one million metric tons), after Russia banned them effective March 10, 2002, ostensibly out of concerns about product safety. During extensive negotiations, U.S. officials several times announced that these safety issues had been resolved. However, differences over technical requirements lingered into fall 2003 — long after the Russian agriculture minister told U.S. reporters that most U.S. plants had met the required health standards and that all of them would be inspected by July 1, 2003.

Russia's new world import quota for poultry was reported to be 744,000 metric tons (MT) for the rest of 2003 (May-December), with annual quotas of 1.05 million MT to be in place for 2004 and 2005. Much of this total poultry quota was expected to be allocated to the United States. Although the United States sells little pork or beef to Russia, new tariff-rate quotas on these products would effectively block any future U.S. growth there, industry officials had contended. In September 2003, the U.S. Trade Representative (USTR) announced what was characterized as a favorable U.S.-Russia market access agreement for poultry, beef, and pork. However, as of mid-October, different Russian officials were sending conflicting reports as to whether such an agreement had been reached.

Mexico. U.S. pork and poultry exports to Mexico have been jeopardized by developments in the wake of the scheduled January 1, 2003, end to import duties for those and other agricultural products under the North American Free Trade Agreement (NAFTA). Mexico historically is the third largest market for U.S. poultry meat. In late January 2003, the Administration announced a U.S. industry-supported agreement on poultry that established a 6-month safeguard tariff-rate quota (TRQ) of 50,000 MT on U.S. chicken leg quarters entering Mexico, with an over-quota tariff of 99%. The Administration then negotiated a longer-term agreement to head off a Mexican safeguard investigation that could have resulted in tariffs of up to 240%. This longer-term agreement, announced in July 2003, sets the TRQ for U.S. chicken leg quarters at 46,950 MT from July-December 2003, with over-quota tariffs of 98.8%. Annual TRQs will be in effect for an additional 4 years: 101,000MT in 2004 with an over-quota tariff of 79%; gradually changing to a TRQ of 104,060 by 2007 with an over-quota tariff of 19.8%. (In-quota tariffs are zero, and the TRQs will not be in effect after 2007 under the agreement.)

Mexico, the second largest and fastest growing U.S. pork export market, also launched on January 7, 2003, an anti-dumping investigation of U.S. pork imports. Preliminary findings, likely this year, could result in high duties and depress U.S. exports.¹¹ USTR announced on June 16, 2003, the filing of a WTO case against Mexico challenging antidumping duties it opposed on U.S. beef in April 2000; already pending is a U.S. challenge of the beef duties under Chapter 19 of NAFTA. Meanwhile, Mexican cattle producers have petitioned the government for a safeguard investigation on imported beef; Mexico is the second largest U.S. beef export market after Japan.

European Union. A longstanding dispute with the European Union (EU) is its ban since 1989 on the import of U.S. beef produced with hormones. In 1997, the WTO ruled that the EU cannot ban, without scientific justification, such imports. The WTO authorized U.S. retaliation of \$117 million in prohibitively high U.S. duties on a variety of EU agricultural imports. The EU offered to compensate the United States by enlarging the 20,000 MT quota for non-hormone treated beef in lieu of lifting the ban. The United States has maintained that such compensation, unless contingent on removing the ban, is unacceptable. On October 15, 2003, *The Wall Street Journal* reported that the EU will soon announce that it now has scientific evidence to support the ban — an indication that the issue is far from resolved.

Japan. The United States and other countries (Australia, New Zealand, and Canada) that export beef to Japan were hit by an increase in Japanese tariffs on frozen and chilled beef imports, effective August 1, 2003, to 50% from their current 38.5%. Under so-called “snapback” tariff provisions of the WTO trade rules, Japan can impose the higher tariffs if imports increase by 117%. Japan used, as the base period for calculating this increase, the time when Japanese consumption was unusually low due to the BSE outbreaks (see above). The higher tariffs are likely to remain in effect until March 31, 2004, according to USDA officials.

Role of Congress

Generally, Congress conducts vigorous oversight of the Administration’s trade dispute activities. On the Russian meat and poultry issue, for example, some Members of Congress signed letters to the President urging him to be more aggressive in resolving the problem. Meanwhile, Section 407 of the Trade and Development Act of 2000 (P.L. 106-200) directs the U.S. Trade Representative (USTR) periodically to revise the list of products subject to trade retaliation, on the premise that rotating products subject to higher duties will expose a broader swath of an offending country’s economy to penalties, thereby creating more pressure for compliance. This so-called “carousel” provision was enacted partly out of frustration over the EU beef hormone and other disputes, but the USTR so far has not employed the provision. Lawmakers also could seek to withhold support for other Administration trade initiatives if they are dissatisfied with trade dispute resolution.

¹¹Mexico did announce in late May 2003 that it was lifting its anti-dumping duties on imports of live U.S. hogs, which had been in effect since 1999. However, anti-dumping duties on pork meat are still possible this year, U.S. officials have indicated.

Trade Agreement Negotiations

Issue

The Administration has signed free trade agreements (FTAs) with Chile and Singapore. These agreements were approved by both Houses of Congress in 2003 under expedited fast-track procedures spelled out in the Trade Act of 2002 (P.L. 107-210).¹² Other bilateral negotiations are being pursued with Central America, Morocco, the Southern Africa Customs Union, and Australia, as are multilateral negotiations to secure a free trade agreement for the Americas (FTAA) and new world trading rules under the auspices of the World Trade Organization (WTO). Fast track procedures would also apply to these agreements.

Farm interests, including those representing animal agriculture, generally support the objectives of such agreements, which for U.S. producers mean removing import tariffs and other barriers that impede sales of their products in foreign markets. However, many U.S. producers have become increasingly wary of trade agreement negotiations. Some have expressed concern that trading partners have not fulfilled their commitments under existing agreements; others worry that new agreements will expose their own industries to intense competition from imports here at home. Such concerns are at play as lawmakers consider newly negotiated agreements in the 108th Congress.

Background and Analysis

A major aim of FTAs is expanding market access through tariff elimination. Agricultural interests will be concerned about the scope of commodity coverage in such FTAs and the time periods during which tariffs would be phased out. U.S. agricultural export and import sectors will have different concerns about commodity coverage and schedules, and negotiated agreements will reflect a balance between U.S. and FTA partners' interests.

Agreements that open world markets to more U.S. exports are critical to the U.S. meat and poultry sectors, where foreign sales have offered the greatest opportunities for growth. As noted earlier, total red and poultry meat exports experienced strong annual gains for 16 years through 2001, reaching nearly 5 million metric tons (MMT) valued at \$7.4 billion, before declining in 2002. Red meat and poultry meat exports are expected to begin increasing again in 2003, USDA reports.

At the same time, U.S. meat and poultry producers are concerned about any negotiations that effectively would provide foreign producers with more access to U.S. markets without offering at least comparable access to U.S. products in their own countries. One view shared by some animal and other agricultural groups is that

¹²For details on fast-track procedures for considering trade agreements and the relationship of fast track to agricultural negotiations, see CRS Report 97-817 ENR, *Agriculture and Fast Track or Trade Promotion Authority*, November 7, 2002. For further information on the Chile, Singapore, and other negotiations, see also the CRS electronic *Trade Briefing Book* at [<http://www.congress.gov/brbk/html/ebtra1.shtml>].

the current U.S. strategy, of completing a series of separate bilateral or regional trade agreements before the WTO multilateral trade negotiations are concluded, would create such unfavorable conditions. Bilaterals are primarily about reducing tariffs. Many of the trade barriers encountered by U.S. agricultural exporters involve nontariff issues, such as what they view as unjustified sanitary and phytosanitary (SPS) measures, and high foreign export and domestic subsidies.

In the view of these groups, a successful multilateral (Doha) round, now scheduled to be completed at the end of 2004, could more effectively address such issues and would be more likely to create greater long-term export growth than the bilateral and regional measures. However, progress in the Doha round has fallen far short of expectations.

Negotiations for a free trade agreement with Australia are of particular concern to U.S. animal producers. Negotiations are not expected to be completed until 2004 at the earliest.¹³ The United States has a long-running agricultural trade deficit with Australia. U.S. exports to Australia were valued at \$338 million in 2002 compared with between \$400 million and \$500 million annually 10 years earlier. Meanwhile, from just over \$1 billion annually 10 years earlier, Australia exported \$1.9 billion in agricultural products to the United States in 2002. Approximately \$1.1 billion of the 2002 value were red meats, mainly beef and some lamb. Australian beef is now subject to U.S. tariff rate quotas. Besides their concern about even greater Australian competition in these products, U.S. producer groups contend that overly rigid Australian SPS measures have blocked U.S. shipments of pork and chicken, among other agricultural products.

Role of Congress

Fast track procedures for congressional consideration of legislation to implement trade agreements include strict time limits on debate, no amendments, and an up or down vote. Congress must be notified of the Administration's intent to negotiate a trade agreement or to sign an agreement. The 2002 Trade Act requires extensive consultation between the Administration and Congress before and during negotiations. Fast track, or Trade Promotion Authority (TPA) as it is currently called, enables the President to assure trading partners that negotiated agreements will not be changed when presented to Congress. At the same time, extensive consultation and oversight requirements ensure that Congress will have a role in the negotiations.

As Congress monitors ongoing negotiations and considers implementing language for new agreements, groups representing meat and poultry producers can be expected to ensure that their perspectives and concerns are heard. Prospective bilateral and regional trade agreements, e.g., with Australia and parts of Latin America, also could receive lukewarm receptions from farm-state lawmakers if they perceive that meat and other agricultural trade disputes (see page 17) are not being resolved to their satisfaction.

¹³CRS Report RS21476, *U.S.-Australian FTA Negotiations*. This report also contains information on the agricultural aspects of the negotiations.

Environmental Issues

Issue

With animal agriculture increasingly concentrated in larger, more intensive “factory-style” production units, concerns arise about the impacts of operations on the environment, including surface water, groundwater, soil, and air. (A related issue, largely dealt with at the local level, concerns odors from large feedlots near residential areas.) Contaminants from manure, if not properly managed, also can affect human health. Policies to address such concerns include regulation, primarily of large feedlots under the Clean Water Act (CWA; 33 USC 1251 *et seq.*), as well as technical and financial assistance for producers. At issue are the effectiveness of these policies, and the appropriate roles for the public and private sector, in mitigating any adverse environmental effects.

Background and Analysis¹⁴

Animal manure frequently is used beneficially on farms to fertilize crops and add nutrients to the soil. However, as livestock production has become denser and more spatially concentrated, the amount of manure nutrients relative to the assimilative capacity of land available on farms for application has grown. Of the estimated 238,000 large U.S. animal feeding operations (AFOs), swine and poultry have seen the most growth. From 1982 to 1997, numbers of hogs raised in large AFOs increased 12-fold; the greatest geographic concentrations now are in Oklahoma, Arkansas, North Carolina, northern Iowa, and southern Minnesota. During the same period, large-AFO poultry output increased 218%, with concentrations now in southeastern and western coastal states; and Minnesota and surrounding areas.

Waste discharges from large concentrated animal feeding operations (CAFOs) into the nation’s waters are regulated under the CWA.¹⁵ The Act’s rules governing these discharges had not been revised since the 1970s, despite the many changes of the past two decades in animal agriculture. In the late 1990s, the Environmental Protection Agency (EPA) initiated a review of the regulations, in part to satisfy the settlement terms stemming from an earlier lawsuit brought by environmental groups. The Clinton Administration proposed rule revisions in December 2000, and the Bush

¹⁴Source: Primarily CRS Report RL31851, *Animal Waste and the Environment: EPA Regulation of Concentrated Animal Feeding Operations (CAFOs)*.

¹⁵Under EPA regulations, an AFO is a facility where livestock or poultry are raised or housed in confinement under the following conditions: (1) animals are confined or maintained for a total of 45 days or more in any 12 month period; and (2) crops are not sustained in the normal growing season over any portion of the lot or facility (i.e., animals are not pastured or on rangeland). CAFOs are AFOs that meet minimum size thresholds (number of animals) plus one of the following conditions: (1) pollutants are discharged into navigable waters through a manmade device; or (2) pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facilities or otherwise come into direct contact with the confined animals. CAFOs account for less than 5% of AFOs but raise more than 40% of confined U.S. livestock.

Administration issued a final, revised set of regulations on December 12, 2002 (the final rule was published in 68 *Federal Register* 7175-7274, February 12, 3003).

The new rules are expected to require an additional 11,000 CAFOs to have pollution discharge permits and manure management plans, compared to 4,500 under prior rules. Overall, the final rules are generally viewed as less stringent than the proposal, a fact that strongly influences how interest groups have responded to them. Agriculture groups have said that the final rules are workable, and they are pleased that some of the proposed requirements were scaled back, such as changes that would have made thousands more CAFOs subject to regulation. However, some continue to question EPA's authority to issue portions of the rules. Many states had been seeking more flexible approaches than EPA had proposed and welcomed the fact that the final rules retain the status quo to a large extent. Environmentalists contend that the rules rely too heavily on voluntary measures to control runoff and fail to require improved technology. Environmentalists and several agriculture industry groups have filed lawsuits challenging the rules in a number of different federal courts.

One concern of environmentalists is that no regulations address CAFO air pollutant emissions such as ammonia, hydrogen sulfide, and methane. Scientists generally believe such emissions have environmental impacts, but most believe more research is needed to determine public health impacts. Industry groups note that water pollution control technologies, the subject of CAFO rules, do not address air emissions, and proven air abatement technologies are needed before adopting rules.

Livestock operators face costs for manure handling requirements and for developing and implementing nutrient management plans. Among several programs, a key source of federal money is the Environmental Quality Incentives Program (EQIP) administered by USDA's Natural Resources Conservation Service. EQIP provides technical assistance, cost sharing, and payments to aid producers with conservation and environmental improvements and practices. Under the 2002 farm law (P.L. 107-171), annual mandatory spending for EQIP is increasing, from \$200 million to \$1.3 billion by FY2007. Sixty percent of available funding is targeted to livestock (the rest to crops). FY2003 appropriations for EQIP are \$695 million. According to the General Accounting Office, neither EPA nor the states have the staff and resources to adequately implement the water quality rules (*Livestock Agriculture, Increased EPA Oversight Will Improve Environmental Program for Concentrated Animal Feeding Operations* (GAO-03-285), January 2003).

Role of Congress

As the rules are implemented, and if new environmental concerns about animal agriculture arise, Congress could be asked to address such issues as: the adequacy of EQIP and other funding to help producers, states, and the EPA with compliance and implementation; the need for research to encourage new technologies for managing animal waste and to measure air quality impacts and priorities; and oversight of EPA, state, and farmer implementation of the rules. Also, do the revised rules reflect congressional expectations on dealing with animal waste? Are amendments needed to clarify or modify lawmakers' current views? (For example, one proposed bill, S. 1407, seeks to strengthen further the regulation of CAFOs.)

Food Safety

Issue¹⁶

USDA's Food Safety and Inspection Service (FSIS) is responsible for inspecting most meat, poultry, and processed egg products for safety, wholesomeness, and proper labeling. The Food and Drug Administration (FDA) is responsible for ensuring the safety of all other foods, including seafood. After September 11, 2001, much of Congress' and food inspection agencies' attention focused on assuring that food and the U.S. agricultural production system are adequately protected from bioterrorism. Preceding the concern with bioterrorism, Congress for years has paid close attention to the efforts of FSIS and the meat and poultry industry to address the ongoing problem of naturally occurring microbiological contamination, which is responsible for outbreaks of severe and sometimes fatal foodborne illness. A longstanding issue is the effectiveness of these efforts and the need, if any, for policy changes (such as increased FSIS resources) to improve them.

Background and Analysis

Since January 2000, all federally inspected slaughtering and processing plants are operating under the HACCP (for Hazard Analysis and Critical Control Point) inspection system. It is intended to prevent contamination by microbial pathogens at points along the manufacturing chain where it is most likely to occur. HACCP complements, not replaces, the traditional system of inspection under existing statutes, where inspectors examine every animal before and after slaughter, and are also present at least daily in plants that process meat and poultry after slaughter.

Data show that HACCP may reduce the presence of pathogens in facilities that produce meat and poultry products. Yet, outbreaks of foodborne illness and sporadic recalls of ground beef and other meat and poultry products indicate the ongoing difficulty of preventing contamination of the products themselves. Although records show that packing plants for the most part have been abiding by the mandatory standards for pathogen levels, major players in the industry argue that USDA's regulations exceed the HACCP concept by establishing what they view as impractical, expensive testing regimes and unrealistic standards. They also maintain that adding HACCP while maintaining existing requirements increases regulatory burdens for meat and poultry processors, with no tangible improvement in public health. Consumer advocates have remained supportive of HACCP, contending, among other things, that the testing program is effective at reducing pathogens because it forces companies to emphasize prevention in their operating plans.

On April 24, 2003, the National Academy of Sciences (NAS) made available its latest report on food safety. *Scientific Criteria to Ensure Safe Food* reiterates the Academy's longstanding recommendations for better connections between public health agencies and food safety regulatory agencies, and for a science-based,

¹⁶Source: Primarily CRS IB10082, *Meat and Poultry Inspection Issues*, updated regularly. See also CRS Report RL31853, *Food Safety Issues in the 108th Congress*.

transparent strategy for developing food safety criteria. The report contains several specific recommendations that NAS believes FSIS should implement as soon as possible to counter the hazard of *E. coli* O157:H7 in ground beef.

Concerns about bioterrorism preparedness after September 11, 2001, brought renewed attention to a decades-long debate over whether the 12 federal agencies and roughly 35 laws governing food safety should be consolidated into a single food safety entity. Consumer groups favor provisions to make federal regulatory oversight of food safety more consistent across all types of food products, however that might be achieved. Food processors argue that: (1) increased regulation will not result in increased food safety until scientifically valid microbiological standards can be determined; (2) reorganization alone will not necessarily improve public health; and (3) reorganization or physical restructuring of agencies would create huge logistical problems that could actually interfere with the efficacy of the current system.

Role of Congress

On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act (P.L. 107-188). Under the law, Congress authorized such sums as may be necessary for enhanced FSIS inspection activities in FY2003 and beyond. The act contains extensive provisions concerning FDA food inspection also. Toward the end of the 107th Congress, new legislation to give FSIS mandatory recall authority was introduced in both chambers (S. 2803/H.R. 5230), and debate recommenced on recall proposals introduced earlier (H.R. 3127, H.R. 4834). Legislation also was introduced to counter a successful lawsuit by the meat industry challenging pathogen performance standards; S. 2013 would have given FSIS statutory authority to use *Salmonella* bacteria test results as a basis for enforcement actions under HACCP.

In the 108th Congress, the consolidated FY2003 funding bill (P.L. 108-7), contains \$759.8 million for FSIS. The Administration's FY2004 budget request proposes \$797 million for FSIS. Of the \$42 million increase over the FY2003 appropriation, \$25.6 million would support hiring more inspectors and increasing laboratory capacity for analyzing food samples for possible acts of bioterrorism, among other things. The \$42 million increase would be funded through new industry user fees. New fee increases are often proposed but usually not adopted by Congress. The House-passed FY2004 USDA appropriations bill (H.R. 2673) would provide \$785.3 million for FSIS. The version (S. 1427) reported by the Senate Appropriations Committee would provide \$783.8 million.

Meanwhile, bills introduced by Senator Harkin (S. 1103) and by Representative Eshoo (H.R. 2203) would clarify USDA's authority to prescribe industry performance standards for reducing pathogens in meat, meat products, poultry, and poultry products, and to enforce HACCP requirements, sanitation requirements, and the performance standards. Another (H.R. 2273) by Representative Udall would provide USDA with authority to mandate recalls of unsafe meat and poultry. A bill (S. 1187) by Senator Clinton would require that ready-to-eat meat or poultry products not produced under a scientifically validated program to address *Listeria monocytogenes* be required to bear warning labels for certain at-risk consumers. S. 1202 (Schumer) would require USDA to adopt a traceback system for food animals.

Antibiotics in Animal Feed

Issue

For some 50 years, livestock and poultry producers having been using antibiotics to prevent and control diseases, promote more efficient growth, and address animal well-being. Their use has paralleled the gradual shift in the United States and in other leading animal producing countries from production on smaller, more diversified farms, to much larger, specialized, and usually confined, animal feeding operations. Some scientists, regulators, and others have argued that misuse or overuse of antibiotics in animal agriculture can create antimicrobial resistance to related drugs used to treat human diseases — and they should be phased out. Others, including many animal producers, counter that such assertions have not been scientifically proven, and that an unfounded ban would cost producers millions of dollars in production costs and harm the quality of animal food products.

Background and Analysis¹⁷

Although antimicrobial agents are used to treat illnesses both in humans and animals, these agents are also used for nontherapeutic purposes, i.e., in animal feed so that chickens, cattle, and pigs grow faster, use less feed, and, sometimes, disease prevention. Concern is that such uses can also promote genetic changes that make microorganisms resistant to antibiotics used to treat human illnesses. The Food and Drug Administration (FDA) states that due to the diffuse use of antimicrobials, it is difficult to assess precisely whether the growing resistance in foodborne pathogens is attributable to the use of antimicrobial drugs in food producing animals or some other use. Animal producers and the animal drug industry have long argued that a far more significant cause of antimicrobial resistance is medical doctors, who over-prescribe antibiotics for people who don't need them.

The FDA has established standards in its drug approval process for examining the safety and efficacy of non-therapeutic uses of antimicrobial drugs (both new and existing ones).¹⁸ But critics have complained that the agency is not moving aggressively enough. These critics were buoyed by a World Health Organization (WHO) report, issued in August 13, 2003, concluding that phasing out antimicrobial growth promoters could be accomplished without major negative economic consequences for food animal producers in countries (like the United States) with systems similar to Denmark's. The WHO expert panel had studied their phaseout in the late 1990s in Danish cattle, broiler and pig production, and found "The program has also been very beneficial in reducing antimicrobial resistance in important food animal reservoirs. This reduces the threat of resistance to public health."¹⁹

¹⁷Source: CRS Report RL31853, *Food Safety Issues in the 108th Congress*. For further information on the topic see also CRS Report RL30814, *Antimicrobial Resistance: An Emerging Public Health Problem*.

¹⁸See [<http://www.fda.gov/cvm/index/other/nadaappr.htm>].

¹⁹World Health Organization, *Impacts of Antimicrobial Growth Promoter Termination in* (continued...)

Animal health industry officials said the WHO report theorizes rather than proves that there are human health benefits from discontinued use of sub-therapeutic antibiotics, and that Denmark has tended to downplay the adverse effects it has had on animal health and production costs. The current FDA plan to examine individual antibiotic products, whose effects are not all the same, to determine their safety is more scientifically appropriate, they add.²⁰

Also fueling the debate is a decision by the McDonald's food chain to require its meat suppliers to end the use of about two dozen specific growth promoters by the end of 2004.

Role of Congress

Defining appropriate legislative responses may be more difficult given the complexity of the antimicrobial resistance problem, the limited data to assess the problem, and the disagreement over the seriousness or the extent of the health threat of resistance. Nonetheless, there is interest in Congress in the issue. For example, on July 25, companion bills that would ban sub-therapeutic uses of most antibiotics in animal feed were introduced into the Senate (S. 1460) and House (H.R. 2932). Among other provisions, FDA would have to withdraw approval for each such drug within 2 years unless it has been proven harmless; and USDA would be authorized to provide financial assistance to farms, especially small family farms, to help them make the transition.

¹⁹(...continued)

Denmark in the Late 1990s, S 2003.

²⁰“WHO says Denmark's experience validates growth promoter phaseout,” *Food Chemical News*, August 18, 2003.

“Mad Cow” Disease (Bovine Spongiform Encephalopathy)

Issue

On May 20, 2003, Canada announced that one cow in a northern Alberta herd had tested positive for bovine spongiform encephalopathy (BSE, or “mad cow” disease). USDA immediately banned Canadian live cattle and beef imports; in August, it began steps to gradually reopen the border to such products. Congress is monitoring closely U.S. efforts to protect U.S. agriculture and consumers from the entry here of BSE, as well as the economic and trade implications of the incident.

Background and Analysis

A variety of animal diseases have the potential to inflict extensive physical and economic harm on animal agriculture, and to cause foreign countries to bar U.S. imports. Some of them pose health risks to humans as well. USDA’s Animal and Plant Health Inspection Service (APHIS) is charged with protecting the health and marketability of animals and animal products.

The Canadian BSE case is illustrative of the difficulties that could confront U.S. producers and APHIS in the event of certain disease outbreaks. BSE is a slowly progressive, incurable disease affecting the nervous system of cattle. It was first diagnosed in Great Britain in the mid-1980s, where it not only economically devastated the beef industry there and in other European countries, but consumption of products from infected animals also was linked later to some cases of a similar (and fatal) human disease. No case has ever been detected in the United States since surveillance began in 1989.

When Canada announced its BSE case, U.S. officials quickly blocked imports of all Canadian ruminants and ruminant products pending further investigation. Canadian authorities quarantined the farm and others; 2,700 cattle have been killed. So far, no more animals have exhibited BSE. An intensive investigation was conducted to determine the cow’s origin (later found to be a Saskatchewan farm) and movements, how its remains were processed, whether other herds might have been infected, and the possibility that contaminated feed may have been the source.

On August 8, 2003, USDA announced that it would accept applications for permits to import selected ruminant products from Canada, including boneless beef from cattle under 30 months old and boneless veal from calves no older than 36 weeks at slaughter; and boneless sheep and goat meat from animals under 12 months old. USDA’s decision was based on what it characterized as a “thorough scientific analysis” that found minimal risk from these imports. Canadian beef began crossing the border again in September 2003. The ban on live Canadian cattle remains. USDA said it was working on proposed conditions for opening the border to younger animals, which possibly could occur sometime in 2004.

International trade considerations complicated the U.S. decision to reopen the border. For example, officials in Japan, the largest U.S. beef export market, insisted

that the United States, effective September 30, 2003, verify that all of its beef exports there were not of Canadian origin. At the same time that USDA announced the border opening, it also unveiled a new “Beef Export Verification” (BEV) program as a voluntary, user-fee funded service. Exporters desiring to sell beef to Japan (or any other country that may request similar documentation) can apply for BEV certification from AMS after satisfying a list of requirements so that the agency can verify that their beef is from cattle slaughtered in the United States. USDA argued that the verification program was not scientifically justified but was developed to meet foreign market demands.²¹

Prior to the Canadian case, U.S. officials already had taken a series of precautionary steps to keep BSE from entering the United States and its food supply, and developed an emergency response plan to implement if a case is found. USDA since 1989 has banned the import of all live ruminants and most ruminant products from countries where even a single case of BSE is known to exist (Canada will be the first “BSE” country permitted to import some beef). In 1991, USDA banned the import of rendered by products from ruminants. As of December 2000, the import of all rendered animal protein products (whether from ruminants or not) is prohibited. The Food and Drug Administration (FDA), which regulates animal feed ingredients, banned the feeding of virtually all mammalian proteins to ruminants in 1997. Additionally, USDA’s Food Safety and Inspection Service (FSIS) requires inspectors to divert from processing any cattle showing suspicious clinical symptoms of BSE and send their brains for laboratory testing.²²

Role of Congress

The 107th Congress updated and consolidated a variety of old animal quarantine and health laws by passing the Animal Health Protection Act as part of the 2002 farm law (P.L. 107-171; 7 U.S.C. 8301 et seq.). P.L. 108-7, which contained the FY2003 appropriation for USDA and related agencies, includes a \$62 million increase for APHIS Animal Health Monitoring and Surveillance activities (\$133 million total) in order to increase the agency’s surveillance against and readiness for a biological attack against U.S. agriculture. The 107th Congress also passed the Animal Disease Risk Assessment, Prevention and Control Act of 2001 (P.L. 107-9), which required USDA to lead an interagency working group to assess and report on the economic impacts if BSE or several other diseases were to be introduced into the United States; federal prevention efforts; the risks to public health from possible links of BSE to human illness; and the sufficiency of legislative authority to control these animal diseases.²³ The handling of the recent BSE crisis in Canada could be instructive for those pondering additional measures.

²¹For more information, see USDA news release, August 8, 2003. Further clouding the situation were reports in early October that the Japanese had found BSE in a young bull.

²²For more information on these actions, and more recent ones being undertaken in response both to a study issued in 2001 by the Harvard Center for Risk Analysis, and to the Canadian BSE situation, see CRS Report RS20839, *Mad Cow Disease: Agriculture Issues*.

²³For the group’s recommendations, see *Animal Disease Risk Assessment, Prevention, and Control Act of 2001 Final Report*.

Animal Identification and Meat Traceability

Issue

Should U.S. animal agriculture improve its capability to trace the movement of livestock and meat products from their sources through the marketing chain? If so, what type of system might be appropriate? Should it be mandatory? What would it cost, and who pays? Interest in such questions has grown in the wake of such developments as the discovery of bovine spongiform encephalopathy (BSE) in a Canadian cow; a related demand by Japan for verification that U.S. beef imports are of U.S. origin; and ongoing concerns about bioterrorism. Implementation of a new country-of-origin labeling (COOL) law for meats and other products also has resulted in an interest in increased animal identification (ID) capabilities.

Background and Analysis

Animal ID refers to permanently marking individual, or groups of, farm animals so that they can be tracked from birth to slaughter. Animal ID is one segment of meat traceability, generally the tracking of identifiable products through the entire marketing chain to the ultimate consumer. Animal ID and meat traceability are not programs in themselves; rather, they may be useful tools in animal health, food safety, quality assurance, and country-of-origin labeling programs.

Many producers already keep records on the identities of each of their animals. However, no nationwide comprehensive U.S. animal ID system is in place, although many animals have been identified as part of animal disease programs. A government-industry task force is developing a national animal ID system. It has stated that the health of U.S. herds “is the most urgent issue ... and therefore, is the most significant focus” of its proposed plan. It is anticipated that USDA’s Animal and Plant Health Inspection Service (APHIS), along with states and industry, will oversee the system. It initially will identify all premises where cattle are located, to help in more quickly finding and eradicating animal diseases. The effort is to evolve into a program identifying individual animals, herds, and/or flocks. The task force effort is focused on animal disease tracking. Policy issues include whether it should be mandatory, its cost and who should pay. There is also interest in a system that can trace meats to their birth animals, where concerns also include the legal and economic impacts on producers and those who process and market meat products.

The task force notes: “Other countries are rapidly developing systems that are already being used as technical barriers to trade. These systems are rapidly becoming the world standard. To avoid the loss of international markets, the United States needs to be consistent with the animal tracking systems of our international trading partners.... As our export potential grows, the need to quickly trace suspected foreign or emerging diseases will be more important than ever.”²⁴

²⁴National Food Animal Identification Task Force, *National Identification Work Plan*, November 2002. It and a revised 2003 version can be viewed at [<http://www.usaip.info/>].

The European Union (EU), where BSE cases have been concentrated (most in the United Kingdom), now has an extensive (but, critics charge, ineffective) mandatory program. Beginning in December 2001, Japan began tagging all beef and dairy cattle and developed a database to track each animal's birth and movement. Current Japanese country of origin labeling already identifies U.S. beef in food stores (Japan's newer demands would require other documentation). Australia, a major exporter and U.S. competitor, has a largely voluntary but universal system that identifies all cattle, and uses carcass and boxed meat labeling procedures that can trace meat back to the animal's origin. Australia is moving toward a fully integrated program linking animal electronic ID devices, product barcoding, and a central electronic database. Exporting countries Argentina and Canada can identify primary animal production sites and most individual cattle, respectively, and also can trace back carcasses and meat cuts to slaughter and processing establishments.

Role of Congress

In the 108th Congress, much of the debate over expanded animal ID has occurred within the context of COOL. The 2002 farm bill (P.L. 107-171) requires many retailers to provide country-of-origin information on a number of raw products, including fresh and ground beef, pork, and lamb, starting September 30, 2004. In reviewing COOL implementation issues (see page 11), lawmakers have learned more about how animal ID can be used for other purposes, most notably to deal with harmful animal diseases. They also have become more aware of trade implications surrounding animal ID and meat traceability. As Japanese officials have made clear, the Canadian case of BSE has critical implications for U.S. producers. The BSE or other unforeseen events might further focus attention on animal ID and meat traceability (one proposed bill, S. 1202, would require traceability for all meat and poultry).

(For further information see CRS Report RL32012, *Animal Identification and Meat Traceability*.)

Humane Treatment of Farm Animals

Issue

APHIS is responsible for enforcing the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*), which requires minimum standards of care for most warm-blooded animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. The AWA specifically excludes commercial farm animals from coverage. Animal protection activists in the United States periodically seek legislation modifying and/or curtailing many practices that have long been considered by U.S. producers as acceptable and necessary.

Background and Analysis

No federal law prescribes standards for on-farm handling and care of animals. Two statutes, the Humane Slaughter Act (7 U.S.C. 1901 *et seq.*), enforced by USDA's Food Safety and Inspection Service (FSIS), and the so-called Twenty-Eight Hour Law (45 U.S.C. 71-74), enforced by APHIS, do govern, respectively, the humane slaughter and transport of livestock (but not poultry). Most states have their own animal anti-cruelty laws, which often but not always apply to farm animals; such laws also generally do not prescribe on-farm treatment standards.

Many animal protection groups contend that today's intensive farming systems perpetuate standard practices that are harmful to animals' well-being. Examples of such practices include rearing large numbers of livestock or poultry in close confinement with little room for natural movement and activity; isolating veal calves in crates; and performing surgery such as docking hog tails and trimming poultry beaks so that confined animals do not hurt each other. Some groups advance the more controversial argument that humans have no right to use animals for any purpose, even food.

Agricultural producers have long maintained that they understand their animals' welfare needs and address them adequately. They express concern that efforts by poorly informed critics could lead to the imposition of mandatory regulations harmful to their industry and the animals alike. Support for science, education, and voluntary guidelines are more effective ways of assuring animal welfare, they believe.

The U.S. approach differs from that in Europe, where the European Union and many of its member states have adopted legislation laying down minimum standards for farm animal care and transport. In the United States, surveys suggest that most people (and many animal protection groups) still support agricultural uses of animals, but many also appear to support some government action to insure humane treatment.

Role of Congress

Over the past several decades, bills to require changes in the treatment of animals on the farm and during transport and slaughter have been offered in Congress, although few have advanced beyond the House and Senate Agriculture Committees. The committees in the past have held hearings on various farm animal

welfare issues, and the panels generally have expressed support for voluntary rather than more coercive methods of assuring adequate care.

As of August 2003, several proposals had been offered in the 108th Congress. H.R. 857 (Sweeney) would prohibit the transport or slaughter of horses destined for human food consumption. On July 14, 2003, Representative Ackerman, during House floor debate on the FY2004 USDA appropriations bill (H.R. 2673), introduced an amendment to bar the use of federal funds for inspecting, slaughtering, and processing all nonambulatory (or “downer”) livestock. The amendment was defeated by a vote of 199-202. Earlier, on June 19, 2003, Representative Ackerman offered a similar proposal as a free-standing bill. Senator Akaka introduced companion legislation on the same date (H.R. 2519/S. 1298).

In January 2003, Congress earmarked, in the FY2003 USDA appropriation (part of P.L. 108-7), \$5 million specifically for FSIS to hire 50 new inspectors to oversee compliance with the Humane Slaughter Act. The agency had come under criticism in 2002 for what some view as lax enforcement of the Act. The 107th Congress included, in the 2002 farm law (P.L. 107-171), a sense of Congress resolution calling for full enforcement of the Act (Sec. 10305). The law also contains a requirement that USDA investigate the treatment of nonambulatory livestock (commonly called “downers”) with authority to issue regulations if findings warrant (Sec. 10815).