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October 2003

Commodity Checkoffs Again in the News

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Frederick, Roy, "Commodity Checkoffs Again in the News" (2003). *Cornhusker Economics*. 140.
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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Commodity Checkoffs Again in the News

Market Report	Yr Ago	4 Wks Ago	10/24/03
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$66.62	\$93.83	101.45
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	*	107.00	*
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	86.85	110.51	107.97
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	102.65	147.50	160.97
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	27.00	39.00	33.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loin, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	85.88	111.25	95.28
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	76.00	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	155.29	180.31	180.32
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	4.62	3.47	3.63
Corn, No. 2, Yellow Omaha, bu	2.40	2.09	2.28
Soybeans, No. 1, Yellow Omaha, bu	5.41	6.32	7.64
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.71	4.13	4.46
Oats, No. 2, Heavy Minneapolis, MN, bu	2.19	1.56	1.65
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	150.00	130.00	130.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	77.50	61.25	62.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	115.00	*	*
* No market.			

It was like landing two punches in rapid succession to the livestock industry's checkoff programs. In separate mid-October rulings made less than a week apart, two panels of judges from U.S. Circuit Court of Appeals said the beef and pork checkoff programs are unconstitutional. These rulings reaffirmed earlier court decisions that reached the same conclusion.

The legal basis for these rulings is that they violate the constitutional right, guaranteed by the first amendment, of free speech. The Sixth Circuit Court of Appeals in Cincinnati, ruling the pork case, went a step further. It said that the checkoff is, in fact, an example of "compelled speech." That is, producers are *compelled* to go along with how the money is spent from the checkoff, whether they agree with it or not.

Both checkoffs are a product of the 1985 Farm Bill. As such, USDA was charged with the responsibility of establishing operating rules and regulations. This has left USDA and some producer groups, such as Nebraska Cattlemen and the National Pork Producers Council, as checkoff defendants.

Because of the U.S. government's role in the checkoffs through USDA, the U.S. Department of Justice will be a key decision-maker regarding further appeals. Producer groups that support the checkoff are waiting to see how the DOJ responds.

Also waiting to see what happens next are the groups that originally brought suit against the checkoffs. One such group is the Campaign for Family Farms, a coalition of family-farm advocates that has led the charge against the pork checkoff since 1998. Among other things, the CFF says the checkoff favors those who sell processed meat while promoting large



commercial farms and downplaying the benefits of family farms.

Supporters of banning the beef checkoff use similar arguments. They worry that the checkoff has helped large producers and processors grow at their expense. Groups like the Livestock Marketing Association would like the cattle/beef industry to remain one of smaller, dispersed operations.

No one is certain of what comes next for either of the checkoffs. For the time being, however, both checkoffs continue to collect assessments and fund ongoing programs.

In the beef case, a three-judge panel from the Eighth Circuit Court of Appeals in St. Louis denied a USDA request for the full court to review a previous panel decision. Moreover, the panel said that the court's final order, which could be expected to halt the checkoff, would be implemented soon.

The pork case is not quite as far along. Here, the recent ruling by a three-judge panel of the Sixth Circuit Court of Appeals simply reaffirms an earlier district court decision. The defendants, USDA and the National Pork Producers Council, now have 45 days to request a review by the full circuit court. The circuit court did say in its mid-October ruling that the checkoff may continue to be collected until the appeals process is complete.

Ultimately, one or both checkoffs may have their futures decided by the U.S. Supreme Court. Alternatively, whatever is decided at this highest level for one checkoff could set the precedent for the other to fall quickly into line.

Any decision by the high court on the beef or pork checkoffs seemingly would build on its previous decisions.

In 1997, the Supreme Court ruled on the checkoff programs for nectarines and other stone fruits. In that case, the court said those checkoffs could continue because "government speech" had been established through market orders. In other words, producers, by voting for market orders, had allowed an entity above the individual producer to speak for them.

However, the Supreme Court followed a different line of reasoning in a 2001 case involving mushrooms. The latter does not have a market-order mechanism like the fruit crops to which the 1997 case applied. In

the language of the court, government speech did not apply for mushrooms. The court objected to the Mushroom Act because it compelled producers and importers of mushrooms to pay assessments for generic advertising of the product. The act was declared unconstitutional.

So far, the courts have ruled that the beef and pork checkoffs are more like mushrooms than nectarines. In fact, in the pork case, the circuit court said, "Because the Pork Act is nearly identical in purpose, structure and implementation to the Mushroom Act, the Pork Act is unconstitutional..."

Checkoff programs typically sponsor several types of activities. For example, nearly all have research and development functions. Many engage in consumer-information activities. But it's the promotion activities that cause most of the dissent. To the extent promotion appears to help some producers over others, checkoffs will continue to have problems. The challenge is to fix this problem, whether real or imagined, so that the benefits derived from checkoffs can continue.

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