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Daily Labor Requirements Under Initiative 300

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Cornhusker Economics

Cooperative Extension

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

Daily Labor Requirements Under Initiative 300

Market Report	Yr Ago	4 Wks Ago	8/31/01
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$64.52	\$70.34	\$69.98
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	91.25	*	96.75
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	99.61	104.51	104.21
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	99.42	110.15	107.75
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	41.00	52.00	44.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	118.06	123.70	115.70
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	72.75	48.47	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	168.00	153.36	*
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	2.95	3.01	2.99
Corn, No. 2, Yellow Omaha, bu	1.53	1.81	1.92
Soybeans, No. 1, Yellow Omaha, bu	4.71	4.77	4.63
Grain Sorghum, No. 2, Yellow Kansas City, cwt	2.83	3.52	3.68
Oats, No. 2, Heavy Minneapolis, MN, bu	1.18	1.43	1.43
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	107.50	102.50	102.50
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	67.50	75.00	67.50
Prairie, Sm. Square, Good Northeast Nebraska, ton	82.50	105.00	105.00
* No market.			

Article 8 §12 of the Nebraska Constitution (Initiative 300) establishes several requirements that corporations must meet in order to legally qualify as family farm or ranch corporations. Under one provision, a majority of the family farm or ranch corporation's shareholders must be family members, "at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch." In *Hall v Progress Pig Inc.*, 259 Neb 407 (2000) the Nebraska Supreme Court ruled that where no family member resides on the farm or ranch, a family member must perform daily *physical* labor on the farm or ranch for the corporation to legally qualify as a family farm or ranch corporation.

The court ruling in *Progress Pig* does not require family members to provide all the physical labor on the farm or ranch, but does require that at least one family member provide daily physical labor and management (if no family member lived on the farm or ranch).

Crop farming v. livestock physical labor requirements. In the *Progress Pig* case, the Otoe County District Court judge noted that daily labor requirements would vary depending on whether the farm were a crop operation or a livestock operation. Livestock would require daily care, while crop operations might require physical labor only seasonally (e.g. at planting or harvesting). This issue was not addressed by the Supreme Court. However, future litigation seems inevitable regarding whether a non-resident corporate owner or family member has provided sufficient daily physical labor to qualify for family farm corporation status, particularly e.g., where an older farmer is phasing out his or her physical labor contribution to the operation.

Grandfathered operations. Many cattle feedlots are operated similarly to *Progress Pig*, with family members providing management but most or all of the physical labor being performed by employees. Many Nebraska cattle feedlots will have been incorporated prior to I300's effective date of November 2, 1982 and therefore would be protected under I300's grandfather clause. However, the extent of the grandfa-



ther protection has not yet been litigated. Future litigation may determine, for example, whether or not the grandfather privilege is lost if the feedlot expands.

Hypothetical Cases

Example 1: Farmer owns a swine operation where all the work is done by employees and the owner makes all management and marketing decisions, and supervises the employees. The farmer-owner lives on the swine facility.

In this case the farm can be organized as a family farm corporation - even though the farmer does not provide daily labor to the farming operation - because the farmer resides on the farm.

Example 2: Same facts except the farmer-owner lives four miles away from the swine facility. In this case the farm may not be organized as a family farm corporation because the owner neither lives on the farm nor provides daily physical labor. Providing daily management is not sufficient, according to the *Progress Pig* case.

Example 3: Older Farmer owns three farms: A, B and C. Older Farmer lives on farm A. Farm B is across the road from farm A, while farm C is four miles away. In the past, Older Farmer provided all of the labor for all three farms until 2000, but now he only drives a grain truck during harvest. The rest of the labor is provided by unrelated employees. Older Farmer makes all the management decisions and directs the activities of the employees.

Which of the three farms could Old Farmer include in a family farm corporation? Older Farmer could incorporate farm A because he resides there. Older Farmer *might* be able to also incorporate farm B as it is contiguous to farm A and arguably is a single farm divided by a public road. Older Farmer *could not* incorporate farm C because he does not live there and does not provide daily labor, even though he provides daily management.

Example 4: Same facts, except that Older Farmer legally incorporated as a family farm corporation in 1985 when he was providing all the labor on all three farms. In 2000 Old Farmer stopped providing daily labor and now only drives a grain truck during harvest.

Must Old Farmer remove farm C (and possibly B) from his family farm corporation under I300? No: Old Farmer's family farm corporation was legal for farms A, B, and C up until 2000, because Old Farmer provided daily labor on all three farms up until 2000. This gives Old Farmer's corporation 50 years within which to requalify as a family farm corporation for farm C (and perhaps B), as long as Old Farmer's family owns 51% of the corporation's stock and meets other I300 requirements. This would provide time for e.g., a grandchild to come back to the farm.

Example 5: Farmer operates a livestock facility located five miles from his home. Farmer provides labor in caring for the animals seven days a week, 52 weeks a year.

In this case it is clear that Farmer meets the I300 daily labor requirement by providing labor 365 days a year at his livestock facility. But what if Farmer takes a two-week family

vacation? A four-week vacation? What if Farmer cares for the livestock five days a week and has a hired hand provide livestock care on weekends? What if Farmer cares for the livestock only 3-4 days per week on average? Which of these scenarios would not violate the I300 daily labor requirement? For now it is impossible to say. The Nebraska Supreme Court will likely be required to provide answers to some or all of these questions in future I300 litigation.

Example 6: Farmer owns and operates a three-site production swine operation. For bio-security reasons, workers at one site cannot work at the second or third sites. Family members provide daily labor at the first site, but non-family employees provide the daily labor at the second and third sites. No family members reside on any of the three swine production facilities.

Can all three sites be included in a family farm corporation? Probably not: only site 1. No family member provides daily labor at sites 2 or 3. However, a court might rule that because the three sites are an integrated production unit, daily labor performed at any one of the three sites would qualify as daily labor for the entire three-site facility. Only time will tell.

The different outcomes in these examples illustrate the importance of timely business and estate planning. In Example 3 it is too late for Old Farmer to put farm C (and probably farm B) in a family farm corporation, even though Old Farmer clearly would have been able to include farms B and C in a family farm corporation up until 2000. In Example 4, early estate and business planning allows Old Farmer to receive the very important benefit of the I300's 50 year re-qualification provision.

These cases illustrate why it is important to develop your estate plan while the owner is still either living on the farm or ranch, or else actively farming (daily physical labor and management) all the ground. Unfortunately, many farm families don't establish an estate plan (if at all) until after the owners have moved off the farm and/or have stopped actively farming (daily physical labor and management) all their ground. This delay limits their estate planning choices considerably. So don't wait too long if you want to have the very important option of being able to put the farm into a family farm corporation.

Recommendations: (1) Visit an estate planner to determine whether incorporation should be part of your business or estate plan. (2) Incorporate while family members are either residing on the farm or ranch and/or providing daily physical labor. (3) After incorporation, if no family member lives on the farm or ranch, and if the operation has significant hired non-family labor, document the labor that family members provide each year. Informal notes as to which family member e.g., performed which operation on which field should be sufficient.

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