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# Nebraska Beef Industry Development Act of 2004

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# Cornhusker Economics

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### Nebraska Beef Industry Development Act of 2004

Market Report	Yr Ago	4 Wks Ago	1/14/05
<b><u>Livestock and Products,</u></b>			
<b><u>Weekly Average</u></b>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight . . . . .	\$79.55	\$84.62	\$89.81
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb . . . . .	111.34	120.70	123.85
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb . . . . .	94.40	105.51	108.07
Choice Boxed Beef, 600-750 lb. Carcass . . . . .	137.30	140.19	151.97
Western Corn Belt Base Hog Price Carcass, Negotiated . . . . .	51.07	64.99	73.10
Feeder Pigs, National Direct 45 lbs, FOB . . . . .	33.79	61.51	66.09
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean . . . . .	57.37	73.15	74.41
Slaughter Lambs, Ch. & Pr., 90-160 lbs., Shorn, Midwest . . . . .	91.25	95.87	106.00
National Carcass Lamb Cutout, FOB . . . . .	204.60	242.26	244.05
<b><u>Crops,</u></b>			
<b><u>Daily Spot Prices</u></b>			
Wheat, No. 1, H.W. Omaha, bu . . . . .	3.96	3.41	3.36
Corn, No. 2, Yellow Omaha, bu . . . . .	2.55	1.75	1.73
Soybeans, No. 1, Yellow Omaha, bu . . . . .	8.19	2.28	5.13
Grain Sorghum, No. 2, Yellow Columbus, cwt . . . . .	4.38	2.59	2.45
Oats, No. 2, Heavy Minneapolis, MN, bu . . . . .	1.79	1.82	1.87
<b><u>Hay</u></b>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton . . . . .	115.00	115.00	115.00
Alfalfa, Large Rounds, Good Platte Valley, ton . . . . .	62.50	62.50	62.50
Grass Hay, Large Rounds, Good Northeast Nebraska, ton . . . . .	57.50	57.50	57.50
* No market.			

Over the past thirty-five years, Congress has authorized promotion programs, known as checkoff programs, for a variety of agricultural commodities. In 2001 the U.S. Supreme Court invalidated the mushroom checkoff, concluding that the generic advertising infringed upon the free speech rights of producers who disagreed with the promotional message. In separate 2002 Federal District Court decisions the beef checkoff was invalidated, the pork checkoff was invalidated, and the legality of the beef checkoff has been upheld. The two cases invalidating checkoff programs relied on U.S. Supreme Court rulings that checkoff programs violated the producers free speech rights. (In 2003, two federal district courts invalidated a mandatory checkoff and a mandatory alligator products checkoff). The one federal district court decision ruling the beef checkoff constitutional characterized the checkoff advertising program as “government speech,” which is exempt from constitutional free speech protections. In a 2003 decision the Eighth Federal Circuit Court of Appeals, relying on the 2001 mushroom decision, ruled that the beef checkoff was unconstitutional. The Appeals Court ruled that forcing cattle producers to pay for generic beef advertising that did not e.g. distinguish between American produced beef and imported beef in effect compelled producers to pay for advertising that they personally disagreed with.

The 2003 beef checkoff decision has been heard on appeal by the U.S. Supreme Court, whose ruling is expected sometime this spring. Beef checkoff supporters and the USDA (which administers the beef checkoff program) have argued that the beef checkoff advertising constitutes government speech, which is

exempt from first amendment requirements. Many observers (including this writer) do not expect the Supreme Court to accept the government speech argument, but instead expect the Court to invalidate the checkoff program as “compelled speech” in violation of the U.S. Constitution. Checkoff supporters should note that the Supreme Court will decide the case on its legal merits. A court decision invalidating the checkoff would not represent a Supreme Court judgment that the checkoff program had not been beneficial to beef producers, but rather that the mandatory advertising subsidy violated the free speech rights of producers who disagreed with it.

LB150, the Nebraska Beef Industry Development Act, would establish a voluntary Nebraska beef checkoff program if the federal program is invalidated by the Supreme Court. (The severability clause of the Federal Beef Act was repealed in 1985, which means that if one part of the Beef Act is declared unconstitutional, the entire Beef Act is therefore unconstitutional). The LB150 checkoff would take effect only if the federal beef checkoff is invalidated, and then not for 30 days. The checkoff would be \$1 per head, the same amount as the federal beef checkoff, and would be collected in a similar fashion. Producers could receive a partial or complete refund of checkoff payments quarterly. LB150 would be administered by the Nebraska Department of Agriculture. LB150 beef checkoff funds could be used for beef promotion, research and education, but could not be used for political purposes, including lobbying (similar to the federal beef checkoff).

LB150 supporters hope that the refund provision would resolve the free speech issue if the U.S. Supreme Court invalidates the federal beef checkoff. However, if the LB150 checkoff is implemented, it might be the subject of a further legal challenge regarding whether the refund provision adequately protects dissenting producers’ free speech rights. The “compelled speech” argument (which was the basis for the 2001 U.S. Supreme Court decision invalidating the mushroom checkoff program) comes from labor law, and some labor law experts believe that the refund provisions would be unconstitutional.

If the U.S. Supreme Court invalidates the federal beef checkoff it will be interesting to see whether beef groups seek a federal mandatory checkoff program that would provide funding for beef industry research and education, but not for beef promotion. The promo-

tion program has been the only element of the beef checkoff program challenged as constituting “compelled speech.” This suggests that the research and education component of the checkoff program might be valid purposes for a mandatory checkoff program, so long as they did not cross over into promotion. If the current beef checkoff is invalidated, one possibility would be a mandatory federal checkoff for research and education, and a voluntary state checkoff for promotion.

If the beef checkoff is invalidated, legal challenges to other mandatory commodity checkoff programs would be likely. However the time needed for such challenges to work their way through the legal system might give checkoff proponents time to develop standby state voluntary checkoff programs (similar to LB150) for their commodity.

LB150 has been referred to the Unicameral’s Agriculture Committee. LB150’s public hearing has not yet been scheduled. A copy of LB150 is available on the Unicameral’s website, at [http://www.unicam.state.ne.us/pdf/INTRO\\_LB150.pdf](http://www.unicam.state.ne.us/pdf/INTRO_LB150.pdf) Information regarding the bill’s current status is available at: <http://www.unicam.state.ne.us/> (search for LB150).

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