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Producer Protection Act of 2000

J. David Aiken
University of Nebraska-Lincoln, daiken@unl.edu

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Market Report	Yr Ago	4 Wks Ago	10/27/00
Livestock and Products, Average Prices for Week Ending			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt.	$69.30	$65.92	$69.63
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt.	79.65	85.72	86.19
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg.	88.44	97.67	69.63
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt.	108.31	102.16	105.81
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt.	32.87	45.25	35.50
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.	99.70	118.55	119.05
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt.	71.05	68.80	62.25
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt.	154.00	158.00	150.50
Crops, Cash Truck Prices for Date Shown			
Wheat, No. 1, H.W. Omaha, bu.	2.78	3.13	3.15
Corn, No. 2, Yellow Omaha, bu.	1.63	1.63	1.81
Soybeans, No. 1, Yellow Omaha, bu.	4.29	4.57	4.35
Grain Sorghum, No. 2, Yellow Kansas City, cwt.	2.71	2.93	3.28
Oats, No. 2, Heavy Sioux City, IA , bu.	1.16	1.15	1.30
Hay, First Day of Week Pile Prices			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton.	90.00	120.00	120.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton.	32.50	75.00	70.00
Prairie, Sm. Square, Good Northeast Nebraska, ton.	*	82.50	82.50

* No market.

Agricultural production contracts are becoming more widespread in Nebraska. (Contract production should be distinguished from custom farming, which is not at issue here). Under ag production contracts, farmers may contract to produce crops or livestock typically for processors. Contracting is widespread in the broiler industry, and is becoming more common in the swine and beef industry, and for some crops. The Producer Protection Act of 2000 (PPA) is a proposed model state statute prepared by the National Association of Attorney Generals to deal with legal issues associated with agricultural contracting. The PPA was developed in order to avoid some problems that have arisen with contracting in the broiler industry. Legislative proposals based on the PPA are likely to be introduced in the 2001 session of the Nebraska Unicameral. The PPA is 15 single-spaced pages long, and this newsletter provides only a brief summary of the legal issues raised. The PPA would provide substantially more legal protection to contract growers than they would likely receive under a typical production contract.

Background. In the broiler industry, broiler contracts tended to favor the processor. The contract was written by the processor's attorney and was presented to growers on a "take it or leave it" basis. Broiler contracts were written to discourage or prevent information sharing among growers, and to prevent collective bargaining or other collective action by growers. The PPA provides several provisions that would address these issues:

- requires a disclosure statement for production contracts identifying major risks the grower would assume if the grower signed the contract;

- requires ag production contracts to avoid complicated legal terminology in order to be more easily understood by producers;
- establishes a three-day review period to allow growers to receive legal and other professional advice regarding the contract and to withdraw from the contract without penalty;
- prohibits confidentiality clauses in the ag production contract, so that contract terms may be disclosed to professional advisors as well as to other growers;
- prohibits unfair (i.e. retaliatory) practices to discourage growers from exercising their legal rights;
- requires ag production contract disputes to be resolved through mediation instead of litigation or arbitration;
- establishes a voluntary process for the state to certify that ag production contracts comply with the PPA's requirements; and
- allows for public and private enforcement, including legal fees to growers who win in court.

Production Contract Liens. One difficult ag production contract issue has been finding ways to protect the grower's right to receive payment, particularly if the processor encounters financial difficulty or if contract disputes arise. If a processor has borrowed its operating funds (as many farmers do), the processor's lender will have the first lien on processor's property. This would include unpaid crops or livestock that the processor had received from growers under an ag production contract. The processor's lender having the first lien on the processor's property means that if the processor is unable to pay growers, the processor's lender would be paid before the growers are. Congress has changed this rule for producers selling livestock to meatpackers, and the PPA would change this for contract growers as well. Contract growers would have the first lien on the crops or livestock that they produced under contract if the grower properly filed a lien statement with the Secretary of State. A form would probably be developed for growers to use. The form would need to be filed within 45 days from when the livestock were received or from when the crops were planted under the contract, and would be valid for a year. This provision is likely to spark controversy within the lending community, as processor lenders would lose their first lien on processor assets to growers. However, federal law establishes a similar result for insolvent meatpackers, so the PPA production contract lien does have a significant legal precedent.

Producer Investment Protection. Some ag production contracts may require the grower to make a substantial investment in new facilities in order to qualify for the contract; e.g. install new broiler houses in order to qualify for a broiler production contract. The danger to the grower is that the contract may be cancelled or otherwise terminated before the loan has been paid off, and the grower will not have an alternative use for the facilities. Minnesota was the first state to address this issue legally, requiring the processor to give the grower 60 days to correct any contract violations that could result in contract termination, and 90 days notice of contract termination. The Minnesota contracting statute also provides that if the grower is required to make a financial investment in buildings or equipment of $100,000 or more with a useful life of at least five years, the processor cannot terminate the contract unless (1) the grower has been given at least 180 days notice of termination, and (2) that the grower has been reimbursed for any damages incurred by an investment in buildings or equipment that was made for the purpose of meeting the minimum requirements for the contract. This might include repaying the grower's equity in the building that was lost to foreclosure if the contract were terminated.

The PPA would require 90 days notice of contract termination, cancellation or non-renewal and would require the processor to pay damages to the grower for damages to the grower's required investment of $100,000 or more. Forty-five days notice would be required if the processor determined that the grower was in material (i.e. important) breach of the contract, and the grower would have to be given 30 days time within which to remedy the alleged breach. No damages would be owed to the grower in cases of material breach. No notice or damages would be required where the contract was cancelled because the grower either abandoned the contract or was convicted of fraud.

The PPA would provide significant legal protection to growers entering into agricultural production contracts in Nebraska. It deserves a hard look by the Nebraska Unicameral in 2001.

J. David Aiken, (402) 472-1848
Water & Agricultural Law Specialist
daiken@unl.edu