

Cornhusker Economics

Cooperative Extension

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

Cooperative & Nebraska “Blue Sky” Statutes

Market Report	Yr Ago	4 Wks Ago	12/15/00
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$69.03	\$71.82	\$76.87
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	90.61	91.46	93.77
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	94.02	95.80	99.30
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	106.68	110.05	118.57
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	36.50	38.00	40.50
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	35.50	38.50	33.50
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	107.20	102.90	115.80
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	68.50	*	73.38
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	163.00	149.00	149.00
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	2.77	3.17	3.22
Corn, No. 2, Yellow Omaha, bu	1.80	1.93	1.97
Soybeans, No. 1, Yellow Omaha, bu	4.33	4.64	4.85
Grain Sorghum, No. 2, Yellow Kansas City, cwt	2.97	3.42	3.72
Oats, No. 2, Heavy Sioux City, IA, bu	1.18	1.17	1.30
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	95.00	115.00	110.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	35.00	75.00	75.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	*	82.50	95.00
* No market.			

Cooperative fever is sweeping Nebraska. Agricultural producers are looking for ways to add value to what they produce, often through forming “new generation” cooperatives or by forming limited liability companies (LLCs). New generation cooperatives differ from traditional cooperatives in that new generation cooperatives typically (1) have closed membership and (2) process goods produced by co-op members. New generation cooperatives are more like citrus and other fruit cooperatives that have existed in other parts of the country. The Nebraska Unicameral is providing financial assistance to assist developing these kinds of value-added efforts through LB1348, the “Agricultural Opportunities and Value-Added Partnerships Act.” LB1348 was enacted in 2000 and is administered by the Nebraska Department of Agriculture. For questions regarding LB1348 grants, call the NDA at (800) 422-6692.

Securities Law Issues. Producers who seek to form either LLCs or co-ops may be surprised to learn that they need to register with the Nebraska Department of Banking and Finance (NDBF) before they invite other producers to join (and invest in) the co-op or LLC. As a practical matter, producers trying to start up a co-op or LLC will need to consult an attorney to advise them regarding compliance with Nebraska securities law.

Securities Regulation. Registration of “investment contracts” (e.g. investment in co-ops, LLCs, corporations or other business entities) is required under the Nebraska Securities Law, more commonly called the Nebraska “blue sky” law, NRS §§8-1103, -1104. Most “investment contracts” must be registered either with the federal Securities and Exchange Commission (SEC) or with the state securities agency (NDBF in Nebraska). The general purpose of securities registration is to prevent those selling securities from defrauding investors by establishing investment information disclosure requirements that describes the business in which the investment contracts are being



solicited. Before investment information disclosure was required through the securities registration process, unscrupulous promoters would sell securities where the underlying business was nothing more than “blue sky;” hence the “blue sky law” nickname for state securities statutes.

Investment Contracts. What is an “investment contract?” Basically, when you ask a person to invest in a new business enterprise (as is common for producer-owned processing cooperatives or LLCs) their promise to invest in the business is an investment contract that must be registered with the NDBF (or with the SEC if you are soliciting investments across state lines).

Registration Information. If registration of the investment contract with NDBF is required, what information is required? Basically full disclosure of the nature of the business that the investors would invest in. This is an expensive process and requires the assistance of an experienced securities attorney or law firm. Securities law practice is much of what the major Wall Street law firms engage in.

Exceptions. Fortunately, three exceptions are available to individuals seeking investments in agricultural value-added activities. The exceptions are for cooperatives, small issues and private offerings. If the value-added activity qualifies for one of these three exceptions they will not be required to go through the full securities registration process, and the associated legal expenses will be significantly lower.

Cooperative Exception. The Nebraska blue sky statute provides a limited exception for Nebraska agricultural cooperatives. The people starting the co-op must first register with NDBF. If the NDBF does not disallow the co-op exemption within 10 days, the exemption has been granted. NRS §8-1111(15). You would need to work with an attorney to apply to the NDBF for the co-op exemption.

Small Issue Exception. What if the value-added entity is going to be an LLC instead of a co-op? There are two Nebraska blue sky law provisions that might apply: small issue and private offering. The small issue provision provides an exception if no more than 15 persons are approached for investing in the value-added venture within 12 months. NRS §8-1111(9). An application must be filed with the NDBF within 30 days of the first investment contract sale. Additional requirements must also be met. It probably would be better to have NDBF approval before you begin seeking investments. Again, you must work with an attorney but the process is much simpler than regular securities registration.

Private Offer Exception. The second exception available to LLCs is the private offer exception. NRS §8-1111(20). NDBF approval is required in order to qualify for the private offer exception. So again, you would need

to retain an attorney to obtain the NDBF private offer approval and to insure that your investment offering met all the NDBF private offer requirements.

Penalties. What happens if NDBF blue sky securities regulations are violated? Violations are a Class IV felony (up to 5 years imprisonment, up to \$10,000 fine or both). NRS §§8-1117(1); 28-105(1). Violators may also be required to refund any money invested plus interest. NRS §8-1118.

Conclusion. When you ask someone to invest money in a value-added entity, whether a cooperative, an LLC or any other legal entity, you are subject to the Nebraska securities laws. This is not a do-it-yourself situation; you must obtain legal assistance before you start raising money to fund your value-added business. If you have already started raising money, stop your fund-raising activities and contact an attorney as soon as possible to avoid any possible legal problems. The attorney will also be able to assist you in determining what is the best legal structure for the value-added business: cooperative, LLC or some other legal entity.

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



Last Issue of the Year

Have a Save and Happy Holiday!!!