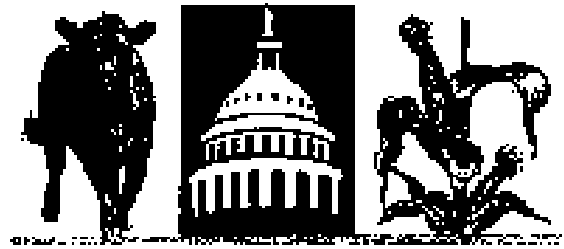


ECONOMIC AND POLICY UPDATE

Vol. 9 No. 1

January 23, 2009



<http://www.uky.edu/Ag/AgEcon/blueshee.html>

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In this issue:

- **Grain Market Update – Cory Walters**
- **EPA Issues Final CAFO Permitting Rules – William T. Gorton III and Jennifer E. Drust**
- **Impact of Current Economic Circumstances on Individuals and Families in Kentucky – Claudia Heath and Jennifer Hunter**
- **Workplace CSA's: A New Way to Strengthen Direct Markets for Food Producers – Tim Woods and Sara Williamson**
- **A Few Tax Tips for 2008 – Jerry Pierce**

Grain Market Update

New crop corn and soybean prices posted gains for five straight weeks until the week of Jan 12-16 when the USDA released its Crop Production, Grain Stocks, and Winter Wheat Seeding's reports. These reports contained negative news that pushed corn and soybean prices dramatically lower. As of January 19, 2009 the Chicago Board of Trade (CBOT) December 2009 corn contract was trading near \$4.36 and the November 2009 soybean contract was trading near \$9.72.

The USDA increased its corn production estimate to 12.101 billion bushels, up 81 million bushels from the previous estimate. This change resulted from an increase in harvested acreage of 400,000 acres and a yield per acre increase of 0.1 bushels. Feed and residual use was reduced by 50 million bushels from the previous estimate. Food, seed, and industrial use was reduced by 135 million bushels from the previous estimate, with 100 million coming from a reduction in ethanol use.

Ethanol use has increased by 574 million bushels over the last year, or about 19 percent, for a total use of 3.6 billion bushels or about 30 percent of total corn use. With an increase in production and an overall decrease in use, ending stocks of corn are projected to increase by 316 million bushels or 21 percent, pushing the stocks to use ratio up from 12.1% to 15%. A 15% stocks-to-use ratio represents the highest value in the last three years. With a higher stocks-to-use ratio, fewer corn acres will be needed compared to last year. Stored corn is down 2 percent from December 1, 2007 for a total of 10.1 billion bushels.

The USDA also increased their soybean production estimate to 2.96 billion bushels, up 38 million bushels from the previous estimate. The change was caused by an increase in harvested acreage of 0.2 million acres and a yield per acre increase of 0.3 bushels per acre. For soybean consumption, crushings were decreased by 30 million bushels and exports and residual were increased by 50 million bushels and one million bushels respectively, from previous estimates. Overall, use was increased by 21 million bushels. With a larger increase in production than use, ending stocks are projected to increase by 20 million bushels or about 10 percent. This increase pushes the stocks-to-use ratio up from 7 percent to about 7.6 percent. When compared to a year ago, the stocks-to-use ratio is about one percent higher. Stored soybeans are down 4% from December 1, 2007 for a total of 2.28 billion bushels.

Soft Red Winter Wheat (SRWW) seeded acreage is down around 26 percent from last year to about 8.29 million acres. Acreage decreases are due in large part to high fertilizer costs and the sharp decline in SRWW prices. For Kentucky, SRWW

seeded acreage is down from 580 thousand acres to 490 thousand acres, about a 15 percent decrease. (Cory Walters)

EPA Issues Final CAFO Permitting Rules

On November 20, 2008, after 10 years of study and eventual litigation, the federal EPA published the final permitting requirements for concentrated animal feeding operations (“CAFOs”) required by the federal Clean Water Act. The revisions were made in response to the 2005 federal court decision in the *Waterkeeper Alliance et al. v. EPA* lawsuit and became effective on December 22, 2008.

While the new rule changes some of the substantive permitting requirements, the federal definitions for CAFOs did not change. Generally, CAFOs are operations that can, have, or do maintain certain numbers of animals confined for 45 days or more within a 12-month period where land does not support crops or vegetation over any portion of the facility or lot. The definition of CAFO can apply to poultry (chicken, turkey and duck), cattle (dairy cows, veal calves, and other cattle including but not limited to heifers, steers, bulls and cow/calf pairs), horse, swine, sheep and lamb operations. Any questions about whether a particular operation is a CAFO should be addressed to an appropriate professional.

Highlights of the final rule that may affect CAFO operators include:

Duty to Apply for a National Pollutant Discharge Elimination (NPDES) Permit: Under the new rule, all CAFOs that discharge pollutants or propose to discharge pollutants must apply for a permit. A CAFO proposes to discharge “if based on an objective assessment it is designed, constructed, operated or maintained such that a discharge will occur....” CAFOs that have had intermittent or sporadic discharges in the past “would generally be expected to have such discharges in the future, and therefore be expected to obtain a permit.”

Voluntary “No Discharge” Certification: Similar to “filing for a non-permit,” CAFOs that do not discharge or do not propose to discharge have the option of certifying that they do not discharge and therefore do not need a permit. Obtaining the voluntary certification provides a mechanism for a

CAFO to determine that a permit is not required. Uncertified and unpermitted CAFOs that discharge face enforcement for both unpermitted discharge and failure to seek permit coverage prior to discharge, while a CAFO that has a valid and currently-effective certification would be held liable for an unpermitted discharge only.

Public Participation: As in other areas of environmental law where permits are required, the public will now have notice and the opportunity to review and comment on the CAFO permit. Of particular concern will be review of the required Nutrient Management Plan.

Nutrient Management Plans (NMPs): NMPs must be submitted to the permitting authority for review prior to issuing an individual permit or granting coverage under a general permit. The terms of the NMPs, including the information, protocols, best management practices and other conditions will also be incorporated into the terms of the NPDES permits and will become enforceable requirements of the permit.

Rates of Application: The new rule establishes two alternative approaches for expressing annual maximum rates of waste application in the NMP for the land application of manure, litter, or process wastewater. The NMP may use a “linear approach,” an approach that expresses the rates of application as pounds of nitrogen and phosphorus, or it may use a “narrative rate approach,” expressing the rate of application as a narrative that results in the amount of manure, litter and process wastewater to be land applied, expressed in tons or gallons. The rule establishes minimum site specific factors that must be included as terms in each approach.

State Action: States have up to one year following the issuance of the EPA rule to revise their permitting regulations as necessary, and two years to make any necessary statutory changes. States are not required to adopt the no discharge certification provision within this time period. Kentucky regulators are currently reviewing waste water permitting regulations to determine whether any changes will be necessary in response to the new EPA rules.

The full text of the revised rule applicable to CAFOs may be found in Federal Register, volume 73 beginning at page 70418, assessable online at <http://www.epa.gov/npdes/afo>. (William T. Gorton III, adjunct professor, and Jennifer E. Drust, Stites and Harbison PLLC)

Impact of Current Economic Circumstances on Individuals and Families in Kentucky

Kentuckians, as well as all Americans, faced economic uncertainty this holiday season. Over the last several months, individuals and families have experienced fluctuating energy prices, a volatile stock market, restricted credit, and growing unemployment, all leading to the question: What is the impact of the current economic circumstances on Kentuckians?

A new study, authored by Dr. Claudia Heath and Jennifer Hunter at the University of Kentucky, entitled “The Impact of Current Economic Circumstances on Individuals and Families in Kentucky,” has been conducted by the University of Kentucky’s Family Sciences Survey Research Center located in the Department of Family Studies. Results are based on a statewide random sample of 321 Kentuckians participating in a telephone survey. In short, the goal of the research is to determine the impact of the current economy on households in Kentucky. The survey began after Election Day and concluded the week prior to the Christmas holiday. The holiday season is recognized as a period of time when the focus of many people is generally on their family, with many family rituals and expectations in the way we observe holidays in regard to expenditures on food, travel, and gifts which may further strain already strapped individuals.

Among the study’s findings:

-The current economic situation is taking its toll on families. When asked how they were feeling about the effects of the economy on themselves and their family? Thirty-five percent reported feeling “okay for now, but do not like it”. Yet, 22 percent reported “feeling sad, blue, or worried” and 26 percent reported being “unhappy or concerned”. Only 17

percent responded optimistically “think about it, but know things are fine.”

-A large majority of Kentuckians are personally feeling the effects of the economy, 58 percent reported their financial well-being as okay for now, but concerned, while 22 percent are either at-risk of big financial problems or desperate and not sure what to do. Twenty percent described their financial well-being as fine and they believe the economy will work out okay. Furthermore, it should be noted that 48 percent of the sample reported their family as worse-off financially than one-year ago, while 38 percent are in the same financial condition and 14 percent better-off.

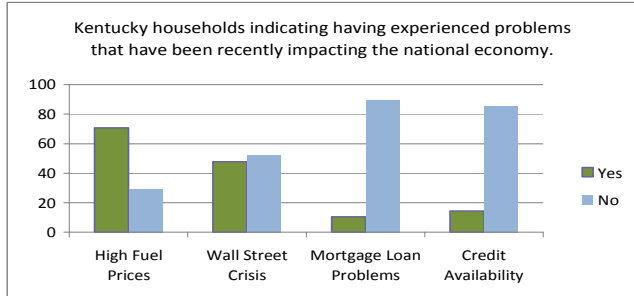
-Nearly 70 percent reported a change in lifestyle due to the economy. Many families are cutting back, only purchasing necessities instead of luxury items. The most commonly reported cutbacks include reducing the amount spent on clothing, entertainment, travel, hobbies and recreation.

-Furthermore, many people have reported eating out less often, with 54 percent eating less fast-food and almost 60 percent eating out less at a restaurant compared to this time last year.

-Fifty-three percent of Kentucky households reported having trouble buying things they want for themselves or their children. With the holiday season approaching, many people indicated having trouble buying Christmas presents. However items such as groceries, insurance, clothes, braces, and a college education were also frequently cited.

-National attention has focused on four primary factors affecting the economy including high gasoline and diesel fuel prices, declining stock values, limited credit availability, and a failing mortgage loan market. To measure the extent to which these problems are being felt in Kentucky, respondents were asked if their families had personally experienced problems as a result of each of these issues. Over 70 percent responded they had experienced problems from high gasoline or diesel

fuel prices, followed by 48 percent experienced problems as a result of declining stock prices. However, mortgage loan and credit availability have had the least impact, where 11 percent and 14 percent experienced problems, respectively. (Claudia Heath and Jennifer Hunter)



Workplace CSAs: A New Way to Strengthen Direct Markets for Food Producers

As Kentuckians embark upon a new year, filled with resolutions and good intention, food producers are meticulously planning their 2009 growing season. In terms of direct marketing, 2008 was a good year for the Commonwealth’s food producers despite the drought and suffering economy. According to the KY Department of Agriculture, farmers’ markets reached an all-time high, with 120 locations and more than 700 vendors that completed training to provide product samples at the market. On the other hand, data collected by the Kentucky Food Consumer Panel (KFCP) in the second quarter of 2008, indicated that consumers are making fewer grocery stops to compensate for increasing fuel prices. As farmers’ market vendors compete for the loyalty of their patrons in 2009, the delicate balance between what to grow and what will sell is unquestionably obvious.

With more than 45 Kentucky listings on the Local Harvest website, the growing popularity of locally produced food in Kentucky has catapulted the number of Community Supported Agriculture (CSA) programs. CSAs provide an opportunity for consumers to share the risk with farmers by prepaying for food before the growing season begins, in exchange for a share of the weekly or biweekly harvest. In many cases, consumers save money on food purchases, reconnect to the land and/or local farmers, and improve their diets. Many

producers are offering eggs, meat, and value added items in addition to the traditional produce. CSAs usually have preset “pickup points”, where the consumer can meet each week and exchange an empty basket from last week with a full, fresh basket of the latest harvest. If the KFCP data is a true indicator of consumer behaviors, it may become more difficult to recruit new patrons of local food unless the farmers’ market or CSA pickup is in a grocery store parking lot (which rarely happens).

A relatively new alternative is the Workplace CSA. As employers struggle to offer unique benefits to employees without affecting the bottom line, Worksite Wellness programs have become a popular solution, and CSAs definitely provide a low cost complement. By coordinating a workplace CSA, producers could increase sales and employees will have a fuel and time conserving alternative to the farmers’ market or traditional CSA.

The USDA recently released the results from a study by the Community Involved in Sustaining Agriculture group that focuses on the start – to – finish of workplace CSA programs. To get started on a workplace CSA in your community, visit www.ams.usda.gov or find more information on the new and improved UK Ag Econ website! (Tim Woods and Sara Williamson)

A Few Tax Tips for 2008

CRP Payments: Beginning this year, CRP payments made to individuals who are receiving social security retirement, survivor, or disability payments are no longer subject to Self Employment tax.

Optional Method for Self-Employment Tax: Some farmers have difficulty qualifying for social security benefits because of erratic income. When net earnings are zero, no Self Employment (SE) taxes are paid and no coverage is earned. The farm optional method allows voluntary contributions. Reasons for wanting contribute:

- 1) Generate social security retirement benefits.
- 2) Earn and maintain disability eligibility. This is often the only disability carried by farmers. Those age 31 or older must be fully insured (40 quarters) or currently insured

(20 quarters in 10 immediately preceding years) to qualify.

- 3) Could make taxpayer eligible for earned income credit.

The Optional Method was updated to make the voluntary contribution equal to four quarters of coverage each year. Farmers can use this method every year with no limit on number of years.

One-Time Depreciation Increase: The Economic Stimulus Act of 2008 raised the maximum Section 179 Expense Election to \$250,000 for 2008 only. The Phase-out Limit is raised to \$800,000. The Act also allows a 50% write-off of qualified 2008 depreciable asset purchases (bonus depreciation). Purchases must be new assets and placed into service before January 1, 2009. Bonus Depreciation is taken after any Section 179 Expense Election is applied. The increased Expense Election and additional depreciation do not apply to Kentucky State Income Tax.

For breeding and dairy animals, “new” includes unbred heifers. Bulls and bred heifers depend on the original owner’s intended use: For cow-calf producers the animal is not eligible. For farmers in the business of selling breeding livestock it would probably qualify.

Pre-Paid Expenses: Cash-basis farmers are generally allowed to deduct the cost of supplies purchased during the year even if the supplies will not be used until the next tax year. Three rules apply:

- 1) It must be a payment, not a deposit. A deposit does not specify quantities, may be refunded if not used, and is listed as a deposit on the seller’s books.
- 2) There must be a valid business purpose for the prepayment.
- 3) The deduction must not result in a material distortion of income. Payments that go beyond the next twelve months generally distort income.

Income Tax Averaging: Farm income averaging is a tax management tool. Taxpayers may amend prior returns to make the most out of farm income averaging. It works to fully use prior year’s marginal tax brackets to reduce current tax liability. See your tax preparer.

Domestic Production Activities Deduction: To encourage employment within the US, the Internal Revenue Code provides an extra deduction for part of the net income from qualified production activities – including farming. The deduction is based on W-2 wages, Schedule F income, and sale of raised breeding stock. Contract work, including contract poultry and hogs, does not qualify. Ask your accountant if you qualify.

Tobacco Transition Payment Program (TTPP) or tobacco quota buyout: Many taxpayers who owned tobacco quota, or grew under the quota system, have been receiving installment payments since 2005. What if TTPP contracts are passed on as gifts or inheritance?

Inherited TTPP contract payments are taxed the same way as they were for the deceased. There is no step-up in basis at death. Grower payments from the inherited contract should not be subject to Self Employment Tax. Income is reported as “Other Income” on Line 21 of Form 1040, or on Form 4835.

The inheritor needs certain information from the original owner: 1) The closing date and gross proceeds from the Form 1099-S issued in 2005 and 2) the basis of quota, date acquired, and the amount of basis recovered from the owner’s records.

Generally, giving a TTPP contract as a gift is a bad idea. The entire remaining contract is taxable in the year of the gift. Better to keep the contract and make gifts from the annual installments.

When TTPP contracts are transferred USDA must be told who will be receiving the payment. Use USDA Form CCC-968 TTPP Successor-in-Interest Contract. It is available at the FSA office or on their website at: <http://content.fsa.usda.gov/tobacco/assets/facts/CCC0968.pdf> (Jerry Pierce)

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