National
Farmers
Union
UNITED TO GROW FAMILY AGRICULTURE

December 8, 2014

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

RE: Docket ID No. AMS-LPS-14-0081-0001: Request for Comments on a New Beef Promotion, Research, and Information Order

Dear Secretary Vilsack:

Thank you for the opportunity to share advice on the possibility of proposing a new beef marketing order. National Farmers Union (NFU) is the second-largest general farm organization in the United States. We have nearly 200,000 members nationwide, including a significant number of dairy and cattle producers who contribute to the beef checkoff.

NFU supports voluntary checkoff programs when certain conditions that safeguard the interests of family farmers are met. These conditions were adopted by delegates to our most recent national convention and include:

- Control of the program is held by producers who are actively involved in production agriculture;
- Promotion of exclusively domestic product;
- Exclusion of processors from positions of leadership and financial responsibility;
- Review referendums executed by USDA every five years offering a program recall in the event of a simple majority vote; and
- Prohibition preventing assessment funds from going to organizations engaged in lobbying.

The current beef checkoff program does not satisfy NFU's policy criteria listed above. Several regulations implementing the program force the existing beef checkoff program to maintain very close ties to an extremely limited number of organizations. NFU believes a very clear separation must exist between all taxpayer-supported, checkoff-funded organizations and related commodity organizations which advocate and lobby for policy positions. In the case of the beef checkoff, such a line of separation does not exist.

In fact, National Cattlemen's Beef Association (NCBA), which is the direct recipient of the vast majority of all beef checkoff dollars (at least 90% of for the last 10 years) and essentially controls the allocation of all beef checkoff dollars, has aggressively lobbied against a number of very important producer and consumer programs, frequently placing themselves in direct opposition to many of the very producers they purport to represent. Examples abound: NCBA aggressively opposes Country-of-origin labeling (COOL) in court, at the World Trade Organization, and in Congress; NCBA opposes the Renewable Fuel Standard, which has led to the largest economic revitalization in rural America in recent history—if not all of modern history; NCBA even opposed the recent Farm Bill, including provisions written specifically to aid livestock producers suffering from disastrous, weather-related livestock losses. . Such actions undermine producer confidence in the check-off program because cattle producers know that NCBA also controls the beef check-off program which is legally required to operate in a strictly non-political, independent fashion.

Nearly 30 years ago, the 1985 Beef Research and Promotion Act was passed in order to assist cattle producers to carry out a coordinated program of promotion and research designed to strengthen the industry and expand domestic and foreign markets and uses for beef and beef products.[1] The prescriptive legislation has led to an inflexible marketing order that has facilitated and enabled a policy organization like NCBA to be the main beneficiary of checkoff funds, while advocating against policies that benefit producers. NCBA supports maintaining the status quo, to the detriment of cattle producers, because a majority of their annual operating budget comes from the beef checkoff. In 2013, 97.6% of all Beef Board contracts went to NCBA.[2] While the checkoff has remained unchanged for the past 30 years, the beef industry has experienced many changes. The current checkoff program does not have sufficient flexibility to address industry changes such as changes in purchasing trends, demographics, or production systems.

NFU is committed to working with USDA and other interested stakeholders in fashioning a new beef checkoff system that is devoted to research and market development, but is divorced from all political, policy advocating organizations. Every other commodity checkoff program has separated the policy organization from the non-political, promotional entity. Under this popular model used by other checkoffs (pork, for instance), checkoff dollars are used exclusively for research, market promotion, and product improvement. The expenditures of checkoff funds are controlled by a non-political, non-policy organization. The beef checkoff is the only program that has failed to embrace this new paradigm, and that has caused the rift we see today. Ranchers dislike that their checkoff dollars are being controlled by a lobbying organization that is fighting against the very policies these ranchers support. All other commodity checkoff programs have gone to this model, and it is time for beef to follow suit.

Although NFU strongly supports changes to the governance structure, we do not support the simultaneous operation of two separate beef checkoff programs. The second checkoff should only go into effect once Congress repeals the Beef Promotion and Research Act of 1985. NFU offers the following responses to the questions posed in the notice of inquiry.

[1] Beef Promotion and Research Act of 1985.
[2] Cattlemen's Beef Board 2013 Annual Report.

1. Who should be assessed?

Domestic cattle producers should be assessed. By only assessing domestic producers, checkoff funds can be used to exclusively promote US beef. Importers should not be assessed for this reason.

2. What should be the board structure?

Who is eligible to serve?

Domestic cattle producers should exclusively be eligible to serve on the board. Groups that profit from cattle production but maintain economic interests divergent from producers should be barred from positions on the board of the new program. Cattle and beef importers should not be allowed on the board. Their interests in some cases undermine those of domestic cattle producers, and the new program should promote U.S. beef exclusively. For similar reasons, beef packers should also be barred from the board of the new program. Beef packers are multinational organizations. One of the largest packers, JBS, is no longer a U.S. company. Foreign owners should not have the ability to make decisions on the use of a U.S. checkoff program.

In addition to barring certain groups from board membership, the new program must be designed to accurately represent the diversity of the cattle community. The new program must have safeguards to ensure feedlot owners and their interests do not overshadow cow-calf operators on the board. Cow-calf producers should make up a majority of the delegate body and the executive committee.

Should there be a relatively large delegate body appointed by the Secretary that would elect and recommend from within itself a smaller board?

The board of the new program must be completely independent and meet independently of any existing policy organizations. The board of the new program should be smaller than the board of the existing program so that its administrative footprint is smaller and less costly, allowing it to function without the assistance of industry groups. A delegate body of fewer than 75 producers could be formed, with a 15-member executive committee selected from the delegate body. The executive committee should maintain the same ratio of diversity and geographic representation as the full board. The beef checkoff delegate body composition should mirror other checkoff boards, like the Pork Board. The executive committee could increase the flexibility and responsiveness of the new checkoff program by carefully evaluating options on critical decisions and crafting concrete alternatives to present to the delegate body when important decisions face the program.

What should be the size of the board?

The board should consist of fewer than 75 members, with an executive committee of 15.

3. How should the board be selected?

Who may nominate eligible candidates to serve?
Similar to the current nomination process, nominations should come from eligible organizations representing domestic cattle producers. The Secretary should make appointments from nominations.

What should be the nomination and selection process?

From the nominations made, the Secretary should appoint the members of the Board on the basis of representation.

The Board should be composed of domestic cattle producers appointed by the Secretary. Periodically, the Board shall review the geographic distribution of cattle inventories throughout the US and the representativeness of the Board.

4. What should be the powers and duties of the board?

The board should have authority to carry out work or enter into contracts or agreements to carry out work, with no requirements for certain contractors to be used. The board should have the authority to enter into contracts with themselves, private companies, and to a limited extent, nongovernmental organizations.

Experience with the current program demonstrates the need to set different rules for the use of funds in the new order. The new program should allow for both in-house execution and open, competitive contracting for program tasks. Carrying out work in-house ensures certain efficiencies and cumulative expertise will bear on certain tasks, while competitive contracting will broaden options for the program to utilize specialists. The current program's requirement that only nonprofit organizations are eligible for contracting is so proscriptive that it functions as an earmark for NCBA, while depriving the program of the potential positive outcomes of the competitive bidding process.

The new order must also contain restrictions preventing payment of personnel salary from program funds to livestock non-government organizations or advocacy groups. Otherwise, the program is ripe for contracting nepotism and conflicts of interest. These organizations must not be eligible for contract awards from the new program either, due to their involvement in political advocacy.

The board should take on a more proactive role in agenda setting for the checkoff. The current board has taken on a reactive role, responding to contractors and others with their own respective agendas. The board should have a more active role in planning.

5. Who has decision-making authority?

Should funding decisions be made by the full board or a smaller board elected from within this board?

All funding decisions should be made by the full board. The board should have the ability to edit, amend, and reject any individual proposals. A subcommittee within the full board would be the most efficient way to vet all contracting decisions before presenting them to the full board.

Should funding decisions be made in conjunction with other organizations such as the Federation of State Beef Councils or the current Cattlemen's Beef Promotion and Research Board?

Funding decisions for the new checkoff should be made entirely by the board.

6. How should the assessment rate be determined?

The rate of assessment should be a flat rate assessed at the point of slaughter. Until the first referendum, the rate for the new checkoff should be calculated to retain equal funding to the current checkoff levels. There should not be an increase in the new checkoff until the first referendum after three years. However, the new checkoff will be more efficient due to the single point of assessment, and the ability for the board to contract competitively with more than one organization, which will effectively give the checkoff more resources to promote U.S. beef.

If a specified amount or a percent of value, should there be provisions for adjustments to the rate by the board, and without subsequent producer referendum?

If a super majority of board deems an increase necessary, they can vote on the issue. The increase could not go into effect until a producer referendum is conducted. Alternatively, 10% of producers can raise or lower the rate.

Should there be a de minimis exemption for certain size operations or classes of cattle or beef?

A de minimis exemption for certain size operations or classes of cattle or beef is not necessary since the point of assessment would be at slaughter and not at each point of sale.

Should there be temporary or permanent provisions for refund of assessments?

There should be permanent provisions for refunds of assessments.

7. How should assessments be collected?

Should the States or the national board collect the assessment?

The states should collect the assessment; however, they should remit the entire amount back to the national board. The states would be permitted to apply for Authorization Request (AR) and would be entered into a competitive process to receive funds, just like all other contractors.

Should the assessment be levied at all points of sale, at slaughter, or at some other time?

Assessment should be collected only at sale before point of slaughter. This will ensure that all producers are represented while effectively barring beef packers from the new program. Assessing at the point of slaughter will also exempt dairies that sell bull calves. Similar to the lamb checkoff, each producer should would in effect pay the portion of the assessment that is its share and pass it on to the subsequent purchaser who will carry the funds forward – ultimately reaching the first handler or exporter, who will remit the total assessment. Simplifying assessment by only collecting at point of slaughter will also decrease administrative costs and burdens.

8. When should the referenda be conducted?

The new order must set in place a mandatory referendum, open to all assessment-payers, on the new program's continuation, recurring every five years. This is an important balancing mechanism to ensure the program effectively pursues the interest of U.S. cattle producers.

Sincerely,

Roger Johnson

President