Fighting for the U.S. Cattle Producer!
R-CALF USA

R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Fax: 406-252-3176
Phone: 406-252-2516
Website: www.r-calfusa.com
E-mail: r-calfusa@r-calfusa.com

May 1, 2012

Craig Shackelford, Agricultural
Marketing Specialist, Marketing
Programs Division, Livestock and Seed
Program, Agricultural Marketing
Service, USDA,
Room 2628–S, STOP 0251
1400 Independence Avenue SW.
Washington, DC 20250–0251

Via Federal eRulemaking Portal

Re: R-CALF USA Comments in Docket No. AMS-LS-11-0086: Beef Promotion and Research Amendment to the Order, Proposed Rule

Dear Mr. Shackelford:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) regarding its proposed rule: *Beef Promotion and Research Amendment to the Order* (proposed rule), published at 77 Fed. Reg. 12,752-754 (March 2, 2012).

R-CALF USA is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 45 states. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

For the reasons stated below, R-CALF USA urges AMS to reopen this proposed rule after the May 1, 2012, comment deadline and propose additional amendments to the Beef Promotion and Research Order (the Order) as suggested below; take meaningful enforcement action to restore the integrity of the Beef Checkoff Program that has been severely, if not irreparably, damaged by the known and documented infractions committed by the National Cattlemen's Beef Association (NCBA); and, petition Congress to amend the Beef Promotion and Research Act of 1985 (the Act), also as suggested below.

Reopen this Proposed Rule After the May 1, 2012, Comment Deadline and Propose Additional Amendments to the Order.

Because the NCBA has enjoyed overwhelming, if not absolute, control over the Beef Checkoff Program for *nearly three decades*, no single reform such as the one contemplated in the proposed rule, can be expected to untwine NCBA's stranglehold over virtually every aspect of the Beef Checkoff Program. With its longstanding, dominant control over producers' Beef Checkoff Program contributions, the NCBA has cemented strong organizational loyalties among, between, and within the numerous qualified State beef councils (state beef councils) that comprise the Federation of State Beef Councils (Federation). *See* Act, Sec. 5, (4)(A).

Even without the benefit of the widespread anecdotal evidence demonstrating the interdependence that has developed between the NCBA and the Federation, it would be laughably naive to believe the NCBA has not secured strict loyalty and interdependence from the majority of state beef councils. Based on information and belief, it is R-CALF USA's position that such loyalty and interdependence was secured, at least in part, through ordinary favors made possible by NCBA's nearly three-decade-long distribution and dissemination of millions of dollars of annual producer contributions, including those contribution that NCBA used to support activities, such as meetings, of the various state beef councils.

Moreover, anecdotal information indicates that the states for 17 state beef councils are referred to as "two-hat" states, meaning the staff for the NCBA state-affiliated organization in that state also is the staff for that state's beef council.

The Act vested the Beef Promotion Operating Committee (Operating Committee) with authority to award contracts to established national nonprofit industry-governed organizations, *including the Federation* (*see* Act, Sec. 5 (6)). Thus, the Act contemplated that organizations like the NCBA would compete with the Federation to receive contracts and carry out Beef Checkoff Program activities. But, the NCBA undermined this contemplated competition by merging the Federation into itself.

Indeed, it is R-CALF USA's understanding that the now NCBA-controlled Federation not only is not competing for contracts, but also, has devised a scheme to funnel even more producer contributions directly to the NCBA. This scheme is known as "pay-to-play," wherein the Federation charges exorbitant fees to state beef councils for the privilege of purchasing "director" seats on the Federation. In Nebraska, for example, R-CALF USA has received information indicating that the first three seats cost $34,000 each; seats four and five cost $250,000 each; and, seats six and more cost $500,000 each. Then, the millions of dollars generated annually by the Federation (estimated at approximately $10 million) through "pay-to-play" are, again according to anecdotal information, earmarked exclusively for the NCBA and not available for other organizations that may win a contract from the Operating Committee. As outrageous as it appears, R-CALF USA's information indicates that approximately $1.8 million in Federation-generated revenues is earmarked for implementation costs, for which only the NCBA is eligible.

This "pay-to-play" scheme has all the elements of a sophisticated money laundering scheme. It siphons large sums of producer contributions that are intended to be used for beef promotion and research directly to the NCBA-controlled Federation, where it is then funneled indirectly to the NCBA.

The proposed rule cannot fix this.

Moreover, because 50 percent of the membership of the Operating Committee itself consists of Federation members, *i.e.*, representatives of state beef councils that pay exorbitant fees to "represent" their state and that have exceptionally strong loyalties to NCBA (anecdotal information indicates that a high percentage of Federation directors, perhaps as high as 97 percent, are member of the NCBA), there is a significant, inherent bias built into this system that strongly favors NCBA, along with a built-in conflict of interest that significantly favors the Federation, whose membership, again, have strong loyalties to NCBA.

Indeed, this system provides that the recipient of producer contributions, *i.e.*, the Federation comprised of state beef councils that is loyal to the NCBA, also controls one-half of the decision-making authority to award grants or contracts onto itself, if it were to so choose though it does not, and to its interdependent ally, the NCBA. But, the bias and conflict of interest does not appear to end here – R-CALF USA's information indicates that, additionally, the leadership of the NCBA plays an influential role in the nominating committee that nominates Federation directors to the Operating Committee.

USDA should no longer tolerate this inherent bias, conflict of interest, and likely money-laundering scheme. If the agency cannot develop an administrative plan to correct this maligned system, it should immediately petition Congress to change the Act. To fully explore the potential for an administrative remedy, USDA should reopen the proposed rule and solicit ideas for remediation from the public.

An obvious first step would be for USDA to immediately require the full and complete separation of the Federation from the NCBA.

Based on the discussion above, USDA's proposal to merely expand the scope of organizations eligible to apply to the Operating Committee for grants or contracts is far too little and far too late to achieve any meaningful improvement to the Beef Checkoff Program. In fact, USDA's overly simplistic proposal is a hollow and disingenuous gesture in light of the horrendous mismanagement and misappropriation of producer contributions that NCBA is known to have committed and for which USDA remains ominously passive and silent.

Presumably, USDA believes the marketplace itself can correct the now maligned Beef Checkoff Program by authorizing other organizations to compete with NCBA and the Federation for producer contributions. Both history and experience belie the efficacy of this approach. Based on anecdotal evidence and information and belief, other organizations, already eligible to receive grants or contracts from the Beef Checkoff Program, have made such application only to be overpowered by the NCBA/Federation dominated system and denied their applications. Other organizations have successfully secured grants or contracts, albeit miniscule in amount, only to eventually be forced to withdraw after being badgered and intimidated by NCBA and/or the Federation. Based on information and belief, this was the very fate suffered by the Beef Mobile program administered by the National Livestock Producers Association.

Also, if USDA is to redefine “established national nonprofit industry governed organization organizations” to expand the contracting authority under the Order, USDA should reinstate the eligibility requirement contained in its initial proposed rule dated March 14, 1986 (*see* 51 Fed. Reg. 8990) that such organizations must be governed by a board of directors representing the cattle or beef industry on a national basis whose Board is composed of a majority of producers.

Obviously, the agency’s rationale for eliminating the requirement that the Board of the eligible organization must be composed of a majority of producers – the concern that the requirement was too restrictive – did not, in any way, expand opportunities for Boards other than that of the NCBA that were composed either of a majority of producers or a minority of producers.

A requirement that the cattle producer-financed Beef Checkoff Program awards contract only to cattle producer-controlled organizations could not, in any way, have led to a worse outcome than exists today.

Further, anecdotal evidence indicates NCBA is afforded a tremendous economic advantage when making application for producer contributions via NCBA’s exemption from the requirement to include its implementation costs in each of its application requests. Instead, as R-CALF USA understands it, NCBA has been allowed to exclude implementation costs for each of its individual applications by combining such costs in an overall Authorization Request, thus skewing any comparison between NCBA’s proposal to fund a specific program and any proposal for a specific program from any other applicant.

Unless USDA has developed, or intends to develop, an additional strategy *in addition to its current proposal* to genuinely level the competitive playing field between the NCBA/Federation and any other eligible organization, the proposed rule will do little, if anything, to restore the integrity of the Beef Checkoff Program. That is why R-CALF USA urges USDA to reopen this rulemaking following the May 1, 2012, deadline and provide a more realistic plan to make needed improvements to the administration and operation of the Beef Checkoff Program.

R-CALF USA appreciates the opportunity to submit these comments.

Sincerely,

Bill Bullard, CEO