



December 4, 2020

Jason Julian, Agriculture Marketing Specialist
Research and Promotion Division
Livestock and Poultry Program, AMS, USDA
Room 2610-S, STOP 0251
1400 Independence Avenue SW
Washington DC 20250-0251

**RE: Comments on the Lamb Promotion, Research, and Information Order;
Activity Changes; Docket Number AMS-LP-19-0093; submitted online via
www.regulations.gov**

Introduction

Family Farm Action Alliance welcomes the opportunity to provide comments on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) Lamb Promotion, Research, and Information Order (Order) Proposed Rule (PR).

Family Farm Action Alliance is a national research, policy development, market innovator, and advocacy organization working to build a sustainable, inclusive economy in which everyone has the right to share in the prosperity they help build while respecting our land, natural resources, and neighbors around the world. We focus our efforts on: 1) anti-monopoly reform, 2) regenerative agriculture, 3) resilient local and regional food systems, and 4) market innovation. The USDA-AMS PR sits squarely within the interest of our supporters, comprised of farmers, small business owners, and rural constituencies.

The Order, Lamb Promotion, Research, and Information Order, was issued in 2002 under the authority of the Commodity Promotion, Research, and Information Act of 1996. It assesses a mandatory \$0.007 payment per pound sold by farmers and ranchers, and a \$0.42 per head payment from first handlers (mainly small-scale processors). The purpose of the payments, known and referred to as 'checkoff payments,' are to promote the lamb market and fund lamb sector research.

Requested Action

Recommendation: USDA-AMS should cover the cost feeder farms and market agencies would be burdened with in order to comply with the PR’s administrative adjustments and software upgrades for double assessments. We request no changes be made to the payment structure proposed.

Despite AMS’s estimate that 50 feeder farms could potentially purchase and sell lambs through market agency, suggesting “the number of feeder farms that raise lambs for meat that would be financially impacted by the proposal would not be considered substantial”¹ is inaccurate, as any additional time or finance burden to a farmer or rancher is amplified by the low profit margins and challenging markets that exist in the lamb sector.

AMS also estimates that 300 market agencies will be burdened if the PR is to be finalized, at the estimated cost of \$500 per respondent (\$150,000 total cost). AMS suggests that 250 of these market agencies could adapt their existing computer software or use hard copy tracking of each lamb sold, since they have low sheep sales volume. Again, the PR considers these changes to the Order “would not have a significant economic impact on a substantial number of small entities.”² If market agencies already have low sales volume, it is the position of Family Farm Action Alliance that AMS ought to be lifting burdens, rather than adding to them.

Family Farm Action Alliance knows that unnecessary economic harm to any small-scale entity (including feeder farms, first handlers, and market agencies) is substantial, and urges AMS to reflect this position in any finalized rule.

Recommendation: In that the Order no longer effectuates the purpose of the Act and pursuant to the statutory authority granted the Secretary in 7 U.S.C. Section 7421 and under the Order, 7 C.F.R. Section 1280.234; the Secretary should suspend the Order and issue an order that provides for a voluntary lamb checkoff assessment to be collected at the point of sale.

“Checkoff” payment, the industry jargon for the assessments coined from the previously voluntary program, used to be opted into by farmers and ranchers by checking a box upon first sale of an animal or crop. Family Farm Action Alliance suggests the checkoff program return to such a process for lamb, and the remaining 21 federally overseen mandatory commodity promotion and research programs.³

¹ Federal Register. Doc. No. AMS-LP-19-0093. Vol. 85, No. 193. October 5, 2020.

² *Id.*

³ Research & Promotion Programs. USDA-AMS. <https://www.ams.usda.gov/rules-regulations/research-promotion>. Accessed December 2, 2020.

The Order is specifically frustrating to sheep ranchers, as they have recently seen Mountain State Rosen Lamb Processing (a main Colorado processing plant) go bankrupt, be taken over by global meatpacker JBS, and converted into a cattle processing plant.⁴ While a 2015 study suggests the lamb checkoff returns an industry profit of \$3.46 per every \$1.00 of assessment paid, their economic model doesn't reflect the reality of highly concentrated, monopolized, and distantly located markets sheep ranchers face every day.⁵ Also, there is no assurance that "industry profit" translates into "rancher profit." If the lamb checkoff dollars were actually working for "promotion and research," ranchers would not be dealing with their most vital markets shutting their doors for corporate interests and profits.

Examples of misused checkoff funds are evident in other sectors as well. Commodity checkoff programs are not allowed to use the funds to "influence any legislation or governmental action or policy."⁶ In the pork industry specifically, The Pork Promotion, Research, and Consumer Information Act prohibits the funds to be used for legislative action.⁷ Yet, in *Humane Society of the United States (HSUS), et al., v. Perdue*,⁸ the court found the National Pork Board's use of checkoff funds were not being used for market promotion and ultimately influenced legislation, *but* that those funds were *not* spent *unlawfully* because the contracts under which the funds were allocated by the National Pork Board did not explicitly intend to influence legislation. With such complex administrative law and regulatory misalignment from USDA-AMS guidance, farmers and ranchers in all commodity checkoff programs should have the choice to opt in or out.

Commodity checkoff funds are in fact used to influence legislative action, as *HSUS v. Perdue* illustrates. Further, AMS struggles to oversee checkoff boards to ensure they provide easy-to-access budgets of checkoff programs. There is little concrete evidence to ensure sheep ranchers' checkoff assessments aren't being used in a similarly deceitful way. Sheep ranchers deserve full transparency in how their checkoff assessment is being spent. From there, they could decide to opt in or out of the program accordingly. A voluntary assessment at the point of sale would allow sheep ranchers that very choice.

⁴ *JBS Aims to Shutter Critical Western US Lamb Processor, DOJ Issues a "Standstill" Order*. Food & Power. <https://www.foodandpower.net/latest/2020/08/13/jbs-aims-to-shutter-critical-western-us-lamb-processor-doj-issues-a-standstill-order>. Accessed December 2, 2020.

⁵ Ghosh, Somali & Williams, Gary. 2015. Returns to Stakeholders from the American Lamb Checkoff Program: A Supply Chain Analysis. Conference paper for the 2015 Agricultural & Applied Economics Association and Western Agricultural Economics Association Annual Meeting.

⁶ Agricultural Promotion Programs: USDA Could Build on Existing Efforts to Further Strengthen Its Oversight. United States Government Accountability Office GAO-18-54. Report to the Honorable Nancy Pelosi, Minority Leader, House of Representatives.

⁷ 7 U.S.C. § 4801(b)(1)(A)

⁸ 290 F. Supp. 3d 5, 15-18 (D.D.C. 2018) (*Human Society III*). <https://www.cadc.uscourts.gov/internet/opinions.nsf/0/A68344478BCF3B208525845F004FC9BD/%24file/18-5188-1803360.pdf>. Accessed December 2, 2020.

We appreciate your consideration of these recommendations, and look forward to working with you as you finalize the Order's rule.

Sincerely,

A handwritten signature in cursive script that reads "Joe Maxwell". The signature is written in a dark ink and is positioned below the word "Sincerely,".

Joe Maxwell
President & CEO
Family Farm Action Alliance