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USCA Roles and Responsibilities Recommendation Comments

July 1, 2011

TO: Cattlemen's Beef Board Members
Ed Avalos, Under Secretary, USDA
Rayne Pegg, Administrator, USDA/AMS
Craig Morris, Deputy Administrator, USDA/AMS
Craig Shackelford, USDA/AMS

FROM: U.S. Cattlemen's Association

The U.S. Cattlemen's Association (USCA) is pleased to offer comments on the Cattlemen's Beef Board (CBB) Executive Committee's Roles and Responsibilities recommendations presented by the CBB Executive Committee. USCA directors and staff have met several times via conference calls during the past several weeks to develop these comments, and we are grateful for the opportunity to provide them. We applaud the CBB's Roles and Responsibilities Committee and the CBB Executive Committee for bringing these recommendations forward and for working so diligently to keep the public debate focused on such very important matters. USCA recognizes this process has not been made easy for the CBB volunteers and staff who have moved this process forward in the face of great challenge.

With that said, USCA leadership has determined that the time is long past for mincing words and we do not intend to.

This is an extraordinary time for the national mandatory beef checkoff; the decisions made by the CBB regarding the proposed roles and responsibilities policy changes will send a resounding message to checkoff investors across the country. That message will essentially be either that the status quo is satisfactory to CBB members or, alternatively, that CBB members are listening and are responsive to all checkoff investors across the country.

Foremost and primarily, USCA members seek a clearer separation between the checkoff program and policy organizations. USCA has been forthright with this position over many months. There can be no clearer evidence of how current structure crosses the line between checkoff and policy than to examine the current joint committee structure policy, which guarantees one - and only one - checkoff contractor and policy organization multiple seats on joint committees dealing with budget and evaluation, excluding all other policy organizations and contractors. Evidence also shows that this same contractor is responsible for breaches of financial firewalls; the total funds associated with these breaches continues to rise as the audit review continues. Despite the undeniable evidence, the Federation, to our knowledge, has failed

to discipline or sanction its leadership for these violations, fueling investor's frustration and doubt while negatively impacting the integrity of the overall program.

We cannot be clearer in our message. The beef checkoff is suffering from an investor perception standpoint because of continuing misappropriations of funds by the major contractor. To deny that this perception problem exists, or to ignore it, sends a negative message to investors, compromising the future of the entire program. USCA's member-driven policy explicitly states that USCA will not support any increase in checkoff assessments until program reforms are implemented. It is regrettable that NCBA's Federation and Policy Divisions have failed to recognize that their ongoing resistance to reform blocks the beef checkoff from becoming the more robust, dynamic program that cattle producers want and deserve.

USCA thanks you for your consideration of the attached comments.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jen Webster".

President, U.S. Cattlemen's Association

USCA Comments on Recommendations Concerning CBB's Roles and Responsibilities

Recommendation #2. *CBB shall develop its own strategies and annual plans, including the board's priorities for funding. QSBCs and contractors shall have input on the board's plans and priorities. CBB's budget shall be developed by a CBB-only budget committee with QSBC input. QSBCs may fund individual programs by sending funds directly to CBB. CBB shall also review the Federation of State Beef Council's budget to ensure compliance with the Act, Order and guidelines.*

USCA Comment: This recommendation is core to strengthening the checkoff's firewalls, to bringing the program into forthright compliance with the Act & Order and USDA's guidelines, and enhancing industry trust in the program. USCA supports its adoption. The ongoing discovery of financial firewall breaches and misappropriation of funds by the primary checkoff contractor validates the need for these policy changes if we are to assure checkoff-paying producers that their program is protected from undue influence and abuse.

The Joint Budget Committee is comprised of twelve members total - four members of the CBB, four members of the Federation and four from NCBA's Policy Division. The Joint Committee structure policy currently **guarantees** the National Cattlemen's Beef Association's (NCBA) **Policy Division four of the 12 seats** on the Budget Committee, to the exclusion of all other policy groups. The Joint Budget Committee is the body that reviews and establishes revenue projections, reviews operating and administrative costs of the Board and recommends a fiscal year budget that allocates resources to budget categories. These are very serious responsibilities that largely determine how checkoff funds will be allocated annually. Ethical questions arise when the primary checkoff contractor holds seats on the checkoff Budget Committee. Foremost is the perception that there is a conflict of interest when said contractor has influence over budgetary decisions that could prove beneficial to the contractor.

Arguably, NCBA's two divisions, which hold the majority votes on the committee, could control budget recommendations emanating from the Joint Budget Committee. The current structure clearly excludes other national industry organizations while guaranteeing one national policy organization at least four seats, weighting the collective voice of U.S. cattle producers.

The Joint Evaluation Committee is comprised of 12 members in total - five members of the CBB; five directors from the Federation; and **two directors from NCBA's Policy Division**. This is yet another example of how the primary contractor for checkoff funds is guaranteed representation on checkoff committees to the exclusion of all other organizations and/or contractors, limiting or eliminating the voice of checkoff-paying cattle producers who do not choose to purchase memberships in NCBA. The Joint Evaluation Committee oversees effective measurement in accomplishing stated objectives of programs as well as measuring results of these programs in achieving the outcomes and goals of the industry's Long Range Plan. The committee periodically reports these measurements and conclusions to the CBB, the Operating Committee and other committees. Guaranteeing NCBA's Policy Division seats on this committee creates another real or perceived conflict of interest by allowing the contractor the opportunity to evaluate its own performance and dramatically weakens the checks and balances system of the checkoff that Congress envisioned.

Secretary of Agriculture Tom Vilsack made clear his specific concerns regarding the relationship between NCBA's checkoff and policy divisions in a May 17, 2010 letter to NCBA saying, "All funding decisions relating to checkoff activities must be made only by the Federation and the CBB, and not policy organizations. Regardless of structure, policy organizations should not be permitted to influence, determine outcomes, or vote on checkoff decisions."

USCA appreciates the Executive Committee's stated goal of including the input of QSBC's in the budget development process as well as the Board's planning and prioritizing processes. This change, which eliminates the undue influence of a single policy organization on budget development and planning, will set the stage for a new, strengthened partnership between the CBB and QSBCs, whereby investors will have more efficient access to checkoff processes and, perhaps more importantly, will have a larger voice in checkoff investments. This level of inclusion will enhance producer ownership of the program at the grassroots level.

USCA is confident that this recommended change is well within the CBB's authority. In fact, CBB's respected legal counsel (McLeod, Watkinson & Miller) has issued an opinion on this recommendation saying the change is well within the Board's parameters as prescribed by law.

CBB's legal counsel opinion: "The Board has the power to develop overall strategic plans and priorities to guide the Board in carrying out its duties. As noted, the Board is vested with the authority to administer the Order and the power to 'adopt such rules for the conduct of its business as it may deem advisable'. Accordingly, the Board has the authority to define its priorities and develop a strategy for decision-making and resource allocation. The Board has the authority to develop its own budget. The Order imposes on the Board a duty to prepare and submit to the Secretary budgets of the Boards over all anticipated expenses and disbursements in the administration of the Order, including the Committee's anticipated expenses and disbursements. (Order § 1260.150). With respect to the CBB-only Budget Committee, the Article IX, Section 1.1 of the Bylaws provide that '[t]he Chair shall appoint from the members of the Board committees as the Board may deem necessary for the expeditious handling of the affairs of the Board.' The Bylaws expressly authorize an Audit Committee and a QSBC Compliance and Coordinating Committee. Thus, the foregoing recommendation appears to be within the power of the Beef Board and is consistent with the Act, the Order, and Beef Board Bylaws.

Recommendation #3: *CBB should design a committee structure for its members and implement the new committee structure prior to the 2011 summer conference. CBB members shall serve as chair and vice-chair of each committee. CBB shall encourage QSBC involvement and industry participation in its committees as an integral part of the process. If QSBCs are represented on a committee, the QSBC boards shall determine whether a board member of the staff executive of a QSBC serves on a CBB committee.*

USCA is well aware that since 1996 the CBB has participated in a joint committee structure with NCBA for planning, budgeting, programs and evaluation and that the committee structure and appointment of members is a joint process between the CBB and NCBA. USCA refers you to the Beef Board Bylaws, Article IX, Section 2, which requires the CBB to establish joint industry committees in conjunction with established, national, non-profit, industry-governed

organizations. Bylaws language - as well as language in the Act and Order - is inclusive, not exclusive, in nature. Based on the Bylaws provision it is puzzling then, that historically the CBB has not reached out to all national, non-profit, industry-governed organizations beyond NCBA for committee appointments. This has created a "closed" system that discourages broader participation and input of producers. Further, this has fueled the perception that NCBA controls the checkoff program.

A review of the CBB Bylaws shows that it is compliant for the CBB to implement a new joint industry committee structure in which CBB members serve as chair and vice-chair of each committee. This is supported in the CBB legal counsel's opinion. USCA supports this recommendation and is confident this recommended change is well within the CBB's authority. The CBB has a very serious fiduciary responsibility to checkoff investors and USDA to ensure that all checkoff programs are planned and performed in a manner that achieves the best results possible while providing an inclusive process that extends to all checkoff-paying producers and not singularly to any one policy organization. In fact, the Secretary of Agriculture, in a letter dated May 17, 2010 to NCBA and other interested parties, the Secretary underscored this principle when he wrote, "Producers should not feel compelled directly or indirectly to join a particular organization in order to have influence on how their mandated checkoff dollars are used. Any structure that leads this direction could have constitutional consequences." The Secretary also wrote, "It is important to remember that beef/dairy producers and importers are mandated to pay into the Beef Checkoff program and they need concrete assurances that their monies are used as intended by law, and the generated funds support the interests of all producers and importers, not just NCBA members."

USCA appreciates and approves of the CBB Executive Committee's stated intent to encourage QSBC involvement and industry participation in its committees as an integral part of the process. USCA believes that the CBB Bylaws already set the stage for this to occur.

CBB's legal counsel issued the following opinion on this recommendation: "Previously, the Board utilized a specific joint committee structure to carry out certain of its program planning functions. It is equally compliant for the Board to implement a new joint industry committee structure in which CBB members serve as chair and vice-chair of each committee. The Beef Board Bylaws, Article IX, Section 2, simply require the Board to establish joint industry committees with the responsibility for "overseeing the development of industry programs authorized by the Act and Order" and to advise the Beef Board and "established national, non-profit, industry-governed organizations" on the development and implementation of such programs. These Committees are to be appointed by the Chair of the Beef Board and "may consist of any number of members of the Board and non-members as may be advisable." The foregoing recommendation is consistent with this Bylaw provision. Indeed, nothing in the Act and Order restricts the Beef Board from using CBB-only committees to provide advice and suggestions for promotion and research projects if that is the desire of the Beef Board. The Beef Board Bylaws do contain such a restriction. If the Beef Board desires to change this it can only do so by amending the Bylaws at a properly-noticed meeting (20 days prior written notice setting forth the intent to amend the Bylaws), provided the amendment passes by the required super-majority of Beef Board members — a two-thirds vote of members present and voting."

Recommendation #6: *The full board should review all programs funded by the Operating Committee, along with the plans and budgets and express any concerns to the Operating Committee.*

USCA Comment: USCA supports this recommendation. Currently the Executive Committee ratifies the actions of the Operating Committee. While the Executive Committee is authorized to conduct business on behalf of the board, this limited process carries the perception of rubber-stamping actions of the Operating Committee. The CBB Executive Committee argues in its "reasons for change" that typically the full board does not formally review and recommend projects to the Secretary for approval. In fact, CBB Bylaws (Article IV Section 5) stipulate that three-quarters of the members shall constitute a quorum for any meeting of the Board in which the approval of a budget of the Board will be voted on. In contrast, CBB Bylaws (Article IV Section 4) stipulate that a majority of the members shall constitute a quorum for any meeting of the Board. Obviously, the intent of the Bylaws language in Section 5 was to mandate the participation at least three-quarters of the Board in budget approval, ensuring that a broad base of producers are represented in the budget process.

CBB members assigned to committees may only be exposed to the programs handled by the committee to which they are assigned. This process sets the stage for CBB members to be uninformed about the broad range of programs funded by the checkoff and this scenario fails to prepare CBB members with the information needed to inform their constituents and promote the program's work in the country. Common sense would dictate that every CBB member would want to be informed with as much information as possible.

Beyond the ethical dictates, the Act & Order clearly require the Board to examine expenses and disbursements approved by the Operating Committee, the budgets prepared by the Operating Committee and programs approved by the Operating Committee. In fact, the language in the Act & Order explicitly places fiduciary responsibility for the program squarely on the full CBB. As stewards of checkoff funds, it is incumbent upon the Board to review all programs funded by the Operating Committee, as well as plans and budgets developed by any and all Committees.

Following is the CBB legal counsel's opinion on this recommendation: The Board has a clear duty under the Act and Order to review budgets prepared by the Operating Committee and, if approved by the Beef Board, to forward those budgets on to the Secretary. Order § 1260.150(f). The Order requires the Board, in reviewing the Operating Committee's budgets, to examine not only the Operating Committee's proposed expenses and disbursements, but also the promotion, research, consumer information and industry information programs approved by the Operating Committee. Id. Having the Beef Board review all programs funded by the Operating Committee is therefore in line with the Board's duty to review the Operating Committee's budget which according to the Order is to include "a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein." Order § 1260.150(f).

Recommendation #7: *The CBB shall develop the long-range and annual strategic plan/priorities for the CBB and the checkoff, and ensure that all programs funded align with the*

Board's strategic plans/priorities. QSBCs and contractors shall be solicited for input during the planning process.

USCA Comment: Without question, the Order stipulates the Board is specifically authorized to develop strategic plans and priorities. At the risk of appearing redundant, USCA reiterates the distinct need for an inclusive process as opposed to the exclusive process that has emerged.

Opponents of this recommendation argue that this provision appears to call for the establishment of a "CBB" rather than an "industry" long range plan, annual plan and set of priorities. USCA does not agree. CBB members are appointed to the Board by the Secretary of Agriculture and are tasked with representing all producers for the betterment of the entire industry. The appointment process is carefully and thoughtfully structured to ensure the broad representation of checkoff investors. Previous processes that have excluded other established, national, non-profit, industry-governed organizations beyond NCBA have dramatically limited the voice of checkoff investors who choose not to belong to NCBA. Opponents' argument that the recommendation narrows investor representation is puzzling in light of the fact that other established, national, industry-governed organizations have been excluded from the planning and prioritizing process in the past.

The CBB Executive Committee specifies that QSBCs and contractors shall be solicited for input during the planning process. USCA supports and encourages the solicitation of input from QSBCs. USCA does not, however, believe that checkoff contractors have a place in long-range planning and prioritizing discussion. This creates a real or perceived conflict of interest.

CBB's legal counsel opinion on the recommendation follows: As discussed above, the Order confers upon the Board the power to develop strategic plans and priorities to guide the Board's decision-making and resource allocation particularly in connection with its review and approval of the budget. See *supra*, Part I. Consistent with this power and the Board's fiduciary responsibilities as stewards of checkoff dollars, the Board has the authority, consistent with the Act and Order, to develop long-range and annual strategic plans for the use of checkoff dollars.

Recommendation #10c: *CBB shall update and distribute CBB's Guidelines for Approval of Programs under the Beef Promotion and Research Act. The Board shall improve its outreach to QSBCs to foster a closer working relationship and educate QSBCs about such items as the opportunity to send checkoff dollars directly to the CBB for funding specific national programs.*

USCA Comment: USCA supports this recommendation and applauds the CBB Executive Committee's stated intent to improve its outreach to QSBCs. The Order specifically charges the Board with the responsibility of working closely with QSBCs to ensure compliance with the Act and Order. The proposed improvement to QSBC outreach by the CBB will nurture and encourage the coordination of checkoff programs at the state and national level, which will directly benefit checkoff investors. This improved outreach will, indeed, foster a closing working relationship between the CBB and QSBCs, and, in turn, this will enhance investor's confidence and trust in the checkoff.

CBB's legal counsel opinion on the recommendation follows: The Board has a duty to “encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry’s position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.” Order § 1260.150(p). One of the Board’s responsibilities in this regard is to work closely with QSBCs to ensure that all expenditures of checkoff funds are in accordance with the Act and the Order. The Board also has the express power to ensure compliance with the requirements of the Act and Order by virtue of its specific authority to “initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.” Order § 1260.149(c). The proposed recommendation to improve the Board’s outreach to QSBCs in this regard is in accordance with the Board’s duties, as defined in the Order.

Recommendation #11: *CBB shall (a) reiterate its position against any person acting as a checkoff representative being engaged in, or voting on, legislative or membership issues in any industry association; and (b) clarify that checkoff dollars may not be used to fund travel or other expenses to meetings that involve legislative policy development, regardless of origin of checkoff dollars (QSBC, Federation or CBB).*

USCA Comment: The Act and Order are profoundly clear in prohibiting the use of checkoff funds for the purpose of "influencing governmental action or policy". AMS Guidelines define "influencing government action or policy" as "any action the principal purpose of which is to bring about a change in existing policy or regulation or affect the outcome of proposed policy or regulation..." Board members are expressly prohibited from taking any actions which may conflict with this prohibition when acting in their official capacity as board members.

The Clifton-Gunderson audit review of NCBA uncovered blatant breaches of this provision in the Act & Order, inflicting great damage to the integrity of the checkoff program in the eyes of investors. An ongoing review has uncovered even more breaches of the provision, for which the total is now in excess of \$300,000 for the period of 2008-2010.

USCA found the response from some members of the CBB and the Federation puzzling and inappropriate. It appeared that some members of the CBB and the Federation were more outraged about the public disclosure of the breaches than they were about the violations themselves. To USCA's knowledge, the Federation has not taken any steps to reprimand or sanction its CEO for these blatant misappropriations. The effect of the Federation's puzzling reaction and lack of punitive action has aggravated investor's negative perceptions of the checkoff. Therefore, USCA fully supports the adoption of R & R #11.

CBB's legal counsel opinion on the recommendation follows: The Beef Act and Order expressly bar the use of checkoff dollars for lobbying activities. The Board, the Operating Committee, and the QSBCs are prohibited from using checkoff funds for the purpose of “influencing governmental action or policy” with the exception of recommending amendments to the Order. 7 U.S.C. § 2904; Order §§ 1260.169, 1260.181. The AMS Guidelines for Oversight of Commodity Research and Promotion Programs (“AMS Guidelines”) define “influencing governmental action or policy” as “any action the principal purpose of which is to bring about a change in existing policy or regulation or affect the outcome of proposed policy or regulation, except those actions

which are specifically provided for in the act, order and/or rules and regulations.” AMS Guidelines § VII (B). Board members are prohibited from taking any actions which may conflict with this prohibition when acting in their official capacity as board members. As noted above, the Beef Board is expressly granted the power to “initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.” Order § 1260.149(c). This proposal is consistent with the Board’s express power and its overarching fiduciary responsibility to ensure compliance with the Act and Order.

Recommendation #12: *CBB shall develop and implement a policy indicating that CBB takes non-compliance with the Act, Order and guidelines seriously, and if non-compliance is reported, CBB shall follow up and take action. CBB shall also require each CBB member to sign a conflict-of-interest form annually.*

USCA Comment: The Board's fiduciary responsibilities under the Act & Order are crystal clear. The Board is authorized to take action to "receive or initiate, investigate and report to the Secretary complaints of violations of the Act & Order." Thus, development of CBB policy indicating that the CBB takes non-compliance with the Act, Order and guidelines very seriously and will follow up on such activities and take action is fundamental to the Board's functions as prescribed by the law. In light of increasing checkoff misappropriations by NCBA being uncovered by auditors, USCA believes it is imperative for the CBB to develop zero-tolerance policy related to noncompliance activities and that development of said policy should be a very high priority for the Board. Investor confidence and trust have been compromised and steps must be taken to repair the damage inflicted to the checkoff's integrity and credibility.

AMS guidelines require that commodity checkoff governance boards develop disclosure statements and conflict of interest statements to be signed and submitted by each board member prior to appointment and annually thereafter.

CBB legal counsel opinion on the recommendation follows: As noted above, the Board has the power to “receive or initiate, investigate, and report to the Secretary” complaints of violations of the Act and the Order. Order § 1260.149. The Board is responsible for taking action to remedy any misuse of checkoff funds. AMS Guidelines § V(C). The AMS Guidelines require the Board to promptly address issues of non-compliance with appropriate action. AMS Guidelines § XI (H), (L). The Board is also required, pursuant to the AMS Guidelines, to “develop Disclosure Statements and Conflict of Interest Statements that will be signed and submitted by each board member prior to appointment to the board and annually thereafter.” AMS Guidelines § XI (K). This proposal is consistent with the Board’s duties under the Act, the Order, and the recently updated AMS Guidelines.

Recommendation #13: *CBB shall remind Board members regularly of their responsibility to perform to the best of their ability and in the best interest of the industry.*

USCA Comment: *Guidelines for AMS Oversight of Commodity Research and Promotion Programs*, published November 4, 2010, contains an "Ethics" section relating USDA's expectations of commodity checkoff board appointees. USCA believes this R & R Recommendation does not go far enough to meet USDA/AMS expectations. USCA would

prefer to see the CBB develop an official Code of Ethics for board members to be updated and circulated annually to board members and staff. Further, USCA suggests that newly appointed CBB members receive the written Code of Ethics during their orientation.

The Guidelines for AMS Oversight section on ethics follows:

Service on and the operation of the Federal boards is a public trust, requiring members and employees to place the appropriate legislative authority and ethical principles above private gain. Each board will develop a Code of Ethics and distribute it annually to board members and staff. Each board, with the assistance of AMS, will also develop Disclosure Statements and Conflict of Interest Statements that will be signed and submitted by each board member prior to appointment to the board and annually thereafter. The Code of Ethics should include prohibitions on:

1. Using board time, facilities, equipment, or supplies for private purposes.
2. Using confidential information acquired by virtue of board activities.
3. Receiving or accepting money or any other consideration from anyone or any organization other than the board—not including salary derived from one’s primary employment—for the performance of duties as a board member, unless approved by AMS.
November 4, 2010 Page 204. Receiving or accepting anything of value from anyone who is doing or seeking to do business with the board concerned under circumstances from which it reasonably could be inferred that the item was intended to influence the officer in an official action as an officer of the government.
5. Making unauthorized commitments or promises of any kind purporting to bind the board or Committee.
6. Giving preferential treatment to any private organization or individual.
7. Engaging in outside employment or activities, including seeking or negotiating for employment, that conflict with board duties and responsibilities. For staff, no such outside employment or activities are permitted; for board members, such employment or activities would be permitted provided board members recuse themselves from any conflicting board duties and responsibilities, including votes.

CBB legal counsel opinion follows: Board members are fiduciaries and must perform their duties in furtherance of the Board’s mission to maintain and expand the markets for beef and beef products. AMS Guidelines § XI(K). As stated in the AMS Guidelines, “service on and the operation of the Federal boards is a public trust, requiring members and employees to place the appropriate legislative authority and ethical principles above private gain.” AMS Guidelines § XI (K). Consistent with this mandate, it is prudent for the Board to regularly remind Board members of their responsibility to carry out their duties to the best of their ability and in the best interest of the industry.

Recommendation #14: *A CBB strategic plan to direct funding decisions, and a strong evaluation program, will help CBB be more directed and successful. A strategic plan will help guide decision making and help leadership set and achieve goals.*

USCA Comment: USCA supports this R & R Recommendation.

Recommendation #17: *CBB shall review state marketing plans carefully, not only to determine compliance with the Act & Order, but also to encourage cooperation between state and national programs.*

USCA Comment: USCA supports the spirit of this R & R Recommendation, although USCA is somewhat concerned that the appropriate CBB infrastructure and planning is implemented to achieve the intended outcomes. In terms of Producer Communications, which is under the purview of the CBB, it is important for the CBB to understand state marketing plans in order to effectively communicate details and results of program plans to investors. This proposed policy change of the CBB reviewing state marketing plans, with the appropriate CBB infrastructure in place, could effectively and immediately streamline programs and increase efficiencies of checkoff expenditures at the state and national level through enhanced coordination of programs and planning. These increased efficiencies are pivotal in a time where checkoff collections and the overall checkoff budget is shrinking. USCA envisions an all-inclusive review process, whereby a diverse group of state beef councils, national groups, investors and CBB members are solicited for input and are integrated into the planning and evaluation discussion. USCA believes the possibilities this policy change represents are infinite.

Opponents argue in a protectionist manner that this recommendation is a threat to the Operating Committee's authority and they also forecast that many producers will view it as an effort by the federal government to seize from state beef councils the discretion and rights Congress gave them. Opponents suggest that "it's better to leave the evaluation of state programs in the hands of the states" and warn that the status quo has served the industry well. USCA couldn't disagree more and the CBB legal counsel's opinion validates this position.

USCA believes this could be one of the most promising and positive policy changes proposed if it is designed to include, rather than exclude, investors.

CBB legal counsel opinion follows: As discussed above, the Board has the power to develop strategic plans to guide the Board in carrying out its duties under the Act and the Order. Supra Part I. Also, as noted above, the Board has a duty to "encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products." Order § 1260.150(p). The recommendation would call for a process of defining the Board's objectives and vision for the program, and formulating a process for achieving the Board's goals and desired outcomes. This recommendation is consistent with Board duties under the Act and Order.

Recommendation #18: *The Evaluation Committee shall be comprised of CBB members and shall evaluate all CBB and joint programs. Federation members will be included on the committee if all Federation-funded activities are included in the evaluation process. The Evaluation Committee shall also review current program plans and budgets to evaluations to ensure all programs are evaluated.*

USCA Comment: As previously stated in USCA comments above, the Joint Evaluation Committee is comprised of twelve seats; five for CBB representatives; five for Federation

representatives; and two for NCBA's Policy Division. This structure excludes all other policy organizations and/or checkoff contractors. USCA adamantly opposes this exclusion.

While the Order requires that the Operating Committee periodically review or evaluate each plan or project, nothing in the Act & Order precludes the CBB from establishing a separate Evaluation Committee to conduct its own evaluation of checkoff-funded programs. Evaluations can be conducted jointly or separately; the law does not compel either approach.

CBB legal counsel opinion follows: The Board has a fiduciary responsibility to evaluate all programs funded with checkoff dollars to ensure that funds are being spent appropriately. As explained in the AMS Guidelines: Boards ... are accountable for how board funds are spent. When projects are contracted, boards must be aware of how the funds are to be used. Boards must expend all funds— whether the funds are from assessments or from an outside source— in accordance with the act, order, regulations, and AMS policy. AMS Guidelines § V (C). As the AMS Guidelines make clear, the Beef Board is accountable for the expenditure of all checkoff dollars set forth in any budget approved by the Board (including the Operating Committee budget that must be reviewed and approved by the Board before it is sent to the Secretary). Thus, the Beef Board has the inherent power to review and evaluate expenditures, projects, and results. See Order §§ 1260.149(c), 1260.150(f). The Board has the power to structure the Evaluation Committee as it deems necessary to effectively carry out its responsibilities. In addition, the Order requires that each plan or project “be periodically reviewed or evaluated by the [Operating] Committee” to ensure that they contribute to “an effective program of promotion, research, consumer information and industry information.” Order § 1260.169(c). This duty imposed on the Operating Committee by the Order, however, does not preclude the Beef Board from setting up an Evaluation Committee for the purpose of evaluating checkoff- funded programs. The Beef Board and the Operating Committee may conduct their evaluations jointly or separately as they see fit. The requirements of the Act, Order, Guidelines, and Beef Board Bylaws do not compel either approach.