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TO: Julie Wise
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THROUGH: Charlene Parker *Charlene Parker 8/31/17*
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Marketing and Regulatory Programs

FROM: Bruce Summers *Bruce Summers* **AUG 30 2017**
Acting Administrator
Agricultural Marketing Service

SUBJECT: Request for Emergency Approval of New Form for Qualified State Beef Councils

ISSUE / REQUEST:

The Agricultural Marketing Service (AMS) is requesting emergency approval for new information collection under the Beef Checkoff Program. The collection would affect those producers paying into the Beef Checkoff Program impacted by the June 21, 2017, preliminary injunction issued by a U.S. District Court Judge in Montana.

The use of normal clearance procedures is likely to prevent or disrupt the collection of information due to the court-ordered deadline becoming effective immediately.

BACKGROUND:

The beef checkoff program is funded by industry members who pay assessments. These assessments fund programs of promotion (including advertising), research, and information to create demand for the commodity. Under the Beef Checkoff Program, state beef councils collect national assessments, retain a portion, and remit at least half to the national programs.

On May 2, 2016, a national cattle organization representing beef producers (Plaintiffs) filed a complaint in the District Court for the District of Montana Great Falls Division, against Sonny Perdue, Secretary of Agriculture for the U.S. Department of Agriculture (USDA), seeking declaratory and injunctive relief. The Plaintiffs alleged that the current administration of the Beef Checkoff Program in Montana violates the First Amendment of the United States Constitution by allowing the Montana Beef Council (MBC)—the beef council that collects assessments in Montana—to use a portion of cattle producers' assessments paid to the Beef Checkoff Program to fund promotional campaigns by MBC without first obtaining permission from those producers.

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On June 21, 2017, a U.S. District Court Judge in Montana issued a preliminary injunction enjoining USDA from continuing to allow MBC to use the assessments that it is qualified to collect under the Beef Checkoff Program to fund advertising campaigns, unless a cattle producer provides prior affirmative consent authorizing MBC to retain a portion of the cattle producer's assessment. As a result of this preliminary injunction, MBC must begin forwarding all Beef Checkoff Program funds directly to the Cattlemen's Beef Promotion and Research Board (Beef Board), the entity that administers the National Beef Checkoff Program, absent proof that a producer has provided advance affirmative consent authorizing MBC to retain a portion of that producer's assessment.

Without the producer's permission for the state to retain a portion of the Federal assessment under the Beef Checkoff Program, MBC will likely have insufficient funds to pay for ongoing projects, contracts, staff salaries, and other administrative functions and, therefore, could be forced to cease operations and potentially leave current staff unemployed.

This new form would be completed voluntarily by beef producers in Montana (and any other state subject to a similar court order that is authorized to collect assessments under the Beef Promotion and Research Act of 1985). The form, once completed by beef producers, will provide prior affirmative consent authorizing certain state beef councils to retain a portion of the Federal assessment paid by beef producers. Otherwise, the full assessment for the Beef Checkoff Program in Montana (and any other state subject to a similar court order) will be forwarded to the Beef Board.

By law, all cattle producers, except organic beef producers, must pay an assessment. State beef councils are legally responsible for collecting monthly assessments and remitting a portion to the program's national board. Because the Montana district court order requires MBC to immediately begin remitting the full \$1-per-head assessment to the Beef Board, MBC must be able to provide beef producers a mechanism (e.g., form) to retain a portion of the Federal assessment in the state.

In compliance with OMB regulations (6 CFR 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), a 60-day notice for comment will be submitted to the *Federal Register* for publication, and the information collection and recordkeeping requirements that may be imposed by this action are submitted to OMB for emergency review and approval by September 25, 2017, or as soon as possible.

Attached are the OMB 83-I, the Supporting Statement, AMS-71, and a copy of the court issued Memorandum and Order.

Attachments