



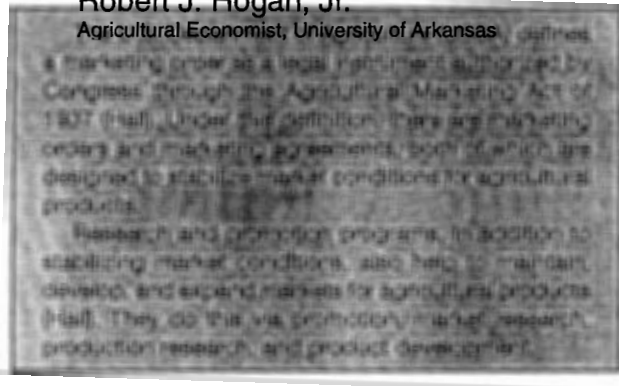
Beef and Pork Checkoffs: Challenges, Impacts, Alternatives

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Beef and Pork Litigation

Checkoff proponents argue that producers need the checkoff-funded research and promotion program to boost demand and increase productivity. Individually, producers cannot adequately fund industry-wide research or promotion. Thus, joining together in an industry-wide checkoff enables them to do more than is possible as individuals. Proponents of the beef and pork checkoffs point to several factors as supporting their argument. One is consumer recognition of checkoff-funded promotion tag lines, "Pork – The Other White Meat" and "Beef – It's What's for Dinner." They also point to significant increases in exports of beef and pork since the checkoff programs began. And they point to new product development research that has contributed to enhanced demand for beef, and production research that contributed to enhanced pork production productivity.

However, opponents view the beef and pork checkoffs differently. One of the first major challenges to the beef checkoff occurred in 1989. The case was made that generic promotion violated the First Amendment right to free speech by imposing forced speech (via the generic advertising message). This First Amendment question of forced speech (or reverse free speech) is at the heart of several challenges to the beef and pork checkoffs. Opponents have long argued the checkoff programs do not promote just U.S. beef and pork, but simultaneously benefit imported beef and pork producers and processors as well. Thus, they argue they are forced to support competitors with their checkoff dollars. There is also concern that processors benefit more than producers because they can develop branded products and capitalize on the generic promotion message.

The Federal District Court decision in the first case that challenged the beef checkoff upheld its constitutionality. However, since then Federal District Courts and U.S. Circuit Appeals Courts have handed down contradictory rulings regarding the beef and pork checkoffs. Some have ruled the checkoff programs unconstitutional and some constitutional. As of fall, 2003, at least one Federal District Court has ruled each of the beef and pork checkoff programs unconstitutional, and at least one U.S. Circuit Court has upheld the lower court ruling for each checkoff program.

Congressional authorization of research and promotion for agricultural commodities dates to the 1930s. Marketing orders and agreements along with research and promotion programs were intended to stimulate market demand and enhance consumer perceptions of agricultural products. The Secretary of Agriculture was given authority to make mandatory assessments to fund industry-wide market improvements. Mandated assessments were intended to benefit all those being assessed.

Congress passed both the Beef Promotion and Research Act and Pork Promotion, Research and Consumer Information Act in 1985. These acts enabled establishing what is commonly called, respectively, the beef checkoff and pork checkoff. The beef checkoff requires domestic cattle producers and foreign importers to pay \$1 per head each time animals change ownership. Importers pay a comparable fee on imported beef. The pork checkoff requires producers to pay \$0.40 per \$100 of value on first time sales of hogs in three separate categories; feeder pigs, breeding hogs, and slaughter hogs. In both cases, most funds collected are used for generic promotion and research.

Since 1989, there have been several court challenges to the beef and pork checkoff. This Extension fact sheets briefly summarizes recent litigation. Then the beef and pork research and promotion programs are compared with a mushroom market research and promotion program that the U.S. Supreme Court ruled unconstitutional in 2001. Lastly, economic impacts of losing the mandatory beef and pork checkoff programs are discussed along with potential alternatives should the checkoff programs be declared unconstitutional.

As the separate challenges to the beef and pork checkoffs wind through the legal appeals process, it appears the U.S. Supreme Court ultimately will determine the constitutionality of each checkoff program. Supreme Court justices may refuse to hear the case and thus allow lower court rulings to stand or they may agree to hear the cases and rule independently on the merits of the challenges.

Comparison with Mushroom Program

Challenges to the beef and pork checkoff are not unique (Crespi and Sexton). Producers have challenged other agricultural commodity checkoff programs. One challenge, of particular significance, may affect and represent an omen for the beef and pork checkoff programs.

In an important related case, the Supreme Court voted 6 to 3 to sustain a 6th Circuit Court of Appeals decision in *United States et al v. United Foods, Inc.*, thus declaring the Mushroom Promotion, Research, and Consumer Information Order unconstitutional. The high court ruled the mushroom program violated the First Amendment right to freedom of speech. Justice Thomas, in a separate concurring statement, said, "I write separately, however, to reiterate my views that paying money for the purposes of advertising involves speech, and that compelling speech raises a First Amendment issue just as much as restricting speech. ... Any regulation that compels the funding of advertising must be subjected to the most stringent First Amendment scrutiny." (*United States et al. v. United Foods, Inc.* October 2001).

The U.S. Supreme Court ruling in the mushroom case is important for two reasons. First, challenges to both beef and pork checkoffs include arguments similar to objections in the mushroom case. Second, the Supreme Court ruled that the mandatory assessment for generic advertising was illegal but a mandatory assessment for research was legal. Table 1 indicates the similarity between the mushroom research and promotion order and the beef and pork research and promotion orders (Hogan). Seventeen of 20 listed provisions in the three orders are similar. Therefore, to an economist - *but not an attorney* - if provisions of the mushroom orders caused it to be declared unconstitutional, those same provisions may leave the beef and pork checkoff programs vulnerable to a similar fate.

Impacts of Eliminating Beef and Pork Checkoff Programs

What economic effects would be associated with losing the beef and pork checkoff programs? This question could be approached in several ways. One that seems obvious is to list specific programs conducted with producer funds that would be eliminated with dissolution of the two mandatory checkoff programs. However, this would not measure the impacts in any concrete manner.

An alternative approach was taken. Hogan estimated the net social welfare of losing each of the beef and pork checkoffs in their entirety. This analysis involves determining whether or not the checkoff positively or negatively affects consumers and producers. Sensitivity of the impacts to key factors is also important in determining whether the effects

on producers and consumers (if negative) are sufficiently large so as to suggest appropriate modifications to establish a legal checkoff program.

Welfare analysis examines changes in consumer and producer surplus and the net effect of these changes. Producer surplus in essence measures the benefit to producers while consumer surplus measures the benefit to consumers. Then, net social welfare is the sum of producer surplus and consumer surplus.

Conceptually, a checkoff-funded marketing program could increase demand via advertising (generic promotion), market research, or product research. Supply may increase as a result of production research but will be reduced by the amount spent on the checkoff assessment, which is a cost of production. Then, loss of the beef and pork checkoff programs in theory would mean a leftward shift in demand and a simultaneous rightward shift in supply. The net effect conceptually is unclear. Key factors affecting the net change include demand and supply elasticities, checkoff assessment amounts, advertising and research elasticities, and returns to generic promotion of beef and pork. Thus, ranges for key factors were used in simulations to assess the sensitivity of the resulting welfare estimates.

Beef Impacts

Estimated changes in net social welfare and the value of industry product from losing the beef checkoff were negative in this study (Hogan). These results imply the beef checkoff program has both consumer and producer value and elimination of the research and promotion program would be an economic loss to the beef industry.

The most important factor affecting the economic impact was the checkoff assessment level. The discussion here is only on the checkoff level nearest to the \$1/head checkoff that exists currently. The range of values for demand elasticity and for supply elasticity caused net social welfare to vary by similar amounts. Thus, changes in net social welfare were about equally sensitive to varying estimates of demand and supply parameters.

Changes in total product value or producer surplus also were negative for all simulations, indicating a positive benefit to beef producers. The average loss in product value at the current checkoff level amounted to -\$0.0028/lb. of fed steers and heifers or -\$3.29/head at average steer and heifer slaughter volume and slaughter weights for 1998-2002 (Figure 1).

Pork Impacts

Estimated changes in net social welfare and the value of industry product also were negative for pork. Elimination of the pork checkoff would be expected to cause a negative impact to both producers and consumers.

As with beef, the key factor affecting impacts was the checkoff assessment level. For the current assessment level (\$0.40/\$100 value), the range in demand elasticity and supply elasticity caused the net change in social welfare to range by similar amounts. Thus, similarly to beef, changes in net social welfare were about equally sensitive to varying estimates of demand and supply elasticities and much less sensitive than to the assessment level.

Changes in total product value or producer surplus also were negative for all simulations. Like beef, simulation results suggest a positive benefit to pork producers from the checkoff program. The average loss in product value associated with the current assessment level -\$0.0022/lb. of slaughter hogs or -\$0.58/head at average hog slaughter volume and slaughter weights for 1998-2002 (Figure 1).

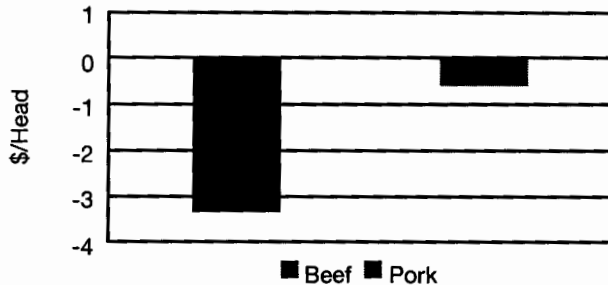


Figure 1. Estimated Decrease in Value of Production per Head from Dissolving the Beef and Pork Checkoff Programs.

Mandatory Checkoff Alternatives

Several alternatives are available to producers who want to retain a checkoff program. Examples of these can be found for other commodities. Five identified in recent research (Hall) include:

1. Change the research and promotion program to a marketing order which the Supreme Court has found to be constitutional – While this alternative passes the Supreme Court test for constitutionality, it could involve additional regulations on the beef and pork industry. Marketing order legislation can include price supports, price controls, and quality restrictions, among other provisions. Such regulations may not be acceptable to beef and pork producers.
2. Offer a refund to producers/handlers who advertise or promote their product individually – Many state and national checkoff programs currently allow for refunds. These may be full or partial refunds and could be related only to the promotion portion of collected funds.
3. Change the promotion portion of the program to voluntary rather than mandatory but still collect mandatory funds for research – The Supreme Court has ruled that mandatory checkoff programs for research are constitutional. Thus, this alternative would allow a two-tiered program; a voluntary checkoff for promotion and a mandatory checkoff for research. This alternative was chosen by the mushroom industry after the mushroom research and promotion order was declared unconstitutional. The mushroom industry changed to a mandatory checkoff for research only.
4. Implement designated assessments which would allow producers/handlers to choose how the Board uses their mandatory checkoff funds – This alternative is similar to what some charitable organizations have done for years. Donors can specify in which programs their contribution dollars can be spent. Thus, in the case of a commodity checkoff program, the choice would be between promotion or research.

5. Change the entire program to a voluntary program – There are several examples of entirely voluntary programs in operation already.

Hall identified and surveyed state and federal market order programs and asked which alternative appealed most to them. Note this research covered a broad array of agricultural commodities. Overall, switching the promotion program to a voluntary program (alternative 3 above) was the most popular alternative. It was followed closely by switching to designated assessments (alternative 4 above).

Summary And Conclusions

Lawsuits challenging the mandatory beef and pork checkoff programs threaten generic promotion and research programs financed by beef and pork producers. Given lower court rulings and the U.S. Supreme Court ruling on a similar research and promotion program for mushrooms, there is a strong likelihood the beef and pork checkoff programs as **currently operating** will be declared unconstitutional and will cease to exist **in their present form**.

Research at OSU used a net social welfare model to estimate changes in producer surplus and consumer surplus and the net change in social welfare should dissolution of the two checkoff programs become a reality. Both for beef and pork, a significant reduction in net social welfare and value of production was found without the checkoff programs. Thus, each checkoff program currently has a beneficial effect both for producers and consumers.

This research did not address nor does it provide any insight into two key points. First is whether dissolution of the checkoffs will have an effect which is **noticeable** to producers. How soon an effect occurs is also unknown. Research and promotion programs result in delayed benefits and the loss of those programs will mean a similar delay in negative effects.

Second, this research did not address whether or not the mandatory checkoff programs could be converted to an effective, alternative program. Other OSU research provides some insight into alternatives that may appeal to beef and pork producers. One may be to retain a mandatory checkoff for research and a voluntary checkoff for promotion programs. Prior to the mandatory beef and pork checkoff orders, voluntary checkoff programs for beef and pork were common. Currently, some states have the legislative authority to implement a voluntary program, whereas others may not.

References

- Crespi, John M. and Richard J. Sexton. "Marketing Orders and Brand Promotion...Got Milk? Lawyers?" *Choices* (First Quarter 2001):18-23.
- Hall, Megan J. "Characteristics of Commodity Check-Off Programs." Unpublished M.S. thesis, Oklahoma State University, December 2003.
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Table 1. Comparison of Beef, Pork, and Fresh Mushroom Research and Promotion Programs.

Criteria	Beef Program	Pork Program	Fresh Mushroom Program
Mandatory assessment	Yes	Yes	Yes
Most funds spent for generic advertising	Yes	Yes	Yes
Allows for a variety of promotional activities	Yes	Yes	Yes
Limits spending for other marketing programs	Yes	No	Yes
Disparaging messages regarding other commodities prohibited	Yes	Yes	Yes
Generic advertising benefit proportionate to assessment	Yes	Yes	Yes
Generic program tends to promote some brands but not others	No	No	No
Finances advertising that may benefit competitors	No	No	No
Assessments used for inspection	No	No	No
Requires licensing and bonding, specified accounting and record keeping, a disciplinary code	Yes	Yes	Yes
Mandates packaging, labeling, product grading	No	No	No
Includes supply controls or quotas	No	No	No
Exempt from antitrust laws	No	No	No
Provides reimbursement of government costs	Yes	Yes	Yes
Prevents individuals from acting independently	No	No	No
Mandates elected committees	Yes	Yes	Yes
Provides for a producer referendum or continuance referendum	Yes	Yes	Yes
Gives assessed importers board representation	Yes	Yes	Yes
Provides for an importer referendum or continuance referendum	No	No	Yes

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