

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANIMAL LEGAL DEFENSE FUND
2108 N St., Ste. N.
Sacramento, CA 95816

Plaintiff,

v.

AGRICULTURAL MARKETING SERVICE
and UNITED STATES DEPARTMENT OF
AGRICULTURE,
1400 Independence Ave., S.W.
Washington, DC 20250

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Animal Legal Defense Fund (ALDF) brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the U.S. Department of Agriculture (USDA) and its agency, the Agricultural Marketing Service (AMS), to promptly disclose records concerning its oversight of the Beef Checkoff program, a federally mandated initiative that channels tens of millions of dollars each year into beef industry advertising. Despite FOIA's twenty-business-day response deadline, AMS has failed to respond to ALDF's January 2025 FOIA request, violating its statutory duty. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.6(b) (2019).

2. AMS's violation deprives ALDF, a 501(c)(3) nonprofit organization, and the public of information urgently needed to assess the government's role in the promotion of

activities harmful to animals and the climate—namely, records pertaining to AMS’s review and approval of advertising and promotional campaigns featuring environmental marketing claims administered under the Beef Checkoff program.¹ Even though industrial beef production is a significant contributor to the climate crisis—the industry is a major source of methane, nitrous oxide, carbon dioxide, and other greenhouse gas (GHG) emissions, and is responsible for biodiversity loss, deforestation, and excessive water use²—AMS has repeatedly approved Beef Checkoff-funded advertising and promotional content with false and misleading claims about beef’s climate and environmental impacts.³

3. ALDF therefore respectfully asks this Court to declare AMS in violation of FOIA and order the agency to promptly produce all responsive, non-exempt records in compliance with FOIA’s mandate.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

¹ AMS, *Cattlemen’s Beef Board*, USDA, <https://www.ams.usda.gov/rules-regulations/research-promotion/beef> (last visited July 9, 2025); USDA, *Guidelines for AMS Oversight of Commodity Research and Promotion Programs* (2020), <https://www.ams.usda.gov/sites/default/files/media/AMSRPGuidelines.pdf> [hereinafter *AMS Checkoff Guidelines*].

² Food & Agric. Org. of the United Nations, *Livestock Solutions for Climate Change* (2017), <https://openknowledge.fao.org/items/2985e4e2-3c37-4e7c-aa7c-3655de93d53c>; *Wildlife and Climate Change*, Nat’l Park Serv. (Dec. 8, 2021), <https://www.nps.gov/articles/000/wildlife-climateimpact.htm>.

³ *Infra* ¶¶ 26–29 (describing false and misleading Beef Checkoff-funded advertisements).

PARTIES

6. Plaintiff ALDF is a public interest nonprofit 501(c)(3) organization dedicated to protecting animals through legal advocacy. As part of its mission, ALDF seeks transparency into government programs that support and promote practices known to cause significant harm to animals and the environment⁴—including industrial beef production, a leading contributor to biodiversity loss, climate change, and GHG emissions.⁵ ALDF relies on and regularly seeks information through FOIA for its legal advocacy and in furtherance of its mission.⁶ ALDF also shares information gathered through FOIA requests with its members and the public.⁷ Obtaining information about government activity, analyzing that information, and publishing and

⁴ E.g., *Forcing Disclosure of Foster Farms Water Usage Records*, ALDF (June 28, 2017), <https://aldf.org/case/forcing-disclosure-of-foster-farms-water-usage-records> (suing City of Livingston, California for unlawfully withholding records about water usage at a Foster Farms slaughterhouse and processing plant during a severe drought); *Demanding Transparency Regarding Government Funding of Factory Farms*, ALDF (Oct. 21, 2022), <https://aldf.org/case/demanding-transparency-regarding-government-funding-of-factory-farms> (suing USDA Farm Service Agency for withholding and improperly redacting records regarding federal funding of factory farms); *Animal Abuse Should Never Be a Secret – Update on Factory Farm Transparency Lawsuit*, ALDF (May 8, 2019), <https://aldf.org/article/animal-abuse-should-never-be-a-secret-update-on-factory-farm-transparency-lawsuit> (suing the Food and Drug Administration for redacting information in response to a FOIA request relating to hen living conditions on several factory egg farms); *Challenging the Government’s Censorship of Animal Advocates’ Speech on Social Media*, ALDF (April 17, 2025), <https://aldf.org/case/challenging-the-governments-censorship-of-animal-advocates-speech-on-social-media> (filing a lawsuit on behalf of animal advocates who were prevented from posting critical comments regarding animal experimentation on the Health and Human Services’ otherwise public social media pages).

⁵ E.g., *Urging FSIS to Ban Use of ‘Climate-Friendly’ Claims on Beef Products*, ALDF (Jan. 25, 2024), <https://aldf.org/case/urging-fsis-to-ban-use-of-climate-friendly-claims-on-beef-products/>.

⁶ E.g., *ALDF v. Rollins*, No. 25-cv-461 (D.D.C filed Feb. 18, 2025) (suing USDA over approving chicken and turkey products without reviewing the imagery on the labels to ensure that it is not misleading to consumers); *ALDF v. Vilsack*, No. 21-cv-1539 (D.D.C filed Jun. 8, 2021) (suing USDA over its approval of misleading poultry product labels, including labels with imagery showing chickens outside of a barn, under the sun, and surrounded by vegetation).

⁷ E.g., *CAFO Statistics for Indiana 2016-2018*, ALDF, <https://aldf.org/project/concentrated-animal-feeding-operations-indiana/> (last visited July 10, 2025) (compiling information ALDF received through FOIA requests to create a publicly accessible map of Confined Animal Feeding Operations in Indiana).

disseminating it to the news media and public are among the core activities that ALDF uses to advance its work in the public interest. ALDF is a “person” within the meaning of 5 U.S.C. § 551(2).

7. Defendant USDA is a department of the executive branch of the U.S. government and is an “agency” within the meaning of 5 U.S.C. § 552(f). USDA and its component AMS have possession and control over the requested records.

8. Defendant AMS is an agency of the USDA and is an “agency” within the meaning of 5 U.S.C. § 552(f). AMS has possession and control over the requested records.

LEGAL FRAMEWORK

The Freedom of Information Act

8. FOIA requires agencies of the government, upon request, to promptly make records available to the public. 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

9. Upon receiving a FOIA request, an agency has twenty working days to respond to the request. *Id.* § 552(a)(6)(A)(i); 7 C.F.R. § 1.6(b).

10. A requestor may seek immediate judicial review of the matter if the agency fails to comply with the twenty-working-day time limit. 5 U.S.C. § 552(a)(6)(C). FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations set forth in 5 U.S.C. § 552(a)(6)(A)(i).

11. An agency may extend its time to make a determination on a request by no more than ten additional working days if “unusual circumstances exist” but, to do so, it must provide written notice to the requester setting forth the unusual circumstances and “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); 7 C.F.R. § 1.6(d).

The Beef Promotion and Research Act

12. Congress established the Cattlemen’s Beef Promotion and Research Board (Beef Board) under the Beef Promotion and Research Act, 7 U.S.C. §§ 2901–2911 (Beef Act). The Beef Board seeks to “maintain and expand domestic and foreign markets and uses for beef and beef products” by, among other things, engaging in promotional activities which are funded by the collection of Beef Checkoff dollars.⁸ The structure and operational requirements of the Beef Checkoff program are detailed in the Beef Promotion and Research Order (the Beef Order), 7 C.F.R. § 1260 (2023), which is authorized by the Beef Act.

13. The Beef Checkoff program is funded through a mandatory \$1 assessment fee per head of cattle sold. Each year, the assessment fees add up to around \$75 million, of which roughly \$40 million is given to the Beef Board.⁹ The remainder is given to Qualified State Beef Councils (QSBCs), which are beef promotion entities certified by the Beef Board that operate at the state level.¹⁰

14. Under the Beef Order, “[n]o . . . plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.”¹¹

⁸ AMS, *supra* note 1; Beef Board, *Financial Statements September 30, 2024 and 2023*, at 10 (2025), <https://www.beefboard.org/wp-content/uploads/2025/02/CBB-FY24-FS-Final.pdf>.

⁹ AMS, *supra* note 1.

¹⁰ 7 C.F.R. § 1260.115 (2023).

¹¹ 7 C.F.R. §1260.169 (2023); *see also Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. Vilsack*, 6 F.4th 983, 990 (9th Cir. 2021) (“The Beef Act’s implementing regulations require that all third-party speech . . . not . . . engage in ‘unfair or deceptive acts or practices’” (quoting 7 C.F.R. § 1260.169(d))).

15. AMS is responsible for overseeing the Beef Board’s research and promotion activities.¹² According to AMS’s guidelines, AMS “review[s] all promotional . . . materials” proposed by the Beef Board, “approving those in compliance with the applicable legislative authority and USDA policy.”¹³ This includes compliance with the requirement that Beef Checkoff-funded promotional materials be “accurate, not misleading, and not deceptive.”¹⁴

16. To this end, AMS guidelines note that “environmental marketing claim[s]” funded by Checkoff dollars “should not overstate, directly or by implication, an environmental attribute or benefit” of a product and further explain that “[i]t is deceptive” for a Checkoff-funded advertisement “to misrepresent, directly or by implication that a product . . . offers a general environmental benefit.”¹⁵ In addition, AMS guidelines state that all Beef Checkoff-funded “advertising” and “social media content (Websites, Facebook, Twitter, YouTube, blog entries, etc.)” must be reviewed and approved by AMS prior to publication.¹⁶ The Beef Board and QSBCs are also “required to create a social media plan for submission to AMS for review and approval.”¹⁷

17. USDA has repeatedly confirmed, including in representations to the U.S. Supreme Court, that it “exercises final approval authority over every word used in every [Beef Checkoff-funded] promotional campaign.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 561 (2005); *see also id.* (“All proposed promotional messages are reviewed by Department officials

¹² See 7 C.F.R. § 1260.520 (2023) (delegating administration of the Beef Promotion and Research Order’s implementing regulations to the Livestock and Seed Division of AMS).

¹³ *AMS Checkoff Guidelines*, *supra* note 1, at 44.

¹⁴ *Id.* at 50–51, 60, 98 (discussing AMS’s review of nutrient-content claims, disparaging or comparative advertising, and environmental marketing claims).

¹⁵ *Id.* at 97, 99.

¹⁶ *Id.* at 44.

¹⁷ *Id.* at 85.

both for substance and for wording, and some proposals are rejected or rewritten by the Department.”).

FACTUAL BACKGROUND

Importance of the Requested Records

18. 2024 was the hottest year on record, surpassing the record set in 2023. The past ten years have been the ten hottest since record-keeping began in 1850.¹⁸ The consequences of climate change caused by anthropogenic GHG emissions are growing worse, resulting in “[m]ore severe heat waves, floods, and droughts” that “harm people, damage property, strain infrastructure, reduce crop yields, and more.”¹⁹

19. According to the United Nations Environment Programme, “[h]ow we produce and consume food” plays a “key role” in “the climate emergency.”²⁰ Agricultural production is responsible for approximately one-third of all human-caused GHG emissions.²¹ Animal products account for between 14.5 and 20 percent of all human-caused GHG emissions.²²

20. Animal agriculture—and beef production in particular—has an outsized impact on the climate because of its substantial emissions of the climate super-pollutants nitrous oxide and methane. Mitigating methane—which is about eighty times more potent than carbon dioxide

¹⁸ World Meteorological Org., *State of the Global Climate 2024*, at 3 (2025), <https://library.wmo.int/records/item/69455-state-of-the-global-climate-2024>; Delger Erdenesanaa, *Earth’s 10 Hottest Years on Record Are the Last 10*, N.Y. Times, <https://www.nytimes.com/2025/03/18/climate/global-temperatures-wmo-report.html> (last updated Mar. 22, 2025).

¹⁹ *Greenhouse Gases*, U.S. Env’t Protec. Agency, <https://www.epa.gov/report-environment/greenhouse-gases> (last updated June 17, 2025).

²⁰ Cleo Verkuijl et al., U.N. Env’t Programme, *What’s Cooking? An Assessment of the Potential Impacts of Selected Novel Alternatives to Conventional Animal Products*, at vii (2023), <https://www.unep.org/resources/whats-cooking-assessment-potential-impacts-selected-novel-alternatives-conventional>.

²¹ M. Crippa et al., *Food Systems Are Responsible for a Third of Global Anthropogenic GHG Emissions*, 2 Nature Food 198 (2021).

²² Verkuijl, *supra* note 20, at 7.

over a twenty-year period²³—is widely recognized as critical to curbing warming in the near-term.²⁴ Animal agriculture is the United States’ top anthropogenic source of methane, responsible for 36.6% of methane emissions.²⁵

21. There are many millions (more than 27 million as of the beginning of 2025) of cattle raised for beef in the United States at any given time.²⁶ Most of them are finished—*i.e.*, raised to slaughter weight—in industrial facilities known as concentrated animal feeding operations (CAFOs).

22. CAFOs not only exacerbate climate impacts but also animal suffering. Due to intensive crowding of animals and concentrated storage of vast quantities of animal waste, CAFOs produce and emit many harmful gases including ammonia, hydrogen sulfide, and methane; release harmful airborne particulate matter; attract infestations of vermin; and pollute natural water sources.²⁷ In a CAFO, scores of animals are confined in close quarters that are

²³ Piers Forster et al., *The Earth’s Energy Budget, Climate Feedbacks and Climate Sensitivity*, in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* 923, 1017, tbl.7.15 (Valérie Masson-Delmotte et al. eds., 2021).

²⁴ Fiona Harvey, *Reduce Methane or Face Climate Catastrophe, Scientists Warn*, Guardian (Aug. 6, 2021), <https://www.theguardian.com/environment/2021/aug/06/reduce-methane-or-face-climate-catastrophe-scientists-warn> (quoting a lead reviewer of a 2021 U.N. Intergovernmental Panel on Climate Change report: “Cutting methane is the biggest opportunity to slow warming between now and 2040. We need to face this emergency”).

²⁵ U.S. Env’t Prot. Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2022*, at ES-13, ES-18 (2024), https://web.archive.org/web/20240927004207/https://www.epa.gov/system/files/documents/2024-04/us-ghg-inventory-2024-main-text_04-18-2024.pdf.

²⁶ USDA, *Cattle 1* (2025), <https://downloads.usda.library.cornell.edu/usda-esmis/files/h702q636h/sf26b275x/h989sz55j/cat10125.pdf>.

²⁷ Ryan Levandowski, *Polluting ‘til the Cows Come Home: How Agricultural Exceptionalism Allows CAFOs Free Range for Climate Harm*, 33 Geo. Env’t L. Rev. 151, 152–53 (2020); Carrie Hribar, Nat’l Ass’n of Loc. Bds. of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* (2010), https://stacks.cdc.gov/view/cdc/59792/cdc_59792_DS1.pdf.

littered with their waste. To prevent animals from “succumbing to illness in their disease-ridden quarters” and to cause them to gain weight, animals in CAFOs are dosed with antibiotics, hormones, and other drugs.²⁸

23. Beef production also monopolizes hundreds of millions of acres of land that would otherwise sequester and store more carbon. Indeed, according to USDA land use data, 41 percent of the contiguous United States—or approximately *800 million acres*—is devoted to cattle grazing or livestock feed production.²⁹

24. Consumers have become increasingly aware of the global climate and local environmental impacts of food production. This growing awareness has inspired many consumers to adopt dietary changes that will reduce their individual climate footprints.³⁰ Recognizing these consumer preferences, the beef industry has adopted marketing tactics meant to assuage consumers’ climate concerns.³¹

25. In particular, the beef industry has deployed a series of deceptive advertising tactics through AMS-approved Beef Checkoff campaigns that mislead consumers about the

²⁸ *Industrial Animal Agriculture: Exploiting Workers and Animals*, ALDF (July 28, 2020), <https://aldf.org/article/industrial-animal-agriculture-exploiting-workers-and-animals>.

²⁹ See Dave Merrill & Lauren Leatherby, *Here’s How America Uses Its Land*, Bloomberg (July 31, 2018), <https://www.bloomberg.com/graphics/2018-us-land-use/> (collating USDA land use data).

³⁰ Anna Birgitte Milford & Sarah Wangui Muiruri, *The Impact of Consumers’ Preferences for Domestic Food on Dietary Sustainability*, 195 *Appetite* 1, 7 (2024) (study showing that consumers are willing to reduce meat consumption when they learn about animal suffering caused by farming practices)

³¹ E.g., Loredana Loy & Jennifer Jacquet, *The Animal Agriculture Industry’s Obstruction of Campaigns Promoting Individual Climate Action*, 2025 *Climate Pol’y* 1; Viveca Morris & Jennifer Jacquet, *The Animal Agriculture Industry, US Universities, and the Obstruction of Climate Understanding*, 177 *Climatic Change* (2024); Melissa Thibault, Sharon Pailler & Daisy Freund, *Why Are They Buying It?: United States Consumers’ Intentions When Purchasing Meat, Eggs, and Dairy with Welfare-Related Labels*, 7 *Food Ethics* (2022).

climate and environmental effects of beef production and consumption.³² These tactics include videos with misleading claims about emissions; false and misleading social media ads; and informational materials with distorted or inaccurate claims about animal agriculture’s purported environmental benefits.

26. These materials make claims that are misleading to reasonable consumers, such as the ones pictured below: “Nicely done, beef. Your sustainable practices pump the brakes on climate change”³³; and “Beef cattle grazing captures and stores so much carbon, it’s the equivalent of taking almost 6 billion cars off the road each year.”³⁴

³² E.g., Cartie Werthman, *The Meat Industry Is Advertising Like Big Oil*, DeSmog (Apr. 18, 2023), <https://www.desmog.com/2023/04/18/meat-industry-advertising-big-oil-climate-change-ncba-nppc-checkoff/> (describing the misleading nature of a 2021 Beef Checkoff advertisement in the New York Times: “Beefing Up Sustainability”).

³³ See *Link to Ad – Beef. It’s What’s For Dinner.*, Meta Ad Library, <https://www.facebook.com/ads/library/?id=495112167860005> (last visited July 10, 2025); see also Ohio Beef Council, *Nicely Done, Beef*, Our Ohio, Sep.–Oct. 2021, at 13, <https://editions.mydigitalpublication.com/publication/?i=718129&p=13&view=issueViewer> (reproducing a similar ad that reads “Nicely done, beef. Your carbon hoofprint barely leaves a trace.”); image posted by Washington State Beef Commission (@WABeef), X, *Gearing up for #EarthDay2020, here are five things to know about beef and the environment* (Apr. 21, 2020), <https://x.com/WABeef/status/1252608750562623488> (similar).

³⁴ The graphic implies that cows have a positive climate impact and that grazing cattle reduces greenhouse gas emissions. Even if some regenerative grazing practices can increase soil carbon sequestration, this mitigation is significantly outweighed by other emissions from cattle, such as enteric fermentation and manure management. *Managed Grazing*, Project Drawdown, <https://drawdown.org/solutions/managed-grazing> (last visited May 22, 2025); Tara Garnett et al., Food Climate Rsch. Network, *Grazed and Confused?*, at 27, 66–68 (2017), https://www.oxfordmartin.ox.ac.uk/downloads/reports/fcrn_gnc_report.pdf (“[E]ven assuming the maximum mitigation potential, the grazing sector would continue to be a net emitter.”). Moreover, the study cited in the fine print of this advertisement has nothing to do with the beef cattle grazing’s impact on carbon storage; rather, the study merely estimates the total grassland carbon stocks in the conterminous United States. See Elise Pendall et al., *Chapter 10: Grasslands*, in *Second State of the Carbon Cycle Report* (2018), <https://web.archive.org/web/20250124213336/https://carbon2018.globalchange.gov/chapter/10/>.



Beef. It's What's For Dinner.

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U.S. beef cattle only directly contribute 2% of U.S. greenhouse gas emission, while transportation is responsible for 28.5%



BEEF.
IT'S WHAT'S FOR DINNER.®



Beef cattle grazing captures and stores so much carbon, it's the equivalent of taking almost **6 billion cars** off the road each year.



BEEF
Funded by
Beef Farmers and Ranchers

Sources:

1. Pendall, E., D. Bachek, R. T. Conant, B. El Masri, L. B. Flanagan, A. K. Knapp, J. Liu, S. Liu, and S. M. Schaeffer. 2018. Chapter 10: Grasslands. In *Second State of the Carbon Cycle Report (SOCCR2): A Sustained Assessment Report*. [Cavallaro, N., G. Shrestha, R. Birdsey, M. A. Mayes, R. G. Najjar, S. C. Reed, P. Romero-Lankao, and Z. Zhu (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 399-427. <https://doi.org/10.7930/SOCCR2.2018.Ch10>

2. EPA. 2021a. *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2019*. U.S. Environmental Protection Agency, Washington, D.C.



27. Notwithstanding beef production’s enormous climate footprint and negative impacts on biodiversity, Beef Checkoff-funded advertisements have also claimed that “[c]attle grazing supports biodiversity, provides wildlife habitat, enhances carbon sequestration,”³⁵ and misleadingly state that cows engage in “carbon recycling” by “mak[ing] use of CO₂ already in the atmosphere.”³⁶

28. One of the Beef Checkoff program’s most recognizable slogans, “Beef. It’s What’s For Dinner,” is featured prominently in media.³⁷ On the @BeefForDinner YouTube channel, a promotional video claims that “beef cattle are actually one of the most sustainable things on the planet” and “cattle are actually . . . the key to sustainability for our future.”³⁸

29. Another Beef Checkoff-funded promotional video claims, without qualification, that “[h]ow beef is raised is . . . good for the environment,”³⁹ notwithstanding AMS’s recognition that such general environmental benefits claims are deceptive.⁴⁰

³⁵ Beef. It’s What’s For Dinner, Facebook, *Cattle grazing supports biodiversity, provides wildlife habitat, enhances carbon sequestration and improves nutrient cycling*. (Sept. 23, 2024), <https://www.facebook.com/share/p/VSkolTqjxxwLfhwJ/> (referenced in the request, Ex. A).

³⁶ E.g., WABeef, *Carbon Cycling by Cows*, at 0:37, 0:59 (YouTube, Apr. 19, 2021), <https://www.youtube.com/watch?v=F8PDilDD1Cw> (referenced in the request, Ex. A).

³⁷ *Beef. It’s Still What’s for Dinner*, Beef Board (July 30, 2020), <https://www.beefboard.org/2020/07/30/beef-its-still-whats-for-dinner/>.

³⁸ Beef. It’s What’s For Dinner, *Rethinking the Ranch with Sarah Sortum*, at 0:01, 0:28 (YouTube, Oct. 12, 2021), <https://www.youtube.com/watch?v=UWKeUSI0ZX4> (referenced in the request, Ex. A).

³⁹ See Oklahoma Beef, *Regenerative Agriculture*, at 0:42 (YouTube, Mar 30, 2021), <https://www.youtube.com/watch?v=6xs7DIT5E34>.

⁴⁰ *AMS Checkoff Guidelines*, *supra* note 1, at 99.



30. AMS is responsible for reviewing these and all other Beef Checkoff-funded promotional materials to ensure they do not contain false, misleading, or deceptive content. AMS thus has possession and control over records pertaining to its review, conditional approval, and approval of Beef Checkoff-funded promotional materials.

FOIA Request

31. On January 7, 2025, ALDF submitted a FOIA request to AMS, seeking “records concern[ing] [AMS’s] oversight of the Beef Checkoff program.” Ex. A, at 1.

32. In particular, ALDF requested:

- a. “Any records concerning AMS’s review and approval of [eight specified] Beef Board and QSBC advertisements and promotions.” *Id.* at 2.
- b. “Any records concerning AMS’s approval of social media plans adopted by the Beef Board or QSBCs, as well as any communications between AMS and the Beef Board and/or QSBCs concerning those social media plans or the administration thereof.” *Id.*

- c. “Any records regarding AMS’s denial or conditional approval of Beef Checkoff-funded advertisements and promotions, including” conditional approvals or denials of “a proposed environmental marketing claim” and “[a]ny instances in which AMS conditionally approved or denied an advertisement because the proposed advertisements were found to violate the Beef Order’s prohibition on unfair or deceptive acts or practices.” *Id.* at 3.

33. ALDF asked that the records be delivered within twenty working days of the request, as mandated by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and implemented by USDA regulations, 7 C.F.R. § 1.6(b). Ex. A.

Agency Response

34. AMS has not provided any of the requested records, in violation of 5 U.S.C. § 552(a)(6)(A)(i).

35. On January 7, 2025, AMS acknowledged receipt of the request, assigning it tracking number 2025-AMS-00064-F. Ex. B.

36. AMS acknowledged the expected twenty-working-day timeline. *Id.*

37. On January 16, 2025, AMS sent ALDF two emails explaining that AMS had “encountered an issue with the tracking number originally assigned to” ALDF’s FOIA request. Exs. C, D. These emails notified ALDF that AMS had assigned a new tracking number, 2025-AMS-00070-F, to its FOIA request, and “assured” ALDF that this “confusion” had “not affected [AMS’s] processing of [the] request in any way.” Ex. C.

38. To date, ALDF has had no further communication from AMS relating to its request since the January 16 emails.

39. AMS has not notified ALDF of any “unusual circumstances” justifying an extension of the twenty-working-day timeline, as required by USDA regulations. 7 C.F.R. § 1.6(d).

40. In any event, ALDF’s request does not present any unusual circumstances. *Cf.* 5 U.S.C. § 552(a)(6)(B)(iii)(I)–(III) (describing such circumstances, including instances where an agency must search for records from field offices, search for a “voluminous amount of separate and distinct records,” or consult with another agency).

CLAIM FOR RELIEF

Violation of FOIA, 5 U.S.C. § 552 Wrongful Withholding of Non-Exempt Responsive Records

41. ALDF’s request was a properly submitted request for records within the possession, custody, and control of Defendants.

42. AMS is an agency subject to FOIA and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.

43. AMS is wrongfully withholding non-exempt agency records requested by ALDF by failing to produce non-exempt records responsive to its request.

44. Defendants’ failure to act on Plaintiff’s record request within twenty working days violates FOIA (5 U.S.C. § 552(a)(6)(A)(i)) and corresponding regulations (7 C.F.R. § 1.6(b)).

45. ALDF is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA request and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

RELIEF REQUESTED

WHEREFORE, Plaintiff ALDF respectfully asks that this Court:

- a. Assume jurisdiction in this matter and maintain jurisdiction until Defendants comply with the requirements of FOIA and any orders of this Court;
- b. Order Defendants to produce all responsive records to Plaintiff ALDF within 20 days of this Court's order;
- c. Award Plaintiff ALDF costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and
- d. Grant such other relief as the Court may deem just and proper.

Dated: July 14, 2025

Respectfully submitted,

/s Carrie Apfel

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* *Pro hac vice* application forthcoming