

National Research & Promotion Programs & the Role of USDA

Presentation for WODPA
by

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October 23, 2012

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R&Ps in a Nutshell

- ▶ USDA oversight
 - Per authority delegated by Congress
 - According to established oversight guidelines
 - R&Ps pay user fees to AMS and OGC
- ▶ Formed at the request of commodity sector
- ▶ Funded through assessments on
 - Producers, handlers, processors, importers, or others in the marketing chain
 - No appropriated funding

The Goal of R&P Programs

- ▶ Using a variety of promotion and research activities
 - Maintain and expand existing markets
 - Develop new markets

Prohibited Activities

- ▶ Any action that would be a conflict of interest.
- ▶ Promotions that are not generic
- ▶ Promotions that disparage another agricultural commodity.
- ▶ Using funds to influence governmental action or policy.
- ▶ Using the program as a “pass through” to fund other organizations

Role of AMS

- ▶ Oversight (Per Established Guidelines)
 - Includes Internal/Management Control Reviews
- ▶ Board Member Appointments
- ▶ Reviews and Approves
 - Budgets
 - Plans, Projects, Programs
 - Contracts
 - Bylaws and
 - Policies
- ▶ Rulemaking and Referendum Activities
- ▶ Enforcement/Compliance Activities

R&P Creation – Sector

- ▶ Identify Goals/Objectives
- ▶ Conduct Sector Analysis – Develop Profile
- ▶ Gain Sector Consensus
 - Will Need Evidence of Substantial Support
- ▶ Develop Justification
- ▶ Describe Impact on Small Business
- ▶ Draft Proposed Order
- ▶ Submit Proposal to USDA

Key Creation Decisions

- ▶ Product Coverage
- ▶ Assessment
 - Who Pays, How Much, Exemptions
- ▶ Types of Activities
- ▶ Board Name, Size, Membership
- ▶ Organization and Administration
- ▶ Referendum
 - Up-front or Delayed
 - Voting by Number, Volume, or Both

R&P Creation – USDA

- ▶ Meet/discuss proposal with proponents
- ▶ Analyze proposal for completeness
- ▶ Publish proposal for comments
- ▶ Analyze comments
- ▶ Publish final proposal and Referendum procedures
- ▶ Conduct referendum
- ▶ Publish final rule
- ▶ Appoint members

Hurdles to Organic R&P

- ▶ Amendment to R&P's exempted 100 percent organic operations, others not exempt
- ▶ Amendment does not allow for an organic program
- ▶ Commodity Promotion, Research, and Information Act of 1996 does not allow for more than one commodity
- ▶ Not enough Harmonized Tariff Schedule (HTS) codes to assess imports

Hurdles to Organic R&P

▶ Program Justification

- Fought to be exempt, now wants own, what changed
- What's the problem, how would an OR&P solve the problem

▶ Equitable Representation

- Membership
- Assessment
- Promotion
- Research

▶ Prohibition on Comparative Promotion

- Government Speech

Supreme Court of U.S.

► Held

- “Because the beef checkoff funds the Government’s own speech, it is not susceptible to a First Amendment compelled–subsidy challenge.”

Supreme Court Ruling Basis

- ▶ Government speech because “the message is effectively controlled by the Federal Government”
 - Congress and Secretary have set out overarching message
 - Members appointed by and subject to removal by Secretary
 - Secretary has final approval authority over every word in every promotional campaign
 - Subordinates attend and participate in meetings where proposals are developed

Ruling's Effect on AMS

- ▶ Reinforces position that all R&P communications are
 - The Secretary of Agriculture Talking
 - Held to the standard, **“Would the Secretary say this?”**
- ▶ Reinforces prohibition on disparaging comparisons
 - To do otherwise would weaken government speech argument
 - Opponents said generic message ignores fact that not all beef is the same (e.g., grass-fed inferior to grain-fed)

Christmas Tree Controversy's Affect on AMS

- ▶ Will require up-front referendum
 - Christmas Tree R&P derailed due to controversy over plan to implement prior to referendum

Organic: Fact and Fiction Per USDA

- ▶ Organic is a production claim
 - Organic is about how food is produced and handled
- ▶ Organic is not a content claim
 - It does not represent that a product is “free” of something
- ▶ Organic is not a food quality or safety claim
 - Organic is not a judgment about the quality and safety of any product
 - Organic does not mean a product is superior, safer, or more healthy than conventionally produced food

For Further Information

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