

National Research & Promotion Programs & the Role of USDA

Presentation for WODPA
by
Richard H. Mathews
October 23, 2012

The contents of this presentation, including format, style, and wording, are the property of Richard H. Mathews. No part of this presentation may be presented, reproduced, or transmitted in any form or by any means, electronic or mechanical, without written permission.

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

- ▶ Contact Richard H. Mathews
 - (717) 457-0100
 - rhmathews51@comcast.net