



GUIDELINES
FOR AMS
OVERSIGHT OF
COMMODITY
RESEARCH AND
PROMOTION
PROGRAMS

June 2012

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For
GUIDELINES FOR AMS OVERSIGHT OF COMMODITY
RESEARCH AND PROMOTION PROGRAMS

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United States Department of Agriculture
Agricultural Marketing Service

GUIDELINES FOR AMS OVERSIGHT
OF COMMODITY RESEARCH AND PROMOTION PROGRAMS

I. Overview

Congress delegated to the Department of Agriculture (USDA) the responsibility for implementation and oversight of commodity promotion, research, and consumer information programs established under freestanding legislation, commonly known as “checkoff” programs. In 1996, the Commodity Promotion, Research, and Information Act, commonly known as the “Generic Act” was enacted to allow commodity groups to create programs for their commodities under a generic statute. Prior to the Generic Act, many of today’s programs overseen by USDA’s Agricultural Marketing Service (AMS) were established under commodity specific legislation (see Appendix 1). The Secretary has delegated all functions to AMS for these programs except those delegated to USDA’s Foreign Agricultural Service (FAS), which has been given the authority to oversee international marketing activities.

The funding for such programs is industry specific, usually through deductions from sales by producers, marketers, and/or importers, and the programs are directed by industry boards. However, the Federal legislation which provides the authority for the collection and expenditure of funds also mandates for all of the programs that the Secretary of Agriculture appoint the board members and approve the boards’ budgets, plans, projects, and contracts. USDA is committed to oversight of research and promotion (R&P) boards in ways that allow them to grow and adapt to a fast-changing marketplace, including leadership to serve on the boards that reflects a diversity of perspectives and opinions.

The boards’ staff and appointed membership determine the direction of and carry out board programs and manage the boards. Every R&P program has a mission to maintain and expand the markets for its commodity. The boards are composed primarily of those

in the marketing chain who pay assessments and sometimes others, and those board members decide how their funds are spent. Because these R&P programs use assessment money to carry out their functions, transparency and oversight of these funds is critical. AMS' role is one of oversight—to ensure compliance with all applicable legislation, regulations, and policies.

Various State and regional promotion programs have been established under State and other statutes. Those State statutes and State regulations are controlling for those programs. Many of the State programs fall under the oversight of States Department of Agriculture, Consumer Affairs, or other state agency, which apply State guidance.

If the Federal legislation or regulations specifically require AMS oversight of State and local programs, portions of the guidelines may apply. If not directed by statute or regulation, the guidelines do not apply as a whole to State, regional, and local programs. Some State, regional, or local programs receive and expend funds from the national checkoff program. Though AMS does not have direct oversight of these State and local programs, AMS has an obligation to ensure that national checkoff funds are expended appropriately in accordance with the Federal legislation, regulations, and any applicable policies. State, regional and local programs cannot use national checkoff funds to carry out an activity unless authorized by the national program.

These guidelines are not meant to cover all aspects of AMS' day-to-day responsibilities in interacting with and supporting activities of the R&P boards. They are designed to facilitate the application of legislative and regulatory provisions of the acts and orders to promote consistency in AMS' oversight of all commodity promotion and research programs.

References to boards in this document also can mean board staff unless otherwise specified. The guidelines provide information on AMS' expectations for how boards will operate and for how AMS will approach oversight of the programs. These guidelines shall be reviewed and amended as necessary. However, in all cases, provisions in the

authorizing legislation and order for all programs provide the legal framework for all board actions and will take precedence over the guidelines in establishing parameters for board activities.

II. Budget Approval

A. USDA will review and approve all budgets. When submitting budgets to AMS for approval, the boards must include detailed information regarding administrative expenses and other costs. Budget submissions must include, at a minimum, all of the following components:

1. A statement of objectives and strategy in each major program area (research, advertising, etc.), including reasons for significant changes from the preceding budget period.
2. A summary of anticipated revenue (assessments, interest, donations, etc.) and anticipated refunds, where applicable, with comparative data for at least the preceding year.
3. A summary of proposed expenditures by major program areas with comparative data for at least the preceding year.
4. Staff and administrative expense breakdown, with comparative data for at least the preceding year. Boards must submit CEO and/or Executive Director salaries and compensation and for other staff as requested by AMS. This information may be supplied in a document separate from the budget.
5. Other legislative requirements as applicable to the budget process.

B. AMS will review budgets for compliance with legislative, regulatory, and policy requirements. Boards must receive AMS' approval of budgets prior to obligating any

funds. AMS also will approve amendments or additions to approved budgets, including shifting of program funds from one major area to another. Approval for initial budgets will be granted by the respective program Deputy Administrator. Approval for amendments will also be made by the respective program Deputy Administrator if the changes are 30 percent or more of the total budget. Otherwise, the Deputy Administrator's designee will approve the amendments.

C. Budgets shall be reviewed and approved by the full board prior to submission to AMS.

D. Annual budget summaries by major category will be posted on the board's Web site and made available to the public.

III. Donations to Boards

The legislation governing the boards ranges from total prohibition of donations to a specific authorization to accept donations. In cases where donations are not prohibited, AMS will allow boards to accept donated funds.

Donated funds must be clearly listed in the budget and incorporated into the budget process to be used for activities permitted under the authorizing legislation, and AMS will review and approve these budgets, including budget amendments, before funds are expended. Also, boards must not accept contributions which create a conflict of interest situation or a situation which could reasonably be perceived by a third party as a conflict of interest.

Donations made by the boards are discussed in XI.G.

IV. Contracts

AMS recognizes that boards may enter into a variety of contracts, including for projects, consultation, services, and administration, and boards select contractors based on criteria that may include cost, skills, successful proposals, or other factors.

A. Contracting Procedures. Each board shall establish written contracting procedures and submit to AMS for review and approval by the respective program Deputy Administrator. Each board has broad discretion on contracting procedures provided they meet the fiduciary responsibilities of the board, and avoid any conflict of interest or a situation that could reasonably be perceived by a third party as a conflict of interest. Boards shall comply with the approved contracting procedures. Contracting procedures shall include prohibitions on lobbying and must require:

1. A statement by the board explaining why a contract was awarded to a particular contractor, including justifications when the lowest bid is not awarded or when non-competitive contracts are awarded.
2. Boards to formally notify potential contractors that any work they undertake prior to contract approval by AMS is at their own risk as boards are not financially liable if the contract is not approved.

B. Contract Approval. AMS will approve contracts for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, as well as contracts for administration, services, legal assistance, and consultants. The contracts will be reviewed for conformance with provisions required by AMS and USDA, including language regarding the prohibition on lobbying. Contracts must be approved by AMS before funds are obligated. AMS will not require boards to submit for approval pure service contracts, such as those for janitorial services, copier repairs, hotel arrangements, maintenance, etc.

C. Contract Compliance. Boards shall monitor contract compliance including that all work performed by and payments to contractors are allowable and appropriate under the terms of the contract and maintain documentation to support contract compliance. Boards are responsible for ensuring that funds are spent appropriately, including with any subcontracts. AMS will review a sampling of subcontractor expenses during management reviews. Contractors' records of all subcontractor transactions are subject to USDA review at any time.

D. Multi-Year Contracts. With AMS approval, boards may enter into multi-year contracts provided: (1) all funding is obligated during the budget year, or (2) contracts require extensions consistent with the budget year and include an "escape clause"—clear language that the board may cancel the project at any time and for any reason without incurring the full contract cost. Leases are exempt from these requirements.

V. Financial, Compliance, and Program Accountability

A. Financial Statements. AMS shall review financial statements for each accounting period (monthly or quarterly) for proper accountability of funds collected and expended. The financial statements will consist of (1) a balance sheet, and (2) a statement of revenues and expenditures (budget vs. actual) during the reporting period including unexpended budget and changes in net assets.

B. Refund Requirements. Where refunds are applicable, the financial statement shall include a monthly collection and refund report showing (1) year-to-date collection of assessments, number of requests for refunds, and total assessments refunded, and (2) comparative data for the preceding year, if applicable.

Refunds are also discussed in VI.

C. Activities and Expenditures. AMS shall review and approve program activities and expenditures for conformance with applicable legislation, regulations, and policies.

Boards, contractors, and subcontractors are accountable for how board funds are spent. When projects are contracted, boards must be aware of how the funds are to be used.

Boards must expend all funds—whether the funds are from assessments or from an outside source—in accordance with the act, order, regulations, and AMS policy. Unless otherwise directed by authorizing legislation, boards may not conduct projects with non-assessment funds that could not be conducted with assessment funds. For example, boards may not conduct activities to influence government policy or action, even if the activities are paid for with non-assessment funds.

Boards are responsible for taking action to remedy any fraud or misuse of funds. Such action should be approved by AMS. Any inappropriate or misuse of funds must be reported to AMS or to USDA's Office of the Inspector General at (800) 424-9121 for investigation or other appropriate action.

D. Annual Financial Audits. Boards shall have independent audits performed annually in accordance with Generally Accepted Government Auditing Standards (GAGAS). AMS staff will review the board's letter of engagement with the auditors, participate in any entrance and exit conferences, and participate in the resolution of findings. AMS participation may be via conference call. AMS shall review these annual audits to determine if the auditor identified any misuse of board funds and if the audit adequately addressed whether (1) funds were discovered to be used for influencing government policy or action, (2) the board adhered to the AMS investment policy (Appendix 3), (3) internal controls over funds met auditing standards, (4) funds were used only for projects and other expenses authorized in a budget approved by USDA, and (5) funds were used in accordance with this guidance.

E. Management Reviews. AMS shall conduct internal/management control reviews of national R&P board operations (programmatic, financial, and compliance) at least once every 3 years, in accordance with these and other applicable guidelines such as the

Government Accountability Office guidance and standards for internal control, to ensure that policies are followed and adequate records are maintained. AMS will: 1) give reasonable notice; 2) coordinate with the boards for scheduling management reviews; 3) conduct an exit interview to review findings and 4) provide a written report to the appropriate board committee, as determined by AMS. The report will ask for a written response from the board. AMS will establish a deadline for the board's response and will ensure that corrective actions are taken.

F. Independent Evaluation. AMS will ensure that the boards conduct an independent evaluation of the effectiveness of their promotion programs every 5 years, unless otherwise required by authorizing legislation, and make the report available to assessment payers and AMS, as required by the Federal Agriculture Improvement and Reform Act of 1996. AMS expects such evaluations to have a credible methodology, articulate shareholder returns, and present the results in a non-technical manner.

G. Travel Expense Claims. Boards shall establish travel policies and procedures, approved by AMS, including the individual(s) designated to approve travel. The board's policies and procedures shall address and incorporate all of the following:

1. A process for travel pre-approval where all travel is approved by a supervisor or the board's designee. Pre-approval could be accomplished via e-mail. In the case of board meetings, an invitation to board members will suffice.
2. Travel rules, which shall include type of carrier (POV, rental, rail, air, etc.) and rates (non-refundable, economy, business, first-class).
3. A standard expense claim form for any reimbursement from assessment funds.
4. The form must include claimant's name, address, position, and travel dates and times (departure and return).
5. If the claimant is an employee of the board, the claim shall be approved by the supervisor or the board's designee.

6. If the claimant is a board member, the claim must be approved by the Treasurer, board Chairperson or someone designated by the Chairperson.
7. If the claimant is a board officer, the claim must be reviewed and approved by the Chairperson of the board or the board's designee.
8. If the claimant is the board Chairperson, the claim must be reviewed and approved by the Treasurer or the board's designee.
9. The claim shall provide clear descriptions of the destination and purpose of the travel.
10. For air travel, coach fare shall be used unless the board approves otherwise. When the ticket is purchased by cash or personal credit card, the original itinerary issued by the airline, travel agent or Web site shall be attached to the expense claim.
11. Lodging expenses shall be reasonable and should be at rates comparable to a standard, single-occupancy room at a national business-class hotel chain unless justified by the board. Reimbursement for the cost of hotel accommodations shall be supported by an original receipt issued by the hotel which will contain the occupant's name, date the receipt is issued, the arrival and departure dates, and the rate per day.
12. Receipts for travel-related expenses are required to be attached. It is preferable for travelers to submit original receipts; however, if originals are not submitted, the traveler must retain original receipts for at least 3 years in case of an audit. Original receipts are receipts for cash expenses or hard-copy printouts from electronic sources, such as for airfare or lodging. Boards may designate a reasonable threshold for which receipts are not required.

H. Credit Card Use. If boards allow corporate credit accounts, these accounts shall be for official board business expenses only. Boards shall establish procedures for the use of such cards and shall have internal controls in place and approved by AMS. Credit card procedures shall include the following:

1. Use of such cards for personal expenses will be prohibited.
2. The board's name must be printed on the card.

3. Dollar limitations must be set unless an exception is approved by the board and documented.
4. Define permissible purchases (e.g., gas, supplies, travel.)
5. A control sheet must be maintained listing, for each card, its type (e.g., Visa, MasterCard or American Express), the sponsoring bank or company, card number, limitation, and the dates of issuance and return.
6. A single staff member shall be designated to safeguard and distribute the cards and keep the control sheet current.
7. The control sheet should be reviewed annually by the board.
8. Specific persons and staff positions eligible to use cards must be identified based on the appropriate need of the organization.
9. Individual expenditure reports shall be completed to justify the appropriate use with original receipts attached to the report.
10. Credit card expenditures shall be reviewed each month by a supervisor or the board's designee.

VI. Refunds (where applicable)

In the event refunds are necessary due to a referendum, AMS will develop a procedure and ensure that the board follows it. In addition to the refund requirements in the enabling legislation, it is AMS policy that:

A. Boards will disseminate procedures approved by AMS for requesting refunds.

B. No pressure of any kind to discourage refunds is brought by boards or staff against those seeking refunds.

C. Names of individuals obtaining refunds be kept confidential and made available only to appropriate staff personnel.

D. Refund information released be limited to dollar amount and number of refunders by State, region, or nationwide and presented in a manner that protects the identity of individual persons or firms.

Refund reporting is discussed in V.B.

VII. Influencing Legislation and/or Government Policy

In the process of monitoring board activities, it is important for AMS to be aware of any actions which may conflict with legislative prohibitions regarding influencing legislative and/or government policy. This prohibition on the use of checkoff funds applies equally to any trade/producer organizations funded wholly or in part by a particular board or contractor to the boards. However, this does not affect a trade/producer organization's ability to lobby with non-checkoff funds. Likewise, there are no restrictions on individual board members, except when acting in an official capacity for the board. The following definitions serve as a guide for commodity programs (see also Appendix 2).

A. "Influencing of legislation" is defined as:

1. Any attempt to influence any legislation or any attempt to affect the opinions of the general public or any segment thereof concerning legislation; or
2. Any attempt to influence any legislation through communication with any member or employee of a legislative body or with any government official who may participate in the formulation of legislation.

B. "Influencing of governmental policy or action" is defined as any action the principal purpose of which is to bring about a change in existing policy or regulation or affect the outcome of proposed policy or regulation, except those actions which are specifically provided for in the act, order and/or rules and regulations.

C. These prohibitions do not preclude boards from providing factual information to government officials, provided the information is presented in an unbiased manner and does not state a specific course of action. For example, boards may share the results of research with government officials, but they may not recommend that the government make a change based on the research; boards also may not register support for or disapproval of any proposed government action.

VIII. Referendum Activities

Boards and board members, when they are acting in their official capacities, are prohibited from attempting to influence the result of the referendum, and no board funds may be expended for that purpose. Boards and board members may only publicize referenda and the votable issues, explain their programs, and provide information about the voting process.

Once a referendum is announced, AMS will review and approve all board communications to industry before they are distributed to ensure their appropriateness.

IX. Policy on Review and Approval of Promotional and Educational Materials

A. AMS will review all promotional and educational materials of boards, approving those in compliance with the applicable legislative authority. No funds should be expended prior to approval.

B. AMS will review (1) all promotional campaigns—advertising, consumer education programs, press releases and other promotional and educational materials, and (2) advertisements or printed materials generated in the campaign. AMS commodity programs may refer any promotional materials to the AMS Research and Promotion Functional Committee for review and consideration in addition to using other sources. The final decision for approval rests with the AMS program unless the issue crosses program areas, in which case consensus will be reached.

C. AMS' review of nutritional claims will include verification of supporting data to determine consistency with the *USDA Nutrient Database for Standard Reference* and other pertinent Federal policies and guidance. Any other supporting data must be substantiated by the boards. In certain cases, AMS may allow boards to use nutrient data from sources outside of USDA's Nutrient Database if they document the source of the information (e.g., the laboratory) and request AMS approval.

D. AMS will disapprove any advertising (including press releases) deemed disparaging to another commodity or competitor or in violation of the prohibition against false and misleading advertising contained in the legislation. Comparative advertising (advertising that compares facts about different commodities or products) will be allowed. Ads considered disparaging are those that depict other commodities in a negative or unpleasant light via either overt or subjective video, photography, or statements (excluding those that are strictly comparative).

E. Boards may not take positions on political issues or endorse candidates for office. All board materials must be non-political. In addition, consistent with White House policy, the image or office of the President of the United States may not be used at any time, unless otherwise approved.

F. For all board Web sites, AMS requires boards to place transition screens or disclaimer statements if the boards have linkages to outside or third-party Web sites. For transition screens, the screen should indicate clearly that the viewer is leaving a board-funded site. Boards should include the language: "You are now leaving a (insert board name) site" or "You are now leaving a checkoff-funded site" or other similar language approved by AMS. This includes linkages to private companies, other industry organizations, or any other non-board sites. If the board chooses to include a standard disclaimer statement on the site, it should say that the board's site contains links to third-party sites, or similar language approved by AMS.

X. Policy on Brand Names

Concerning the boards' funding of promotion or advertising involving brand name or trade name products, AMS first requires that boards operate within their legal framework. The various legislation governing the boards provides different thresholds of acceptable brand-name advertising.

XI. Administration

A. Legal Counsel. USDA's Office of the General Counsel (OGC) will provide all legal counsel to the boards, except as may be provided for under a Memorandum of Understanding between the individual boards and OGC. On a case-by-case basis, OGC may also grant approval for boards to use outside counsel for specific issues or timeframes. In these cases, a memo from AMS and concurrence from OGC shall serve as approval.

B. Investment of Funds. AMS requires boards to follow the AMS investment policy (Appendix 3) to ensure proper investment of board funds. AMS will review the investment statement for each accounting period (monthly or quarterly) to verify that board funds were invested in accordance with this policy.

C. Bylaws, Policy Statements and Annual Reports. Boards will be required to establish bylaws and policy statements that AMS will review and approve. Approval will be granted by the respective program Deputy Administrator. These bylaws and policy statements will be posted on the board's Web site and/or otherwise made available. In order to be transparent, boards will prepare an annual report containing detailed information on all board expenditures, projects (including costs and outcomes), administrative expenses and results of any audits/reviews that will be published on board Web sites and/or otherwise made available to those paying assessments.

D. Meetings. Boards must provide advance notification to AMS of all board meetings, including but not limited to meetings of the full board, executive committee, advisory committee, standing committees, ad hoc committees, and task forces. The term “meetings” includes but is not limited to on-site meetings, conferences, and webinars. Organizations that receive board funds also must notify AMS of any meetings involving board funds, unless exempted by AMS. AMS will attend board meetings and participate in conference calls, webinars, committee meetings, and any other meetings involving the boards when deemed necessary by AMS. Meetings with other Government agencies are addressed in Section XI.N.

E. Board Administrative Expenses.

1. Recognizing inherent differences in implementing laws or regulations, scope, and funding among commodity promotion and research programs, AMS expects each board and State association or other organization, authorized by law to receive assessment funding, to establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs mandated by law. Each board shall include its annual administrative expenses as a separate item in its annual report. Each State association or other organization may be required to report its annual administrative expenses in a similar manner.

2. The Secretary’s costs for oversight of the research and promotion boards and OGC fees will not be considered as an administrative expense of the boards as these charges are outside commodity boards’ control and management.

3. AMS does not specify which expenses the boards must include under administration, and certain costs may be billed back as program costs as deemed appropriate by AMS. Board members must be aware of how the boards calculate administrative costs and whether and how they are charged to programs. As a

general rule, the items on the following list may be included in boards' administrative expenses:

staff salaries and benefits	telephone expenses
bonuses	database management
staff travel	audit fees
board member travel	insurance and bonds
meeting expenses	bank fees
equipment purchases and rentals	legal fees (excluding OGC user fees)
equipment repair and maintenance	postage and shipping
furniture purchases and rentals	consultants on administrative matters
depreciation	memberships and subscriptions
general supplies	licenses
paper	taxes
printing	some Internet-related costs
office rent and utilities	compliance activities
automobiles	

4. Administrative caps. Boards whose authorizing legislation establishes administrative caps may not conceal administration expenses in other budgets, though some costs may be considered program costs as appropriate. Questions as to whether an expense is administrative or program should be directed to AMS.

F. Prohibited Expenditures.

Boards may not spend assessment funds for:

1. Spouse/Family Expenses. Board members and alternates are not allowed a fee or compensation for board services or expenses for spouses or other family members. Likewise, board staff and contractors, are prohibited from claiming any expenses for spouses or other family members.

2. Open Bars. Boards are prohibited from using assessment funds for open bars.
3. Influencing government policy or action.
4. Use of Funds for Personal Expenses.
5. Other prohibited expenditures listed in this guidance document.

G. Board Donations. Boards will develop a written policy statement regarding donations utilizing funds derived from assessments. This policy statement will be reviewed and approved by AMS.

1. Boards are prohibited from making financial and gift contributions to any organizations, even in honor or memory of an individual.
2. (a) Boards may establish policies to expend funds, up to \$100 per board member per event, for cards, flowers, plants or similar tokens per event for other special events. Boards may spend up to \$200 per board member or officer per term to recognize the board member's service.

(b) Boards may only expend funds for board members, not for staff or contractors. This does not prevent boards from using checkoff funds for staff for merit-based recognition/awards, including keepsake awards, as part of regular personnel practices.
3. AMS allows boards to make donations of commodity, product, or funds (e.g., to food banks or disaster relief efforts) provided the donation is tied to a public relations or promotional effort promoting the commodity and/or the image of the industry.

4. AMS will allow boards to provide monetary gifts, gifts that function as money, or other gifts as part of a research or promotion project (e.g., financial restitution to subjects of a research study, gift cards to survey participants) because such restitution is common practice and doing so benefits the board's collection of information or extends the reach of a promotion.

5. Nothing in this section prohibits boards from providing funds to an organization if the funds are for a direct allowable expense. As an example, a board shall not make a contribution to the American Heart Association in memory of an individual, but the board may provide funds to the American Heart Association as part of the board promotion to cover exhibiting or symposium costs. This also does not prohibit boards from paying membership or sponsorship fees to industry associations or other groups, but the association or group must certify that those funds were not used for the purpose of influencing government policy or action (e.g., in an agreement, letter, or other documentation).

H. Compliance. The respective boards are responsible for promptly identifying delinquencies in assessments. Each board shall develop procedures that include a timetable for the referral of compliance cases to AMS for appropriate action. The board will make every attempt possible to bring delinquencies into compliance before referring a case to AMS. Boards will notify AMS of any delinquency after all efforts have been exhausted by the national board, and where applicable, State program. Before submission to AMS, boards will conduct or coordinate an audit of the alleged delinquent party. Upon receipt of compliance cases (including audit results), AMS may:

1. Contact the delinquent party either by telephone, letter with delivery confirmation (e.g., FedEx or certified mail), or other means;
2. Advise that collection will be made by administrative offset, if applicable;

3. Refer violations to OGC for action; and

4. Other actions as appropriate.

I. Charging Research and Promotion Boards. R&P authorizing legislation requires boards to reimburse AMS for its costs in overseeing their programs. It is AMS policy that all R&P programs be charged in a fair and equitable manner and that all costs be covered. In this regard, the following costs will be billed to boards:

1. Direct Program Costs. These costs include salaries and benefits of employees directly involved in the daily workload associated with research and promotion boards. Other costs include travel to board meetings, rent as applicable, for office space for employees directly working on the research and promotion programs, printing, supplies, equipment, and other reasonable costs needed to complete the work involved in overseeing the programs. All direct program costs should be charged to the appropriate research and promotion programs.

2. Overhead. As with all AMS programs, a percentage of the direct program costs are charged as overhead to cover other AMS and USDA expenses associated with these programs, and AMS must bill these expenses back to the boards.

3. Other Costs. The costs billed to AMS by USDA offices for authorized services provided in the support of the various boards will be charged back to the boards. These include all billed costs to AMS by other USDA agencies and outside government agencies. Also, costs billed to AMS by States for actual unemployment claims paid to former board employees will be charged back to the boards when the bills are received by AMS.

J. Nominations for Board Membership. USDA sees the pursuit of diversity in board membership as an opportunity for embracing new ideas and growth that will enable boards to better serve the industry. Central to this effort is the goal of growing new

leadership to serve on the boards that reflects a diversity of perspectives and opinions. The industry population that pays the marketing and promotion assessment is diverse, and the boards should reflect that diversity in the size of operations, experience of members, methods of production and distribution, marketing strategies, and other distinguishing factors that will bring different perspectives and ideas to the table.

AMS policy is that the diversity on the boards should reflect the diversity of their industries. Therefore, when making recommendations for appointments, the industry must take into account the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population.

AMS will communicate the Secretary's policy on diversity to the industry groups responsible for soliciting board nominations. AMS requires boards to develop diversity plans, approved by AMS, that outline concrete action plans to identify and encourage nomination of a diverse slate of candidates based on the criteria noted above. Boards should engage other USDA agencies (FSA, etc.), universities, industry groups, and others to encourage participation. The nomination process should demonstrate outreach to multiple groups.

The nomination package will be submitted to the Office of the Secretary through the Administrator of AMS, in accordance with established timeframes and procedures.

K. Ethics. Service on and the operation of the Federal boards is a public trust, requiring members and employees to place the appropriate legislative authority and ethical principles above private gain. Each board will develop a Code of Ethics and distribute it annually to board members and staff. Each board, with the assistance of AMS, will also develop Disclosure Statements and Conflict of Interest Statements that will be signed and submitted by each board employee annually and by each member prior to appointment to the board and annually thereafter. The Code of Ethics should include prohibitions on:

1. Using board time, facilities, equipment, or supplies for private purposes.

2. Using confidential information acquired by virtue of board activities.
3. Receiving or accepting money or any other consideration from anyone or any organization other than the board—not including salary derived from one's primary employment—for the performance of duties as a board member, unless approved by AMS.
4. Receiving or accepting anything of value from anyone who is doing or seeking to do business with the board concerned under circumstances from which it reasonably could be inferred that the item was intended to influence the officer in an official action as an officer of the government.
5. Making unauthorized commitments or promises of any kind purporting to bind the board or Committee.
6. Giving preferential treatment to any private organization or individual.
7. Engaging in outside employment or activities, including seeking or negotiating for employment, that conflict with board duties and responsibilities. For staff, no such outside employment or activities are permitted; for board members, such employment or activities would be permitted provided board members recuse themselves from any conflicting board duties and responsibilities, including votes.

L. Civil Rights and Equal Opportunity. Boards will comply with Federal, State, and local laws regarding civil rights and equal opportunity, and other employment policies. These apply to everyone regardless of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information.

In accordance with these policies, boards must maintain a work environment where:

- Employees are treated with respect and in a professional manner.
- Conflicts and complaints are resolved quickly.
- Employees and supervisors are able to discuss concerns openly without fear, reprisal, or retaliation.
- Employees, at every level, demonstrate a commitment to civil rights and equal opportunity for everyone through their work and actions.

AMS requires boards to establish policies or procedures, approved by AMS, to document their reporting responsibilities, prohibit retaliation, and make employees aware of how they may report violations to AMS or to USDA's Office of the Inspector General at (800) 424-9121.

AMS has responsibility to investigate and address all allegations of civil rights or equal opportunity violations, sexual harassment, violence, and other misconduct associated with the board and board staff.

M. Debt Management. AMS commodity programs shall be guided by authorities outlined in Appendix 4 for writing off uncollectible assessments and late fees.

N. Other Government Agencies. AMS serves as the boards' liaison to other Federal Government agencies, with the exception of FAS if the board is a cooperator under FAS programs. AMS requires boards to provide advance notice of meetings with any other Federal Government agencies and must pre-approve all meetings and be aware of communications with those agencies. AMS must pre-approve any correspondence, including comments on Federal rulemaking.

AMS will develop appropriate working relationships with other Government agencies having responsibilities related to these programs. For example, AMS commodity programs will assure close coordination with the FAS anytime checkoff funds are used for international marketing activities. FAS has oversight responsibility of the Foreign

Market Development (FMD) and the Market Access Program (MAP), and checkoff funding is made available to some participants in these FAS-supervised programs. However, in all cases, FAS must have the opportunity to approve the boards' budgets, plans, and projects that focus on international activities. Approval will be subject to compliance with the checkoff legislation as well as other FAS requirements. Likewise, for programs with import checkoff provisions, it is the responsibility of AMS commodity programs to maintain a close liaison with the Customs and Border Protection of the U.S. Department of Homeland Security. Similarly, as required by section 1999T of the Food, Agriculture, Conservation, and Trade Act of 1990, AMS will inform the United States Trade Representative on any proposed new or amended research and promotion order or plan which would assess imports.

O. Unemployment Practices. On April 17, 1992, the Department of Labor (Labor) determined that employees of research and promotion boards and marketing order committees, which are under USDA's supervision, perform "Federal Service" for Unemployment Compensation for Federal Employees (UCFE) Program purposes (UCFE Program Coverage Ruling No. 92-1). On December 3, 1993, Labor published a notice in the *Federal Register* extending coverage for unemployment compensation to employees and members of additional boards and committees. In December 2007, AMS sent a request to Labor to add additional boards to the list.

For these employees, the procedures to file a claim are different from those of other individuals. Boards should contact their respective AMS Commodity Program for instructions about the unemployment compensation procedures.

P. Records Retention. If not established in authorizing legislation, boards will develop record retention policies, approved by AMS, for all documents and electronic mail for which AMS has not established a requirement. Individuals receiving reimbursement from a board for travel expenses must maintain original receipts for a period of 3 years. Boards will maintain all program records for at least 3 years.

Boards possess information that demonstrates their adherence to their authorizing Acts, Orders, the *Guidelines*, and related AMS directives. Such records must be retained and be available for AMS to conduct proper oversight of board activities. As such, the records must be maintained for a period of time of no less than 3 years to enable AMS personnel to review necessary documents during AMS Management reviews. Note that AMS approval of record retention policies pertains solely to records subject to AMS review for purposes of the oversight responsibilities of AMS. Neither the *Guidelines* nor board policies approved by AMS supersede other record retention requirements that may apply to the boards, including Federal, State, and local laws or orders by a court of competent jurisdiction.

Appendix 1 – Authorizing Legislation

Appendix 2 - Influencing Government Policy or Action

Appendix 3 – AMS Directive: Investment of Public Funds

Appendix 4 – AMS Directive: Debt Management

Appendix 5 -- Research and Promotion Boards

AUTHORIZING LEGISLATION

- **Commodity Promotion, Research, and Information Act of 1996** (7 U.S.C. 7411-7425)
 - **Blueberry**
 - **Honey**
 - **Lamb**
 - **Mangos**
 - **Peanuts**
 - **Processed Raspberries**
 - **Softwood Lumber**
 - **Sorghum**
- **Beef Research and Promotion Act** (7 U.S.C. 2901-2911)
- **Cotton Research and Promotion Act** (7 U.S.C. 2101-2118)
- **Dairy Production Stabilization Act of 1983** (7 U.S.C. 4501-4514)
- **Egg Research and Promotion Act** (7 U.S.C. 2701-2718)
- **Fluid Milk Promotion Act** (7 U.S.C. 6401-6417)
- **Hass Avocado Promotion, Research, and Information** (7 U.S.C. 7801-7813)
- **Mushroom Promotion, Research, and Consumer Information Act of 1990** (7 U.S.C. 6101-6112)
- **Popcorn Promotion, Research, and Consumer Information Act** (7 U.S.C. 7481-7491)
- **Pork Promotion, Research, and Consumer Information Act of 1985** (7 U.S.C. 4801-4819)
- **Potato Research and Promotion Act** (7 U.S.C. 2611-2627)
- **Soybean Promotion, Research, and Consumer Information Act** (7 U.S.C. 6301-6311)
- **Watermelon Research and Promotion Act** (7 U.S.C. 4901-4916)
- **Federal Agriculture Improvement and Reform Act of 1996** (7 U.S.C. 7401)
- **Other statutes and regulations, as applicable**

ACTIVITIES FUNDED BY CHECKOFF DOLLARS

Legislation governing research and promotion boards prohibits checkoff funds to be used for influencing legislation and/or Federal, State, or local government action or policy. The USDA Agricultural Marketing Service (AMS) has addressed this issue in its guidelines for oversight of research and promotion boards.

EXAMPLES OF ACTIVITIES INVOLVING GOVERNMENT POLICY OR ACTION

<u>ALLOWED ACTIVITIES</u>	<u>PROHIBITED ACTIVITIES</u>
Recommending changes to regulations governing the research and promotion program	Attempting to influence any legislation
Providing factual information to Federal, State, or local government officials, but must be unbiased and may not state a specific course of action	Attempting to affect the opinions of the public or segment of it concerning legislation
Providing results of studies to Federal, State, or local government officials, provided no course of action is stated	Attempting to influence any legislation by communicating with a member or employee of a Federal, State, or local legislative body
Providing comments on Federal regulations, as long as the comments are purely factual and do not register support for or disapproval of the regulation or advocate a course of action	Attempting to influence a Federal, State, or local government official who may participate in the formulation of legislation or government action or policy
	Taking any action to bring about a change in existing policy or regulation (other than as allowed in the act, order, and regulations)
	Taking any action to affect the outcome of proposed policy or regulation (other than as allowed in the act, order, and regulations)

ENTITIES SUBJECT TO RESTRICTION ON INFLUENCING LEGISLATION AND/OR GOVERNMENT POLICY

Checkoff boards Board members and alternates	Restrictions apply No restriction on individuals, except when acting in an official capacity for the board
Board staff/individuals paid by the board Trade/producer organizations funded wholly or in part by the board or board contractor(s)	Restrictions apply Restrictions apply when check-off funds are used
Contractors, organizations, and other groups	No restrictions unless using checkoff funds

Directive AMS 2210.2

2/7/11

INVESTMENT OF PUBLIC FUNDS

1. PURPOSE

This Directive states the policy and responsibilities for investment of public funds maintained by the Agricultural Marketing Service (AMS).

2. REPLACEMENT HIGHLIGHTS

This Directive replaces AMS Directive 2210.2, Investment of Public Funds, dated August 2005.

3. AUTHORITIES

- a. Title 31, Code of Federal Regulations (CFR), Parts 202-226, Money and Finance: Treasury.
- b. Volume I, Treasury Financial Manual 6-9000, Securing Government Deposits in Federal Agency Accounts.

4. DEFINITIONS OF TERMS

- a. Agency. Any department, agency, or instrumentality of the U.S. Government.
- b. Designated Depository. A financial institution designated by the Department of the Treasury as a depository and financial agent of the Federal Government which has been selected by an agency to hold public funds.
- c. Federal Reserve Districts and Banks. The Federal Reserve Bank or branch of the district within the geographic area where the agency's designated depository is located.
- d. Government Deposits. Public money, including, but not limited to, revenue and funds of the United States and deposited funds subject to the control or regulation of the United States or any of its officers, agents, or employees.
- e. Recognized Insurance Coverage. The insurance provided by the Federal Deposit Insurance Corporation (FDIC), National Credit Union Share Insurance Fund, and

the insurance organizations specifically approved by the Secretary of the Treasury under Title 31, CFR, Part 226.

5. POLICY

It is AMS policy to:

- a. Exercise prudent cash management of funds collected through:
 - (1) Fees for services,
 - (2) Assessments from handlers and producers to finance research and promotion efforts, and
 - (3) Assessments to administer marketing agreements and orders. This also applies to payments received by producer settlement funds and interest or other charges collected on overdue accounts.
- b. Require that a formal agreement or Memorandum of Understanding be signed between parties before funds are deposited with a financial institution. This agreement is to state the responsibilities of both the custodial agency and the financial institution, and must conform with the policies and guidelines established by the U.S. Treasury with respect to the deposits of, and collateral for, public funds.
- c. Require complete safety of invested funds. In this regard, AMS adheres to U.S. Department of the Treasury Regulations, Title 31, CFR, Parts 202-226.

6. RESPONSIBILITIES

- a. The fund custodians for AMS who maintain public funds are the Budget Division, the Research and Promotion Boards, Milk Market Administrators, and the Fruit and Vegetable Marketing Order Administrative Committees. When investing funds held in public trust, fund custodians must follow these guidelines:
 - (1) **Investments.** All investments must be short-term, risk-free, interest-bearing instruments.
 - (a) **Short-Term.** All investments must have a maturity period of 1 year or less to ensure availability and rapid conversion of the principal to cash.
 - (b) **Risk-Free.** All investments must be federally insured or fully collateralized with Federal Government securities.

(2) **Insurance Coverage.** All investments must be fully secured. Accounts are to be established at financial institutions having FDIC insurance which protects the funds depositor's place in banks and savings associations. Accounts at individual institutions should not exceed, in the aggregate, FDIC insured thresholds in order to ensure full insurance for both account principal and interest. The standard insurance amount currently is \$250,000 per depositor through December 31, 2013. On January 1, 2014, the standard insurance amount will return to \$100,000 per depositor for all deposit accounts.

(3) **Collateralization.** All investments exceeding FDIC insured thresholds, within said institutions, must be fully collateralized.

(a) Before sending funds to an institution for investment, eligible collateral must be pledged to an account under the control of the investing custodian.

(b) Only those securities specified in U.S. Department of the Treasury Regulations, Title 31, CFR, Part 202, are acceptable collateral. They include securities issued, fully insured or guaranteed by U.S. Government agencies, or U.S. Government-sponsored corporations. Regulations that govern the types of acceptable collateral that may be pledged to secure deposits of public monies, as well as the valuation of that collateral are addressed in Title 31 CFR, Part 380. For a current list of acceptable classes of securities and instruments described within this Code and their valuations, see the Bureau of the Public Debt's Web site at www.publicdebt.treas.gov.

(c) Collateral must be pledged at face value. Financial institutions must provide the investor with quarterly inventories of pledged collateral showing both face and market value.

(d) Pledged collateral must be separately segregated in the name of the investor (i.e., AMS-Budget Division, Board, Milk Market Administrator, or Administrative Committee), in order to prevent double pledging.

(e) Collateral not held by the Federal Reserve Board must be held by a financial institution authorized by Treasury as a Federal Depository, having FDIC insurance, and approved by the Federal Reserve Board.

(f) Investment records must be maintained for 6 years and 3 months, as required by the AMS Records Management Program.

b. The Planning and Accountability Division, AMS, will conduct a biennial review of the investment decisions process for the AMS investment program. Investment authorities outside of the AMS investment program will continue to be reviewed as outlined in their investment authority. The Budget Division will issue quarterly investment letters that will apprise committee members of their investment earnings. The Budget Division will also host an annual meeting with

the Investment Committee to provide an overview of the investment program activities.

c. On an annual basis, all employees authorized to conduct business with any financial institution participating in the AMS investment program must complete an AMS Investment Program Disclosure Statement Form which indicates any personal relationships with those financial institutions with which business is conducted.

d. The Budget Program and Analysis Branch Chief and the AMS Budget Officer share the responsibility of approving daily investment decisions respectively. In their absence, acting staff (GS-13 and above) assume these responsibilities provided they have signed disclosure statements and have confidential disclosure reports on file.

7. INQUIRIES

a. For further information, please contact the AMS Budget Office.

b. This Directive is available online at <http://www.ams.usda.gov/amsissuances>

/s/

Ellen King

Deputy Administrator

Compliance and Analysis Programs

United State Department of Agriculture
Agricultural Marketing Service

Directive

May 10, 2004

Re: **AMS Debt Management Directive 420.3**

The Agricultural Marketing Service (AMS) Debt Management Directive, 420.3 is being revised. Most of the debt management policies listed in the current version of 420.3 are still applicable. Since AMS converted to the Federal Financial Information System (FFIS) procedural references related to the Billings and Collections system (BLCO) are no longer applicable and are the major reason for the revision.

An outline summary of the revised directive is as follows:

I. PURPOSE

- A. States the AMS policy on the recording, monitoring, analyzing, reporting and disposition of program and administrative accounts receivable.
- B. Delegates to Program Deputy Administrators the authority to write off uncollectible accounts receivable up to \$500 (threshold amount under review as part of Directive revision).

II. REPLACEMENT HIGHLIGHTS

This Directive will replace AMS Directive 420.3, Debt Management, and dated 6/29/87.

III. POLICY

Debts owed the Federal Government shall be recorded, monitored, and pursued in a manner that protects the interest of the Government and promotes the ability of AMS programs to provide services to the public.

IV. AUTHORITY

- A. Federal Claims Collection Standards (Code of Federal Regulations 4, Chapter II).
- B. Code of Federal Regulations 7, Part 3.

V. APPLICABILITY

This directive applies to debts or claims owed to AMS by individuals (including employees), commercial entities or corporations, and States and possessions. Amounts owed by Federal agencies are excluded.

VI. RESPONSIBILITIES

Programs and Administrative Staffs must:

1. Produce bills at least monthly.
2. Monitor and analyze the status of billings and collections.
3. Take action as necessary on billing and collection problems.

VII. DELINQUENCIES

- A. Delinquencies must be aggressively and promptly pursued.
 - B. Deputy Administrators or their designees may write off up to \$500 of a debt (amount under review) if they feel it is in their program's best interests to do so.
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Research and Promotion Boards

- Beef Cattlemen’s Beef Promotion and Research Board
 - Blueberries U.S. Highbush Blueberry Council
 - Cotton Cotton Board
 - Dairy National Dairy Promotion and Research Board
 - Eggs American Egg Board
 - Fluid Milk National Fluid Milk Processor Promotion Board
 - Hass Avocados Hass Avocado Board
Peruvian Avocado Commission
California Avocado Commission
Chilean Avocado Importers Association
Mexican Hass Avocado Importers Association
 - Honey National Honey Board
 - Lamb American Lamb Board
 - Mangos National Mango Board
 - Mushrooms Mushroom Council
 - Peanuts National Peanut Board
 - Popcorn Popcorn Board
 - Pork National Pork Board
 - Potatoes National Potato Promotion Board
 - Raspberries National Processed Raspberry Council
 - Softwood Lumber Softwood Lumber Board
 - Sorghum United Sorghum Checkoff Program
 - Soybeans United Soybean Board
 - Watermelons National Watermelon Promotion Board
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