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Oyster shells piled high at Nahcotta, Washington.

**ODDITY****FOOD FIGHT**

Ag groups seek exemption from scrutiny

By **CANDICE CHOI** and **MARY CLARE JALONICK**  
*Associated Press*

NEW YORK — Congress is pushing the Agriculture Department to exempt the groups behind promotional campaigns like “The Incredible, Edible Egg” and “Pork, the Other White Meat” from public scrutiny of their internal operations despite recent controversy.

The push comes after organizations representing eggs, pork, potatoes and even Christmas trees pressed for an exception from the federal Freedom of Information Act for programs that promote agricultural products. A provision supporting their push was part of spending legislation approved by a House panel last month.

The familiar campaigns are overseen by USDA but paid for by the industries that vote to organize them. In a non-binding report accompanying the agriculture spending bill, the House Appropriations Committee urged USDA to recognize that the campaigns are “not agencies of the federal government” and therefore should not be subject to information requests required by federal FOIA laws.

**Eggless mayonnaise**

The move comes after some

so-called “checkoff” programs have been dogged by controversy. Last year, The Associated Press reported that the American Egg Board tried to stop the sale of an eggless mayonnaise alternative at Whole Foods, based on documents obtained through a public records request.

The head of the egg board subsequently stepped down and the USDA launched an investigation into the board’s activities, saying it does not condone “efforts to limit competing products in commerce.”

In April, a group of 14 trade associations sent a letter to U.S. Rep. Robert Aderholt, R-Ala., chairman of the House Appropriations agriculture subcommittee, and U.S. Rep. Sam Farr, D-Calif., the subcommittee’s top Democrat, asking them to urge USDA to recognize that the promotional programs are not subject to public records requests.

The rationale was that the programs are funded by producers, according to a copy of a letter obtained by the AP.

The House Appropriations Committee approved the legislation in April, including the report language urging USDA to recognize the programs are not subject to FOIA. Congress often uses such non-binding directions to put a department on notice that lawmakers will push back if officials ignore them.

A spokeswoman for U.S. Rep. Hal Rogers, R-Ky., chairman of the House Appropriations Committee, said Monday that the panel has no comment.

**Not just eggs**

The industry associations that signed a letter seeking FOIA exemption include the American Mushroom Institute, the National Potato Council, the National Christmas Tree Association, the National Watermelon Association and the United Egg Producers.

The letter was not signed by the checkoff programs themselves, such as the American Egg Board and the U.S. Potato Board, which are not supposed to engage in lobbying.

“The American Egg Board had no role or involvement in the request by trade organizations for an exemption to the Freedom of Information Act,” wrote Kevin Burkum, an egg board representative.

Details of the letter were first reported last week by Capital Press.

The push underscores the gray area occupied by the checkoff programs, which have operated with little oversight.

The checkoff programs were established by the government at the industry’s urging as a way to collect mandatory fees from producers for promotional efforts. That has resulted in considerable marketing muscle for agricultural products. Last year, the egg board had revenue of more than \$22 million; the pork board’s revenue topped \$98 million in 2014.

**Generic promotion**

The catch is that these programs are subject to government oversight to ensure they stick to generic promotion, and avoid lobbying that some produc-



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**The Incredible, Edible Egg.**

ers might not agree with.

Still, the programs’ activities have been challenged in court. In 2008, a judge barred the egg board from spending money to campaign on a proposition in California. In 2012, the Humane Society sued the USDA over allegations that the National Pork Board cut a deal to improperly funnel money to a pork industry association that lobbies lawmakers, a case that remains unresolved.

In 2012, USDA’s inspector general issued a report saying departmental oversight should be improved. Specifically, the audit said USDA should better detect the misuse of board checkoff funds and gather more information from the boards to assess their activities. The report cited examples of improper employee bonuses and travel expenses.

Chase Adams, a spokesman for the National Cattlemen’s Beef Association, said he did not know if public records requests with the checkoff program have been increasing but said it is an

issue “we’ve been cognizant of.”

Adams said the associations believe the money that producers contribute to the checkoff programs is intended for research and promotion, not carrying out FOIA requests.

“It’s really pretty cut and dry,” Adams said.

Not everyone agrees.

**‘Government speech’**

Matthew Penzer, special counsel to the Humane Society, says the groups are “trying to have it both ways” by saying the boards should not be subject to records laws, even though they rely on government authority for the mandatory collection of fees.

“The only thing that makes them constitutional is that they’re government programs,” Penzer said.

Penzer pointed to a Supreme Court decision in 2005 that upheld the boards’ collection of fees from producers as being protected as “government speech.”



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