

Petition for Rulemaking

on

Missouri Beef Checkoff Program and Referenda

This Petition for Rulemaking on Missouri Beef Checkoff Referenda (“Petition”) is submitted to the Missouri Department of Agriculture (MDA) on behalf of Roger Allison, a Missouri cattle producer and the Executive Director of the Missouri Rural Crisis Center (MRCC), MRCC, and its cattle producer members. This Petition seeks notice and comment rulemaking to establish rules for a Missouri beef checkoff program and for conducting referenda that establish or modify such a program as authorized under Missouri Revised Statutes § 275.352.

This Petition is submitted pursuant to Missouri Revised Statutes § 536.041 which grants any person the authority to submit a petition for the adoption of any rule.

I. Petitioners

Roger Allison is a Howard County cattle producer and the Executive Director of the Missouri Rural Crisis Center.

Missouri Rural Crisis Center is a statewide farm and rural organization that represents members who raise cattle in Missouri.

II. Authority for Rulemaking

The petitioners assert that in order to implement the authorities granted to the Director of the Missouri Department of Agriculture (MDA) under Missouri Revised Statutes § 275.352, the agency by necessity must implement, interpret, and prescribe law or policy of general applicability that substantially affects the legal rights of all cattle producers in the state. The legal rights affected include one of the most fundamental and essential rights of any democracy: the right of suffrage. The agency must also develop procedures and practice requirements for administering a checkoff program and referendum.

To exercise its authority under § 275.352 the agency must interpret, prescribe, and implement policy and set out agency procedures and practices involving such matters as:

- (1) the timing of any beef checkoff referendum;
- (2) how the agency will give notice of, conduct, and analyze testimony and evidence from the required public hearing on a petition to impose or modify a beef checkoff program to ensure compliance with all statutory and regulatory mandates including those affecting the types of programs, projects, and plans that may be paid for with checkoff assessment funds;
- (3) how the agency will give cattle producers notice of any upcoming referendum;
- (4) how cattle producers will be required to register to vote in a referendum;
- (5) how and where cattle producers will be able to obtain registration forms;
- (6) the language of the registration form and ballot;

- (7) how cattle producers may obtain a ballot;
- (8) how cattle producers will be required to cast their votes;
- (9) how the agency will conduct any review or verification of the registration forms submitted and/or ballots cast;
- (10) how the agency will ensure a secret ballot process in the referendum;
- (11) how the agency will secure ballots, count votes, and report the referendum results; and
- (12) how cattle producers will be notified of their right to request a refund of any state checkoff assessments paid and the procedures for making such refund requests.

Such policies, practices, and procedures are of the nature that fall within the definition of a “rule” pursuant to Missouri Revised Statutes § 536.010(6) and which, therefore, must be established through the notice and comment rulemaking procedures prescribed by Missouri Revised Statutes § 536.021.

Missouri Revised Statutes § 275.352 is insufficiently detailed to contain all of the policies, procedures, and practices necessary to conduct a beef checkoff referendum which substantially affects suffrage rights of all Missouri cattle producers in deciding whether or not they will be required to pay fees to the Missouri Beef Industry Council (MBIC). Notice and comment rulemaking must be conducted to establish the details of the policies and procedures to be used in administering and conducting any beef checkoff program and referendum. The fact that in the past commodity checkoff referenda have been conducted in violation of the statutory requirement for notice and comment rulemaking does not excuse the agency from following these laws prior to conducting a state beef checkoff referendum.

Missouri Revised Statutes § 275.352(12) explicitly grants MDA the authority to promulgate rules to carry out the provisions of that section. As demonstrated herein the types of policies, procedures, and practices necessary to carry out § 275.352 fall within the definition of a “rule” under Missouri Revised Statutes § 536.010, and, therefore, must under the authority of § 275.352(12) comply with all rulemaking requirements of Chapter 536.

Pursuant to Missouri Revised Statutes § 536.041, the Petitioners submit this Petition for Rulemaking, asking for codification and implementation for the rule language included below.

III. Referendum Rules Must Ensure A Secret Ballot and Prevent Interference with Free Exercise of the Right of Suffrage

A. Secret Ballot

The Missouri Constitution guarantees the “free exercise of the right of suffrage” by prohibiting any power, whether civil or military, from interfering with or preventing the free exercise of that right. *See*, Missouri Constitution Article I, Section 25.

The secret ballot process has long been recognized as one of the most important aspects of our country's system of voting and an essential aspect of the free exercise of suffrage. The Petitioner, MRCC, as a member organization of the Campaign for Family Farms, was involved in a previous lawsuit in which the Eighth Circuit Court of Appeals recognized the supreme importance of a secret ballot in checkoff referenda. In discussing the agriculture commodity producers' privacy interests in a secret ballot, the Court of Appeals stated:

As the Supreme Court recognized, the secret ballot is of paramount importance to our system of voting. In Burson v. Freeman, 504 U.S. 191, 206 (1992), for example, the Court found a "widespread and time-tested consensus" that the secret ballot is necessary to prevent voter intimidation and election fraud. Three terms later, the Court used the tradition of the secret ballot, which it described as "the hard-won right to vote one's conscience without fear of retaliation" in recognizing a First Amendment interest in anonymous political advocacy. McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 343 (1995); see also Buckley v. Valeo, 424 U.S. 1, 237 (1976) (Burger, C. J., concurring in part and dissenting in part). Relying on this strong interest in a secret ballot, the Sixth Circuit invalidated a Kentucky ballot access law that required signers of candidate petitions to declare that they desired to vote for the candidate. See Anderson v. Mills, 664 F.2d 600, 607-09 (Cir. 1981).

Campaign for Family Farms v. Glickman, 200 F.3d 1180, 1187-1188 (8th Cir. 1999).

Missouri recognizes the importance of the secret ballot in the free exercise of the right of suffrage. The Elections and Suffrage title of the Missouri Revised Statutes incorporates the crucially important secret ballot:

No election voting system shall be approved unless it: (1) permits voting in absolute secrecy.

Missouri Revised Statutes § 115.225(2).

Despite the paramount importance of the secret ballot in our voting system, the MDA has failed to ensure secret ballots in past checkoff referenda. For example, in the 2008 Missouri Corn Merchandising Council Referendum, corn producers were required to sign their names to the ballot right next to where they marked their "yes" or "no" vote for increasing the corn checkoff fee. Clearly being required to sign your name next to your vote of "yes" or your vote of "no" does not offer producers a secret ballot. By failing to provide secret ballot procedures, MDA interferes with the free exercise of the right of suffrage in violation of the Missouri Constitution by failing to protect producers from the fear of retaliation based on how they voted and paves the way to potential voter intimidation and election fraud.

Implementation of the rules included in this Petition will ensure that MDA's procedures for conducting a beef checkoff referendum will include a secret balloting system.

B. The Missouri Legislature’s Unconstitutional Interference with Free Exercise of Suffrage

The state legislature has violated the Missouri Constitution by enacting legislation that interferes with cattle producers’ “free exercise of the right of suffrage.” See, Missouri Constitution Article I. Section 25. Missouri Revised Statutes § 275.352(5) requires that in order to register to vote in a beef checkoff referendum, a cattle producer must include on the voter registration form, along with his or her name and address, “the yearly average quantity of beef cattle sold by him or her in the three years preceding the date of the notice, or in such lesser period as a producer has sold beef cattle.” This statutory mandate is unconstitutional because it interferes with cattle producers’ “free exercise of the right of suffrage” by discouraging vast numbers of those producers from registering to vote because they do not want to publicly disclose their cattle sales numbers due to property, privacy, and proprietary information concerns. (It should be noted that cattle sales history is not the same information that is provided to assessors for property tax purposes, which includes only information about cattle on-hand at a given point in time.)

This statutory mandate at a minimum requires disclosure of each individual producer’s cattle sales history to MDA employees who are involved in administering the checkoff program and referendum. Providing this information to a regulatory agency causes one form of discouraging producers from voting in the referendum, interfering with their free exercise of suffrage. Many producers are concerned that disclosing their cattle production numbers to an agency that regulates agriculture and provides programs for agricultural producers may adversely affect the agency’s decisions related to their individual operations. Thus, the required disclosure of production history on voter registration forms will discourage these producers from registering to vote in the checkoff referendum, interfering with their free exercise of suffrage in violation of the Missouri Constitution. Producers also have no way of knowing whether or not their names and addresses along with their cattle sales histories will be disclosed to the general public. Producers’ concerns about disclosure of private, proprietary information such as cattle sales history becomes much more significant if that information can be made available to the general public to be used as the public sees fit, increasing the likelihood that many cattle producers will be discouraged from registering to vote in the referendum.

Cattle producers who do not want to disclose publicly information about their cattle sales history should not be precluded from voting for or against a program that will increase their cost of production. By discouraging producer participation in the referendum, the statutory mandate to disclose on the voter registration form the producer’s three-year average cattle sales history interferes with the producers’ “free exercise of the right of suffrage” in violation of the Missouri Constitution.

Because MDA cannot conduct a referendum in compliance with § 275.352 without also violating the Missouri Constitution, no such referendum should be held until the legislature remedies the constitutional violation inherent in the statute it enacted.

IV. Rules Language and Explanations

This section includes the language of the rules Petitioners ask to be adopted through notice and comment rulemaking procedures. In some instances an explanation of why the particular language is necessary is included in an *Explanatory Notes* section before the proposed rule language.

A. Administration and Permitted Uses of Missouri Beef Checkoff Funds

1. Explanatory Notes

Before any producer referendum on whether to impose a state beef checkoff fee is held, it is essential for cattle producers to understand how the checkoff fees will be administered and the types of programs, projects, and plans the fees will fund. Without this understanding, there can be no informed voting. The state legislature recognized the importance of public notice and an opportunity to address issues related to the checkoff program when it mandated that a public hearing or hearings be held “on the proposed program.” Missouri Revised Statutes § 275.352(3)(3). Clearly, a “proposed program” means much more than simply a proposal that a beef checkoff fee be imposed. A “proposed program” includes a full description of the types of programs, projects, and plans the assessed fees will fund and how the program will be administered. A thorough description of “the proposed program” must be incorporated into the petition submitted pursuant to Missouri Revised Statutes § 275.352(3). This petition seeks rules establishing guidelines for the content of such petitions.

Of crucial importance to cattle producers who vote in any state referenda to impose a beef checkoff assessment is knowing that they, as Missouri producers, will be the beneficiaries of the programs and projects funded by the fees they are required to pay. Missouri beef producers are already paying over \$2 million in beef checkoff assessments each year into the current national checkoff program. Missouri cattle producers must be assured that the programs and projects paid for by any state checkoff assessment will not simply increase the amount of money the MBIC has to pay for the federally authorized programs that are designed to benefit all producers nationally. The state checkoff fees must benefit Missouri cattle producers and not those outside the state.

The MBIC only has the authority to establish and administer programs and projects that benefit Missouri cattle producers and beef products produced in the state of Missouri. MBIC is organized under the authority of Section 275.310 of the Missouri Revised Statutes. This statutory section grants authority to councils, such as MBIC, to maintain, develop, and expand markets **only** for “agricultural commodities produced in Missouri.” The language of Section 275.310 makes it abundantly clear that the **only** authorized programs are those that benefit Missouri producers and commodities produced in the state through the repeated use of phrases such as “for agricultural commodities produced in Missouri,” “for agricultural commodities produced within the state,” and “for agricultural producers of this state.” While state beef checkoff fees may be used to “research, market, educate, and promote beef products and production” according to Section 275.352(12), the MBIC has the authority to use state checkoff fees to pay for such programs **only** for the benefit of cattle and beef produced in the state of

Missouri. State rules must be promulgated that ensure all fees assessed under the state checkoff program will be used in compliance with this state law – only for the benefit of Missouri cattle producers and Missouri beef products.

Because the Missouri statutes authorizing a checkoff program are different from those that control the national beef checkoff, rules must be developed in Missouri to ensure compliance with our state’s laws and cannot simply piggyback on the national beef checkoff rules. Though drawing on ideas from the national rules in a state rulemaking process may afford some efficiencies in developing state rules.

2. Rule Language

Section 100: Requirements for Petition to Hold Referendum to Impose a Missouri Beef Checkoff Assessment

- (A) The petition submitted to the Director of MDA by the beef commodity council or signed by twenty-five percent of the Missouri beef producers to impose a Missouri beef checkoff fee pursuant to Missouri Revised Statutes § 275.352(3), must describe in detail how the checkoff fees will be administered by and/or between the MDA and the beef commodity council and include guidelines to be used to establish allowed and disallowed uses of the checkoff fees to fund programs or projects.
- (B) The petition required by this section must include the following types of provisions:
 - (1) Definitions of relevant terms used therein.
 - (2) Commodity Council structure including the name of the council, the composition of the council, terms of office, method of nomination, election procedures, procedures for filling unexpired terms, salaries, travel expenses, and duties of the members of the council, guidelines for regional, animal type, or production type representation of individual directors, and periodic review procedures to reapportion representation on the board of directors; qualifications of board members; provision that the council will be made up of not less than five nor more than fifteen members of whom the majority are producers and are selected by producers; and providing that the Director of MDA and the Dean of the College of Agriculture at the University of Missouri will serve as ex officio members of the council.
 - (3) The rate of fee or assessment to be collected for each designated unit of commercial quantities of the commodity; the definition of “commercial quantity” of the commodity; and the method or methods to be used in the collection of the fee.
 - (4) Purposes, powers, and duties including standard provisions such as administering the beef checkoff programs according to applicable statutes, rules, and council articles and bylaws; collecting assessments; developing and recommending changes to rules to the Director of MDA when such becomes necessary; organizing and selecting officers; employing staff; conducting programs and projects funded by checkoff fees only in a manner legally allowed under Missouri law; preparing and recommending

the rate and any modification of the rate of checkoff assessment to the MDA Director; entering into contracts as necessary to carry out the purposes of the checkoff program; keeping records; receiving, investigating, and reporting to the MDA Director violations of the checkoff program rules; recommending to the MDA Director changes in the checkoff program rules; and recommending procedures for regular periodic evaluations of the checkoff program's effectiveness.

- (5) Meeting procedures including matters such as quorum requirements and voting procedures.
- (6) Programs, plans, and projects including a description of the types of programs, plans, and projects that may be conducted with the use of state beef checkoff fee assessments. **Establishing guidelines and procedures ensuring that all programs, plans, and projects comply with Missouri Revised Statutes § 275.352(11) which mandates that all state beef checkoff assessment funds “shall only be used to research, market, educate, and promote beef products and production,” and with Missouri Revised Statutes § 275.310 which only authorizes the state beef council to conduct such programs and projects for “agricultural commodities produced in Missouri” and for “agricultural producers in the state.”** Establishing guidelines and procedures for ensuring that **no** Missouri beef checkoff assessments will be used for any action, program, plan, or project: (1) that may present a conflict of interest; (2) for the purpose of influencing any legislation, rule, governmental action or policy other than recommending to the MDA Director amendments to the Missouri beef checkoff rules; (3) for any advertising that may be false, misleading, or disparaging to another agricultural commodity or to some beef producers or sectors; or (4) for marketing, research, promotion, advertising, or education related to cattle producers from states other than Missouri or beef products produced outside the state of Missouri.
- (7) Requirements for contractors including that they must comply with all provisions of statutes and rules that apply to the beef checkoff program and any individual program-specific requirements.
- (8) Expenses and Assessments including the assessment rate and provisions for raising and lowering the rate, how covered entities are to remit the assessments, exemptions and safeguards to ensure exemptions are not abused, any credit for branded activities, penalties for not paying assessments, reimbursement of MDA costs, limitation on the amount of administrative expenses, and description of activities prohibited from the use of checkoff assessments.
- (9) Reports, Books, and Records including a description of reporting forms and when they should be completed, record-keeping requirements, and confidentiality requirements.
- (10) Personal liability of council board members and staff including a description of if and when such liability applies.

- (11) Statement on Patents, Copyrights, Inventions, Publications, and Product Formulations including who will own any of these developed through the use of Missouri beef checkoff assessment funds and who will be entitled to the royalties.

B. Establishment of Beef Producer List

1. Explanatory Notes

Missouri Revised Statutes § 275.352(3)(2) requires MDA to “establish a list of beef producers or make any such existing list current.” MDA does not have a list of Missouri beef producers. And to Petitioners’ knowledge no such list exists. The names of producers who pay into the national beef checkoff program are not collected by MDA, MBIC, USDA, or the national Beef Council. Petitioners believe that the only list of Missouri beef producers MDA has is one developed over the years when producers register to vote for the board members of the MBIC. Very few producers receive actual notice of the MBIC director elections, and the vast majority of producers do not vote in those elections. As of February 17, 2015, only 2,839 cattle producers were on the list. Numerous people on that list are deceased. This outdated and inadequate list represents only about five percent of Missouri’s over 53,000 cattle producers. A list including such a low percentage of producers clearly does not represent the state’s cattle producers as a whole.

If the legislature intended that the agency establish only a list of beef producers that are registered to vote in the referendum, it would have made such an intention clear in the statutory language of § 275.352. The legislature was well aware that it was addressing voter registration issues in this statutory section. Within § 275.352, the word “register” related to producer registrations to vote is used three times, and the word “registration” is used once, and the term “registered producers” is used once. None of these uses was in the context of the statutory mandate to establish a “list of beef producers.” The “list of beef producers” was clearly intended by the legislature to mean a list of producers that goes beyond the list of beef producers that are registered to vote.

Petitioners do not believe that MDA has the ability to create a list of Missouri beef producers that fairly represents the full number of beef producers in the state, and thus, believe that MDA cannot comply with this mandate of the statute. This is another aspect of the statute that must be clarified before any referendum may be held. Without such statutory clarification, any referendum held would be in violation of the statutory language because MDA does not have the ability to “establish a list of beef producers.”

C. Public Hearings

1. Explanatory Note

Missouri Revised Statutes § 275.352(3)(3) mandates that MDA “hold a public hearing or hearings on the proposed program” included in a petition to impose or modify a Missouri beef checkoff fee. Section 275.352 contains what appear to be conflicting requirements for the timing of the notice of these public hearings. Section 275.352(3)(4)(c) requires notice of the

public hearing(s) to be published “at least one month prior to the hearing.” However, § 275.352(4) provides that the Director “shall publish notice of the public hearing and registration requirements giving at least ten days’ notice prior to public hearing.” To reconcile these two provisions, notice of the public hearing must be published at least one month in advance of the hearing. Since voter registration requirements certainly are relevant issues for discussion at the public hearing, this thirty-day advance notice should also include notice of these requirements.

Because the only requirement for publishing notice of the public hearing in § 275.352 is that it be published in “publications devoted to agriculture which have a total statewide circulation of not less than two hundred twenty-five thousand” to have a reasonable chance of providing beef producers with actual notice of the hearing(s), it is essential that all publications involved must be truly devoted to agriculture. In past checkoff referenda, including the 2008 Missouri Corn Merchandising Council Referendum, MDA published the notice of the public hearing in *Rural Missouri Magazine*, a magazine that is not devoted to agriculture, but rather publishes articles of interest to all types of rural businesses. During the most recent – 2008—corn checkoff referendum, MDA violated the statutory requirements of § 275.330.1(4)(d) by including the *Rural Missouri Magazine* as a publication for the notice of the public hearing. Even with this publication MDA failed to publish the notice in “at least three publications devoted to agriculture and each of which has a statewide circulation of not less than seventy-five thousand” as was required in the applicable statute. To prevent further violations of statutory publication mandates, rules on publication of the notice of the beef checkoff public hearings must be established and strictly complied with.

To ensure that beef producers have a reasonable opportunity to participate in a public hearing, the time, place, and/or manner of conducting the hearing must be designed to encourage participation. Sufficient information about “the proposed program” included in the petition that is the subject of the hearing must be included in the notice and/or easily accessible to cattle producers and other interested members of the public.

2. Rule Language

Section 101: Public Hearings on Beef Checkoff Program and Referendum

- (A) The Director of MDA shall hold one or more public hearings on any petition to impose or modify a beef checkoff fee assessment submitted pursuant to Missouri Revised Statutes § 275.352(3).
- (B) The Director of MDA shall cause a notice of the public hearing or hearings to be published in publications devoted to agriculture which have a total statewide circulation of not less than two hundred twenty-five thousand at least 30 days prior to the hearing or hearings.
 - (1) The public hearing notice must include a clear, prominently displayed statement of the proposed checkoff fee amount; a summary of the proposed program to be funded by the checkoff fees including the types of program, projects, and plans to be funded

including how the council will ensure that checkoff funds are used only to benefit Missouri cattle producers and beef products produced in Missouri and how the checkoff program will be administered; an explanation of how and where a copy of the full petition that is the subject of the hearing can be obtained including, but not necessarily limited to, through the MDA website from which it can be reviewed and/or downloaded; a statement that to be eligible to vote a producer must register, and a description of the registration requirements; a statement that written comments to be included in the public hearing record may be submitted at any time up to the date of the final public hearing or any later date the hearing officer may order by sending them to a specified address; and the dates, times, and places of the public hearing or hearings.

- (2) The term “publications devoted to agriculture,” as referenced in Section 275.352 of the Missouri Revised Statutes, does not include publications such as *Rural Missouri Magazine* which are not devoted to agriculture but rather include articles about many types of non-agricultural related rural businesses. Only publications that are devoted to agriculture shall be included in calculating the two hundred and twenty-five thousand minimum publications’ circulation number statutorily required for the public hearing notice. The MBIC and the MDA shall not publish, nor pay to have published, the notice of the public hearing or hearings in any publication of an organization that, in the previous 12 months, has stated a position supporting or opposing imposition or modification of a Missouri beef checkoff assessment fee.
- (C) The fees for publication of notice under this section shall be advanced in cash to the Director of MDA by MBIC, and no publication of notice shall be paid for by state funds.
 - (D) Pursuant to Missouri Revised Statutes § 275.340:
 - (1) the public hearing or hearings shall be conducted by an administrative hearing officer;
 - (2) a permanent record of all testimony at the public hearing will be maintained by the MDA;
 - (3) the Director of MDA shall make and publish findings based upon the facts, testimony, and evidence received at the public hearing and make a determination based on the entire hearing record; and
 - (4) the Director of MDA shall cause copies of his findings and decisions to be delivered or mailed to all parties of record appearing at the hearing, or to their attorneys of record.
 - (E) The Director’s decision based on the record of the public hearing or hearings shall approve in whole or as revised, or disapprove the petition, pursuant to Missouri Revised Statutes § 275.352(6). In making the determination based on the entire hearing record the Director shall summarize and make findings on significant points raised in oral testimony, written comments or testimony, and other evidence included in the public hearing record. If the Director decides to approve the petition in whole or as revised, the Director shall make

findings that the proposed checkoff program included in the petition or as revised and any related referendum procedures comply with all relevant constitutional, statutory, and regulatory provisions, including making a specific finding of compliance on each such provision raised in oral testimony, written comments or testimony, or other evidence included as part of the public hearing record. The record of the public hearing shall include written comments and written testimony. All written comments or testimony postmarked or received by the date for submission of such comments included in the notice of the public hearing shall be made a permanent part of the public hearing record.

C. Referendum Rules

1. Explanatory Notes

To ensure that any referendum related to a beef checkoff program is conducted in a manner that encourages cattle producer participation, ensures a secret ballot, prevents any interference with cattle producers' free exercise of their rights of suffrage, and provides a fair and open referendum procedure, extensive rules need to be established through the notice and comment rulemaking procedures. Inherent in any referendum conducted by MDA are statements of general applicability that implement, interpret, and prescribe law or policy and which describe the procedure and practice requirements of the agency, and which, therefore, must be promulgated through notice and comment rulemaking procedures mandated by Missouri Revised Statutes §§ 536.010(6) and 536.021. If MDA does not conduct notice and comment rulemaking procedures to establish the details of the referendum process, any beef checkoff referendum conducted will be in violation of state law.

As explained above, the statutory requirement that the voter registration form include space for the producer's "yearly average quantity of beef cattle sold by him or her in the three years preceding the date of the notice, or such lesser period as a producer has sold beef cattle" violates the Missouri Constitution's protection of the "free exercise of the right of suffrage" by interfering with and discouraging producer participation in a beef checkoff referendum. (See, Missouri Revised Statutes § 275.352(3)(5) and Missouri Constitution Article I, Section 25). Because required disclosure of producers' private, proprietary cattle production numbers as a condition to voting in a beef checkoff referendum violates the Missouri Constitution the rule language included in this petition does not provide for the inclusion of cattle production numbers on the registration form, and does not provide that for the petition to be adopted the producers voting for adoption must cast the majority of the votes and also "represent a majority of the production of all registered producers casting votes." (See, Missouri Revised Statutes § 275.352(5)). Before MDA conducts any referendum to impose a state beef checkoff assessment on cattle producers the state legislature should remove these unconstitutional requirements from the statute or there should be a Missouri court decision, on which all appeals have been exhausted, holding that these statutory provisions do not violate the Missouri Constitution.

2. Rule Language

Section 102: Voter Eligibility

(A) Persons eligible to vote in the referendum include:

- (1) Individual Producers. Each individual who owns and sells at least one cow, steer, bull, or calf during the representative period and does so in his or her own name is entitled to cast one ballot.
 - (2) Producers that are a Corporation or an Entity. Each corporation, partnership, limited liability company, or other business entity that owns and sells at least one cow, steer, bull, or calf during the representative period is entitled to cast one ballot. Only one representative for a corporation, partnership, limited liability company, or business entity may register to vote and cast a ballot in the referendum.
- (B) Proxy registration and voting is not authorized, except that an officer or employee or partial owner of a corporate or other business entity producer; or any guardian, administrator, executor, or trustee of a producer's estate; or an authorized representative of a business entity producer, such as a corporation, partnership, or limited liability company, may register and cast a ballot on behalf of the entity. Any individual who registers to vote in the referendum on behalf of any eligible producer must certify that he or she is authorized to take that action.

Section 103: Time and method of registration and voting

- (A) Any beef checkoff referendum will be held over at least a two-week period beginning and ending on a day that is not a Saturday, Sunday, or national holiday. This means that beef producers must be given a full two weeks to cast their ballots and return them to the agency. To be considered to have been returned to the agency within the referendum period, the producer must ensure that the envelope in which the ballot is mailed is postmarked by the final day of the referendum period. The agency shall mail a ballot package to each registered voter by the end of the next business day after the date on which the registration form was received.
- (B) Registration forms will be developed by the agency and must conform to all statutory and regulatory requirements. Producers may obtain a registration form by mail from the agency by calling the Missouri Department of Agriculture at (573) 751-5618, emailing a request to _____@mda.mo.gov and requesting a copy of the registration form be sent to him or her. Producers may also download and print the registration form by going to the MDA website. Interested persons or organizations may also make the registration form available by handing out copies of the registration form.
- (C) The registration form will include a place for the person who is registering to:
- (1) print his or her name, address, phone number, and county;
 - (2) the name, address, and phone number of the corporation, partnership, limited liability company, or other business entity that owned or sold at least one head of cattle during the representative period and for which the person signing the

- registration form is the authorized representative for purposes of the beef checkoff referendum vote;
- (3) lines for the registering person’s signature and date of signing under the boldly printed statement that **“By signing this I verify that I have owned or sold at least one head of cattle in my own name, or if I am signing as the representative of a business entity (such as a corporation, partnership, or limited liability company) that I am the one and only authorized representative of that business entity for purposes of voting in this beef checkoff referendum.”**
 - (4) a statement of what registration is for, including a statement of the amount of the beef checkoff assessment fee being proposed;
 - (5) the instructions on who is eligible to vote, including instructions related to voting on behalf of a business entity; and
 - (6) the address to return the registration form to the MDA and the date by which it must be postmarked.
- (D) MDA referendum officials will maintain a list of registered voters by, as registration forms are received, adding the name of the person registering either as an individual producer or as the authorized representative of a business entity producer, along with the address of the person registering to vote, and the address of any business entity the person is voting on behalf of. All registration forms will be retained by MDA as records related to the referendum.
- (E) The Director of MDA shall publish a notice that producers who want to vote in the referendum must register to vote, and describing the registration requirements in publications devoted to agriculture which have a total statewide circulation of not less than two hundred and fifty thousand (1) at least 30 days before the date of the first public hearing on a petition to impose or modify a Missouri beef checkoff assessment fee as provided in Section 102(B)(1) above; and (2) after the Director makes a determination on the petition based on the public hearing record and at least 30 days before the opening date of the two week referendum period.
- (F) In order to ensure a secret ballot in any beef checkoff referendum, the following steps for casting and returning ballots must be followed. The MDA shall send ballot packages to each and every registered voter. The ballot package sent by the MDA to all registered voters shall include:
- (1) the ballot form to be completed by the voter;
 - (2) a ballot envelope marked “beef ballot envelope;”
 - (3) an envelope addressed to the MDA address that will be used to collect the ballots cast and in which the “beef ballot envelope” will fit and which has marked on the outside “beef checkoff referendum” and lines on which the voter must write his

- or her name and address and the name and address of any corporation, partnership, limited liability company, or other business entity for which the vote is being cast; and
- (4) instructions for completing the ballot and for use of the various envelopes. These instructions will describe:
 - (i) who is an eligible voter in the referendum;
 - (ii) that he or she must cast a “yes” or “no” vote on the ballot;
 - (iii) that he or she must place the cast ballot in the enclosed envelope marked “beef ballot envelope” and seal that envelope;
 - (iv) that he or she must place the sealed “beef ballot envelope” containing the cast ballot into the “beef checkoff referendum” envelope addressed to the MDA and write the voter’s name and address and, if applicable, the name and address of the business entity for which the voter is casting the vote; and
 - (v) that he or she must stamp and mail the envelope to MDA ensuring that the envelope is postmarked by the last day of the referendum period and giving that date.
 - (G) The ballot form on which voters will cast their votes shall include a clear statement of who proposed the measure being voted on – the Missouri Beef Industry Council or by signed petition of a ___ number of beef producers; in bold prominent lettering print the question on which the vote is being taken including the specific amount of the proposed checkoff fee; a line directly in front of “yes” and “no” on the which the voter will mark his or her vote; an instruction to mark an “X” or check mark () on the “yes” or “no” line to indicate his or her vote; and the statement in bold prominent print: “To be considered a valid vote the completed ballot must be returned to MDA by mail with a postmark date no later than (specified date which is the last day of the referendum period) or hand-delivered by not later than (specified date which is the last day of the referendum period to specified address).” In order to ensure secret balloting, no signature line is allowed on the ballot and no instructions may suggest that the ballot be signed.

Section 104: Handling and Counting Cast Ballots

- (A) MDA will receive the ballots in the “beef checkoff referendum” envelopes by mail or by hand delivery. Ballots shall be considered to be received by MDA on time if the outside envelope is postmarked before or on the last date of the two-week referendum period. If a ballot is received by hand-delivery in the required envelope, it will be hand-marked with the date it was delivered on the outside of the envelope along with the name of the person at MDA who received the hand-delivered envelope. A hand-delivered ballot will be considered to have been delivered on time if it is hand-delivered before or on the last date

of the two-week referendum period. MDA shall also accept ballots and treat them as submitted on time if they are postmarked or hand-delivered before the start of the two-week referendum period.

- (B) As ballots are received in the mail or hand-delivered to MDA’s state office address, MDA referendum officials shall place the unopened MDA-addressed envelope-- “beef checkoff referendum” envelope-- with its sealed contents in a locked box and store it in a secure location.
- (C) MDA referendum officials shall oversee and conduct the counting of the ballots. Interested members of the public shall be allowed to attend and view the entire process from the opening of the locked box containing the “beef checkoff referendum” envelopes through the final count of each and every ballot, including the classification of individual ballots as invalid or spoiled. This process will be conducted in a room and in a manner that allows the attending public to view the ballot package documents as decisions are made on how to treat individual ballots as invalid, spoiled, “yes” vote, or “no” vote. At least 15 days prior to the counting of the ballots, MDA will publish a notice on its website identifying the date, time, and location of the ballot count and notifying the public that they may attend the opening of the ballot boxes and the counting of the ballots. The counting of the ballots shall take place within 21 days of the end of the referendum period.
- (D) The unopened “beef checkoff referendum” envelopes with their sealed contents will be maintained in a secure location in a locked box until delivered to the referendum officials on the day the votes are to be counted. The procedures for counting the votes are as follows:
 - (3) Each envelope with the name of the voter and/or the business entity for which the vote is cast will be checked against the voter registration list;
 - (4) If the voter is not listed on the voter registration list, the unopened, sealed “beef checkoff referendum” envelope will be set aside in a locked box in a group with other ballots from voters not on the registration list, and these ballots will be declared invalid;
 - (5) If the voter is on the voter registration list, the “beef referendum envelope” will be opened and the “beef ballot” envelope will be taken out and deposited into a locked box where all valid “beef ballot” envelopes will be deposited together before they are opened and the ballots counted;
 - (6) Once “beef ballot” envelopes for all voters who are listed on the voter registration list have been inserted into the locked ballot box, the ballots will be shuffled or mixed up in such a manner that the ballot cannot be associated with the voter’s name and the box will be opened;
 - (7) The ballot envelopes will be opened and each “yes” and each “no” vote recorded in an ongoing separate tally of the “yes” and “no” votes; and

- (8) Once all valid ballots have been counted, the MDA official in charge of overseeing the vote will certify the total “yes” and the total “no” votes.
 - (9) Observers of the vote counting shall be entitled to raise objections about the vote counting or an individual ballot with the MDA official in charge of the vote counting. The MDA official in charge of the vote counting shall rule on the objection before continuing the vote counting. Any objecting party may make an immediate appeal of such decision to the Director and the Director shall rule on the objection before vote counting shall proceed again.
- (E) The MDA shall maintain the voter registration list, blank copies of the registration form, and blank copies of all documents contained in the ballot package including the ballot, the “beef ballot” envelope, and the “beef checkoff referendum” envelope as a permanent record of the agency. MDA shall maintain all completed voter registration forms, cast ballots, used “beef ballot” envelopes, used “beef checkoff referendum” envelopes, “beef checkoff referendum” envelopes marked as invalid, cast ballots marked as spoiled, and the referendum report described below for at least six years after the date the referendum results are officially announced. The MDA referendum officials shall develop and maintain a report with the:
- (1) Number of eligible producers casting ballots;
 - (2) Number of eligible producers voting “yes” on the referendum;
 - (3) Number of eligible producers voting “no” on the referendum;
 - (4) Number of invalid ballots;
 - (5) Number of spoiled ballots; and
 - (6) Number of registered voters.
- (F) Invalid ballots are those that are cast by persons not on the voter registration list or for which there is more than one voter casting a ballot for the same business entity producer such as a corporation, partnership, or limited liability company.
- (G) Spoiled ballots are those that are mutilated or marked in such a way that it cannot be determined whether the voter is voting “yes” or “no.” Spoiled ballots will not be considered as either a “yes” or “no” vote nor as a ballot cast in the referendum.
- (H) If the Director of MDA deems it necessary or appropriate, the report of the referendum results and the ballots will be reviewed and checked by persons unaffiliated with the cattle or beef industry as may be designated by the Director.
- (I) If the majority of the votes cast are “yes” votes, the program proposed in the petition is adopted.

- (J) The Director of MDA will announce the referendum results in an official press release and will also publish those results in the Missouri Register and on MDA’s website.
- (K) It is prohibited for MDA or any other agency, entity, or individual to release publically documents or information related to the referendum that would permit a person to identify whether a voter voted “yes” or “no” in the referendum.

F. Refund of Beef Checkoff Assessments

1. Explanatory Notes

Since the time a national beef checkoff program was established and until the amendments to Missouri Revised Statutes § 275.352 in 2015, any state beef checkoff assessments were not refundable. However, with the enactment of Missouri Revised Statutes § 275.352 (10), all state beef checkoff assessments are subject to refund under § 275.360. The statutory amendments were won, in significant part, because proponents described the program as a voluntary checkoff program due to the refund provisions. MDA has the responsibility to make the refund procedures as easy as possible for producers to access within the constraints of the statute.

2. Rule Language

- (A) MDA shall develop forms to be completed by cattle producers to request refunds of any beef checkoff assessment. MDA shall develop procedures that:
 - (1) make it possible for cattle producers to complete and submit these refund request forms online and to download and print the refund request forms at the MDA website through an easily located, prominently displayed location on its home page; (2) direct livestock auction barns, packers, feedlots, and other purchasers of live cattle, other than those conducting direct producer-to-producer transactions, to make available, at all business locations where cattle producers may be present, paper copies of the refund request form and instructions on how to complete and submit those forms to MDA; (3) direct livestock auction barns, packers, feedlots, and other purchasers of live cattle, other than those conducting direct producer-to-producer sales, to prominently display notices prepared by MDA advising cattle producers of the right to obtain refunds and the manner in which they can be requested at all business locations where cattle producers may be present; and (4) ensure that MDA will do ongoing outreach to cattle producers to advise them of their right to request a refund of any state beef checkoff assessment, including but not limited to, at least twice annually publishing such a notice in the same publications in which the notice of the public hearing on the petition imposing or modifying the checkoff fee amount was published.
- (B) MDA’s website shall provide a receipt, that can be printed or emailed from the website, for any refund request completed and submitted online showing the date of the online submission.
- (C) Pursuant to Missouri Revised Statutes § 275.360 cattle producers may request the refund of any state beef checkoff assessment by ensuring that the refund request is in the office of the Director within sixty days following the date of payment of the checkoff fee. Because

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a producer submitting a request for refund by mail or online does not have control over when it will reach the office of the Director, the MDA interprets this provision to mean that the refund request must either be submitted online within sixty days of the date the checkoff fee was paid or the envelope containing the refund request must be postmarked within sixty days of the date the checkoff fee was paid. Checkoff fees are considered paid the date the cattle producer sells the livestock or the date the cattle producer is actually paid for the livestock, whichever is later.

- (C) MDA will place a check for payment of a requested refund to the cattle producer in the mail within 14 days of the postmarked date of a mailed request for refund and within 14 days of the date of the request for refund submitted online through MDA's website.

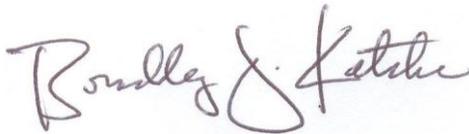
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