

MU Guide

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Basics of

Missouri Agricultural Cooperatives

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In 1983, 105 locally owned agricultural cooperatives operated in Missouri.¹ But although they strongly support the idea of cooperatives, farmers may not fully understand their role in the cooperative or the unique features of cooperatives.² They have many questions about members' rights and director and corporate responsibilities.

The state cooperative statutes provide a source of authority when dealing with these questions. Missouri has two separate agricultural cooperative statutes: Chapter 274 and Chapter 357 of the Revised Statutes of Missouri. In this guide, we will call a cooperative incorporated under Chapter 274 a "274 cooperative," and a cooperative incorporated under Chapter 357 a "357 cooperative."

This publication will provide information about certain statutory provisions for agricultural cooperatives. Specific questions addressed are:

1. What type of business is a cooperative?
2. Who may form an agricultural cooperative in Missouri?
3. How do you set up an agricultural cooperative?
4. How do you become a member?
5. What are the "bylaws" of a cooperative?
6. What are the duties and responsibilities of the board of directors?
7. How can members control their cooperative's affairs?
8. How do cooperatives distribute their savings?
9. How and when do cooperatives redeem members' equity?
10. Must a cooperative hold an annual membership meeting?
11. Can members vote only at membership meetings?

This publication does **not** provide legal advice. Always consult an attorney if you have specific legal questions.



1. What type of business is a cooperative?

Generally, cooperatives are corporations. A corporation is a legal entity apart from its owners and is created by or under the authority of the laws of a state.

A cooperative corporation, however, is different from an investor-owned corporation. A cooperative is owned by those who conduct business with it. Its purpose is to benefit its owners as *producers* by providing marketing or supply services. On the other hand, an investor-owned corporation's purpose is to benefit its owners as *investors*. An investor-owned corporation's owners do not usually conduct business with the corporation.

As mentioned earlier, two statutes govern the creation and operation of agricultural cooperatives in Missouri. Missouri Statutory Chapter 274 provides for the incorporation and operation of a nonstock cooperative, while Chapter 357 provides for the incorporation and operation of a stock cooperative. Any differences in the manner in which cooperatives are created and operated under Chapters 274 and 357 result from the different statutes applicable to each.

2. Who may form an agricultural cooperative in Missouri?

A minimum of 11 agricultural producers, a majority of whom are Missouri residents, is required in order to form a 274 cooperative.

Chapter 357 requires a minimum of 12 people.

3. How do you set up an agricultural cooperative?

Both statutory chapters require that articles of incorporation be prepared and filed by the group that wants to form a cooperative. Articles of incorporation are the basic instrument that, when properly executed and filed, give rise to the cooperative's corporate existence. Chapter 274 and 357 each require different procedures for executing and filing articles of incorporation. The articles of incorporation must contain certain information for each statute.

For a 274 cooperative, the articles of incorporation must contain:

1. The name of the association;
2. The purpose for which the cooperative is formed;
3. The place where its principal place of business will be transacted;
4. The term for which the cooperative is to exist, which may be for any number of years or may be perpetual;
5. The number of directors (at least five), their terms of office, and the names and addresses of those who will serve as incorporating directors for the first term; and,
6. How property rights and interests of members are to be determined.

For a 357 cooperative, the articles of incorporation must contain:

1. The name of the association;
2. The names and residences of the persons forming the cooperative;
3. The purposes of the cooperative;
4. The location of the principal place of business; and,
5. A statement of the amount of capital stock, and the number of shares and par value of each.

At times, the information contained within the articles of incorporation needs to be changed. When this happens, the articles of incorporation must be amended. For a 274 cooperative, two-thirds of the directors must approve any amendment. Then, a majority of co-op members voting at any regular or specially called meeting must adopt it. Such vote may occur by mail. Once an amendment is adopted, it must be filed with the secretary of state.

For a 375 cooperative, the articles of incorporation may be amended by a majority vote of shareholders. Shareholders may vote at any regular shareholders' meeting called for that purpose. The board must mail written notice of the meeting to all shareholders at



least 60 days before the meeting. After adoption of the amendment, the cooperative must record a copy of it in the office of the recorder of deeds in the county or city in which the cooperative's principal place of business is located. The cooperative must also file a certified copy with the secretary of state.

4. How do you become a member?

The statutes do not give a direct answer to this question. Chapter 274 indicates the bylaws of a cooperative can establish membership criteria. Chapter 357 does not address this question either, but again, the bylaws are the proper place to outline requirements for membership.

Usually, membership is based upon either payment of a nominal fee or the annual dollar amount of business an individual conducts with the cooperative or both. The bylaws should state the minimum dollar figure which must be met before an individual is eligible for membership. The bylaws may also prescribe additional requirements.

A 274 cooperative typically issues a membership certificate to all members. Members receive shares of stock for a 357 cooperative. No shareholder in a stock cooperative may own shares of a greater aggregate par value than 10 percent of the total par value of all shares of stock in the cooperative.

5. What are the "bylaws" of a cooperative?

Bylaws are rules adopted by an organization's membership. They govern the organization's internal affairs. Bylaws are valid as long as they are not illegal or in conflict or inconsistent with state or federal laws that apply to the organization. Both Missouri cooperative statutes list items that may be addressed in a cooperative's bylaws. Such provisions are practical and necessary for the continued operation of the cooperative. Examples are:

- number of members constituting a quorum at membership meetings;
- right of members to vote by mail or proxy or both;
- time and manner of membership meetings;
- number of directors constituting a quorum at board meetings;
- qualifications of directors and terms of office;
- election of directors and officers;
- membership requirements; and,
- stock or equity restrictions, if any.

274 cooperatives must adopt bylaws within 30 days after incorporation

6. What are the duties and responsibilities of the board of directors?

Both Chapter 274 and 357 say the general affairs of the cooperative must be managed by a board of directors. The board must include at least five members elected from the membership or stockholders. Typically, members delegate management authority to the directors through specific bylaw provisions. Additionally, the bylaws may contain any restrictions and qualifications desired, including designation of districts or territories, length of term, and provisions for removing directors from the board.

Chapter 274 specifically mandates that no director, during the term of his or her office, may be a party to a for-profit contract with the cooperative that differs from the business relations accorded to regular members of the association.

Chapter 357 gives shareholders control of co-op policies. By direct vote, the shareholders govern policies including declaring dividends, setting aside reserve funds, and distributing cooperative savings.

The members, through cooperative bylaws, may allow one or more directors (in addition to the minimal required number) to be appointed by any public official, commission, or by existing board members. These "outside" directors represent the interests of the general public in the cooperative. They need not be members of the cooperative. Chapter 274 limits the number of "outside" directors to no more than one-fifth the total number of directors.

7. How can members control their cooperative's affairs?

Members can control their cooperative in a number of ways. As discussed earlier, cooperative members enact the bylaws and may amend them by member vote. Each cooperative member is entitled to only one vote. Hence, all members share equally in the control of their cooperative.

Under Chapter 274, members have the right to call a special membership meeting at any time if at least 10 percent of the members file a petition with the secretary of the board of directors. The petition must state the specific business to be discussed at the special meeting.

Rights of members of a 357 cooperative to call a special meeting must be specified in the bylaws. The bylaws must also outline appropriate procedures to follow.

Under Chapter 274, any member may bring charges against an officer or director of the cooperative by filing charges with the secretary of the cooperative. The member must also file a petition, signed by 5 percent of the membership, to request the removal of the officer or director in question. The removal must be voted on at the co-op's next regular or special

meeting and, by a majority vote of members, the association may remove the officer or director and fill the vacancy.

The director or officer who is charged must be informed in writing before the meeting. He or she has the opportunity to be heard at the meeting in person or by counsel and to present witnesses. The person bringing the charges has the same opportunity.

Under Chapter 357, shareholders have the power at any regular or specially called meeting to remove any director and to fill the vacancy created. The director ceases to be a director of the cooperative at that time.

8. How do cooperatives distribute their savings?

Chapter 274 does not specifically address the method of distribution of savings earned by a cooperative to its members. The method, however, is typically found in the co-op bylaws. The provisions usually outline the manner in which patronage refunds are declared and distributed. The bylaws may direct that a reserve be maintained at all times through distribution of savings. The bylaws may also establish rules for treatment of net losses incurred.

Chapter 357 contains a statutory provision that restricts the method of distribution of savings. The shareholders *must* set aside not less than 10 percent of the savings for a reserve until the dollar amount in the reserve fund equals 50 percent of the paid-up capital stock. A dividend on the paid-up capital stock is then declared, the amount determined by the shareholders. It may not exceed 10 percent of capital stock. The remainder of the cooperative savings is then distributed according to patronage. Additionally, the shareholders may adopt bylaws that restrict the manner of distribution even more.

Typically, cooperatives distribute savings in a combination of three ways. A cooperative often distributes a portion of its savings to patrons in the form of a cash patronage refund, a noncash patronage refund (savings treated as having been distributed to patrons as cash, reinvested back into the cooperative, and credited to the patron's equity account in the cooperative, commonly called "allocated savings"), and as unallocated savings (an accumulation of cooperative savings not allocated to any cooperative patron). Additionally, shareholders of a 357 cooperative may receive a dividend on their stock of up to 10 percent.

9. When and how do cooperatives redeem members' equity?

Generally, the manner and timing of redemption of patrons' equities is determined by the membership of the cooperative according to cooperative bylaws.

Upon death, withdrawal, or expulsion of a member of a 274 cooperative, the board of directors, when

authorized by the cooperative membership, equitably and conclusively appraises the member's property interests in the cooperative and pays that amount to the member or the member's legal representatives. Payment must be made no later than such interest would have been payable in the usual course of business, had the member continued his membership.

10. Must a cooperative hold an annual membership meeting?

Both statutes require that an annual meeting be held.

11. Can members vote only at membership meetings?

No. Under Chapter 274, cooperatives can vote by mail. This practice should be outlined in the bylaws and the procedure should be followed closely.

Chapter 357 says that at any regular or specially called meeting of the membership, a written note signed by and received by mail or messenger from any absent shareholder is accepted as the vote of the absentee.

Summary

Farmer cooperatives in Missouri may be incorporated under either of two statutory chapters, Chapter 274 and 357. The manner in which a cooperative conducts business may be affected by the statute under which the cooperative is incorporated.

Two chief differences between the cooperative

statutes are: (1) Chapter 274 provides for the incorporation and operation of a nonstock cooperative and does not restrict the manner in which the net earnings of the cooperative may be distributed; and, (2) Chapter 357 provides for the incorporation and operation of stock cooperative and contains restrictions covering the manner in which the net margins of a cooperative are distributed. Chapter 357 also allows for incorporation of a consumer cooperative, which produces or furnishes goods, services, or housing.

This report is not intended as a source of legal advice, but is instead meant to inform the reader about important statutory provisions pertaining to farmer cooperatives incorporated under Missouri law. See your attorney for legal advice concerning your special circumstances.

References

1. C. Brice Ratchford and Others, "Financial Condition and Performance of Local Cooperatives in Missouri, 1970, 1978, and 1983." University of Missouri-Columbia, Agricultural Experiment Station, Special Report 326, Columbia, Missouri, July, 1985, p. 1.

2. Scott W. Phillips, *The Attitude And Behaviors Of Young Large-Scale Farmers Towards Cooperatives*. Master's Thesis, (University of Missouri-Columbia, May, 1984), p. 51.

Harold F. Breimyer and Meredith Burks, *Opinions of Leading Missouri Farmers About Farm Policy*, University of Missouri, Agricultural Economics Extension Division, Extension Newsletter, Vol. 24, No. 7, July, 1983, p. 4.



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