

§ 900.302

(k) *Cooperative association.* *Cooperative association* means any association of producers that the administrator has found to be qualified pursuant to section 608c(12) of the Act.

[30 FR 15412, Dec. 15, 1965, as amended at 37 FR 8059, Apr. 25, 1972]

§ 900.302 Associations eligible to vote.

(a) Any association of producers, not previously determined to be a cooperative association may file an application for a determination as to whether it is a cooperative association and thus eligible to vote in a referendum. Such application shall be filed with the Administrator at least 60 days prior to the holding of the referendum; *Provided, however,* That the Administrator may permit the filing of an application in less than 60 days when, in the opinion of the Administrator, such filing would not delay the conduct of the referendum.

(b) Within a time fixed by the referendum agent, but not later than 5 days prior to the final date for balloting, each cooperative association electing to vote shall, upon the request of the referendum agent, furnish to him a certified list showing the name and address of each producer for whom it claims the right to vote and the plant at which such person's milk was received during the representative period.

§ 900.303 Conduct of referendum.

The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator.

§ 900.304 Who may vote.

(a) Each producer shall be entitled to only one vote and to cast one ballot in each referendum; and no person who may claim to be a producer shall be refused a ballot. Each producer casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such producer in such referendum. Each ballot cast shall contain a certification by the person casting the ballot that he is a producer.

(b) Except as provided in section 8c(5)(B) of the act, as amended, any co-

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operative association eligible under § 900.302 may, if it elects to do so, vote and cast one ballot for producers who are members of, stockholders in, or under contract with, such cooperative association. A cooperative association shall submit, with its ballot, a certified copy of the resolution authorizing the casting of the ballot. Each such cooperative association entitled to vote in a referendum casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such voter in such referendum.

(c) Voting by proxy or agent, or in any manner, except by the producer or cooperative association will not be permitted; however, a producer which is other than an individual may cast its ballot by a person who is duly authorized and such ballot shall contain a certification by such person that the person on whose behalf the ballot is cast is a producer.

§ 900.305 Duties of referendum agent.

The referendum agent shall also:

(a) For purposes of mailing, prepare a record of producers which will disclose the name of each such person, his address, the name of the handler who received the producer's milk during the representative period, and the name of the cooperative association, if any, which claims the right to vote for the producer. Such record may be compiled from readily available sources, including the following:

- (1) Records of the Department;
- (2) Producer records supplied by handlers;
- (3) Health authority records;
- (4) Certifications signed by dairy farmers who claim to be producers;
- (5) Any other reliable sources of information which may be available to the referendum agent.

(b) Apply, as a guide, the following criteria in preparing a record of producers:

- (1) When the order requires approval by an appropriate health authority before a person meets the definition of producer, only those persons having such approval and who otherwise meet the definition may be regarded as producers. When the definition of producer

requires the shipment of milk to a handler or a plant as well as health authority approval, only those persons having such approval and whose milk was received by a handler or at a plant may be regarded as producers.

(2) When the order requires shipment to a handler or to a plant, without regard to health authority approval, a person may not be regarded as a producer, except as provided in paragraph (b)(6) of this section, unless his name appears on the handler's producer records.

(3) In the case of a producer that is other than an individual, the business unit shall be regarded as the producer.

(4) No person may be included in the record more than once although he may operate more than one farm, hold more than one health authority approval, or appear on more than one handler's producer records.

(5) In the event the health authority records are not available, are inaccurate, or are incomplete, the appearance of the producer's name on a handler's records as an approved producer shall be prima facie evidence of health authority approval.

(6) In the event any handler refuses or fails to make his records available to the referendum agent, a certification signed by the producer shall be regarded by the referendum agent as prima facie evidence that such person is eligible to vote.

(c) Verify the information supplied by each cooperative association which wishes to vote on behalf of producers, as follows:

(1) Examine the records of the cooperative association for the purpose of ascertaining whether each producer claimed by the cooperative association is a member of, stockholder in, or under contract with the cooperative association.

(2) Identify the persons ascertained to be members of, stockholders in, or under contract with a cooperative association which wishes to vote on behalf of its producers with the names of producers which appear on the record compiled pursuant to paragraph (a) of this section.

(3) In determining whether a cooperative association may vote on behalf of

a producer the following criteria shall be used:

(i) The cooperative association may vote for each producer who is a member of, stockholder in, or under contract with such cooperative association on the date of the order directing that the referendum be conducted.

(ii) The cooperative association may cast only one ballot for all such producers.

(iii) Whenever more than one cooperative association claims the right to vote for a producer only the cooperative association which furnished evidence satisfactory to the referendum agent that such association was in fact marketing the milk of the producer on the date of the referendum order may vote for such producer.

§ 900.306 Notice of the referendum.

(a) The referendum agent shall at least 5 days prior to the final date for balloting:

(1) Mail to each cooperative association which has elected to cast a ballot on behalf of its producers and to each of all other known producers, a notice of the referendum which will include instructions for completing the ballot, a statement as to the time within which the ballot must be mailed to, and received by, the referendum agent, a copy of the final decision, and a ballot containing a description of the terms and conditions of the order.

(2) Give public notice of the referendum:

(i) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) serving the area, announcing the time within which ballots must be completed and mailed to and received by the referendum agent, eligibility requirements, where additional information may be procured, and other pertinent information; and

(ii) By such other means as said agent may deem advisable.

(b) [Reserved]

§ 900.307 Time for voting.

There shall be no voting except within the time specified by the referendum agent as stated in the notice of the referendum.