Factors in the Organization of Cooperative Associations

By

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<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>5</td>
</tr>
<tr>
<td>Marketing Functions and Agencies</td>
<td>5-7</td>
</tr>
<tr>
<td>Types of Associations</td>
<td>7-8</td>
</tr>
<tr>
<td>Local Associations</td>
<td>7</td>
</tr>
<tr>
<td>Federations</td>
<td>7</td>
</tr>
<tr>
<td>Centralized Associations</td>
<td>7-8</td>
</tr>
<tr>
<td>Cooperative Sales Agencies</td>
<td>8</td>
</tr>
<tr>
<td>Bargaining Associations</td>
<td>8</td>
</tr>
<tr>
<td>Conditions Essential to Success</td>
<td>8-10</td>
</tr>
<tr>
<td>Service Must be Rendered</td>
<td>8-9</td>
</tr>
<tr>
<td>Volume of Business Must be Adequate</td>
<td>9</td>
</tr>
<tr>
<td>Management Must be Good</td>
<td>9</td>
</tr>
<tr>
<td>Members Must be Loyal</td>
<td>10</td>
</tr>
<tr>
<td>Factors Contributing to Success</td>
<td>10-14</td>
</tr>
<tr>
<td>Organization by Commodity</td>
<td>10</td>
</tr>
<tr>
<td>Localization</td>
<td>11</td>
</tr>
<tr>
<td>Non-profit Organization</td>
<td>11</td>
</tr>
<tr>
<td>Patronage Dividends</td>
<td>11-12</td>
</tr>
<tr>
<td>Membership of Producers Only</td>
<td>12</td>
</tr>
<tr>
<td>One-man, One-vote Principle</td>
<td>12-13</td>
</tr>
<tr>
<td>Direct Financing</td>
<td>13</td>
</tr>
<tr>
<td>Financial Reserves</td>
<td>13</td>
</tr>
<tr>
<td>Accounting and Audits</td>
<td>13-14</td>
</tr>
<tr>
<td>Operating Policies</td>
<td>14-16</td>
</tr>
<tr>
<td>Orderly Marketing</td>
<td>14</td>
</tr>
<tr>
<td>Merchandising</td>
<td>14</td>
</tr>
<tr>
<td>Pooling</td>
<td>14-15</td>
</tr>
<tr>
<td>Price and Sales Policies</td>
<td>15-16</td>
</tr>
<tr>
<td>Federal and State Laws</td>
<td>16-20</td>
</tr>
<tr>
<td>Section 6 of the Clayton Act</td>
<td>16</td>
</tr>
<tr>
<td>The Capper-Volstead Act</td>
<td>16-18</td>
</tr>
<tr>
<td>The Oregon Cooperative Law</td>
<td>18</td>
</tr>
<tr>
<td>Federal Income Tax Regulations</td>
<td>18-20</td>
</tr>
<tr>
<td>Financing a Cooperative</td>
<td>20-23</td>
</tr>
<tr>
<td>Financing Organization</td>
<td>20</td>
</tr>
<tr>
<td>Obtaining Permanent Capital</td>
<td>20-21</td>
</tr>
<tr>
<td>Operating Capital</td>
<td>21-22</td>
</tr>
<tr>
<td>Revolving Fund Plan</td>
<td>22-23</td>
</tr>
<tr>
<td>How to Organize</td>
<td>23-28</td>
</tr>
<tr>
<td>Preliminary Survey</td>
<td>23-25</td>
</tr>
<tr>
<td>Calling a Meeting</td>
<td>25</td>
</tr>
<tr>
<td>Temporary Organization</td>
<td>25</td>
</tr>
<tr>
<td>Incorporation</td>
<td>25-27</td>
</tr>
<tr>
<td>Association Agreement</td>
<td>27-28</td>
</tr>
<tr>
<td>Legal Service in Organizing</td>
<td>28</td>
</tr>
<tr>
<td>Marketing Contracts</td>
<td>28-31</td>
</tr>
<tr>
<td>Types of Contracts</td>
<td>29</td>
</tr>
<tr>
<td>Form of Contract</td>
<td>29-31</td>
</tr>
<tr>
<td>By-Laws</td>
<td>32-40</td>
</tr>
<tr>
<td>The Adoption of By-Laws</td>
<td>32</td>
</tr>
<tr>
<td>Form of By-Laws</td>
<td>32-40</td>
</tr>
<tr>
<td>Appendix: Cooperative Association Law of Oregon</td>
<td>41-47</td>
</tr>
</tbody>
</table>
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INTRODUCTION

The purpose of this bulletin is to present in a condensed and convenient form for reference the important factors to be considered and the procedure to be followed in the organization of farmers' cooperative business enterprises in Oregon, especially cooperative marketing. It is designed to serve to some extent as a handbook or guide for individuals, groups, or agencies directly concerned in furthering the cooperative movement along sound lines and in conformance to the provisions of the Oregon Cooperative Association Law and the Federal Capper-Volstead Act.

Before undertaking the organization and operation of a cooperative marketing association, those who sponsor the adoption of this method of doing business and those who expect to be associated in the enterprise should understand its possibilities and limitations. They should know the factors that contribute to success and failure, the principles that have become established in the cooperative plan of marketing, and the several conditions that must prevail before an association is in a position to succeed.

In the event that a decision is reached to organize a cooperative association, questions will arise regarding the procedure to be followed. Shall there be an organization committee and how shall it be formed? What must be included in the articles of association? What are the restrictions with respect to the payment of dividends in order to comply with the law? How can a cooperative obtain operating capital? How shall a meeting be called to effect temporary or permanent organization? In attempting to answer questions like these it has seemed advisable to include in this publication certain forms and specimen documents. Copies of state and Federal laws are also included for reference.

MARKETING FUNCTIONS AND AGENCIES

Marketing has been defined as the sale, purchase, or exchange of products and the activities incidental to the transfer of ownership and possession. These activities, which form the several steps by which farm products are transferred from producer to consumer, may be grouped and considered as distinct parts of marketing. The following eight

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1This outline of marketing functions and agencies contains excerpts from a mimeograph circular published by the United States Department of Agriculture, entitled "Marketing Functions," by R. H. Elsworth and Geo. O. Gatlin. Copies may be obtained upon request.
functions or services have been recognized as parts of the marketing process: (1) standardizing, (2) assembling, (3) selling, (4) transporting, (5) storing, (6) financing and risking, (7) processing, and (8) dispersing.

These eight functions or services do not appear in every marketing transaction, nor do they occur in any particular order. Several agencies may perform one function at different times, or a single agency may perform several functions at the same time. A single transaction may involve all of the functions or any number in any combination. Some one or more of these functions, however, must be performed in every marketing transaction. They are neither more nor less than the activities which constitute the services that must be rendered by marketing agencies.

Among the important agencies concerned with the marketing of farm products are the cooperative association, country buyer, car-lot assembler, car-lot receiver or wholesaler, broker, commission merchant, auction company, public market, private exchange, jobber, common carrier, warehouseman, cold storage operator, elevator company, and retailer. These agencies may be considered as the result rather than the cause of present marketing conditions. Their number may increase or decrease and in either case be justified by resulting economies. New agencies may appear, existing agencies may change or disappear, but the functions which they perform must be continued. Some one must standardize, assemble, sell, transport, store, finance and assume risks, process, and disperse farm products. The advisability of a change of agencies or the development of new agencies should be determined by the degree of efficiency and economy with which the marketing functions can be performed.

Economies often result and should result through producers or consumers collectively assuming the performance of functions which as individuals they can perform only partly or ineffectively. Cooperative marketing, however, neither decreases nor increases the number of marketing functions, and it may dispense with existing agencies only by taking over the functions of these agencies. A cooperative marketing association must be considered as a business agency for performing marketing functions; and, as such, should be considered in relation to other agencies which exist or which may be proposed for the same purpose. Its existence and development will depend on the economic result of its operation.

Cooperative associations cannot eliminate the processes or services which constitute marketing. It is possible, however, for them to render such services in a manner advantageous to both producers and consumers. Through cooperative activity improvements may be brought about in production methods; standardizing of varieties, grades, and packs may be facilitated; competitive wastes may be reduced; and a better adjustment may be brought about between supply and demand. By working together as a unit, producers may improve their bargaining power, finance their marketing operations on more favorable terms, control the flow of products to market, effect equitable distribution as between markets, and extend and develop markets by advertising and other methods. The fact that producers, as such, own and control their marketing agencies and obtain, in accordance with the quality and quantity of their products, the benefits from any economies effected or any improvements brought
about in the marketing processes or in demand for their products, is an incentive to effort on their part which is often lacking in non-cooperative marketing.

**TYPES OF ASSOCIATIONS**

There are several generally recognized types of cooperative marketing associations, the principal differences being in the method or plan of control, the legal set-up, and the scope of operations. Many associations, however, cannot be classified accurately as belonging to any one type, but contain features of different types. The selection and adoption of any one of these types of association should be governed largely by the purposes in organizing, the character of the commodity to be marketed, and the conditions existing within the producing area. In most instances it is advisable to work out organization plans to meet the needs of a given group of growers, with little emphasis on conformity to any particular type.

**Local associations.** Approximately 80 percent of all active cooperatives in the United States are independent local associations. The total membership of these local associations, however, is less than the total membership represented by approximately one hundred associations of the federated and centralized types.

A typical local organization is one formed by a relatively small group of neighboring farmers for the purpose of rendering a local service. The area covered by the membership is usually a community or a territory adjacent to a shipping point or packing plant. The purpose is to serve the group of local growers, rather than the industry, in such activities as assembling, grading, packing, and shipping. As a rule it undertakes to perform only those marketing functions which may be performed under the direction or observation of the members, with little or no effort to extend its activities beyond the local shipping point.

**Federations.** As the term implies, a federation or a federated association, is made up of several otherwise independent local associations that have agreed to work together for the purpose of obtaining some desired advantage in large-scale operations. Federations, therefore, may be described as large-scale organizations formed and controlled by a number of local associations known as local units. In this type of organization the individual grower is a member of a local association and the local, in turn, is a member of the federation. The grower contracts with the local, the local with the federation or overhead organization. The local has its own directors and has control over all its activities, except those delegated to the central association in order to effect the purpose for which the federation was formed.

**Centralized associations.** A type of large-scale organization similar to federations in the scope of its activities and in the area served, but without local units, has become known as a "centralized" association. Associations of this type are usually organized to serve an entire producing area or an entire industry. They may be organized on a state-wide basis, or they may have members in several states. Individual growers are members of the central organization. They usually exercise voting power only in the election of directors from their districts for
the board of directors. Control is vested in the central organization and marketing contracts are between the individual grower and the association.

Cooperative sales agencies. In most instances cooperative sales agencies are located in central markets and are owned and controlled by several cooperative marketing associations handling a like product or products. In much the same manner that independent locals unite in establishing federations, groups of large-scale organizations unite in maintaining central market sales agencies. The cooperative sales agency usually operates in the manner of a broker, or commission merchant, but renders exclusive service at cost to the several cooperatives that maintain it. The Pacific Egg Producers, Inc., located at New York City, is a good example of a cooperative sales agency. It represents several Pacific Coast cooperatives in the sale of eggs in Eastern markets.

Bargaining associations. Under certain conditions growers have found it advisable to organize associations solely for the purpose of collective bargaining. For instance, numerous associations of this type have been developed to bargain with large corporations which control the distribution of fluid milk in various cities. Their activities are confined mainly to bargaining in the sale of members’ milk with the distributing agencies. Bargaining associations may be local in character or they may cover a large area. Generally they do not undertake the physical handling of a product, but serve only as the mouthpiece for the united growers in price bargaining with buying agencies.

CONDITIONS ESSENTIAL TO SUCCESS

Many lists of “essentials” have been prepared for the guidance of cooperative organization. In numerous instances, however, these lists have included principles and practices which cannot be considered as prerequisites to success. As an example, the one-man, one-vote principle deserves emphasis as a method of voting that tends to assure democratic control, but exceptions prove that success may be attained under other voting plans. Pooling, meaning the averaging of returns for products of like quality, is also a sound practice, but it is not in effect in some cooperative associations. The conditions that may be considered as essential to successful operation are practically the same conditions that are necessary for the success of any ordinary business enterprise.

Service must be rendered. A cooperative association must render a needed service that is not otherwise available or that is not being rendered efficiently or economically by other agencies. This is another way of saying that organization is not an end in itself. If there is not a need for organization or a workable plan for rendering a desired service a cooperative will neither receive nor deserve sufficient support to keep it alive. It is sure to fail unless the growers themselves can get more satisfactory results through collective effort than through individual effort.

The statement is sometimes made that a cooperative marketing organization must be the outgrowth of economic necessity. The history of the cooperative movement in agriculture tends to support the statement. Undoubtedly the greater the need for cooperation, the greater its
opportunity to succeed. Members are half-hearted cooperators and fail to support their marketing organizations in times of stress unless they are convinced that continued cooperative activity is necessary for their individual well-being. Nothing is as effective in bringing about this conviction as disastrous experience. Prejudices, misconceptions, and extravagant promises may get men into an organization, but the same methods or appeals that professional organizers have sometimes used to get them in can be used by others who are antagonistic to get them out again.

**Volume of business must be adequate.** An organization must have sufficient volume of business to enable it to operate efficiently and economically. It must have enough business or "tonnage" to provide, at a reasonable per unit cost, adequate handling facilities, to employ capable men, and to serve any purpose for which it was formed. Unless it can furnish the desired or necessary marketing services at a cost comparable with that of competing marketing agencies or concerns, it is hopelessly handicapped.

In a study of 1,100 cooperatives that had "ceased to function," the United States Department of Agriculture found that approximately one-third attributed their failure to continue operations to insufficient business. In many instances the volume of production near a given shipping point or in a county does not justify a local association, even if the association markets all of it. Cooperative creameries have been established in localities where the farmers were not dairymen and had no intention of becoming dairymen. Cooperative packing plants have been built when the farmers did not have sufficient products to operate them without a loss, and in localities unsuitable for commercial production of such products. In some instances farmers themselves have initiated these unfortunate cooperative enterprises with the best of intentions, but without adequate information. In other cases they have been influenced by machinery salesmen or professional promoters. It is not unheard of for owners of private business enterprises to "unload" unprofitable plants by encouraging farmers to organize, purchase the plants, and operate them on a cooperative basis.

**Management must be good.** A cooperative marketing association must have good management. By management is meant the control and direction which is exercised by a board of directors through a general manager or other person authorized to carry out its policies in the operations and relations of the organization. The responsibility for management rests with the entire board, but in many associations there are one or two men who influence the adoption of policies and practices. It is necessary to recognize that some cooperatives, like other business organizations, are the lengthened shadow of one man.

Whether or not the management is exercised by a board of directors, delegated to an executive committee or to a general manager, or assumed by one or more persons in the management group it must be good management. Of the 1,100 associations mentioned which ceased to operate more than one-half gave as the reason "inefficient management." Undoubtedly wise management should be stressed more than any one requisite to success, since it overcomes, to a large extent, many weaknesses that otherwise would mean failure and without it the best organized association cannot continue to operate.
Members must be loyal. Loyalty, as the term is used here, does not mean blind faith in cooperation or unjustified support. It means that degree of support which it is reasonable to expect from a person who is informed regarding the purposes, policies, and operating practices of an organization of which he is a member, and who is willing to do his part in making the enterprise a success. A cooperative is dependent upon its members for its products. Its very existence depends upon the support which the members are willing to give under adverse as well as favorable market conditions. A cooperative cannot long survive if the members are willing to deliver their products only when it offers a price advantage over other agencies. "Bait" prices are sometimes made to members by competing agencies for the purpose of embarrassing a cooperative association. It often takes several years for an organization to work out its policies and practices and to become established as a successful and responsible business enterprise. Its members must be willing to do their part in the establishment of their own business and protect it in the same way that men ordinarily protect their business interests.

FACTORS CONTRIBUTING TO SUCCESS

Organization by commodity. An organization should, in most instances, confine its marketing activities to a single commodity, or to a group of related commodities or products. Many associations formed to market the miscellaneous crops of a community or locality have failed. Those that have succeeded have done so because of exceptional management or other unusual conditions.

At the present time probably ninety percent of the cooperative marketing associations in the United States are organized to handle only one commodity or several related commodities. An association handling apples may market other crops that require similar marketing machinery, the same kind of local facilities, similar handling methods, and the same knowledge on the part of officials and employees. This is very different from an organization that undertakes to market apples, wheat, and wool—commodities requiring different facilities, distinct trade channels, and men of widely different experience.

In recent years the phrase "commodity marketing association" has been used to designate a particular type of large-scale organization, rather than an organization handling one commodity. The phrase is misleading unless we understand the peculiar sense in which it has been used by many advocates of a particular type of cooperative. As they use the phrase it means a large-scale, non-profit organization of the centralized rather than the federated type, having a long-term marketing contract of a certain kind, and designed to control a large part of the commodity it will handle. In fact this use of the term "commodity marketing" is almost synonymous with "commodity control," inasmuch as the most important difference between the so-called commodity marketing associations and other cooperatives is a difference in ideas rather than in form. The dominant note in this particular plan of cooperative marketing, at least when it was first proposed, was "control,"—control of the grower, control of the commodity, and control of the market.
Localization. Cooperation is most readily developed among men who know each other, who meet often, and who have common problems and common interests. The best examples of cooperation are in restricted areas of specialized production. In addition to the greater unity of interest that exists in a closely associated group of men specializing in the growing of a single crop, organizers should recognize that farmers as a class are local-minded. Any plan of cooperation that ignores this is handicapped from the beginning.

It is not always possible or desirable to limit cooperative effort to ideal groups, but large organizations should attempt to retain as much as possible the advantages of such groups by adopting some plan of localization. To get the advantages in large-scale organization, especially in bargaining power and merchandizing, it is often advisable to form an association covering a wide producing area and serving widely scattered groups of growers. In such organizations group action should be encouraged and developed. Locals or units should operate so as to maintain and extend community interest, effort, pride, and initiative.

The units formed as parts of a large organization should have economic rather than social activities as their principal function. In other words they should perform or direct some local business activity, such as assembling, grading, packing, or storing the product. Many associations of the centralized type have endeavored to form “contact” locals, that is, informal groups without business activity or authority. They have been called talking locals, which describes their usual activities. Such locals may meet to discuss the operations of their association, to listen to addresses, and to pass resolutions, but they have no authority as a local in the handling or marketing of their product. Few of these locals have contributed anything to the success of cooperative marketing.

Non-profit organization. The end in view in cooperative marketing is not to make profits on invested capital, but to market products advantageously. Unlike the owners of private marketing agencies the members of a cooperative do not look to the spread between the buying and selling price of a product for their profit. They are the original owners of the product and any profit they receive is the result of the net price being greater than their cost of production and marketing. The purpose in cooperative marketing is to get the best price possible for the products handled and to return that price to the members less the actual cost of marketing. The term “non-profit,” as applied to a cooperative means only that the association makes no profit for itself as a result of marketing operations but returns all savings to its members in the form of a higher net price for their products or in a patronage dividend or refund in the event a surplus is accumulated.

Patronage dividends. In non-cooperative organizations earnings which result from operations are paid out to stockholders in accordance with the amount of stock owned. These payments are dividends on invested capital. In cooperative associations any balance that may be distributed after paying expenses and providing reserves is distributed to members not in accordance with their investment in capital stock, but in proportion to the amount of business which each one has contributed. This apportionment of earnings is known as patronage dividends. In
realities it is a refund of the part of the charge for doing business above
that which has been found necessary to pay expenses and provide re-
serves.¹

Membership of producers only. An organization should admit as
members only bona fide producers. It is difficult to maintain harmony
and singleness of purpose when non-producers, buyers, and men with
conflicting interest are grouped with farmers in a single organization.
There is often a temptation to admit local business men who are not
producers as members with the expectation of obtaining local support
or perhaps money for organization expenses or handling facilities. To
do this not only nullifies the privileges accorded cooperative associations
under the Capper-Volstead Act but jeopardizes the very existence of a
truly cooperative organization. Growers should cooperate with business
men, with buyers, and distributors of farm products, with bankers, and
with any agencies interested in improving conditions in their industry,
but the cooperation should be between their respective organizations as
distinct groups rather than attempting to unite them all in a growers'
marketing association. The cooperative itself must be grower owned
and grower controlled.

One-man, one-vote principle. The plan of limiting voting power to
one vote for each stockholder or member, regardless of the amount of
stock owned or the amount of business contributed, is one of the prin-
ciples of cooperative organization developed by the Rochdale weavers in
1844. Under this plan of voting it is not possible for a group of men or
a single member to gain control of an association by acquiring the
majority of its capital stock and voting it in accordance with the
amount owned, which is the general practice in ordinary corporations.
This plan of voting is designed to keep a cooperative a democratic
organization.

Another method of voting that is not as widely used may be called
patronage voting. Under this plan each member may vote according to
the volume of business which he transacts through the organization.
In some associations each member is allowed one vote and in addition
one vote for each one hundred boxes of apples delivered, or one vote
for each certain number of acres in fruits or field crops as the case may
be. Patronage voting may be desirable in some organizations, but it
does not have legal sanction to the same extent as limiting each member
to one vote and only one.

The Oregon Cooperative Law provides that no member of a cooper-
avtive shall be entitled to more than one vote, except that when an emer-
gency arises an appeal may be made to a vote by which each member
shall be represented by a voting strength in proportion to the amount
of business he is doing through the association. Any appeal to a vote
on the patronage basis must be in accordance with provisions in the by-
laws and those provisions must be adhered to strictly.

The following form of a by-law is suggested for incorporation into
the by-laws of an organization that may have occasion at some time to
resort to patronage voting for the welfare of the association:

¹Cooperative Marketing of Farm Products. O. B. Jesness. J. B. Lippincott Co.,
Philadelphia.
"Every member shall be entitled to one vote. When an emergency arises threatening the welfare of the Association, the Board of Directors may authorize an appeal to a vote, by which each member shall be represented by a voting strength in proportion to the amount of business he may have done through the Association during the previous fiscal year. Such an emergency shall be conclusively deemed to exist upon the affirmative vote of two-thirds of the directors. In the event of such a vote the Board of Directors shall have the power to determine conclusively the proportion of voting power to which each member is entitled."

**Direct financing.** An organization should provide, if possible, its own fixed capital. There is nothing that gives more assurance of stability in a cooperative as does a membership able and willing to furnish funds for the establishment of its own business. It means that the members believe in the plans and principles of the organization. The fact that they can and do provide funds for organization and for investments in plants and facilities is some assurance also that the membership is made up of relatively successful and progressive producers, men who will support the enterprise consistently. In an organization requiring no investment more members may be obtained including small, inefficient, occasional producers, and others who cannot be depended upon for consistent delivery and support. Marketing contracts prove more binding when performance thereunder protects a member's investment in physical properties.

In many cases the nature of the cooperative enterprise is such that no capital is needed. In those associations, however, that do require capital, substantial investments on the part of the members tends to give the organization a superior credit standing in addition to assuring a greater degree of active interest on the part of the membership.

**Financial reserves.** A cooperative association should provide for and maintain an adequate financial reserve. It needs to command confidence and credit among banking and trade agencies, and to be able to withstand losses when they occur. A reserve fund should be built up as quickly as possible, at least until it reaches a size sufficient to assure the payment of all claims arising in ordinary business transactions. The larger the fund the better the credit standing of an organization with financial institutions. There is considerable difference, however, in a liquid reserve, available at any time, and a reserve that is invested in land and buildings. The purpose of the reserve, however, should govern its use. There may be reserves for losses, reserves for depreciation, reserves for capital investment, or reserves for other purposes.

**Accounting and audits.** In the cooperative form of organization it is usually necessary to keep more detailed and accurate records than in non-cooperative organizations. The cooperative acts as an agent for the individual members. It must keep records that are readily available covering the products of and the transactions with each member. Pooling and patronage dividends require forms, calculations, and work that is not necessary in privately owned corporations. The accounting system must be adequate to meet the peculiarities of the business, but caution should be exercised to prevent an excessive expenditure. Sometimes a newly organized association works out an elaborate office system, including accounting, and endeavors to adapt the operations of the organization to the system, rather than the system to operating practices.
In accordance with good business practice, regular audits should be made by internal auditing committees, certified public accountants, or both. It is not only good business, but it is especially desirable because of the position of trust in which the management of a cooperative is placed and the nature of the propaganda that is often used against cooperative enterprises. Provisions for auditing should be included in the by-laws, such questions as frequency being determined by the size and character of the organization. In large organizations auditing committees may be elected by the members from among themselves and authorized to make audits quarterly, and provision is made for an annual audit by a certified public accountant.

**OPERATING POLICIES**

It is not enough to determine the organization structure of an association before presenting a plan of cooperative marketing to prospective members. Operating policies should be outlined in order that growers may know, in a general way at least, how the association proposes to accomplish its purposes.

**Orderly marketing.** In recent years many cooperatives have adopted "orderly marketing" as a policy without much consideration to the meaning of the phrase. In fact, some associations handling non-perishable products have attempted to adopt as orderly marketing the practice of selling its products in aliquot parts, for instance one-twelfth of its stocks each month in the year. Experience has proved that this is often disorderly marketing. Orderly marketing in practice must result in the supply more frequently meeting the demand in both time and quantity. It must keep the demand satisfied; at the same time an association must keep in mind such a distribution of sales as will enable it to receive average or better than average prices for the season. The practice of "holding" is often as disastrous as "dumping." To practice orderly marketing an organization must know demand conditions and must be in a position to take advantage of changes as they occur.

**Merchandising.** Orderly marketing relates especially to the quantity of a product sold and the time of sale. Merchandising has a broader meaning inasmuch as it involves standardization of quality, preparation for market, advertising, the carrying of adequate stocks, elimination of waste, equitable distribution based on comprehensive market information, expert salesmanship, and such operations and policies as are effective in establishing and maintaining trade confidence. An effective merchandising policy may be defined as a plan of marketing designed to result in maximum returns to the producer and a minimum expense to the consumer through the use of efficient methods and practices by which products are made available in the quantity and condition desired and at the time and place of greatest demand.¹

**Pooling.** Growers frequently refer to their respective associations as "pools." This is not an incorrect use of the term in the sense that they have aggregated their interests and property to further a joint undertaking. To obtain the benefits of collective action they pool their

interests by individually and collectively transferring to their association the control of the marketing of their products and the distribution of the returns therefrom. In order to equalize these returns between members, an association pools the products received usually according to standards of size and quality, returning to each individual member having products of a particular grade his pro rata share of the average price received for the entire lot of which it is a part.

Pooling is a sound policy in cooperation, but the commodity to be handled and the conditions under which it must be handled need to be considered in determining whether or not pooling practices are feasible. Conditions may be such that an association must plan to buy the products of its members outright at prices specified at or prior to delivery. This is the common practice among farmers' elevators. Some other associations, such as those handling deciduous fruits for instance, may find it advisable to sell the products of members for the members' individual accounts. Pooling plans must be designed to meet conditions and must be sufficiently flexible to permit an association to make changes if changes are necessary. Pools may be annual, monthly, weekly, daily, or for any period of time that seems advisable. A single shipment may be a pool. No one plan can be adopted for all commodities and all conditions.

Pooling distributes marketing risks by providing that each member of a given pool shall receive the same price per unit for products of similar quality sold during a certain period of time. It eliminates for the individual members the possibility of loss or gain from sales made at the bottom or top of the market. It also gives to an association a degree of control that it must have to carry out successfully a program of merchandising, including orderly marketing. Against the advantages of pooling must be weighed (1) the difficulty in some cases of equitable adjustments between the members of a pool and (2) the delay in the returns from sales of the products.

Price and sales policies. Nothing is more important in the successful development of a cooperative association than the working out of a sound price and sales policy. Some consideration to this question may prevent misconceptions on the part of the members relative to the ability of an organization to accomplish the impossible. The following two paragraphs are taken from United States Department of Agriculture Circular No. 403, The Business Set-up of a Cooperative Marketing Association, by Chris L. Christensen:

"In popular discussion there are two theories as to what constitutes the best price and sales policy for a large-scale farmers' cooperative marketing association which undertakes to perform the marketing functions of carrying the product and feeding it into the consuming channels. One of these assumes that it is the aim of a cooperative association to effect such control of a product as to enable it to dictate an arbitrary price without reference to supply and demand conditions. The other theory assumes that an organization handling farm products can not maintain prices which are out of line with economic conditions, and that in the long run its members will receive the largest benefit through the development of a price and sales policy which attempts to adjust supply to demand.

"It is possible to fix a price, but it is not possible to make the customers pay that price. There is practically no agricultural commodity which is so essential to human
existence that substitution can not be made for it, at least in part, and this possibility of substitution destroys any effective arbitrary control of price over a period of time. Usually a brief analysis of the price history of various commodities and its relation to some of the more evident demand and supply factors will illustrate the difficulty that a cooperative association would encounter in attempting to fix prices arbitrarily."

FEDERAL AND STATE LAWS

Section 6 of the Clayton Act. The Federal Antitrust Law, passed in 1890, prohibited contracts, combinations, and conspiracies in restraint of trade in interstate and foreign commerce. It was made a misdemeanor for any person to join with other persons in attempting to monopolize any part of the trade or commerce among the several states. In 1914 this law, which is commonly known as the Sherman Antitrust Act, was amended by the Clayton Act, which provided for exempting cooperative associations under certain conditions. Section 6 of the Clayton Act reads as follows:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

In order to obtain any benefit from the exemption provided in the Clayton Amendment, cooperative associations must meet its requirements. The Association must be (1) a labor, agricultural, or horticultural organization; (2) it must be "established for the purpose of mutual help;" (3) it must not be organized with capital stock; and (4) it must not be conducted for profit. With these conditions met the Act would appear to prevent the dissolution of an association, but a few court decisions have indicated that it does not enable associations to adopt methods of conducting their operations denied to other lawful business organizations.3

Following the passage of the Clayton Act a number of states adopted laws for the incorporation of non-stock cooperative associations, and many organizations were formed on the non-stock plan which otherwise might have found capital stock organization more desirable. In the belief that Section 6 of the Act was too narrow in its scope and too vague in its provisions efforts were made to enact more definite and less discriminating laws for the benefit of cooperatives. The result of several years of effort in this direction was the passing of the Capper-Volstead Act. This act does not repeal the Clayton Act, which is still in effect.

The Capper-Volstead Act. In 1922 Congress passed the Capper-Volstead Act, which relates to the operation of cooperative associations formed with or without capital stock. No provision is made for incorporation or registration, and the Act does not relieve an association from the operation of state laws. Associations may or may not operate under this Act, depending upon whether or not they desire to meet the conditions contained therein.

The Capper-Volstead Act provides that associations desiring to obtain any advantages from the Act must be composed of producers only as shareholders or members and must be "operated for the mutual benefit of the members thereof." Also, it must meet one or both of the following requirements: First, no member of an association may be allowed more than one vote because of the amount of stock or membership capital owned; or, second, dividends on stock or membership capital must not exceed 8 percent per annum. Another condition, which must be in effect, is that an association must not deal in products of non-members to an amount greater in value than such as are handled by it for members.

The Act in full is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes; *Provided, however,* that such associations and the members thereof are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First: That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or, Second: That the association does not pay dividends on stock or membership capital in excess of 8 per cent per annum.

And in any case to the following:

Third: That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

Sec. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than 30 days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon such association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association, or if such association fails or neglects for 30 days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes. The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of
the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

The Oregon Cooperative Law. The Cooperative Association Law of Oregon was passed in 1915, and has been amended from time to time. Unlike the Capper-Volstead Act it does not specifically limit membership to producers of agricultural products, but it does limit the amount of stock that may be owned by a member and provides that no member can have more than one vote, except under specified conditions. Dividends on capital stock are limited to 8 percent and patronage dividends are provided for. It provides for the incorporation of both stock and non-stock cooperatives, and makes mandatory the use of the word "cooperative" in the name of the incorporating association. The full text of the Oregon Law, as amended, is printed herein as an appendix.

Federal income tax regulations. Section 231 of the Federal Revenue Act of 1926 provides that cooperative associations, under certain conditions, are exempt from income tax. Article 522 of regulations 62, issued by the Treasury Department, relates to the income tax status of cooperative marketing and purchasing associations. This article reads as follows:

"Cooperative Associations: (a) Cooperative associations, acting as sales agents for farmers, fruit growers, dairymen, etc., and turning back to them the proceeds of the sales, less the necessary selling expenses, on the basis of the produce furnished by them are exempt from income tax. Thus cooperative dairy companies, which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among their members upon the basis of the quantity of milk or of butter fat in the milk furnished by such members, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, or if the association deducts more than necessary selling expenses, it does not meet the requirements of the statute and is not exempt. The maintenance of a reasonable reserve for depreciation or possible losses or a reserve required by State statute will not necessarily destroy the exemption. A corporation organized to act as a sales agent for farmers and having a capital stock on which it pays a fixed dividend amounting to the legal rate of interest, all of the capital stock being owned by such farmers, will not for that reason be denied exemption.

(b) Cooperative associations organized and operated as purchasing agents for farmers, fruit growers, dairymen, etc., for the purpose of buying supplies and equipment for the use of members and turning over such supplies and equipment to members at actual cost, plus necessary expenses, are also exempt. In order to be exempt under either (a) or (b) an association must establish that it has no net income for its own account. An association acting both as a sales and a purchasing agent is exempt if, as to each of its functions it meets the requirements of the statute."

In order to qualify as an exempt organization, a cooperative marketing association must operate on a non-profit basis. It must pay to its patrons the proceeds from sales of their products, less necessary selling expense, on the basis of the amount of business which each has contributed. A cooperative that deals in the products of non-members must pay patronage dividends to such patrons in the same proportion as such
dividends are paid to members. If it excludes non-members from participation in patronage refunds, or if it refunds to them at one-half the rate paid to members, it is not exempt.

If an association otherwise exempt retains the profits made on business done with non-members, it is generally held to be no longer exempt and a tax return must be made. In this case, the tax is based upon the entire amount of the association's receipts of the kind which are comprehended within the meaning of the term "gross income," which includes, under Treasury rulings, any annual dues that may be paid to the association. In arriving at the net taxable income, however, an association is entitled to the deductions allowed by law and it is held by the Treasury Department that amounts periodically returned to members as a refund of profits on business transacted for them and proportioned to the amount of such business, may be deducted from the gross income.\(^1\) The effect of this ruling is that an association, paying patronage dividends to members and also making a profit on non-member business, must pay income taxes on the profits made from non-member business. After paying taxes on this amount, such income can be disposed of as the association may desire.

A reasonable reserve for depreciation or possible loss, or a reserve required by state statute does not necessarily change the status of an exempt organization. Also, exempt associations are permitted to pay a fixed dividend amounting to the legal rate of interest provided that all the capital stock is owned by farmers. If, however, an association makes a profit on non-member business and retains it as reserves or surplus, or distributes it to the members, it is held that all the reserves or surplus is taxable, including that derived from business with members. This means that the net income from business done with members under such circumstances must be paid to the members in cash as patronage dividends, or if retained, must be evidenced by certificates of indebtedness or similar evidence of liability. Unless handled in this way, amounts received as income, even though they are actually deferred patronage dividends held in a reserve or surplus fund, are taxable. Such amounts are considered subject to tax, not because they are being held, but because they were received as income.

It should be understood that the income-tax exemption or non-exemption of a cooperative does not necessarily affect its legal status under state law or the Capper-Volstead Act. Many associations may find it more desirable to pay federal income taxes than to make the necessary changes in order to become exempt.

Any associations that desire to claim exemption under Section 231 of the Revenue Act of 1926 should file an affidavit with the Collector of Internal Revenue, Portland. What this affidavit should contain and the procedure to be followed is outlined in Article 511 of the regulations, and reads in part as follows:

\[^{1}\text{Proof of exemption.—In order to establish its exemption and thus be relieved of the duty of filing returns of income and paying the tax, it is necessary that every organization claiming exemption, except personal service corporations, file an affidavit with the collector of the district in which it is located, showing the character of the organization, the purpose for which it was organized, the sources of its income and its disposition, whether or not any of its income is credited to surplus or may inure to the benefit of any...}\]

\[^{2}\text{Gross income is defined in Section 213 and 233 of the Revenue Act of 1921.}\]
private stockholder or individual, and in general all facts relating to its operations which affect its right to exemption. To such an affidavit should be attached a copy of the charter or articles of incorporation and by-laws of the organization. Upon receipt of the affidavit and other papers by the collector he will inform the organization whether or not it is exempt. If, however, the collector is in doubt as to the taxable status of the organization he will refer the affidavit and accompanying papers to the commissioner for decision. When an organization has established its right to exemption it need not thereafter make a return of income or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all exempt corporations, to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated.

FINANCING A COOPERATIVE

Cooperative associations may be formed in Oregon either with capital stock or as membership (non-stock) organizations. In either case some plan must be worked out for meeting the expense of organizing, for obtaining funds for necessary facilities, and for financing operations.

**Financing organization.** Some expense is involved in the formation of an association. Even in a small organization which incurs no expense in obtaining members there is an incorporation fee to be paid and other items for legal service, printing, correspondence, etc. In large organizations the expense of obtaining members and otherwise establishing the organization may amount to a considerable sum.

In capital stock associations the expense of organizing may be met by the sale of shares of stock. Associations incorporated in Oregon, however, cannot expend in organization more than 10 percent of its paid up capital stock, and must refund the total expense of organizing out of net profits before the distribution of any dividends on business. In some instances it may be desirable to require an organization fee of members in addition to the purchase of stock, such fee to be used only in the formation and furthering of the organization.

In non-stock associations the funds collected in membership fees may be used to meet organization expense, or loans for this purpose may be obtained from the members or from interested banks, business men, or individuals. Such loans may be repaid over a period of years by annual deductions from sales, a method of financing, however, which imposes a handicap on a new organization in the form of a deficit. The expense of organization, prior to incorporation, is legally an obligation of the incorporators, but after the organization is formed it should assume the expense. The most satisfactory method of meeting organization expense is to make the membership fee payable in cash and sufficiently large for the purpose.

**Obtaining permanent capital.** Capital stock organizations which require no unusually large expenditures for plants, warehouses, or other property may sell sufficient common stock to the members to provide all necessary facilities. This should be done if possible. If it is not possible, however, the members should make a substantial investment and obtain the remainder of the funds needed by other methods. One method of obtaining additional funds is to issue preferred stock for sale to investors. A plan may be worked out for the retirement of this preferred stock over a period of years by annual deductions from sales as in the
case of refunding loans. Association notes, endorsed by the directors, are sometimes used, but this is a method unfair to the directors since they assume more than an equal part of the responsibility. Accommodation or collateral notes obtained from the members may be used, but this plan has not been found generally satisfactory. In fact, the best plan is to insist upon a substantial investment by all members, the total investment being enough to provide all the funds needed or the major portion, in which case it is not difficult to borrow the remainder on the association's note secured by a mortgage.

In non-stock associations funds for fixed investments, when the necessary investments are small, may be obtained from membership fees, from loans obtained from the members for this specific purpose, or from the pledge of accommodation notes. Loans may be obtained sometimes from other sources, although it is more difficult for a non-stock association to obtain satisfactory loans than for one organized with capital stock. Non-stock associations which require extensive facilities may organize subsidiary corporations, preferred stock being sold to members and investors with the association controlling the corporation through ownership of a small issue of common stock. Plans may be worked out whereby eventual ownership of all property may be had by retiring loans or stock issues through deductions from sales of products.

It is not always necessary for an association to provide its facilities by ownership. Plants, warehouses, and equipment are sometimes available at a rental charge that makes it inadvisable for associations to attempt to finance ownership. If property cannot be leased and if large investments are necessary many associations will find it advantageous to be organized with capital stock.

Operating capital. A certain amount of capital is needed for short periods by marketing associations to purchase supplies, pay salaries, meet packing expenses, make advances to members on delivery of their products, etc. If the association does not have adequate funds to meet seasonal or short time expenses in whole or in part the money may be borrowed by methods similar to those used in obtaining loans for other purposes. Accommodation notes are less objectionable in obtaining temporary loans. It is important, however, to build up a fund for operating capital. The lack of a reserve fund that may be used for this purpose frequently means embarrassment and occasionally failure.

Warehouse receipts may be used in financing the marketing of certain staple products, such as grain, wool, potatoes, canned goods, and dried fruit. Associations which are in a position to store their products in warehouses licensed under the United States Warehouse Act may borrow directly from the Federal Intermediate Credit Banks with the warehouse receipts as collateral. In other instances loans may be obtained on trust receipts, bills of lading, or other documents covering the products in the process of marketing. Advances are sometimes made by storage companies and distributing agencies.

The Federal Intermediate Credit Bank of Spokane serves the states of Oregon, Washington, Idaho, and Montana. It was organized to aid agriculture and renders service to cooperative marketing associations in

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financing the orderly marketing of farm products. It makes two types of loans: the direct loans to cooperative marketing associations and the rediscount, or loan coming through and endorsed by an acceptable financial agency.

A cooperative marketing association that desires to apply for loans to the Spokane bank should furnish the bank with a copy of its articles of association certified by the State Corporation Commissioner. This should be accompanied by a copy of the by-laws, marketing contract, and the most recent financial statement, all three documents being certified by the secretary of the association. It is also advisable to furnish the bank with a history or description of the association’s operations.

Revolving fund plan. A method of financing non-stock associations which is being used to some extent in Oregon is frequently referred to as the revolving fund plan. Under this plan the association borrows from each member an amount based on the volume of business which each is expected to contribute. It issues to the members certificates of indebtedness for the amounts obtained. These certificates usually bear interest, such interest being considered an operation expense. These, however, may be non-interest bearing if the by-laws so provide. These certificates of indebtedness may be payable in annual installments or at the end of three, five, or any number of years. They are paid when due out of a fund built up by deductions from sales of products. At the end of each year each member receives a certificate evidencing the amount of money he has contributed in the form of deductions for the capital investment fund. These deductions are continued each year, new certificates being issued and those previously issued being redeemed.

To indicate more fully the use of certificates of indebtedness in obtaining capital for investments and the use of a revolving fund in repaying loans the following article is copied in full from the by-laws of an Oregon prune marketing association which has used this method.

ARTICLE XIV. FINANCES

Section 1. At the time of admission to membership in the Association each member shall either pay to the Association in cash $10.00 for each acre of bearing prunes owned or controlled by the member, or he shall execute and deliver to the Association, in such form as it may require, a negotiable promissory note bearing interest at the rate of seven percent per annum, which shall represent in amount the sum of $10.00 for each acre of bearing prunes or other fruit owned or controlled by the member. To the member who makes payment in cash the Association shall execute and deliver its evidence of indebtedness bearing interest at the rate of seven per cent per annum and payable on or before 3 years from date. Notes given by a member shall fall due in 3 annual installments. All cash payments or notes so made or given shall be credited to the special fund for capital investment. This fund is a revolving fund. The cash contributions thereon shall be returned to the member making them. The notes given by a member shall be returned to him when there shall have been contributed to said fund the amount of the capital investment of the Association.

Sec. 2. The Association is hereby authorized to borrow for any of its corporate purposes such sums of money as it may require, and is further authorized to pledge the promissory notes of its members, delivered as contributions to the special fund for capital investment, as security for any indebtedness the Association may contract.

Sec. 3. The capital investment of the Association shall be contributed to the Association by its members, by the imposition of a charge of one fourth of a cent per pound

\(^{1}\)Springbrook Cooperative Prune Growers’ Association.
on all dried prunes, or other fruit, delivered to the Association by its members, and when such assessments shall have created a fund equal in amount to the investment of the Association for capital purposes, the notes representing contributions by the members to the special fund for capital investment shall be cancelled and returned to the members.

Sec. 4. At the end of each fiscal year each member shall receive a certificate showing the amount of money which he has contributed during the fiscal year to the special fund for capital investment by virtue of the levy of one fourth of a cent per pound on his prunes or other fruit. After the capital investment in real and personal properties of the Association shall have been paid for in full by the levy above provided for such levy shall continue, and the proceeds arising therefrom shall be used to redeem, in the priority of their issue, the face amount of certificates theretofore issued to members in the evidence of the amount of their respective contributions to such special fund. This levy and process of payment shall continue during the life of the Association. All Certificates of any one year shall be paid in full prior to the payment of any part of any certificate issued during a subsequent year, and all payments on the certificates of any one year shall be prorated. Moneys contributed to the special fund by the levy herein provided may be expended for necessary additions to or betterment of the real or personal properties of the association as well as in the redemption of certificates previously issued. The amount of the levy may not be increased except on the affirmative vote of the membership, nor may it be decreased by the Board of Directors below such sum as will be sufficient from year to year to meet necessary additional expenditures for capital investment and to retire the certificates representing contributions to the special fund made three years before.

Sec. 5. All of the general expenses of maintaining the Association including interest at seven percent on the contributions to the special fund for capital investment, shall be paid out of a general fund which shall be created by membership fees and the deductions provided for in the marketing agreement.

All surplus remaining in the general fund at the end of a fiscal year may be divided among the members of the Association in the proportion of the value of the prunes or other fruit delivered by them under their marketing agreements, as a return of a portion of the Association's deductions, or any such surplus may be used in the discretion of the Board of Directors for the creation of reserves or for any of the general corporate purposes of the Association.

HOW TO ORGANIZE

Cooperative marketing associations should not be organized because of a feeling on the part of a few individuals that "farmers should get together." Sentiment of this sort, appeals to prejudice, and misconceptions regarding marketing may bring an organization into existence, but it will not function very long unless it renders a needed service. Growers should not permit themselves to be stampeded into cooperative enterprises, and business men, bankers, and other persons or agencies should not sponsor or lend their aid to organization work without a study of the situation.

Preliminary survey. Before attempting organization those persons directly interested in forming a cooperative should make a survey to determine the need for organized activity and the possibilities of its success. As a suggestion for the scope of a survey for a local association the following five questions will indicate the type of information that should be obtained:

1. Is the volume of production in the area to be served sufficient to warrant cooperative marketing? In answering the question it will be necessary to determine the acres of field crops, the number of fruit trees or the
number of cows, as the case may be. For this information to be of much value it will be necessary to find out the approximate expenditure for plants, machinery, management, labor, and other items which the association will have to meet. With an estimate of the total available tonnage or volume, the amount that the association can expect to receive, and with figures on the necessary investment and probable operating costs it will be possible to arrive at approximate cooperative marketing costs per bushel, per box, or other marketing unit. Will the costs be high or can savings be made? Can a creamery operate efficiently with 400 cows or must there be 1000 to assure economical operation?

2. Is the character of production conducive to success in cooperative marketing? Specialization, standardization, and stability as regards volume are favorable conditions. Wide variations from year to year in the quantity and quality of a product presents serious obstacles. A surplus of eggs only in the spring, or a large acreage of potatoes one year and a shift to some other crop the next are conditions fundamentally unfavorable. The next question is closely related to this one.

3. Is the dissatisfaction of local farmers a condition to be corrected by improving marketing methods? Frequently conditions will be found to exist which cannot be overcome by marketing if marketing service is rendered without charge. High costs of production due to poor soil, to bad management, or to an unwise selection of farm enterprises may make it impossible for a locality to compete on the markets with those more advantageously located or producing at a much lower cost per unit. A study of the situation in order to answer this question may show that causes for dissatisfaction are to be found in production rather than in marketing.

4. Is there a sufficient number of substantial growers who want an organization and who will support it? Sometimes men of the promoter type, or well-meaning but uninformed persons will attempt to "organize the farmers" when there is no desire on the part of the farmers to be organized. The attitude of farmers regarding marketing, and regarding the possibilities and limitations of the cooperative method, should be ascertained. Substantial, progressive men as members usually mean a substantial, progressive association, while an organization composed of men who cannot manage their individual farms satisfactorily cannot expect to be a well managed organization.

5. What services will the cooperative render and how will it improve marketing conditions? To obtain the answer to this question it will be necessary to find out what services are already available and how satisfactory they are. If facilities are lacking it will be wise to inquire the reason. What new facilities are needed for packing, warehousing, transporting, etc.? How can the cooperative perform the functions of middlemen or supplement their services so as to market their products more efficiently or more economically?

A survey may be made by a self-appointed group of interested persons, or such a group may appoint a committee to investigate the situation. It is often advisable to visit competing districts and to make a first-hand study of cooperatives in such districts. Central markets may need to be visited also to obtain facts on central market practices, meth-
ods of sale, and outlets. The County Agricultural Agent, as the joint representative of Oregon State Agricultural College and the United States Department of Agriculture, is in a position to assist the committee and to furnish much of the information needed.

Calling a meeting. If the result of the survey of conditions justifies an organization effort by the leaders in the movement, they should call a meeting or a series of meetings in different localities for the purpose of presenting the report and recommendations of the survey committee to the growers throughout the area to be covered. It is advisable to decide in advance who shall be nominated for chairman, who shall explain the purpose of the meeting, and who shall make the report. Resolutions should be drafted in advance to present at the proper time and other arrangements made to facilitate the action desired at the meeting. These suggestions are made to assure definite results, not to enable a small group to "railroad" their plan through the meeting. Discussion should be open to all and the case for cooperative marketing should be made on its merits. It should be presented as a business proposition. The growers should understand what their duties and responsibilities are likely to be and the results they may expect to achieve.

Temporary organization. It may be desirable at the first meeting or at a subsequent meeting to effect a temporary organization of those present. When the motion has been made and carried to form a temporary organization, officers should be elected and committees appointed. A committee should be appointed and authorized to prepare by-laws and contracts and other committees may be named for any other necessary or desirable purpose. Committees should report back to the temporary organization and any plans of procedure recommended and the by-laws, contracts, or other documents that have been prepared should be approved by the organization. Plans may then be made to form the permanent association. A committee of not less than five should be authorized to sign the articles of association and duly incorporate the association under the Cooperative Association Law. An organization committee may be named with instructions to make a canvass of the growers to obtain signatures to marketing contracts, or to the by-laws, or to other documents which may be used in obtaining members. In the case of capital stock organizations members should subscribe for stock. They may do this by signing a separate paper called a "stock subscription agreement," or by signing a marketing agreement in which the provisions of a stock subscription agreement have been included. The organization committee may be appointed to act as incorporating directors, handling the organization work, incorporating the association, and serving as directors of the permanent organization until a board is elected.

Incorporation. In order for a cooperative to have a distinct legal status incorporation is necessary. Incorporation not only enables an association to be recognized by the courts in its own name rather than in the names of its individual members, but it also limits the liability of the members. In Oregon no member of an incorporated cooperative, having capital stock, is liable for the association's debts beyond the amount remaining unpaid on his subscription to stock; and in a non-stock association no member is liable beyond the unpaid amount on his membership fee or annual dues.
Oregon law provides that any number of persons, not less than five, may form and incorporate a cooperative association. The articles of association, or incorporation, must state the name of the association, the purpose for which it is formed, its principal place of business, the term of its duration (not to exceed 50 years), the total amount of capital stock, with the number of shares, the par value per share, and the conditions to govern transfer of stock. Non-stock associations must state the amount of the membership fee and the conditions under which a membership may be transferred. The following form may be used in preparing articles of association.

ARTICLES OF ASSOCIATION

We, the undersigned, do hereby associate ourselves together for the purpose of forming a cooperative association under the Cooperative Association Law of the State of Oregon, and for that purpose state the following:

ARTICLE I

The name of this association shall be...

ARTICLE II

The purpose of this association and the enterprise, business and pursuit in which it proposes to engage is...

(Note: See Article II of the By-laws printed herein. A comprehensive statement should be made of the purposes of the organization and the business activities in which it proposes to engage.)

ARTICLE III

The principal office and place of business of this association shall be at the city of..., in the county of..., State of Oregon.

ARTICLE IV

The duration of this association shall be for... years.
(Note: Not to exceed 50 years.)

ARTICLE V

The capital stock of this association shall be... dollars, divided into... shares, and the par value of each share shall be... dollars.

ARTICLE VI

The conditions under which the stock of this association may be transferred shall be as follows:...

(Note: See Article X of the By-laws printed herein for capital stock associations.)

In Witness Whereof, We have hereunto fixed our signatures in quadruplicate, this... day of..., A.D. 19...
Articles of Association must be acknowledged by the incorporators before filing. The usual form of acknowledgment is as follows:

STATE OF OREGON

County of ................................................................. ss.

This Certifies, That on this..........................day of............................., A.D. 19........,..., before me, the undersigned a..........................----------------------------------------in and for said county and state, personally appeared.........................., known to me to be the identical persons named in and who executed the foregoing articles of association, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and.......................... seal, the day and year last above written.

(Notarial Seal)

Associations formed on the non-stock plan should replace Articles V and VI with the following:

ARTICLE V

This association shall not have capital stock. It shall be established for the mutual benefit of its members and the membership fee shall be..........................dollars.

ARTICLE VI

The conditions under which a membership shall be held and transferred are as follows:

When four copies of the articles of association have been prepared, approved, signed, and acknowledged before some person authorized to take acknowledgments, one copy must be sent to the Corporation Commissioner, State House, Salem; another must be filed and recorded with the clerk of the county in which the principal place of business is located; a third must be sent to the Director, Bureau of Organizations and Markets, Oregon State Agricultural College; and the fourth is to be retained by the association. When the Corporation Commissioner notifies the County Clerk and the secretary of the association that the articles have been filed in his office, the association is legally organized and incorporated.

The fee for filing articles of incorporation is $10.00, together with the proportionate part of the annual license fee which may be due for the succeeding fraction of the fiscal year (see Appendix). These fees should be sent to the Corporation Commissioner with the articles. The amount to be paid the County Clerk for recording the copy of the articles is 20 cents per hundred words or fraction thereof.

Association agreement. In some organizations, especially large-scale enterprises where the incorporation of the association and the validity of the marketing contracts signed are contingent upon the organization committee obtaining like contracts representing a certain minimum of acres or units of products by a fixed date, it is not uncommon to use an "Association Agreement." This may be a separate document or it may be prepared with the marketing contract in one document, the grower signing both at the same time.
The following paragraphs show the beginning of a form of association agreement that is sometimes used:

The undersigned propose to organize a non-profit association, (with or without capital stock), under the Cooperative Laws of the State of Oregon, for the purpose of cooperatively marketing (name of product), for cooperatively and collectively handling the problems of the..................................................................................growers, and for other pertinent purposes.

In consideration of the premises; and of our mutual undertakings; and of the agreement of each and every other party hereto, we, the undersigned do hereby agree as follows, each for himself and collectively for the express benefit of, and as, the association to be organized:

1. We will become members of the ........................................................................Cooperative Association) a non-profit association (with or without capital stock), to be organized under the laws of the State of Oregon.

If such an agreement is used additional numbered paragraphs should outline the general plan of organization and operation, somewhat as covered in the articles of association and the by-laws. The conditions under which the agreement is to become effective should be stated. The obligations of both parties should be set forth.

Association agreements are not used if the organization is incorporated prior to submitting marketing contracts to the growers. Indeed, the need for an association agreement as a separate document may be eliminated in other instances by including in the marketing contract a paragraph to the effect that the producers are associating together for collective action and that it is proposed and agreed that the contracts signed will be adopted or accepted by the cooperative association that they plan to form. A provision in the contract should provide for its termination in the event that the volume of products agreed upon is not covered by signed contracts prior to a fixed date.

**Legal service in organizing.** The services of a competent attorney, especially one who has made a thorough study of the legal phases of cooperative organizations, should be obtained in working out the organization structure and in preparing by-laws, contracts, and other legal documents. If assistance is not obtained in the actual preparation of plans and documents, such plans and documents should be submitted to an attorney prior to their final adoption.

A detailed discussion of legal aspects of cooperative marketing is not within the scope of this bulletin. It should be understood, also, that suggestions made on the basis of the present legal situation and the laws printed herein are subject to change. Amendments to laws, new legislation, or court decisions may affect materially the organization of cooperatives or change the legal requirements that must be observed.

**MARKETING CONTRACTS**

The purpose of marketing contracts between an association and its members is to assure a definite volume of business, to provide a basis of financing, to prevent disruption, to avoid misunderstandings, and to give stability and permanency to an organization. Contracts are necessary and legitimate instruments in the conduct of practically all business, and their use by cooperatives is almost indispensable. An association must know the approximate volume of business it will receive in order to plan
to handle such business economically and efficiently. Buyers want to know that they can get delivery from an association and bankers want to know if they can safely extend credit to the organization. The members themselves should have assurance that other members will deliver their crops.

A contract should set forth clearly the obligations of the contracting parties. It should have mutuality, that is, both parties to it should incur obligations. Just how much detail should be given in a marketing contract depends largely on the character of the organization, its scope of operations, and the commodity. In recent years it has become a practice, especially in the case of large-scale organizations, to give considerable detail in the contract regarding operating plans. Such contracts have much to commend them, especially the fact that members are inclined to attach more significance to contract provisions than to the same provisions in by-laws. The main points to be covered in the contract are the names of the contracting parties, the consideration, the duration, the products covered, the rights and obligations of the members, the rights and obligations of the association, and the provisions for liquidated damages in the event of a breach thereof.

**Types of contracts.** Oregon cooperatives may use either purchase-and-sale or agency contracts. There is little difference in form. One states, "The Association agrees to buy and the Grower agrees to sell . . .," the other states, "The Grower appoints the Association his agent and the Association agrees to act as such . . ." It is doubtful, also, whether there is much difference in the two types in other respects, in the absence of a statute stating how title shall be passed. In the case of all cooperatives that account to their producers on the basis of the price received for their products, whether pooled or not, less authorized deductions, the transaction is in essence an agency transaction.¹

The purchase-and-sale contracts seem to be favored at present by bankers and, in fact, some lending agencies have rather insisted on the adoption of such contracts by borrowing associations. Another reason for its adoption a few years ago was the belief that it made cooperatives less liable to attack in the courts for restraint of trade. Under the Capper-Volstead Act, however, the type of contract would not seem to make any difference in this respect. In regard to the position of lending agencies it is doubtful whether this position will be maintained. It would seem that an agency contract giving control of time of delivery, distribution, sorting and grading, and authorizing the borrowing of money and the pledging of the products, is a good basis of credit.²

**Form of contract.** The following form of contract is designed to serve only as a suggestion in the preparation of a marketing agreement between a cooperative and its members. It should be changed to meet the requirements of local conditions, the peculiarities of the products to be handled, the purposes of the association, and the operating methods to be followed.

*This Agreement, made and entered into this____________day of__________________________, A.D. 19______, by and between the (__________________________) Fruit Growers Cooperative*

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¹Agricultural Cooperation, Feb. 4, 1928. Article by L. S. Huibelert.
²Univ. of Minn., Station Bul. 211, Cooperative Central Marketing Organization, by John D. Black and H. Bruce Price.
Association), formed under the Cooperative Association laws of the State of Oregon, having its principal place of business at..........................in the said State, hereinafter referred to as the Association, and the undersigned grower of (Fruits), hereinafter referred to as the Grower, witnesseth:

That for and in consideration of the expenses to be incurred by the Association in providing means and facilities for handling, storing, marketing (Fruits), including the expense of locating, organizing and establishing markets, and in further consideration of the mutual obligations and promises of the respective parties hereto, it is hereby agreed as follows:

1. The Grower herewith becomes a member of the Association and agrees to abide by its by-laws and articles of association, which by-laws and articles of association are hereby made parts of this contract. In becoming a member and in executing this agreement, the grower is helping to carry out the express aims and purposes of the Association for cooperative marketing, for the elimination of waste in marketing, and for stabilizing markets in the interests of the grower and the public through this and generally similar obligations undertaken by other growers.

2. The Grower appoints said association his agent, and the Association hereby agrees to act as such for the purpose of handling, packing, storing, selling, and otherwise marketing all the (Fruits) which shall be grown for shipment and sale by the Grower or for him, whether as landlord or tenant, or otherwise, in the County of........................., State of Oregon, and that he will harvest and will deliver all his marketable (Fruits) at the packing house, cannery, or shipping point designated by the Association, in such quantities and condition and at such times as the Association, or its agent, may direct, during the year 19.......... and every year thereafter continually. On or before (April 1) of each year the Grower shall report to the Association the acreage to be grown by him during that year of (Fruits) covered by this contract. During the growing season the Grower shall also furnish such information concerning said (Fruits) as may be requested by the Association.

3. Either party may cancel this contract on the first day of (April) of any year by giving notice in writing to that effect to the other party at least thirty days prior to said date. Upon such notice, the Grower shall, prior to said first day of (April) pay any indebtedness then due from him to the Association and deliver his copy of said contract to the Association; such cancellation shall not affect any incompletes sales or transactions between the parties hereto nor release either from any indebtedness then unpaid or hereafter accruing under this contract, nor relieve the Grower from his obligation to sell through the Association or the Association of its obligation to handle, all the (Fruits) described in Section 2 which were grown during the preceding season. It is expressly agreed that this contract shall be binding upon the legal representatives of the Grower.

4. Harvesting, grading, inspecting, packing, storing, and shipping of the (Fruits) shall be done in accordance with the by-laws and rules of the Association now in existence or hereafter in effect. The determination of grades, standards, classification, and differentials in price by the Association shall be conclusive.

5. The (Fruit) delivered by the Grower shall be classified as to grade, size and variety, and shall be pooled and mingled with other (Fruit) of like size, quality, and variety, delivered by other growers who have signed generally similar contracts. The Association agrees to receive, pack, process, and otherwise market and sell all of said (Fruit) at the best prices obtainable by it under market conditions. After deducting from the sales price of each pool all necessary marketing expenses properly chargeable to such pool, including a deduction of (one fourth of a cent per pound) as a contribution towards the capital fund as provided for in the by-laws, the Association agrees to pay over to the grower his proportionate part of the net proceeds of each pool in which he has (Fruit). It is also agreed that the Association may deduct not to exceed (two percent) of the sales price of the (Fruit) sold to be set aside as a reserve fund.

6. The Grower hereby warrants that he has not heretofore entered into any contract which would affect his right to deliver all his (Fruit) to the Association, except as specified at the end of this contract.
7. The Association may sell all or any part of the (Fruit) delivered to it, or products manufactured therefrom, to or through any agency for the cooperative marketing of (Fruit) in this state or anywhere, under such conditions as shall serve the interests of its members; and any expenses in connection therewith shall be deemed necessary expenses of the Association.

8. The Grower further agrees that the Association shall have power without limitation, except as provided by the by-laws, to borrow money in its name and on its own account for the purpose of making advances to members, or for other proper Association purposes on the (Fruit) delivered to it, or on any accounts for the sale thereof, or on drafts, warehouse receipts, bills of exchange, notes, acceptances, or other commercial papers obtained or drawn in connection with the marketing of said (Fruit); and pledge in its name and on its own account such (Fruit) or receipts, accounts, drafts, or other commercial papers as collateral therefor.

9. If this Agreement is signed by one or more members of a partnership, it shall apply to the partnership, and to each of the partners individually in the event of the dissolution or termination of the partnership.

10. The Grower agrees to give written notice immediately to the Association upon any sale or lease of his farm, or orchard, or at any time he gives up the growing of or control of (Fruit), and he further agrees to give such notice immediately upon making a chattel mortgage covering any part of his (Fruit). His failure to give such notice shall make the Grower liable to the association for liquidated damages, if his transferee or mortgagee shall fail to deliver said (Fruit) to the Association, provided, however, that if any transfer of the farm or orchard, whether by sale, gift, or lease to any relative of any degree, or to any person in trust, during the term hereof, shall be deemed to have been made subject to and conditional upon compliance with all of the terms hereof by such transferee, and the Grower hereby agrees to be responsible for such compliance by such transferee.

11. The parties hereto, fully understanding and admitting that it will be impractical and extremely difficult to fix the actual damage to the Association which will result from the breach of this contract by the Grower, hereby expressly agree and stipulate, that in the event of the Grower’s neglect, failure or refusal to deliver to the Association the (Fruit) covered by this contract, the Grower will pay to the Association the sum of (two cents per pound) for all such (Fruit) undelivered to the Association, as liquidated damages for such breach, all parties agreeing that this contract is dependent for its true value upon the adherence of each and all parties to each and all generally similar contracts, but the failure of the Grower to comply with this agreement or the release of the Grower shall have no effect upon other similar agreements. In case suit or action is brought by the Association for any violation of this contract, the Grower agrees to pay, in addition to all court costs, all expenses arising out of or caused by the litigation, and a reasonable attorney’s fee to be fixed by the Court, and any judgment or decree obtained against the Grower shall include such items.

12. It is agreed that changes may be made in succeeding marketing contracts between growers and the Association without affecting the terms, conditions, and enforcement of this contract, provided that the Grower signing this contract shall be given the opportunity to obtain the benefits of such changes as may be made in succeeding contracts.

13. The parties hereto covenant that there are no oral or other conditions, promises, covenants, representations or inducements in addition to or at variance with any of the terms hereof, and that this Agreement represents the voluntary and clear understanding of both parties, fully and completely.

In Witness Whereof, the said parties have executed this contract in duplicate.

............................ Grower
............................ Address
............................ Fruit Growers’ Cooperative Association
By .................................................. President
By .................................................. Secretary
BY-LAWS

The by-laws of a cooperative association should outline the working plan of the organization. The provisions included should contain definite rules for the conduct of the organization's business. Painstaking care in their preparation may prevent confusion and serious difficulty long after their adoption. Amendments may be made, but the necessity for frequent and perhaps radical amendments to meet legal requirements or operating problems means embarrassment to an association.

By-laws should contain provisions relating to the purpose of the organization; membership; meetings; fiscal year; quorum; elections; duties and responsibilities of members, directors, officers, and the manager; financing plans and methods; physical handling of the product; contracts; expenses, payments, savings, and damages; accounts and auditing; amendments; and any other provisions authorized by law or those that may seem desirable and which are not inconsistent with the law of the state.

The adoption of by-laws. It is customary for by-laws to be prepared and agreed upon prior to the formation of a permanent organization. They may be prepared by a special committee appointed for the purpose, or by an organization committee, or by a board of incorporating directors. They may be approved by a temporary organization or at a general meeting of prospective members. In connection with their approval it is advisable to read and vote upon each section separately before voting on them in entirety. After the organization is incorporated it is again necessary to adopt the by-laws. The majority of the members may do this. Where "association agreements" are used a provision therein may state the conditions under which both the by-laws and marketing contracts will be binding upon the signers. A clause in the marketing contract may state that the by-laws are a part thereof.

Form of by-laws. There is no standard form of by-laws which in its entirety will meet the needs of all organizations. The nature of the organization, its purpose, the commodities to be handled, and the plans under which the association proposes to conduct its business must be taken into consideration. The form of by-laws which follows is intended to be suggestive only. It should be altered as circumstances require, provided of course that such alterations are not in conflict with existing laws. In the following specimen form the material in parentheses indicates the nature of the items to be filled in by an association using this form or parts of it. Under the word "Note," certain sections are explained and suggestions made for changes.

BY-LAWS OF THE (Name of the Association)

ARTICLE I.—NAME

Section 1. This association, incorporated under the Cooperative Association Law of the State of Oregon, shall be known as the (................................. Fruit Growers' Cooperative Association). Its principal office or place of business shall be located in the city of ..........................................., County of ........................................, State of Oregon.

Note.—The laws of Oregon provide that the term "cooperative" must be used as a part of the business name or title of associations incorporated under the Cooperative Association Law, and that its use shall be restricted to organizations incorporated thereunder. The name selected should indicate the territory covered and the class of products handled.
ARTICLE II.—OBJECTS

Section 1. The objects of this association shall be to encourage better and more economical methods of production of (name of product or products to be handled) and other farm products; to provide better facilities and agencies through which the products of its members may be grown, harvested, cleaned, graded, sized, packed, dried, cured, canned, preserved, stored, advertised, sold, and distributed in such manner as to bring about standards of variety and quality and wider or more satisfactory distribution; to lessen the cost of marketing by establishing agencies which will act for members; to assure the collection of loss and damage claims; to buy and manufacture supplies in a cooperative way; to rent, buy, build, equip, own, sell, and control such buildings and other real and personal property as may be needed in the conduct of its operations; to apply for, acquire, own, use, and dispose of trade-marks, copyrights and patents necessary or desirable for furthering any of the purposes of this association; to develop the cooperative spirit in the territory or districts covered; and to perform any other work designed to benefit the (fruit growing) industry in general and the members of this association in particular.

NOTE. The objects stated should be definite, but sufficiently broad in scope to include any anticipated activities. They must be within the limits of the power conferred by the state and in harmony with the objects stated in the articles of association. If it is desired to omit a statement of objects in the by-laws Article II may be written as follows: "The purpose for which this association is formed are set forth in its Articles of Association."

ARTICLE III.—MEMBERSHIP

Section 1. Any bona fide grower of farm products (in the area covered by association), or the owners or lessees of land upon which (Fruits) are grown and who share in the crops produced thereon, may become a member of the association by agreeing to comply with the requirements of these by-laws. The signature of a person to the by-laws, articles of association, association agreement, or a marketing contract shall be construed to mean that said person has agreed to comply with said by-laws.

NOTE. Membership may be limited, if desired, to those growers recommended by the board of directors, those found acceptable by the board, those receiving a two-thirds vote of the members present at any meeting, or those who meet other reasonable conditions that may be imposed to safeguard the association. Such conditions as are decided upon should be stated in this section.

Sec. 2. Upon entering into such an agreement and upon the payment of a membership fee of (five) dollars, the association shall issue a certificate of membership to the applicant. Such certificate of membership shall not be transferable.

Sec. 3. At any time the board of directors determines that a member has ceased to be a bona fide grower of (products handled by association), or that he no longer receives a share of such products as landlord or lessee, his membership may be terminated and his membership certificate cancelled.

Sec. 4. The violation of the by-laws or of any contract entered into by the association with a member, shall constitute a sufficient cause for the expulsion or suspension of such a member from the association by the Board of Directors, and said Board may expel or suspend such a member at any time provided that an opportunity is given the member to answer any charges made against him.

ARTICLE IV.—FISCAL YEAR, MEETING

Section 1. The fiscal year of the association shall commence (August 1) and end on (the 31st of the following July).

NOTE. The fiscal year should end after the close of one season's business and before the opening of the next.

Sec. 2. The annual meeting of the association shall be held at (name of place), on the (second Monday in January) of each year at (10 o'clock a.m.).
NOTE.—The annual meeting should be held soon after the beginning of the fiscal year. Previous to this meeting all transactions of the fiscal year just ended should be closed, the books audited, and the annual reports of the officers prepared.

Sec. 3. Special meetings of the members may be called at any time by the president or the Board of Directors. Such meetings shall be called also whenever ten members shall so request in writing.

Sec. 4. Notice of the annual meeting shall be mailed by the secretary to each member ten days previous to the date of the meeting. Ten days before the date of any special meeting the secretary shall mail notice of such meeting to each member, which shall state the nature of the business to be transacted at such meeting.

ARTICLE V.—QUORUM

Section 1. (One-third) of the members in good standing present in person or represented by ballot shall constitute a quorum for the transaction of business at any meeting of the membership.

Note.—When the organization is small and compact, the proportion required for a quorum may be larger than in a large organization whose members are scattered over a wide territory. This by-law may provide that the members at a meeting and voting by mail shall constitute a quorum.

ARTICLE VI.—DIRECTORS AND OFFICERS

Section 1. The board of directors of this association shall consist of (seven) members, who shall be divided into two classes. At the first election after the adoption of these by-laws, the members shall elect from among themselves (four) directors for a term of one year, and (three) directors for a term of two years. At the expiration of the terms of the directors so elected their successors shall be elected in like manner, for terms of two years. Directors shall hold office until their successors have been elected and qualified and have entered upon the discharge of their duties.

Note.—The number of directors, not less than five in any event, should be governed largely by the size of the organization, the area served, number of units or shipping points, etc. Provision may be made for the appointment of a public director, if the character of the organization makes it desirable to have a director representing the general public. Unless conditions require a large number of directors, a small board is desirable. If the size of the board is too large for efficiency, provision may be made for an executive committee, composed of the officers and one or two members of the board, to which the board of directors delegates authority.

Sec. 2. The board of directors shall meet within five days after the first election, and after each annual election, and shall elect by ballot a president and a vice-president from their number, and a secretary-treasurer (or a secretary and a treasurer) who may or may not be a member of the association. All officers shall hold office for one year or until their successors are duly elected and qualified.

Sec. 3. Any vacancy in the board of directors shall be filled for the unexpired term by a majority vote of the remaining members of the board and directors so chosen shall hold office for the unexpired portion of the term of the member whose place he was elected to fill.

Sec. 4. (Four) members of the board of directors shall constitute a quorum at any meeting of the board of directors.

Sec. 5. Any director or officer of the association may, for cause, at any general or special meeting be removed from office by a vote of the majority of the total membership, present or represented by ballot, in accordance with the procedure outlined in the cooperative Association Law.

Note.—The Cooperative Association Law (Sec. 9, Chap. 226, G. L. 1915) describes in detail the methods to be followed in removing an officer or director.

Sec. 6. The association may provide, at a regular or called meeting of the members, a fair remuneration for the time actually spent by its officers and directors in its service,
except that no director, during his term of office, shall occupy any position in the association on regular salary, nor shall he be a party to a contract for profit with the association different in any way from the business relations accorded other members.

NOTE.—This provision, regarding compensation to officers and directors uses almost the exact wording in the Oregon cooperative law (Sec. 8, Chap. 226, G. L. 1915, as amended by Sec. 4, Chap. 411, G. L. 1917).

ARTICLE VII.—DUTIES OF THE DIRECTORS

Section 1. The board of directors shall manage the business and conduct the affairs of the association and shall make the necessary rules and regulations, not inconsistent with law or with these by-laws, for the management of the business and the guidance of the officers, employees, and agents of the association.

Sec. 2. The board of directors may employ a general manager, fix his compensation and dismiss him for cause. He shall have charge of the business of the association under the direction of the board of directors.

Sec. 3. The board of directors shall require the treasurer and all other officers, agents, and employees charged by the association with responsibility for the custody of any of its funds or property to give bond with sufficient surety for the faithful performance of their official duties, the premium on which bond shall be paid for by the association.

Sec. 4. The board of directors shall meet on the (first Saturday) of each month at the office of the association in the city of (name of place). Special meetings of the board shall be held upon call of the president or upon written request of (three) members of the board.

ARTICLE VIII.—DUTIES OF OFFICERS

Section 1. The president shall—

a. Preside over all meetings of the association and of the board of directors.

b. Sign as president on behalf of the association all papers which he is authorized to sign by the board of directors.

c. Call special meetings of the association and of the board of directors and perform all acts and duties usually required of an executive and presiding officer.

Sec. 2. In the absence or disability of the president, the vice president shall preside and perform the duties of the president.

Sec. 3. The (secretary-treasurer) shall—

a. Keep a complete record of all meetings of the association and of the board of directors, keep a membership roll, and countersign membership certificates.

b. Sign on behalf of the association all papers which he is authorized to sign by the board of directors.

c. Serve all notices required by law and by these by-laws.

d. Receive and disburse all funds and be the custodian of all the property of this association.

e. Keep a complete record of all business of the association and make a full report of all matters and business pertaining to his office to the members at their annual meeting and make all reports required by law.

f. Perform such other duties as may be required of him by the association or the board of directors.

NOTE.—When the offices of the secretary and treasurer are separate, the duties of each should be given in different sections of this Article.

ARTICLE IX.—DUTIES AND POWERS OF THE MANAGER

Section 1. Under the direction of the board of directors, the manager shall employ and discharge all employees, agents, and laborers. He shall have charge of the grading,
packing, and inspection of all products handled by the association, and shall have control of the brands and labels and their use on such products, in accordance with the rules of the association. Subject to the terms of the contracts made by the members with the association for the marketing of their products, the order of the board of directors, and the by-laws and rules of the association, the manager shall have entire charge of the sale and marketing of such products.

Note.—The duties of a manager vary according to the forms of organization and the kinds of business. This provision, therefore, should be redrafted in order to provide more specifically for the duties of the manager, extending or limiting his activities as conditions in each organization make advisable.

Article X.—Membership Fee and Finance

Section 1. Each member shall pay in advance to the association a membership fee of ($5).

Sec. 2. At the time of uniting with the association or at any time thereafter when called upon by the board of directors each member shall loan an amount to be fixed by the board, not less than ($10) nor more than ($100), in cash to the association to be used in building warehouses or other necessary buildings and the lease or purchase of lands therefor or in securing necessary equipment.

Sec. 3. Such loans shall draw interest at the rate of (6) per cent per annum.

Sec. 4. Such loans shall be repaid from a special fund created by levying a percentage assessment on the produce sold and supplies bought through the association, the amount of such percentage to be fixed by the board of directors, which amount shall be sufficient to pay (one-fifth) of the entire loan and the interest thereon in each year.

Sec. 5. At the end of each fiscal year each member shall receive a certificate showing the amount of money which he has contributed that year to the special loan fund. The amount of the loan may be fixed at so much per acre or other estimated volume of business, thereby making each member’s loan proportionate to the volume of business to be transacted by him. (See Chapter on Financing.)

Article XI.—Emergency Capital

Section 1. At the time of uniting with the association, or any time thereafter when called upon by the board of directors, each member, in consideration of the maintenance and operation of the association, shall give a negotiable promissory note, payable on demand to the order of the association. Such note shall be for the sum of ($25) and an additional ($1) for each acre of land farmed by the member, the products of which are to be marketed through the association. But in no case shall this note be for less than ($35).

Sec. 2. Such note shall be the property of the association for the purpose of being pledged by the board of directors as collateral security for any loan that may be necessary in the conduct of the association’s business and also for the purpose of securing the payment of any debt or claim due by the member to the association, including the settlement of any liquidated damage that may result from the failure of said member to live up to his contract with the association.

Note.—This article is intended to supply capital which is needed only for short periods; for example, during the harvesting and shipping period and other periods when a temporary supply of money is required.

Article XII.—Grading and Inspecting

Section 1. All products grown by the members for sale through the association shall either be graded and packed on the growers’ premises, in accordance with the rules
of the association, subject to such inspection as may be established by the board of directors, or shall be delivered to the association, as directed by the manager, in proper conditions for grading, packing, and shipping.

Sec. 2. All produce offered for shipment shall be inspected before shipment. If any produce is not of good quality and in good condition for shipping, such produce shall be sorted and prepared for shipment at the expense of the owner or it may be turned back to the owner as products unsuitable for marketing.

Sec. 3. All brands, labels, trade-marks, and the like established by the association shall be registered and become its property, and they shall be attached only to such grades as shall be approved by the board of directors.

NOTE.—The nature of organization and the kind of business engaged in should be kept in mind, and the grading and inspecting rules given in this article adapted to fit the requirements of the organization and the products handled.

ARTICLE XIII.—CONTRACTS AND AGREEMENTS

Section 1. Every member of this association shall enter into a contract with the association in the form required by the board of directors, subject to the following provisions:

(a) That the member, by said contract, appoints the (Fruit Growers' Cooperative Association) his sales agent to sell all products grown by him for sale, or such part thereof as shall be specified in the contract, and binds himself to deliver such products to the (Fruit Growers' Cooperative Association) for sale at such time and place as the rules fixed by the board of directors of the association may direct.

(b) That said contract shall run continuously unless canceled by the member on (April 1) of any year by giving written notice to that effect to the association at least (30) days prior to said date. Such cancellation shall be subject to any indebtedness due from him to the association.

ARTICLE XIV.—DUTIES AND RIGHTS OF MEMBERS

Section 1. A member shall have the right to give away or retain for his own use such of his farm products as he may wish, but he shall not sell any products contracted to the association to an outside party, except products offered to and rejected by the association.

Sec. 2. Any member who receives an offer for his farm products which is greater than the price presently obtainable through the association may submit this offer to the manager. If deemed advisable, the manager may authorize the member to accept the offer, but payment for the products shall be made to the association. Products sold in this manner shall bear their proportional share of the association's expenses, and settlement therefor shall be made to the member as hereinafter provided for.

Sec. 3. Each member shall have a number or mark which shall be permanently stamped on every sack, box, barrel, crate, basket, or other container, packed by him or under his direction, for shipment through the association. Any loss occasioned by improper packing or grading shall be charged to the member whose mark is found on said package.

NOTE.—Products packed on the growers' premises should be inspected by an association inspector. The inspector must be accountable only to the association. His private mark should be placed upon each package he inspects, and he should be held jointly responsible with the grower for the grade and condition of the pack as disclosed in the market.

Sec. 4. On or before (April 1) of each year each member shall report to the association on request the approximate acreage of products to be grown by him that year for sale through the association. During the growing season each member shall furnish such information concerning the crops contracted to the association as may be required by the manager.
Sec. 5. Each member of the association shall have only one vote, except as provided for in Section 6. No member shall be allowed a vote so long as any past-due debts or obligations owing by him to the association remain unpaid. Voting by proxy shall not be permitted. Absent members may vote on specific questions by ballots transmitted to the secretary of the association, in accordance with Sec. 7, Chap. 226, General Laws of Oregon, 1915.

Sec. 6. When an emergency arises threatening the welfare of the association, the Board of Directors may authorize an appeal to a vote by which each member shall be represented by a voting strength in proportion to the amount of business he may have done through the association during the previous fiscal year. Such an emergency shall be conclusively deemed to exist upon the affirmative vote of (two-thirds) of the directors. In the event of such a vote the Board of Directors shall have the power to determine conclusively the proportion of voting power to which each member is entitled.

NOTE. — In some cooperative associations it has been felt that it was neither fair nor wise to demand that the large-producing member should be held to the same vote as a small-producing member, as their responsibility and interest are so unequal. In some cases the voting power of members has been proportioned according to the amount of their products or acreage handled through the association. The Oregon Cooperative Association Law provides as an emergency provision that an association incorporated thereunder "may make provision in its by-laws for an appeal to a vote by which each member shall be represented by a voting strength in proportion to the amount of business he is doing through the association."

Sec. 7. Any member may withdraw from the association on the first day of (April) of any year by giving notice in writing thirty days prior to said date, but such withdrawal shall not affect any right or lien which the association has against the retiring member or his property until his indebtedness to the association is fully paid. Any member having a grievance or complaint against the association may appeal to the board of directors (or to the members at any regular or called meeting).

NOTE. — The time of withdrawal should be so fixed as to take effect some time between the close of one season’s business and the opening of the next. To permit a member to withdraw during a busy marketing season will result in confusion and may seriously handicap the manager in filling his contract.

ARTICLE XV.—INDEBTEDNESS, MEMBERSHIP LIABILITY

Section 1. The amount of indebtedness which may be incurred by or on behalf of this association shall at no time exceed ($20,000).

Sec. 2. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding any sum remaining unpaid on his membership fee.

ARTICLE XVI.—EXPENSE AND PAYMENTS

Section 1. The expense of operating the association shall be met by a percentage charge laid upon returns for produce sold, or by a uniform fixed price per package; and upon supplies purchased, the amount of such charge to be fixed by the board of directors.

Sec. 2. The association may pool or mingle the products of each member with products of like quality, variety, and grade delivered by other members. The net returns from the sale of such products less such costs, advances, reserves, and charges as are provided for in these by-laws and the rules prescribed by the board of directors shall be credited and paid to each member in proportion to the quantity of such products shipped by him through the association, and on the basis of the average price received for such products of like quality, variety, and grade during such period or periods as the board of directors from time to time may determine.

NOTE. — It is important that an average price should be paid for products of the same grade shipped during a specified period. In this way inequalities and dissatisfaction are avoided, and the association is better able to serve the interests of the entire membership.
ARTICLE XVII.—COOPERATIVE PURCHASE OF SUPPLIES

Section 1. All merchandise purchased by the association for any member shall be paid for in cash by the member ordering such supplies at the time the order is placed.

Sec. 2. If local dealers handle the supplies desired, they shall be given an opportunity to bid on the order before it is placed with an outside agency.

Note.—In the cooperative plan of buying farm supplies the local dealer should be given consideration and an opportunity to submit terms and prices.

ARTICLE XVIII.—SAVINGS AND DAMAGES

Section 1. After the season's expenses are paid and a proper sum set aside to cover the depreciation of the association's property and provision is made for a reserve fund to be fixed by the board of directors, the balance of the season's returns on products sold shall be divided among members and non-member patrons, if any, in proportion to the value of their products sold through the association, and the balance of the season's savings on supplies purchased shall be divided in like manner. In the case of a non-member-patron, patronage dividends shall be at one-half the rate paid to members, except that the full sum of money may be applied, with his consent, to the payment of membership fees and dues for him; and, if so applied, when such fees and dues are fully paid a membership certificate shall be issued to him. When any non-member offers his products and the association accepts them for sale, such offer and acceptance shall be deemed an application for membership, if the non-member agrees that it shall be so considered.

Sec. 2. Any member who fails or refuses to deliver his (Fruits) to the association in accordance with the contract entered into by him with the association shall pay to the association the sum of $ for each not delivered by him to compensate the association for its expenditures in providing and maintaining for him the machinery, equipment, facilities, personal services, and information necessary to market his crop, and said sum may be deducted from any money in the possession of the association due to the member. And in addition thereto, he shall be liable to the association for all damages suffered by it as a result of the breach of the contract. All contracts entered into by the association with members for the delivery of produce contemplate the delivery of such produce and not the payment of compensation in lieu thereof.

ARTICLE XIX.—ACCOUNTS AND AUDITING

Section 1. This association shall install a system of accounts and provide other accounting appurtenances that may be necessary to conduct the business in a safe and orderly manner.

Sec. 2. The books and business of the association shall be audited quarterly by a committee of auditors selected by the membership from among themselves. A complete annual audit shall be made by a competent accountant previous to the date of each annual meeting, at which meeting his report shall be presented in full. Special audits shall be made upon order of the board of directors or upon a majority vote of the members at any regular or called meeting.

ARTICLE XX.—AMENDMENTS

Section 1. These by-laws may be amended at any meeting by a two-thirds vote in the affirmative of the members present, or represented by ballot, provided that notice of the proposed amendment is included in the call for said meeting.

The preceding form of by-laws, suggested for a non-stock organization, may be used for a capital stock association by changing Articles III and X. The following Articles are suggested for capital stock organizations.
ARTICLE III

Section 1. Any bona-fide grower of farm products (in the area covered by association), or the owner or lessee of land upon which (Fruits) are grown and who share in the crops produced thereon, may become a member of the association by agreeing to comply with the requirements of these by-laws and by purchasing one share of the capital stock of the association.

ARTICLE X—CAPITAL STOCK

Section 1. The capital stock of this association shall be $10,000, divided into 500 shares of $20 each.

Sec. 2. No member shall hold more than one-fifth of the capital stock of the association.

Sec. 3. No stock shall be issued or delivered by the association to any subscriber until he has paid the full price therefor.

Sec. 4. Transfers of shares will be made upon the books of the association only when the stockholder is free from indebtedness to the association.

Sec. 5. Whenever any stockholder desires to sell his stock he shall first offer it to the association for purchase by it or by a person or persons designated by the board of directors of the association at a price to be conclusively determined by the board of directors. In the event the stock is not purchased by the association, or by a person or persons designated as aforesaid, within 30 days after the receipt of a written notice by the association offering the stock for sale, then the stockholder may sell the stock to any person engaged in the production of (Fruits). This restriction on the transfer of stock shall be printed on every certificate of stock.

Sec. 6. If any member shall by purchase or by the operation of law come into possession of more than ... shares of the capital stock of this association, the board of directors may elect to purchase, and such member shall then sell to the association such excess shares at a price to be conclusively determined by the board of directors, plus any dividends or refunds due and unpaid. Also, in the event of the death or disability of the owner of any shares of stock in this association such shares of stock may be purchased by the association and shall, in the event the board of directors elects to purchase them, be sold by the legal representatives of such owner to the association at a price to be conclusively determined by the board of directors, plus any dividends or refunds due and unpaid.
Cooperative Association Law of Oregon

(General Laws of Oregon, 1915, As Amended)

§6954. Cooperative Associations—Who May Organize—Purposes.

That any number of persons, not less than five, may associate themselves as a cooperative association, society, company, or exchange for the transaction of any lawful business on the cooperative plan. For the purpose of this act the words “association,” “company,” “exchange,” “society” or “union” shall be construed to mean the same. Membership in an association organized under this act shall be conditioned upon compliance with the rules, regulations and purposes of the association, and the signature of a person to the articles of association, the by-laws, the membership agreement or a member’s marketing contract with the association shall be construed to mean that such person has accepted said rules, regulations, and purposes and has become a member of the association. Associations may be organized under this act either with or without capital stock. An association organized under this act shall adopt the term “cooperative” as part of its business name or title as given in its articles of association; and in its own name it shall have the right to adopt and use a corporate seal, to sue and be sued and, subject to the provisions of this act, to exercise all the business rights and privileges conferred upon corporations under the corporation law of the state of Oregon, except that associations organized without capital stock may use the fund provided by membership fees as a revolving fund constituted for the purpose of mutual help, and no profit, interest or dividends shall be distributed on the basis of contributions to such fund. It is the public policy of the state of Oregon to encourage the production of agricultural products and to stabilize marketing conditions through the elimination of speculation and to bring about a lower cost of living through the establishment of more efficient systems of distribution. To this end it is and shall be lawful for persons who have associated themselves under this act to unite or consolidate any or all of their business activities by means of contracts or agreements between the members and their associations or through the provisions of their articles of association or bylaws. Such contracts may require members to transact the business embracing all or any specified parts of their products or specified commodities exclusively with or through the association, upon such terms as may be agreed upon in the contract. The bylaws and marketing contracts may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach of any provision of the marketing contract regarding the sales or delivery of (or) withholding of products, and any such provision shall be valid and enforceable in the courts of this state. In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, an enjoinment to a decree of specific performance thereof. Pending the adjudication of such suit, the association shall be entitled in a proper case to a temporary restraining order or preliminary injunction against the member. Any two or more associations organized pursuant to this act may act as incorporators to establish under its provisions a federated cooperative association authorized to do and perform any and all lawful business which may be deemed necessary or beneficial to its member associations. Articles of association for such a federated cooperative association may be executed by one or more duly authorized representatives of each association uniting to form the federated association. The board of directors shall consist of representatives of the member associations appointed or elected in such a manner as may be provided in their bylaws and in the bylaws of the federated association. Such a federated association may also admit to membership any other incorporated body complying with the provisions of the Capper-Volstead act or any other federal legislation at present existing, or which may be enacted for the purpose of regulating interstate commerce of cooperative associations. (As amended by c. 324, L. 1925.)

§6955. Preliminary Investigation.

Every group of persons contemplating the organization of an association under this act is urged to communicate with the director of the bureau of organization and markets of the Oregon Agricultural college, who shall inform them to the best of his ability as to whether or not a survey of the locality and marketing conditions indicate that the proposed association is such as to succeed and meet the needs of the neighborhood in which it is to be established.

§6956. Articles of Association—Contents.

Every association formed under this act shall prepare articles of association, which shall set forth the name of the association, the purpose for which it is formed, its principal place of business, the term of its duration, not to exceed 50 years, and the total amount of capital stock with the number of shares, the par value of each share and any restrictions or privileges attaching to ownership thereof. Any association may provide in its articles of association that it will only handle products for its members. Associations established without capital stock shall state the amount of capital stock, the amount of membership fee, and the conditions under which a membership may be transferred. Each of the persons uniting to establish an association...
under this act shall subscribe to the articles of association, and acknowledge the same before some person competent to take an acknowledgment of a deed in this state. (L. 1915, c. 225, § 3; L. 1917, c. 411, § 2; L. 1921, c. 260, p. 488.)

§6957. Articles—Filing—When Legally Organized.

Every association organized under this act shall make out its articles of association in quadruplicate. It shall file one copy with the corporation commissioner, file and record another with the clerk of the county in which its principal place of business is located, a third with the director of bureau of organizations and markets of the Oregon Agricultural college, and the fourth shall remain in the possession of the association. When the corporation commissioner notifies the county clerk and the secretary of the association that its articles of association have been filed in his office, the association is legally organized. For filing the articles of association an association organized under this act shall pay to the corporation commissioner $10, together with the proportionate part of the annual license fee, as hereinafter provided for, which may be due for the succeeding fraction of the fiscal year; and for filing an amendment to the articles, § 5. For recording the copy of the articles it shall pay to the county clerk a fee of 20 cents per hundred words, or fraction thereof; and at an equal rate for recording an amendment.

Whenever any association or corporation organized under this act or acts amendatory thereto shall prepare and deliver to the county clerk a book to be called the "Contract book of, or the name of the association," such book shall thenceforth become a public record book of such clerk's office and it shall be the duty of such clerk to record therein the matters and things authorized by this act.

At any time after any such book shall have been so delivered to the clerk as provided herein, the association which has delivered the same may request the clerk to whom such book has been delivered to record therein any marketing contract or agreement which has been entered into by such association and any amendment thereto, provided that any such contract or agreement be in substantially the same terms as any other contract or agreement with any other members of the association and be separately signed by such members of the association, such association may have one of such contracts or agreements recorded in extenso in such book and may furnish the clerk with a list of the names of persons appearing on such contracts as signers thereof, with the dates of the signatures, respectively. Whereupon the clerk shall record such names as signers of such contracts or agreements with the dates of their signatures, respectively. Such recordation of the list of signers so furnished shall be equivalent to the recordation in extenso of the contract or agreement of each signer therein. Such copy of such contracts or agreements and such list of names of persons appearing on such contracts as signers thereof shall be sworn to by some officer of the association cognizant of the facts, before some officer authorized to take acknowledgments to deeds. But in no case shall any such contract or agreement be deemed to be recorded as to any signer thereof until his name shall be recorded in such book by the clerk, which recording said clerk is hereby required to do.

When this act shall have been complied with and any such recordation as is herein provided for has been made in the county in which is situated the land on which the products covered by the particular marketing contract or agreement concerned is grown or produced, such recordation shall operate as constructive notice of the existence of such contract or agreement and of the terms thereof; and all persons contracting or dealing with any such member in relation to any such products covered by such contract or agreement shall be bound thereby, and all rights or liens acquired by any such person in such products subsequent to the date of such recordation shall be subject in all respects to the rights of the association under such contract or agreement; provided, that if any member of an association place any mortgage or hold any liens upon such products under contract to an association and recorded as provided herein, the member and the mortgagee may jointly notify the association in writing of the amount of the mortgage. Thereafter all payments due such member from sale of products covered by such mortgage shall be made to the holder of the mortgage until the amount thereof has been paid. Thereafter payments shall be made to the member as provided in his contract.

For making the recordation authorized by this act the clerk shall be entitled to the following fees, to be paid by the association for which the service is performed, for recording the contract or agreement in extenso, and the sworn list of names accompanying it, the fees shall be the same as for recording a deed, and for the subsequent recording of additional names, 2 cents for each person. (As amended by c. 337, L. 1925.)


Except as specified in section 6966, no stockholder of a cooperative association shall own more than one-fifth of the common capital stock of an association; and an association in its bylaws may limit the amount of common capital stock which one member may own to less than one-fifth of its total common capital stock. Associations may also issue and sell preferred stock which may be sold to members or nonmembers. In addition to his holding of common stock a member may own any amount of preferred stock. Associations may place such restrictions upon the privileges of holders of preferred stock as they may deem to be for the best interests of the association. Such restrictions as may be adopted, together with the rate of dividend and the time of redemption must be printed on the face of the certificates of such preferred stock. Each holder of membership stock the membership fee shall be the same for each member, and the association may charge annual dues in such amount as it may determine and embody in its bylaws.
Voting shall be by ballot, and no member shall be entitled to more than one vote; but an association established under this act may make provision in its bylaws for an appeal to a vote by which each member shall be represented by a voting strength in proportion to the amount of business he is doing through the association. This provision is intended for use only when an emergency arises threatening the welfare of the association, and easy association making use of it shall outline the conditions under which it may be appealed to clearly in its bylaws and adhere to them strictly. There shall be no voting by proxy; provided, that an association covering an area too large for the convenient assembling of its members may provide in its bylaws for the formation of districts and the holding of district meetings and elections. District meetings may elect delegates who shall represent their districts in annual and special meetings of the association. The vote of such delegates shall be taken as representing the votes of all the members in their districts on points not covered by ballots submitted to all members. (L. 1915, c. 226, 6; L. 1917, c. 411, 3; L. 1921, c. 260, p. 488.)

§6959. Members May Vote by Mail.
The bylaws may require the secretary to prepare ballot upon the principal questions to be voted on at any general or special meeting of the association, in which case he shall mail to each member, along with the notice of the meeting, one ballot and a small voting envelope. An absent member may write the secretary, inclosing the sealed envelope containing his vote, requesting over his signature that the voting envelope be dropped into the ballot box along with the votes cast in person. The secretary shall read the sign request and place the voting envelope in the box. A vote so cast shall be counted as if the member were present and voting in person.

§6960. Directors—Election.
At such time, in such manner and for such a term of office, not to exceed two years, as the bylaws may prescribe, not inconsistent with this act, the members of every cooperative association shall elect from their own number, to manage the affairs of the association, a board of not less than five directors. The directors shall enter immediately upon the discharge of the officer, of the hold office for the time for which elected, and until their successors are elected and qualified. An association may provide in its bylaws for the appointment of a director or directors representing the public interests. When such a director is appointed, he shall be appointed by some official representing the public official who is to have the appointing power. An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. But no director, during his term of office, shall occupy any position in the association on regular salary, nor shall he, during his term of office, be a party to a contract for profit with the association differing in any way from the business relations accorded regular members of the association under the bylaws as provided in this act. When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy. The term of the member thus appointed shall be the unexpired portion of the term of the member whose place he is elected to fill. (L. 1915, c. 226, 8; L. 1917, c. 411, 4; L. 1921, c. 260, p. 489.)

§6961. Removal of an Officer or Director.
Any member bringing charges against an officer or director shall file them in writing with the secretary of the association; and the secretary shall immediately notify the officer or director of the charges filed against him. The officer or director may then file with the secretary a statement, not to exceed 400 words in length, giving concisely his defense against the charges made. The board of directors shall take the matter up at its next meeting and take such action as it deems to be for the good of the association. If the charges are accompanied by a petition requesting the removal of the officer or director, signed by 10 per cent of the members, and are filed with the secretary at least 14 days previous to any general or special meeting, the secretary shall prepare and shall send, to each member with the regular notice a ballot calling for a vote upon the removal of the officer or director. Accompanying the notice and ballot, the secretary shall inclose a statement, not to exceed 400 words, giving the charges against the officer or director; and at the request of the accused officer or director, the secretary shall inclose with this statement to each member a copy of the written defense as filed. By a vote of the majority of the total membership present or represented by ballot, the association may remove the officer or director and fill the vacancy.

§6962. Election of Officers.
Within five days after an election the directors shall meet and they shall elect from their number a president, one or more vice presidents, a secretary and treasurer; but they may combine the two latter officers and designate the combined office secretary-treasurer. If deemed advisable by the directors the office of secretary and treasurer, or secretary-treasurer, may be filled by engaging any person or persons they consider capable of rendering the association the most efficient service.

§6963. General and Special Meetings—How Called.
In its bylaws each association shall provide for one or more regular meetings annually. The secretary shall mail notice to each member 10 days previous to the date set therefor in the bylaws. The board of directors shall have the right to call a special meeting at any time; and by filing a petition stating the business to be brought before
the association, signed by 10 per cent of the members, the petitioners shall have the right to demand a special meeting at any time. The secretary shall call special meetings in the same manner as provided for regular meetings except that he shall add to each notice a brief statement of the purpose of the proposed meeting.

A majority of the members present, or represented by ballot as prescribed in section 6960, at any regular meeting or any special meeting called for that purpose, may amend the articles of association, but they shall never by amendment diminish the amount of capital stock below the amount of paid-up capital stock at the time of the adoption of the amendment. Those proposing an amendment shall place it in the hands of the secretary not less than 14 days previous to the date set for the regular or special meeting at which it is to be voted upon; and not less than 10 days before the amendment is to be voted upon the secretary shall mail copies of it to each member. Within 30 days after the adoption of an amendment to its articles of association, the association shall cause a copy thereof to be filed in the office of the corporation commissioner, another filed and recorded with the clerk of the county wherein its principal place of business is located, and another in the office of the bureau of organization and markets of the Oregon Agricultural college.

No association shall issue stock to a member until it has been fully paid for; but an association in its bylaws may admit a member and allow him to vote and hold office who has paid for one-third of the capital stock for which he has subscribed. When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership; but an association in its bylaws may admit a member and allow him to vote and hold office who has paid one-third of his membership fee and who has agreed to pay the remaining two-thirds in regular installments. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding any sum remaining unpaid on his subscription to the capital stock. And no member of an association established without capital stock shall be liable for the debts of the association to an amount exceeding any sum remaining unpaid on his membership fee, or on his annual dues.

Each member shall fulfill the conditions of all contracts between him and the association, whether stipulated in the bylaws or in separate agreements; provided, such agreements do not conflict with the terms of this act. For failure to live up to the provisions of this act or the bylaws of his association, or the terms of any contract between him and his association, a member may be expelled from any association established under this act. Associations may provide in their bylaws the conditions under which members may be expelled in such manner as to protect the interests of the association and safeguard the property rights of expelled members. (As amended by c. 324, L. 1925.)

§6966. To Expend Funds and Do Business—When to Begin.

No cooperative association organized under this act with capital stock shall do business or incur expenses beyond the necessary preliminary costs of organization, until 60 per cent of the entire capital stock shall have been subscribed for, and one-fourth of the entire capital stock shall have been paid in to the association. An association with capital stock shall in no case expend in organization more than 50 per cent of its paid-up capital stock, and it shall refund the total expense of organization out of the net profits before the distribution of any dividends on business. (As amended by c. 424, L. 1925.)

§6967. Subscription to the Stock of Other Associations.
At any regular meeting or lawfully called special meeting at which a majority of the members are present or represented by ballot, an association organized under this act with capital stock may by a majority vote of the members present and represented by ballot, subscribe for shares and invest not to exceed 20 per cent of its paid-up common capital stock and reserve fund in the capital stock of any other cooperative association. This 20 per cent limitation shall not apply to the issue of preferred stock which may be sold for cash and the proceeds invested in, or which stock may be exchanged for an interest in any property of any person, firm, corporation or association as hereinafter provided.
value would equal a fair market value of the stock or interest so purchased. Whenever an association organized hereunder with preferred capital stock shall purchase the stock of any corporation or association, or an interest in any property of any person, firm, corporation or association, it may discharge the obligation so incurred, whether in whole or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. (L. 1915, c. 226, 16; L. 1921, c. 260, p. 490.)

§6969. Certificates of Stock Held in Trust.

In case the cash value of the stock or interest purchased under section 6968 should place more than one-fifth of the common capital stock of the association in possession of one stockholder, the directors are authorized to hold in trust for the owner the shares in excess of one-fifth of the par value of the common capital stock until the excess can be disposed of upon terms mutually agreeable to the parties interested. (L. 1915, c. 226, 17; L. 1921, c. 260, p. 490.)

§6970. Earnings—Apportionment.

The directors shall pay all operating expenses of the association out of the gross earnings and shall then apportion the net earnings as follows:

1. In case of associations having capital stock they shall pay interest not to exceed 8 per cent per annum upon all sums received from members for shares of capital stock which have been fully paid for.
2. They shall set aside not less than 5 per cent of the remainder as a reserve fund.
3. That portion of the net earnings which still remain they may apportion as dividends, upon the amount of business transacted with the association. In this apportionment they shall, except as provided in section 6971, apportion dividends to nonmembers at one-half the rate paid to members; provided, that associations of consumers having not less than 30 members, and which make it possible for new members to come into the association on equal terms at all times, may make such provisions in their bylaws as they deem proper regarding the distribution of dividends to nonmembers. (As amended by c. 25, L. 1923.)

§6971. Directors to Make Final Apportionment.

When an association is composed of consumers organized to supply their need for commodities of any kind, the directors shall make the final apportionment of net earnings in proportion to the amounts purchased from or through the association, but not upon purchases which the association makes from others. When an association is composed of producers organized for the storage, manufacture or marketing of their products, the directors shall distribute the net earnings in proportion to the value of commodities supplied to or sold through the association, but not upon purchases from the association. When an association is made up of both producers and consumers, they shall provide in the bylaws for such a division of the net profits, not contrary to the provisions of this act, as shall be mutually agreeable. In case a member has not paid in full for the capital stock for which he has subscribed, or for his membership certificate, the directors shall credit to his account the dividends due him until the stock or his membership certificate has been fully paid for. The directors may, at their option, and with the consent of any member, credit the dividends due him to his account in payment for capital stock or for a membership certificate and when a sum has accrued sufficient to entitle him to membership they may enroll him as a member of the association. If the dividends remain uncalled for for one year after having been declared, they shall revert to the association. No person, firm or corporation engaged in buying, selling or handling agricultural products for profit, or engaged in any other line of wholesale or retail trade for profit, shall receive a dividend upon any transaction with the association involving the business of such person, firm or corporation. An association may provide in its bylaws the minimum amount of any single transaction covered by the provisions of this section which shall be recorded for the purpose of participating in patronage dividends. (L. 1915, c. 226, 19; L. 1917, c. 411, 10; L. 1921, c. 260, p. 490.)

§6972. Distribution of Dividends.

The directors shall distribute the net earnings of an association to those entitled to receive them at such times as its bylaws may provide, and in a manner not inconsistent with this act. They shall distribute dividends as provided in section 6970 as often as once a year, unless the members decide otherwise, by a majority vote of those present or represented at any regularly called meeting for which a ballot on the distribution of dividends has been sent out in advance, as provided in section 6960.


Every association formed under this act shall during the month of July, on or before the first day of August of each year, prepare and make out in duplicate an annual report. The report shall be made out in the forms furnished by the corporation commissioner and shall contain the name of the association, its principal place of business in this state, and a general statement of its business, showing the total amount of business transacted, the amount of capital stock subscribed, the amount of capital stock unsubscribed, the
amount of capital stock issued, the amount of capital stock paid up, the number of stockholders, the total expenses of operation, the amount of its indebtedness or liability and its profits and losses. For associations established without capital stock, the annual report shall contain the amount received in membership fees in place of the information regarding capital stock required from associations having capital stock. On or before the first day of August the association shall mail the original of this report to the corporation commissioner, together with the annual license fee, and shall keep the other on file in the head office of the association. Twice each year, in the middle and at the close of its fiscal year, every association organized under this act shall file with the bureau of organization and markets of the Oregon Agricultural college, a complete statement of its business for the preceding six months. This statement shall be made out in accordance with and upon forms furnished by the director of the bureau, who shall acknowledge the same in writing, and offer such suggestions as the business condition of the association seems to warrant.

§6974. Annual License Fees.

Every association organized under this act, except it be established for educational, literary or scientific, religious, political or charitable purposes, shall pay to the corporation commissioner, when it sends in its annual report, an annual license fee in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Total Authorized Capital Stock</th>
<th>Annual License Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Exceed $5,000</td>
<td>$ 5.00</td>
</tr>
<tr>
<td>$5,000 to $10,000</td>
<td>$ 7.50</td>
</tr>
<tr>
<td>$10,000 to $25,000</td>
<td>$10.00</td>
</tr>
<tr>
<td>$25,000 to $50,000</td>
<td>$15.00</td>
</tr>
<tr>
<td>$50,000 to $100,000</td>
<td>$25.00</td>
</tr>
<tr>
<td>$100,000 to $250,000</td>
<td>$35.00</td>
</tr>
<tr>
<td>$250,000 to $500,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>$500,000 to $1,000,000</td>
<td>$62.50</td>
</tr>
<tr>
<td>$1,000,000 to $2,000,000</td>
<td>$87.50</td>
</tr>
<tr>
<td>$2,000,000 to $5,000,000</td>
<td>$100.00</td>
</tr>
</tbody>
</table>

An association established for the mutual benefit of its members without capital stock, unless established for educational, literary, scientific, religious, political or charitable purposes, shall pay to the corporation commissioner, when it sends its annual report, an annual license fee of $5.

§6975. Associations Heretofore Organized May Adopt the Provisions of this Act.

Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this act. It shall make out a statement signed and sworn to by its directors, upon forms supplied by the corporation commissioner, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the provisions of the act, and complying with the same in writing, and offer such suggestions as the business condition of the association seems to warrant. The filing fee paid the corporation commissioner shall be the same for filing an amendment. The corporation commissioner shall mail notices as required in section 6957, in order to legally complete the transfer.

§6976. Limits in the Use of the Term "Cooperative"—Interpretation of Restraint of Trade.

No persons, firm, corporation or association organized or doing business for profit in this state shall be entitled to use the term "cooperative" as part of its corporate or other business name or title unless it has complied with the provisions of this act. Any person, firm, corporation or association violating the provisions of this section may be enjoined from doing business, under such name, at the instance of any stockholder or any association legally organized hereunder. Should the courts decide that any person, firm or corporation established previous to February 20, 1913, having the term "cooperative" as a part of its corporate or other business name or title, shall have the right to continue to so use the term "cooperative," any such person, firm or corporation electing to continue to so use the term "cooperative" shall always place immediately after the term "cooperative" the words "Does not comply with the Oregon cooperative laws" in the same kind of type and in letters not less than two-thirds as large as those used in printing the term "cooperative." No association organized hereunder and complying with the terms and purposes of this act shall be deemed to be a combination in unlawful restraint of trade or an unlawful monopoly, nor shall any marketing contract or agreement between the association and its members which is authorized by this act be considered
unlawful or in unlawful restraint of trade; provided, that associations which have contracts with their members covering the purchase and sale of products and providing for liquidated damages and equitable relief shall not handle the same products for nonmembers. (L. 1915, c. 226, 24; L. 1921, c. 260, p. 491.)

§6977. Bylaws.

An association formed under this act may adopt bylaws to govern itself in carrying out the provisions of this act which are not inconsistent with the provisions of this act.

§6978. Power to Transfer Property as a Whole.

Any association established under this act may, by two-thirds vote of the total membership, at any meeting regularly called for that purpose, decide to sell, lease, assign, transfer, or convey the business, franchise, and property as a whole, of any association established under this act, the secretary of the association shall file with the corporation commissioner and with the director of the bureau of organization and markets of the Oregon Agricultural college certified copies of the minutes of the meeting at which the transfer was authorized, and a statement signed and sworn to by the secretary of the association setting forth the condition under which the transfer has been made.

§6979. Voluntary Liquidation—Certificate of Dissolution—When Receiver May be Appointed.

Any association operating under the provisions of this act may be dissolved and its affairs wound up by the vote of two-thirds of the members present and represented by ballot at any regularly called meeting; provided, the notice of such meeting shall contain a statement to the effect that the dissolution of the association shall be voted on, and a brief statement of the reasons why such dissolution is deemed advisable. Such notice shall also contain an alphabetical list of the members in good standing and provide a ballot for the election of three members as trustees to have charge of the liquidation of the affairs of the association. Should the vote cast decide in favor of the dissolution of the association the authority of the directors shall cease forthwith, and they shall turn over all books, records, real and personal property belonging to the association to the three members receiving the highest vote for trustees. The board of trustees so elected shall proceed to wind up the affairs of the association, realize upon its assets, pay its debts and divide the remaining funds among the members in good standing in proportion to their holdings in the capital stock of the association. Or in case of an association organized without capital stock, the members shall share equally in such remaining funds. Upon completing the liquidation the trustees shall execute under oath a signed statement that the association has been dissolved and its affairs liquidated, which statement shall be forwarded to the corporation commissioner, together with the dissolution fee of §2. Upon receipt of such statement the corporation commissioner shall notify the county clerk of the county in which the association dissolved had its principal place of business, that such association has been legally dissolved.

§6980. Laws Not to Apply.

Any provisions in law which are in conflict with this act shall not be construed as applying to cooperative associations herein provided for.

§6981. Constitutionality.

If any section or part of a section of this act shall for any reason be declared unconstitutional, such fact shall not affect the remainder of the act.