

UNIVERSITY OF KENTUCKY

COLLEGE OF AGRICULTURE

Extension Division

THOMAS P. COOPER, Dean and Director

CIRCULAR NO. 134

PLANS FOR COOPERATIVE MARKETING

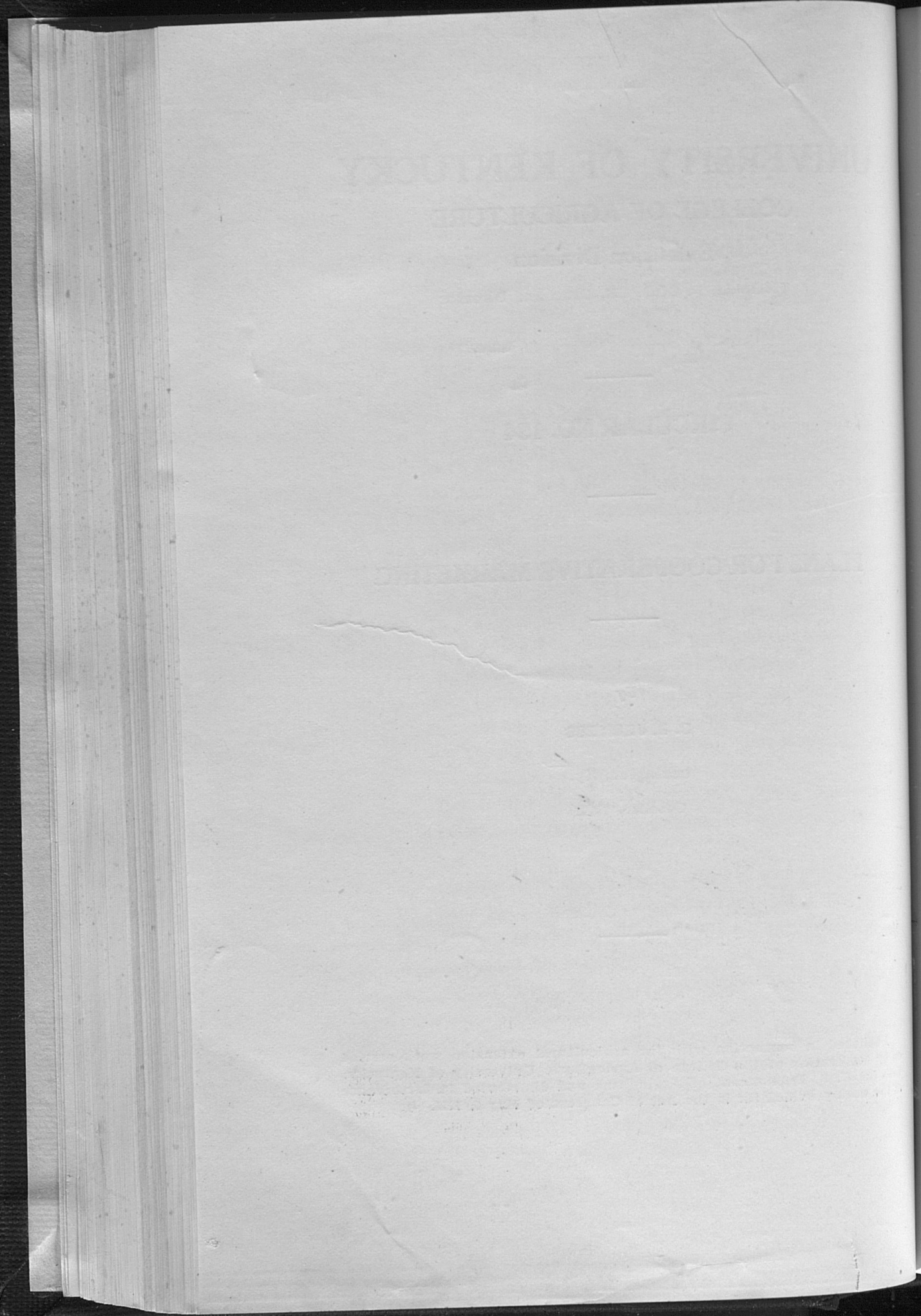
By

O. B. JESNESS

Lexington, Ky.

October, 1922

Published in connection with the agricultural extension work carried on by cooperation of the College of Agriculture, University of Kentucky, with the U. S. Department of Agriculture and distributed in furtherance of the work provided for in the Act of Congress of May 8, 1914.



Su
wit

bee
nu
op
est
As
by
org
fut

far
can
its
me
soc
bu
an
mu
th
—

of
B

CIRCULAR NO. 134

Plans for Cooperative Marketing

INCLUDING

Suggested articles of incorporation, by-laws and contracts, prepared with special reference to the Cooperative Marketing Act of Kentucky.*

By O. B. JESNESS

Cooperative marketing is not new in Kentucky as it has been employed by farmers in some sections of the State for a number of years. The organization of tobacco growers for cooperative marketing, however, has brought an increased interest among farmers in this method of disposing of their products. As a result, cooperative organizations are under consideration by farmers in various parts of Kentucky and a number of new organizations in all likelihood will be established in the near future.

WHAT IS THE PURPOSE OF COOPERATIVE MARKETING?

Cooperative marketing aims to obtain better results for the farmer in the sale of his products than the individual farmer can obtain for himself. It is entirely a business proposition and its possibilities must always be viewed from that angle. The member measures the benefits of a cooperative marketing association by the results it obtains for him and since it is a business enterprise his means of measurement are the dollars and cents saved by the organization for him. The association must perform some service for the members in order to effect this saving. A variety of services are usually performed by

*Many features of the plans suggested in this circular are adaptations of plans used by existing cooperative marketing organizations such as the Burley Tobacco Growers' Cooperative Association.

successful organizations. Among them may be better grading and handling to produce higher quality and more uniform products; sale on the basis of grade so that the grower having products of high quality is rewarded; selling in large lots; gathering crop and market information; furnishing expert salesmanship; bargaining more effectively than can the individual grower; finding new markets and expanding old ones, and using business methods.

The farmer is, of course, interested in getting the best possible prices for his products. A cooperative marketing organization therefore has a very direct relation to prices. This fact has led some to conclude that success in cooperative marketing can best be obtained by an organization whose purpose it is to fix prices for the products handled. The belief that a farmers' marketing organization can arbitrarily fix the price of the product handled is not well founded. An association often can influence the prices obtained by the members to a considerable extent but this is a different matter from being able to fix prices on some arbitrary basis. Fortunately, it is becoming generally appreciated that there are limits to the ability of an organization to fix prices and farmers are establishing real business organizations for the purpose of serving them in selling and not in arbitrary price fixing. The markets for farm products, and other products as well, are affected by a great variety of forces and conditions. It is the purpose of a cooperative marketing organization to know those conditions and so conduct its business that the results obtained will be the best possible in the light of existing conditions.

WHEN AND WHERE IS COOPERATIVE MARKETING ADVISABLE?

A cooperative marketing association is a business enterprise and like in any other business enterprise, due consideration of the essentials for success should be given before it is established. Cooperative marketing is advisable only in instances where the chances for success are reasonably promising. Since a cooperative marketing organization must be able to render some service if it is to succeed, consideration should al-

ways be given to the need for a cooperative association wherever this plan is suggested. Do the farmers feel a real need for an organization? Are they dissatisfied with existing methods and can cooperation remedy the difficulties? Are existing agencies rendering satisfactory service? Is there available a sufficient volume of business to support an organization properly? Is the attitude of the farmers towards cooperative marketing favorable, and are they willing to establish an effective organization and provide the required capital? Is the necessary leadership available? The answers to these and similar questions will indicate whether or not cooperative marketing is advisable in any specific instance.

PLAN OF ORGANIZATION.

The product to be handled and the local conditions play a leading part in determining the plan of organization and operation which is most suitable. Because this is true, a plan which has worked successfully for one product and in one section, may require considerable change in order to adapt it to a different product and different conditions. This means that attention must be given to the needs of each situation in order that the plans adopted may meet the demands which will be made upon them.

In addition to being adapted to local needs, the plan should observe cooperative and sound business principles. Each member should have only one vote. The aim of the organization should be service and savings, and not profits on capital stock. The organization should be democratically controlled and at the same time grant the management sufficient power to enable it to produce results. A sufficient volume of business should be provided for, preferably by means of specific written contracts between the members and the organization.

Cooperative marketing organizations usually find it advisable to be incorporated under State law. A corporation has a legal standing of a kind not possessed by an unincorporated association. It has many of the rights of a natural person, such as power to sue in its own name and to own property. The lia-

bility of the members for the debts of an incorporated organization is definitely limited while the members of an unincorporated association are not so protected. Incorporation bears an important relation to the organization plans as the laws under which incorporation is effected outline the forms of organization which may be employed. Farmers' cooperative marketing organizations should become incorporated under the cooperative law of the State as that has been prepared especially for cooperative enterprises with the view of providing for and safeguarding the principles of cooperation. The provisions of the cooperative law should therefore be followed in preparing organization plans in order that they may conform therewith. A cooperative law was enacted by the legislature of Kentucky at the 1922 session. (See Kentucky Extension Circular 115, "Cooperative Marketing," for a copy of the law.) This act provides for nonprofit, cooperative organizations, formed either with or without capital stock. Kentucky also has a law which was passed in 1918 which provides only for the incorporation of cooperative associations with capital stock.

The form of organization most suitable depends largely upon the nature of the business to be carried on and the local situation. Live stock shipping associations require practically no capital for equipment and operating purposes. Cooperative milk distributing plants on the other hand need a large amount of capital in order to supply the necessary plant and equipment. A much simpler organization plan will suffice for the former than for the latter. It is frequently easier to obtain capital by selling shares of capital stock than by means of membership fees. In capital stock organizations, part of the capital stock may be preferred stock and this may be sold to anyone. The capital stock form of organization is generally employed when considerable capital is necessary. In other instances, the non-stock form is very satisfactory. Some marketing organizations formed without capital stock have subsidiary corporations formed with capital stock which provide the facilities needed. In connection with the Burley Tobacco Growers' Cooperative Association, which is a non-stock organization, there are ware-

housing corporations formed with capital stock which provide the necessary warehouses. The preferred stock may be subject to retirement by means of deductions from the returns for products sold and common stock be issued to the members in accordance with the deductions made from the returns of each. This plan permits the employment of the non-stock form for the marketing association while relying upon the sale of capital stock in the subsidiary organization to finance warehouses or similar facilities. Another feature worthy of mention is that in the case of warehouses, it is of advantage to have the warehouse receipts issued by a separate organization in order that the marketing association may not be required to issue warehouse receipts to itself for products over which it has control. Agencies and individuals who lend money on warehouse receipts as collateral naturally do not regard with favor receipts issued by organizations or individuals to themselves.

The plan outlined above of having two organizations, a marketing association formed without capital stock and a capital stock organization to provide equipment, warehouses, plants or the like, naturally is not suitable for use except under certain conditions. It is adapted especially for the larger organizations which can attract investors who will be willing to purchase the preferred stock. It is unlikely that this plan will be employed to any extent in the case of local enterprises, except under special circumstances such as the operation of a warehouse for the storing of farm products in connection with their sale.

HOW TO ORGANIZE.

The first step in the organization of a cooperative marketing association is to study the situation for the purpose of deciding whether or not conditions are favorable. The need for an organization, the attitude of the farmers and the volume of business available, should be ascertained. Existing marketing agencies and methods should be studied. Thought should be given to the savings likely to result and, of course, any estimate of possible savings should be conservative. The essentials for success also merit careful consideration. Time should be taken

to attend to all these details. Meetings of the interested farmers are helpful in obtaining their views and crystallizing their ideas regarding the proposition.

If the consensus of opinion is in favor of forming an association, steps should be taken to formulate definite plans. Committees should be selected for different purposes, one of the most important committees being the one on organization plans. This committee should outline a definite plan of organization and should formulate articles of incorporation, by-laws and contracts. Qualified legal assistance is highly desirable in preparing these in such form that they will harmonize with law, and is also of service in advising regarding the procedure which must be followed in incorporating the organization.

The suggested organization plans given below are intended to serve as guides in the preparation of suitable plans. The requirements of different lines of business and different local conditions vary considerably and, on that account, the forms suggested must be changed to meet the needs of each individual organization.

ORGANIZATION FORMS.

The suggested organization forms given below include articles of incorporation, by-laws and contracts. Articles of incorporation must be prepared by every association which becomes incorporated. They must be in harmony with the law under which incorporation is effected and usually include such provisions as the name of the association; a complete statement of its purposes; the principal place of business; the term of existence; the number of directors, their term of office and the names and addresses of the incorporating directors, and reference to capital stock or membership fees. The by-laws contain in general the more detailed rules regarding the membership, the management of the organization and its operations. The contracts bind the members to deliver certain products to the association and set forth the essential points of the relationship of the members and the organization in the selling operations.

The forms suggested in this circular have been prepared with especial reference to the provisions of the Bingham Cooperative Marketing Act. Organizations forming under some other law must adapt their plans to suit the provisions of such law. The Bingham Act permits the incorporation thereunder of both capital stock and non-stock associations. The articles of incorporation and by-laws for these two types necessarily differ in some respects. The articles of incorporation and by-laws which follow refer to organizations formed without capital stock and changes necessary to adapt them to the needs of organizations formed with capital stock are suggested.

SUGGESTED ARTICLES OF INCORPORATION.

The points to be covered in the articles of incorporation are mentioned in section 8 of the Cooperative Marketing Act. The provisions of the law should be followed closely in order that the articles of incorporation which are prepared may be found to be in acceptable form when submitted to the Secretary of State for filing and recording.

ARTICLES OF INCORPORATION

of the

.....COOPERATIVE ASSOCIATION

We, the undersigned producers of agricultural products, a majority of whom are residents of the State of Kentucky, do hereby voluntarily associate ourselves together for the purpose of forming a non-profit, cooperative marketing association, without capital stock, under the laws of Kentucky, and more particularly under the provisions of "The Bingham Cooperative Marketing Act," Chapter I, Acts 1922, and all amendments thereof and acts supplementary thereto.

1. *Name.*

The name of this association shall be the
Cooperative Association.

2. *Purposes.**

The purposes for which this association is formed are:

(a) To engage in any activity in connection with the marketing or selling of.....and..... products of its members and with the harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping or utilization thereof, and the manufacturing or making of by-products thereof;†

(b) To act as agent for its members in the handling and marketing of theirand..... products, or to purchase and sell any.....and..... products produced and delivered to it by its members;

(c) To collect and distribute to its members information relating to the production, supply, handling and marketing ofand related products;

*The purposes outlined in the articles of incorporation should cover all the lines of activity in which the association may want to engage. The purposes, of course, must be limited to those expressly permitted by the law.

†The language of this section should be adapted to the products which the association expects to handle.

(d) To engage in any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment;

(e) To engage in the financing of any of the above mentioned activities, including the borrowing of money and the making of advances to members;

(f) To act as agent or representative of its members in any of the above mentioned activities;

(g) To acquire membership in or to purchase or otherwise acquire, and to hold, own, exercise all rights of ownership in, sell, transfer, pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing of any of the products handled by this association;

(h) To lease, purchase or otherwise acquire and to exercise all privileges of ownership over such real and personal property as may be necessary or convenient for the conduct of any of the business of the association;

(i) To apply for, take out, acquire, and own any interest in patents, trade-marks and copyrights, relating to the business of the association or the products handled by it;

(j) To have and exercise all powers, privileges and rights authorized by the laws of this State, particularly those powers enumerated in Section 6 of Chapter I, Acts of 1922, and all powers and rights incident thereto.

3. *Place of Business.*

The principal business of this association will be transacted at _____, _____ County, Kentucky.

4. *Term of Existence.*

The term for which this association is to exist is..... years from and after the date of its incorporation.*

5. *Directors.*

This association shall be managed by a Board of..... Directors who shall be elected for terms of three years, except of the first Board of Directors,.....members shall hold office until the first annual meeting of the association,..... members until the second annual meeting and.....members until the third annual meeting.

The names and addresses of the incorporating directors who shall serve until the election and qualification of their successors, are:

NAME	ADDRESS
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

A meeting of the members for the purpose of electing the successors to the incorporating directors shall be held at....., Kentucky, on the.....day of....., 19....., at..... o'clock..... M.†

*The Cooperative Marketing Act (Section 8) provides that the term of existence stipulated in the articles of incorporation shall not exceed fifty years.

†A regular election soon after incorporating is desirable more especially in instances where all the members did not have an opportunity to take part in the selection of the incorporating directors. Where the incorporating directors represent selection by the members generally, it usually will not be necessary to make provision for another election before the first annual meeting.

6. *Membership.*

This association shall not have any capital stock; but shall admit members upon payment of an entrance fee of dollars and other uniform conditions.

The voting power of the members of this association shall be equal; and each member shall have one vote only.

The property rights and interest of each member shall be equal; and each member shall have one unit of property rights only.*

7. *Membership Liability.*

The private property of the members shall not be subject to the payment of corporation debts; and no member shall be liable for the debts of the association to any amount exceeding the unpaid balance of his entrance fee.

IN WITNESS WHEREOF, we have hereunto subscribed our names this day of, 192.....

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

*The property rights of members may be unequal. If so, the articles must give the method of determining the property rights and interests of each member.

CHANGES FOR CAPITAL STOCK ORGANIZATIONS

The following changes are suggested in adapting the preceding articles of incorporation to organizations which are formed with capital stock.

The phrase "without capital stock" in the introductory paragraph of the articles should be changed to "with capital stock."

The following should be substituted in place of article 6 relating to membership.

6. *Membership; Capital Stock.*

The membership of this association shall consist of producers of farm products who are owners of one or more shares of the common capital stock of this association. Each member shall have one vote only.

The capital stock of this association shall be..... dollars divided into..... shares of common stock and..... shares of preferred stock, each having a par value of..... dollars per share. The preferred stock shall have no voting privileges, but shall be entitled to dividends of..... per cent on the par value of shares, such dividends to be cumulative. The preferred stock shall be divided into five equal classes and shall be subject to retirement at the rate of one class annually beginning....., 192.....*

The phrase "the unpaid balance of his entrance fee" in article 7 should be changed to "the unpaid balance of his subscription to its capital stock."

ACKNOWLEDGING ARTICLES OF INCORPORATION

The Cooperative Marketing Act requires that "the articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State

*Organizations which do not have preferred stock should eliminate all reference to preferred stock in this paragraph.

to take and certify acknowledgments of deeds and conveyances." The following form is suggested for use in acknowledging the articles.

STATE OF KENTUCKY

.....County }

Before me, a Notary Public within and for said county and state, on this day of, 192....., personally appeared, known to me to be one of the identical persons who executed the within and foregoing instrument; and he acknowledged to me that he had executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires....., 192.....

Witness my hand and official seal the day and year above set forth.

.....
Notary Public in and for the County of
....., State of Kentucky.

FILING ARTICLES OF INCORPORATION

The articles of incorporation of an association formed under the Cooperative Marketing Act are filed and recorded in the manner provided by the general corporation laws of the State. Section 540 of the corporation laws states that the articles of incorporation shall be "recorded in the county clerk's office of the county in which its principal office or place of business is to be located, and a copy thereof shall be filed and recorded in the office of the Secretary of State." The Cooperative Marketing Act in addition requires that a certified copy of the articles of incorporation be filed with the Dean of the College of Agriculture, University of Kentucky.

Section 32 of the Cooperative Marketing Act requires the payment of a filing fee of ten dollars for filing the articles of incorporation.* In addition, a recording fee of twenty-five cents

*Different incorporation laws require the payment of different filing fees. An organization formed under some other law than the Cooperative Marketing Act must pay the fee provided for by the particular act under which it is being incorporated.

for each one hundred words must be paid to the Secretary of State for recording the articles (Sec. 540, Kentucky Statutes). The filing and recording fees should accompany the copy of the articles of incorporation sent to the Secretary of State, the check for the filing fee being made payable to the State Treasurer and that for the recording fee, to the Secretary of State.

SUGGESTED BY-LAWS

The Cooperative Marketing Act requires an organization forming thereunder to adopt by-laws within thirty days after its incorporation. While by-laws must be adopted after incorporation in order to make them the by-laws of the corporation, farmers' associations frequently prepare and adopt tentatively by-laws before incorporating because this is a convenient method of deciding upon many of the details of organization. When this is done, the by-laws so adopted can be formally adopted as the by-laws of the association after incorporation has been effected. The by-laws of an association set forth a number of details regarding its operations, membership, meetings, directors and officers, financing and similar matters. The by-laws should be formulated with the needs of the local situation in mind. The suggested by-laws which follow are intended to serve merely as a general guide and should be changed to meet local requirements.

BY-LAWS

of the

.....COOPERATIVE ASSOCIATION

ARTICLE I. *Name and Purposes.*

Section 1. The name of this association is the.....
.....Cooperative Association and it is here-
inafter referred to as the Association.

Section 2. The purposes of this Association are those set
forth in its articles of incorporation.*

ARTICLE II. *Membership.*

Section 1. Any producer of in the
territory served by this Association, including the landlord and
tenant or lessor and lessee of land on which.....
is produced, provided the landlord or lessor receives all or part
of the rental in....., may be-
come a member of this Association by agreeing to comply with
these by-laws, paying the membership fee of.....
dollars and signing the member's contract requiring him to
market his..... thru the Association.
Upon compliance with the requirements for membership, a cer-
tificate of membership shall be issued by the association to the
applicant.

Section 2. Membership certificates shall not be transfer-
able and no member shall be permitted to withdraw from mem-
bership during any period in which he is under contract to de-
liver any products to the Association, unless he ceases to be
eligible for membership. The Association, by action of its Board
of Directors, may purchase the full interest of any member in
the property or other rights of the Association at the book value
thereof whenever in the judgment of the Board of Directors,
it is essential to the interests of the Association to do so. The
statement of the Board of Directors of the book value of such

*Organizations which do not become incorporated should include in this
section a statement of the purposes of the organization.

interest shall be conclusive. Any member whose interest is thus purchased shall cease to be a member.

Section 3. Each member shall have only one vote. Voting by proxy shall not be permitted. Members may vote on specific questions by ballots transmitted to the Secretary of the Association by mail, such ballots to be counted only in the meeting at the time at which such vote is taken.

Section 4. The property rights and interests of each member in the property of the Association shall be equal.*

ARTICLE III. *Meetings; Fiscal Year.*

Section 1. The annual meeting of the Association shall be held at _____, Kentucky, on the _____ in _____ of each year, at _____ o'clock _____ M., for the purpose of electing directors and transacting any other business which may properly come before the meeting. In case such date falls on a legal holiday, the meeting shall be held on the next business day following.

Section 2. Special meetings may be called at any time by the Board of Directors. The Board of Directors shall call such meeting at any time ten per cent of the members file a written petition requesting that a special meeting be called and stating the specific business to be brought before the Association at such meeting.†

Section 3. Notice of every regular and special meeting shall be mailed by the Secretary of the Association to each member at least ten days before the date of such meeting. Such notice shall indicate the time and place of meeting together with a statement of its purposes.

Section 4. At any meeting _____ of the members present in person or present as voting by mail shall constitute a quorum.

*If the property rights are not to be equal, this section should be changed. See section 6 of articles of incorporation.
 †The Cooperative Marketing Act requires the calling of a special meeting upon such a request, consequently this provision should not be altered.

ARTICLE IV. *Directors and Officers.*

Section 1. The corporate powers, business and property of the Association shall be exercised, conducted and controlled by a Board of Directors of..... members elected by the members from among their own number.*

Section 2. The directors shall be elected for terms of three years, except that of the first board of directors,..... directors shall hold office until the first annual meeting,..... directors until the second annual meeting and..... directors until the third annual meeting.

Section 3. Vacancies in the Board of Directors shall be filled by the remaining directors and the directors thus elected shall hold office until their successors are elected by the members.

Section 4. Immediately after each election of directors, the Board of Directors shall meet and organize by the election of a President and a Vice President from among its membership, and a Secretary-Treasurer who need not be a director or member of the Association.

Section 5. The Association shall have an Executive Committee consisting of the President and Vice President and..... other directors elected by the Board of Directors. The Executive Committee shall have such of the duties and powers of the Board of Directors as the board may delegate to it from time to time.

Section 6. The Board of Directors shall meet monthly at such time and place as it may determine. Special meetings may be called at any time by the President or a majority of the directors. Notice of all regular meetings of the Board of Directors shall be mailed by the Secretary to each director at least one week prior to the date of meeting and notice of special meetings shall be mailed at least three days prior to such meeting.

*The territory served by an organization may be divided into districts, the members in each district nominating a director from that district. This arrangement is especially desirable in the larger organizations which cover a considerable area.

Section 7. A majority of the Board of Directors shall constitute a quorum at all meetings of the board.

Section 8. Directors shall receive no compensation for their services other than a per diem ofdollars for the time actually in attendance at meetings of the board and traveling thereto and therefrom, and necessary traveling expenses actually incurred by them in attending meetings of the board. The members of the Executive Committee shall be paid the same rate of per diem and the necessary traveling expenses in attending meetings of the Executive Committee.*

ARTICLE V. *Duties and Powers of Directors.*

Section 1. The Board of Directors shall have general supervision and control of the business and the affairs of the Association and shall make all necessary rules and regulations not inconsistent with law or these by-laws, for the management of the business and the guidance of the officers, employees, and agents of the Association. They shall have installed an accounting system which shall be adequate to the requirements of the business, and it shall be their duty to require proper records to be kept of all business transactions.

Section 2. The Board of Directors shall have power to employ and dismiss a business manager and fix his compensation.

Section 3. The Board of Directors shall require the manager and all officers, employees and agents, charged by the Association with responsibility for the custody of any of its funds or property to give bond for the same. The cost of obtaining such bonds shall be paid by the Association.

Section 4. The Board of Directors shall keep a complete record of all its acts and of the proceedings of its meetings and shall present a full statement at the annual meetings of the Association, showing in detail the condition of the affairs of the Association.

*Some associations may prefer to have the Board of Directors decide upon the compensation of the Executive Committee. It is not customary for the Board of Directors to determine the compensation of the directors.

Section 5. The Board of Directors shall audit all accounts of the Association at least every three months and shall at least once each year previous to the date of the annual meeting of the members, cause the books to be audited by a qualified, disinterested auditor and his report shall be presented to the members at the annual meeting.

Section 6. The Board of Directors shall call special meetings of the members when they deem it necessary and they must call such meeting whenever requested to do so by one-tenth or more of the members.

ARTICLE VI. *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, with the Secretary-Treasurer, all checks, notes, deeds and other instruments on behalf of the Association.

(c) Call special meetings of the Association and of the Board of Directors.

(d) Perform all acts and duties usually required of an executive and presiding officer.

Section 2. In the absence or disability of the President, the Vice President shall preside and perform the duties of the President.

Section 3. The Secretary-Treasurer shall:

(a) Keep a complete record of all meetings of the Association and of the Board of Directors.

(b) Sign as Secretary-Treasurer, with the President, all checks, notes, deeds, and other instruments on behalf of the Association.

(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 the Association.

(e) Keep a complete record of all business of the Association and make a full report of all matters and business pertaining to this 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.

ARTICLE VII. *Duties of the Manager.*

Section 1. Under the direction of the Board of Directors, the manager shall have general charge of the ordinary and usual business operations of the Association. He shall have control over and may employ and dismiss all employees and agents. He shall keep true and complete records of the business of the Association and shall make full reports to the Board of Directors monthly and an annual report to be presented at the annual meeting of the members.

ARTICLE VIII. *Marketing Contract.*

Section 1. Each member of the Association must sign the standard marketing contract of the Association and market his products in accordance with its provisions.

ARTICLE IX. *Expenses of Operation and Maintenance.*

Section 1. The expenses of operating and maintaining this Association, including all overhead expenses, expenses of handling, storing, advertising and marketing of the products of the members, the creation of reserves and the retirement of preferred stock in any subsidiary corporation which may be organized by the Association for handling the members' products, shall be deducted from the returns received for products before full payment is made to the members. The amount of such deductions shall be determined by the Board of Directors.

Section 2. In the event that the deductions provided for in Section 1 in any year produce a surplus above what is required for the purposes set forth, such surplus shall be apportioned among the members in accordance with the products delivered by each during that year.

ARTICLE X. *Seal.*

Section 1. The seal of this Association shall contain these words and figures:

“..... Cooperative Association, incorporated, 19.....”
in circular form.

ARTICLE XI. *Amendments.*

Section 1. These by-laws may be altered or amended at any annual or other meeting of the Association by a majority vote of those present in person or voting by mail, providing notice of the proposed amendment is included in the call for the meeting.

CHANGES SUGGESTED TO ADAPT PRECEDING BY-LAWS TO ORGANIZATIONS FORMED WITH CAPITAL STOCK.

In using the preceding by-laws for organizations formed with capital stock, the wording of Section 1 of Article II should be changed so that in place of reference to the membership fee mention is made of capital stock as follows, “may become a member of this Association by agreeing to comply with these by-laws, subscribing and paying for one or more shares of its common capital stock at.....dollars per share and signing the member’s contract requiring him to market his.....thru the Association. Upon compliance with the requirements for membership and the payment in full for the capital stock for which the applicant has subscribed, a capital stock certificate shall be issued by the Association to him. No member shall own more than one-twentieth of the common capital stock of the Association.”

Section 2 of Article II should also be changed and the following is suggested.

Section 2. Transfers of capital stock of this Association shall be made only upon the books of the Association, and the old certificate must be surrendered for cancellation before a new certificate is issued. The common capital stock of the Association shall not be transferred to anyone who is not engaged in

the production of agricultural products handled by the Association. This restriction on the transfer of capital stock shall be printed upon every certificate of common stock of the Association.*

The Association, by action of its Board of Directors, shall have full right to purchase the capital stock of any member at the book value thereof whenever in its judgment it is essential to the interests of the Association to do so. The statement of the Board of Directors of the book value of such stock shall be conclusive. Any member whose common stock is thus purchased shall cease to be a member. This provision shall also be printed upon each stock certificate.

Section 4 of Article II should be omitted in the by-laws of capital stock organizations as the property interests of the members will be in proportion to their stock holdings.

The amount of capital stock of the Association and the par value of the shares are stipulated in the articles of incorporation. This information also may be included in the by-laws in order to bring it to the attention of the members.

MEMBERSHIP CONTRACTS

Cooperative marketing organizations are awakening to the need of having definite contracts with their members whereby the latter are bound to market certain products through their organization. A cooperative marketing organization is directly dependent upon its members for a volume of business and contracts assure the organization that it will have a volume of business and will continue in business.

Contracts are of varying forms. The agreements used in organizing the tobacco growers in Kentucky, consist of two parts, one setting forth the features of the organization to be formed and the other covering the marketing agreement. Where such agreements are used the organization is not actually formed until a certain sign-up has been obtained, so that during the sign-up there are no articles of incorporation or by-laws to which one may turn for information regarding the details

*This is required by Section 14 of the Cooperative Marketing Act.

of the organization plans. Associations which become incorporated at the outset can refer their members to the articles of incorporation and by-laws for the details of the organization plan and the agreement which they use consists only of a marketing contract.

Marketing contracts may be roughly classified into two groups. One is represented by a contract of purchase and sale where the title to the product passes from the producer to the association upon delivery to it by the producer. The other is an agency contract by which the producer appoints the association his sales agent to market products for him. There is no great difference between these two types of contracts in the way results are obtained. Under the non-profit plan of operation, an organization which takes title to the products does not establish a certain purchase price in advance. The method of arriving at the purchase price is agreed upon in the contract and, in brief, this is that the price to be paid the producer is the resale price of the products less deductions for expenses of operation and reserves. An organization which serves as the agent of its members in marketing their products distributes the returns to the members less similar deductions. Contracts of purchase and sale are regarded by some with greater favor for organizations which may want to store products and borrow money upon warehouse receipts, because of a belief that the Association can negotiate loans more readily where it has title to the products than where it serves as an agent. Some highly successful organizations have agency contracts and others have contracts of purchase and sale showing that both types are practicable.

Suggestions for contracts of both types are given below, the first being an agency contract and the second being a contract of purchase and sale.

SUGGESTED FORM OF AGENCY CONTRACT

..... COOPERATIVE ASSOCIATION

MARKETING AGREEMENT

This agreement, made and entered into at.....
 on this..... day of.....,
 A. D., 19....., between the.....
 Cooperative Association formed under the laws of Kentucky,
 having its principal place of business at.....,
 Kentucky, hereinafter referred to as the Association and.....
, a grower of.....
 of....., county of.....,
 Kentucky, hereinafter referred to as the Grower, witnesseth:

That for and in consideration of the outlays incurred and to be incurred by the Association in providing means and facilities for handling, grading, processing, storing, advertising, shipping and marketing....., including the expense to which it has been put for organizing and finding and establishing markets, and in further consideration of the mutual obligations of the respective parties hereto, it is hereby agreed as follows:

1. That the Grower appoints the Association his agent for the purpose of handling, receiving, weighing, grading, processing, advertising, distributing and marketing all the..... produced by him or for him for market in the territory served by the Association, and that he will deliver to the Association all said..... during the years 19....., 19....., 19....., 19....., and 19....., and continuously every year thereafter except that on January 1, 19....., or of any year thereafter, either party may cancel this contract by giving notice of such cancellation in writing to the other party at least ten days prior to such date.

2. That the Grower may sell his..... whenever and wherever he pleases until such date as called upon by the Association upon affirmative vote of at least two-thirds of all the directors to make deliveries to the Association.

Notice of exercise of option and of date of delivery shall be mailed the Grower at least ten days in advance of the date after which deliveries shall commence.*

3. That the producing, handling, delivery, weighing, grading, processing, distributing and marketing of the..... and products shall be done in accordance with the by-laws and rules of the Association now in existence or hereafter in effect.

4. That the..... delivered by the Grower shall be sold together with..... delivered by other producers under similar contracts, at the best prices obtainable in the judgment of the Association and that the Association may market it as..... or in the form of manufactured or other..... products, in its discretion.

5. That the Association as agent for the Grower may borrow money upon products delivered to it by the Grower and by other growers under similar contracts.

6. That the returns received for all..... and products sold by the Association shall be averaged by grades for such periods as shall be decided upon by the Board of Directors and payment on the basis of such average price shall be made to the Grower and other growers named in contracts similar to this contract, according to the grades and quantities of..... delivered by the respective growers during such period, after deducting therefrom the charges for its services, as fixed by the Board of Directors, which charges shall be sufficient to pay all expenses of rendering such services including the overhead expenses of the Association, and reserves for depreciation, taxes, advertising, the retirement of preferred stock or bonds, and other commercial

*This section is suitable mainly in case of products such as live stock, dairy products, eggs and poultry, and not for seasonal crops such as tobacco, wool, fruit, etc.

purposes in the discretion of the Association. Such payments shall be made as soon as possible after the end of each period.*

7. The Grower is bound by the terms of this contract as long as he is a grower or possesses any legal interest in or products but is not obligated to sell any specified amount of through the Association but must sell all that he markets, through the Association. The Grower may stop producing at any time.

8. (a) That if the Grower at any time fails or refuses to deliver to the Association the as required by this contract, he shall pay to the Association as liquidated damages the sum of for each not so delivered.

(b) That in the event of a breach or threatened breach by the Grower of any provision regarding delivery of , the Association shall be entitled to an injunction to prevent breach or further breach thereof and to a decree for specific performance hereof.

(c) That if the Association brings any action whatsoever by reason of a breach or threatened breach hereof, the Grower will pay to the Association all costs of court, costs for bond and otherwise, expenses of travel and all expenses arising out of or caused by the litigation and any reasonable attorney's fee expended or incurred by it in such proceedings; and all such costs and expenses shall be included in the judgment and shall be entitled to the benefit of any lien securing any judgment hereunder.

9. That the Association shall not commence to handle and market the Grower's until growers having a total of have signed similar agreements, and that this agreement shall be null and void if the signatures of growers having the said

*The length of time involved depends upon the product and conditions. Seasonal or annual pools, monthly pools, weekly pools or other periods may be used. This section should be changed accordingly.

number of.....have not been obtained by, 19..... The written statement of the Board of Directors of the Association, signed by its President shall be conclusive in all matters relating to signatures and production.

10. That the Grower unless he already is a member of the Association hereby makes application for membership and will comply with the requirements for membership.*

In witness whereof, the parties have hereunto subscribed their names on this.....day of....., 19.....

.....Cooperative Association.

By.....

President.

.....

Grower.

*An association organized under the Cooperative Marketing Act can not market the products of non-members.

SUGGESTED CONTRACT OF PURCHASE AND SALE

..... COOPERATIVE ASSOCIATION

MARKETING AGREEMENT

This agreement, made and entered into at.....
 on this..... day of.....
 A. D., 19....., between the
 Cooperative Association formed under the laws of Kentucky,
 having its principal place of business at.....,
 Kentucky, hereinafter referred to as the Association and
, a grower
 of of
 County of, Kentucky, hereinafter
 referred to as the Grower, witnesseth:

That for and in consideration of the outlays incurred and
 to be incurred by the Association in providing means and
 facilities for handling, grading, processing, storing, advertising,
 shipping and marketing.....,
 including the expense to which it has been put for organizing
 and finding and establishing markets, and in further considera-
 tion of the mutual obligations of the respective parties hereto,
 it is hereby agreed as follows:

1. That the Association will buy from the Grower at a
 price to be determined in the manner hereinafter set forth and
 that the Grower will sell and deliver to the Association all the
 produced by or for him for
 market in the territory served by the Association, and that he
 will deliver to the Association all said
 during the years 19....., 19....., 19....., 19....., and 19.....,
 and continuously every year thereafter except that on January
 1, 19....., or of any year thereafter, either party may cancel
 this contract by giving notice of such cancellation in writing to
 the other party at least ten days prior to such date.

2. That the Grower may sell his.....
 whenever and wherever he pleases until such date as called

upon by the Association upon affirmative vote of at least two-thirds of all the directors to make deliveries to the Association. Notice of exercise of option and of date of delivery shall be mailed the Grower at least ten days in advance of the date after which deliveries shall commence.*

3. That the producing, handling, delivery, weighing, grading, processing, distributing and marketing of the..... andproducts shall be done in accordance with the by-laws and rules of the Association now in existence or hereafter in effect.

4. That the..... delivered by the Grower shall be sold together with..... delivered by other producers under similar contracts, at the best prices obtainable in the judgment of the Association and that the Association may market it as..... or in the form of manufactured or other..... products, in its discretion.

5. That the..... delivered by the Grower hereunder shall become the absolute property of the Association and that the Association may borrow money thereon and exercise any and every right of ownership thereof.

6. That the Association shall resell such..... together with..... delivered by other growers under similar contracts, at the best prices obtainable by it under market conditions and pay over the net amount received therefrom as payment in full to the Grower and growers named in contracts similar hereto, according to the..... delivered by each of them during such periods as the Board of Directors may determine, after deducting therefrom within the discretion of the Association, the costs of maintaining the Association and of handling, storing, processing, advertising, shipping and marketing of....., and of creating funds for credits and other gen-

*This section is suitable mainly in case of products such as live stock, dairy products, eggs and poultry, and not for seasonal crops such as tobacco, wool, fruit, etc.

eral commercial purposes. The annual surplus from such deductions must be prorated among the growers delivering..... in that year on the basis of deliveries.

7. The Grower is bound by the terms of this contract as long as he is agrower or possesses any legal interest in.....or.....products but is not obligated to sell any specified amount ofto the Association but must sell all that he markets, to the Association. The Grower may stop producing.....at any time.

8. (a) That if the Grower at any time fails or refuses to deliver to the Association the.....as required by this contract, he shall pay to the Association as liquidated damages the sum of.....for each.....not so delivered.

(b) That in the event of a breach or threatened breach by the Grower of any provision regarding delivery of....., the Association shall be entitled to an injunction to prevent breach or further breach thereof and to a decree for specific performance hereof.

(c) That if the Association brings any action whatsoever by reason of a breach or threatened breach hereof, the Grower will pay to the Association all costs of court, costs for bond and otherwise, expenses of travel and all expenses arising out of or caused by the litigation and any reasonable attorney's fee expended or incurred by it in such proceedings; and all such costs and expenses shall be included in the judgment and shall be entitled to the benefit of any lien securing any judgment hereunder.

9. That the Association shall not commence to handle and market the Grower's.....until growers having a total of.....have signed similar agreements, and that this agreement shall be null and void if the signatures of growers having the said

number of.....have not been obtained by....., 19..... The written statement of the Board of Directors of the Association, signed by its President shall be conclusive in all matters relating to signatures and production.

10. That the Grower unless he already is a member of the Association hereby makes application for membership and will comply with the requirements for membership.*

In witness whereof, the parties have hereunto subscribed their names on this..... day of....., 19.....

.....Cooperative Association.

By

President.

.....

Grower.

PROVISIONS IN CONTRACT FOR SUBSIDIARY CORPORATIONS.

The plan sometimes employed of having a warehousing or other corporation formed alongside the marketing organization has already been mentioned.† Organizations which may have occasion to establish such corporations probably will find it advisable to include reference to them in the marketing contracts. The following section is suggested for that purpose and should be incorporated as part of the marketing agreement by those organizations which will follow this plan. This is similar to the provisions embodied in the agreement of the Burley Tobacco Growers' Cooperative Association.

(a) That the Association, at any time it deems necessary for the proper handling and marketing of....., may cause a warehousing or other corporation to be organized for the purpose of leasing, purchasing, or constructing and operating warehouses or other places to

*An association organized under the Cooperative Marketing Act can not market the products of non-members.
†See page 6.

handle; treat, process and warehouse any or all of the.....
delivered to it by members of the Associa-
 tion.

(b) That such corporation shall have appropriate name, and shall have common capital stock and preferred capital stock in amounts estimated as sufficient for its purposes by the Board of Directors of the Association. The Association shall send a written notice to every member in the district to be served, of the intention to organize such a corporation, specifying the amount of capital stock involved; nature of plants; location of plants and specific purposes. The members shall have two weeks within which to signify their dissent or disapproval of such plant. If within two weeks of the mailing of such notices by the Association, the majority fail to file notices of such disapproval or dissent, the Association may proceed with its program and may organize the corporation as indicated.

(c) That the authorized common stock shall exceed in amount the authorized preferred stock. The common stock shall be sold only to members of the Association at par. The common stock shall have all the voting power of the Corporation.

(d) That the preferred stock shall be divided into five equal classes, all bearingper cent cumulative dividends and having similar preferences, subject to retirement with a bonus of 2 per cent at a rate of one class or one-fifth thereof annually, beginning with the year after the organization of the corporation.

(e) That the Association shall make a cross-contract with the Corporation providing substantially as follows: That the Corporation shall handle, clean, condition, test, store, ship and deliver, all as required and directed by the Association, thedelivered to it by and at the order of the Association. Such service shall be on a non-profit basis; and the Corporation shall receive therefor only the actual costs of such operations and amounts, apportioned over the operation of any one season, sufficient to pay a dividend of.....

per cent on the outstanding common stock and the dividend on the outstanding preferred stock, and to retire each of the five calendar years, beginning with the year following its organization, one-fifth of the preferred stock, or one class thereof; and sufficient amounts for taxes, insurance, depreciation, betterment, and commercial and secondary charges, all as the Board of Directors of the Association may instruct and limit the corporation, and not otherwise.

(f) That the Association will retire each class of preferred stock by deductions from the marketing proceeds of the members. As the preferred stock is retired the Association shall calculate the value of the contribution from each grower'stowards such retirement and the Corporation shall credit and issue from time to time to each such grower, common stock in an equivalent amount, at the book value thereof, as conclusively established by the Board of Directors of the Corporation, as soon as the aggregate deductions equal the book value of one or more shares.

ADOPTING PLANS

The articles of incorporation must adhere closely to the requirements of law, consequently the members of an organization are limited in the modifications they can make in them. The articles usually are prepared by an attorney or other qualified person and are gone over by the incorporators before incorporation. The by-laws and membership contract ordinarily should be discussed carefully with the members or prospective members before they are placed in final form. The proposed by-laws and contracts may be taken up section by section and be carefully discussed and changed wherever necessary at a meeting of those interested. This method gives the members a better understanding of the contents and purposes of these forms than can be otherwise obtained. It is also helpful in adapting the plans to local needs. This applies especially

to local organizations as in the case of larger organizations which cover considerable territory it is impossible to obtain the attendance of a very large proportion of the prospective membership at a single meeting and in such movements it is customary for some of the leaders to formulate definite plans for use in forming the organization. The approval or rejection of the plans adopted by these leaders is left to the prospective members in the form of a decision as to whether or not they will join the organization.

U

P
on b
with
of th