



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*New York*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: New York

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## **N.Y. Coop. Corp. §§ 1 to 134**

### **Section 112 – Incorporation of Agricultural Cooperative Corporation**

Five or more producers of agricultural products may form a cooperative agricultural corporation with or without capital stock, under this article. If the principal activities of such a corporation are connected with the marketing, processing, manufacture, sale or other dispositions of agricultural products, agricultural waste product, or agricultural compost including the capture of methane and other gases for the generation and use or sale of energy, as defined in section 1-103 of the energy law, it may be termed a cooperative marketing corporation and incorporated as such. If its principal activities relate to the purchase of supplies for producers of agricultural products, it may be termed a cooperative purchasing association and incorporated as such, but in either case such a corporation may engage in both such lines of activity. Nothing in this section or article shall be deemed to prohibit the incorporation of a cooperative corporation under article two of this chapter or affect the existing powers of any existing cooperative corporation not within section one hundred eleven of this article.

### **Section 13 – Purposes for Which General Cooperative Corporation May be Formed**

A cooperative corporation may be created under this chapter primarily for mutual help, not conducted for profit, for the purposes of assisting its members, including other cooperatives with which it is affiliated, by performing services connected with the purchase, financing, production, manufacture, warehousing, cultivating, harvesting, preservation, drying, processing, cleansing, canning, blending, packing, grading, storing, handling, utilization, shipping, marketing, merchandising, selling, financing or otherwise disposing of the agricultural and food products of its members or of any by-products thereof, including livestock waste or other organic agricultural wastes and the capture of methane and other gases for the generation and use or sale of energy, as defined in



section 1-103 of the energy law, or connected with the acquisition for its members of labor, supplies and articles of common use, including livestock, equipment, machinery, food products, family or other household and personal supplies, to be used or consumed by the members, their families or guests, or for carrying on any other household operation or educational work in home economics and cooperation by or for its members, or for buying, selling or leasing homes or farms for its members, or building or conducting housing or eating places cooperatively, or for furnishing medical expense indemnity, dental expense indemnity, or hospital services to persons who become subscribers under contracts with such corporations in the manner provided in article forty-three of the insurance law, or for the purpose of organizing agency or credit corporations as provided in article seven of this chapter, but a corporation so organized as a credit corporation shall not have power to engage in any other activities. A certificate of incorporation, which includes the purpose of carrying on educational work, shall have attached thereto the consent of the commissioner of education. A worker cooperative may be formed for any lawful business purpose and may be conducted for profit.

### Section 14 – General Powers

In addition to the powers and rights set out in the business corporation law or, in the case of a membership cooperative, the not-for-profit corporation law and subject thereto and subject to the provisions of this chapter, a cooperative corporation shall have the following additional specific powers to be exercised for the furtherance of its lawful purposes and business:

- (a) To define or limit its activities as set forth in its certificate of incorporation or in its by-laws.
- (b) To handle the products of non-members, except that, in the case of a producers' cooperative corporation, such non-member products handled in any year must not exceed the total of similar products handled for its own members.
- (c) To make advance payments or loans to members.
- (d) To act as the agent or representative of any member, including other cooperatives with which it is affiliated in any of the activities of the member or other cooperative.
- (e) To acquire, own, sell, transfer or pledge shares of capital stock or bonds or other securities of any corporation or association engaged in any directly related activity or in the warehousing, handling or marketing of any of the products handled by the corporation.
- (f) To establish reserves, and to invest the funds thereof in bonds or in such other property as may be provided in the by-laws.
- (g) To establish, secure, own and develop patents, trademarks and copyrights.
- (h) To set forth in its certificate of incorporation, by-laws or member contracts the number, qualifications, classifications, obligations and relative rights of its members; and general rules as to the property and funds of the corporation, the property rights, voting rights and interests of members and of its several classes of members, the admission of new members, the resignation or removal of members, the transfer, suspension, termination, forfeiture, retirement and purchase of membership and membership certificates (including shares of



stocks), the methods thereof, the distribution to members, the making of contracts with its members and with others, the holding of meetings and elections, the establishment of voting districts, and the election of delegates to represent the members in such districts or to represent affiliated corporations or associations.

(i) To adopt and amend by-laws, consistent with law and the certificate of incorporation, including emergency by-laws made pursuant to subdivision seventeen of section twelve of the state defense emergency act, relative to the foregoing subjects, the conduct and management of the affairs of the corporation, the calling and conduct of meetings, the amount of stock or the number or proportion of members or delegates which must be represented at meetings of the shareholders, members or delegates to constitute a quorum, the manner of voting, the election, appointment, removal, powers, duties, terms and compensation of its officers, directors and committees, and the fixing of procedures and liabilities in case of violations of the by-laws or of the obligations of members, officers or directors.

(j) To become a member of any other cooperative corporation with such rights, powers and representations as may be prescribed in the certificate of incorporation or the by-laws of the latter corporation.

(k) To act as agent for a non-member in the performance of such services as are permitted under this chapter for its members.

(l) To enter into all proper contracts and agreements with any other cooperative corporation for the cooperative and more economical carrying on of its business or any portion thereof, or for the employment of common facilities or agencies.

(m) To act as an agency for, or subsidiary of, any other cooperative corporation or corporations.

(n) To act as a holding corporation for the properties of any other cooperative corporation or corporations.

(o) To borrow money and contract debts, when necessary for the exercise of its corporate rights and purposes; to issue and dispose of its obligations for any amount so borrowed; and to pledge its property and franchises to secure the payment of its debts.

(p) To limit the amount of indebtedness which may be incurred by it or on its behalf.

(q) To possess and exercise all powers, rights and privileges, including the acquisition of real property, necessary, suitable or incidental to the purposes or activities for which the corporation is organized or in which it is engaged.

## Section 11 – Certificate of Incorporation

Five or more persons may form a corporation, under this chapter, by making, acknowledging and filing a certificate of incorporation which shall state:

1. Its name. The name shall include the word "Cooperative."
2. Its purposes, as permitted by this chapter.
3. Its duration.
4. The city, village or town and the county in which its office is to be located.
5. The names and post office addresses of its incorporators.



6. The number of its directors, or that the number of directors shall be within a stated minimum and maximum as the by-laws may from time to time provide. In either case, the number shall be not less than five.

7. The names and post office addresses of the directors until the first annual meeting.

8. Whether organized with or without capital stock. If organized with stock, the total amount thereof, the total number, if any, of the shares without par value, and the total number and par value of any shares having a par value. If the shares are to be classified, the number of shares to be included in each class and all of the designations, preferences, privileges, and voting rights or restrictions and qualifications of the shares of each class.

9. That all of the subscribers are of full age; that at least two-thirds of them are citizens of the United States; that at least one of them is a resident of the state of New York; and that of the persons named as directors at least one is a citizen of the United States and a resident of the state of New York.

10. A designation of the secretary of state as agent of the corporation upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.

11. If the corporation is to have a registered agent, his name and address within this state and a statement that the registered agent is to be the agent of the corporation upon whom process against it may be served.

### Section 14(i) – By-laws

To adopt and amend by-laws, consistent with law and the certificate of incorporation, including emergency by-laws made pursuant to subdivision seventeen of section twelve of the state defense emergency act, relative to the foregoing subjects, the conduct and management of the affairs of the corporation, the calling and conduct of meetings, the amount of stock or the number or proportion of members or delegates which must be represented at meetings of the shareholders, members or delegates to constitute a quorum, the manner of voting, the election, appointment, removal, powers, duties, terms and compensation of its officers, directors and committees, and the fixing of procedures and liabilities in case of violations of the by-laws or of the obligations of members, officers or directors.

### Section 60 – Directors; Terms; Elections; Duties

Except as otherwise provided in this chapter, the board of directors shall be divided, as nearly equally as practicable, into three classes. At the first annual meeting, the members shall elect from among themselves a director or directors of the first class for a term of one year; of the second class for a term of two years; and of the third class for a term of three years. At the expiration of the respective terms, successors shall be elected for terms of three years. Successor directors of corporations to which this chapter applies, which were formed under the stock corporation law prior to January first, nineteen hundred fifty-four, need not be members.



## Section 64 – Officers

The officers of every corporation shall include a president, one or more vice-presidents, secretary and treasurer who shall be elected annually by the board of directors. The president and a first vice-president shall be members of the corporation or of a member corporation, and shall be elected from among the directors. Other officers need not be directors or members of the corporation. The offices of secretary and treasurer may be combined.

## Section 111 – Definitions (Agricultural Cooperative Corporation definition of “Member”)

For the purposes of this article: (a) the term "agricultural cooperative" means a cooperative, either stock or non-stock, operated for the mutual benefit of the members in which (1) no member is allowed more than one vote because of the amount of stock or membership capital he or she may own therein, and (2) the cooperative does not pay dividends on stock or membership capital in excess of twelve per centum per annum, and (3) the cooperative does not deal in farm products, agricultural waste products or agricultural compost, farm supplies, farm business services and the capture of methane and other gases for the generation and use or sale of energy, as defined in section 1-103 of the energy law with or for non-members in an amount greater in value than the total amount of such business transacted by it with or for members.

Only persons engaged in the production of agricultural products, or cooperative corporations of such producers organized under the laws of this or any other state, shall be eligible for membership in any agricultural marketing or purchasing corporation formed or operated under the provisions of this article. The terms and conditions of membership shall be prescribed in the by-laws. The board of directors shall be chosen at the time and place and for terms fixed by the by-laws, but at least one-fourth of the directors must be elected annually.

The by-laws may provide for their amendment by the board of directors; but any amendment adopted by the board which affects the preferential rights or obligations of the members or stockholders shall be reported to the next annual meeting of the corporation, and if not affirmatively approved thereat shall cease to be in effect. Such by-laws reported to the annual meeting may be adopted, repealed or amended on the affirmative vote of two-thirds of the members, stockholders or delegates voting thereon at a meeting held after due written notice setting forth the proposed action and the purpose of the meeting.

(b) The term "agricultural products" shall mean horticultural, viticultural, dairy, livestock, poultry, bee and any other farm products.

(c) The terms "feed", "food", and "food products" mean any substance, capable of human, animal or poultry consumption, whether simple, mixed or compound, and all substances or ingredients added to food for such purpose.





(d) The term "agricultural waste products" means livestock manure and crop residues.

(e) The term "agricultural compost" means organic waste derived principally from farm operations and which has been subjected to aerobic, thermophilic decomposition to produce a stable, humus-like material.

### Section 40 – Certificate of Membership

Every corporation shall issue to each member, upon full payment therefor, a certificate of membership (whether evidenced by stock or otherwise) which shall not be transferable otherwise than as may be prescribed in this chapter, the certificate of incorporation and by-laws. The corporation may accept as full or partial payment a member's promissory note, but shall hold the certificate as security for payment, without, however, affecting the member's right to vote unless such note is past due.

### Section 77 – Annual License Fee

1. Each cooperative corporation organized, with or without capital stock, for the purpose of cooperative marketing of agricultural products or for the purpose of making loans to its members producing agricultural products or for the purpose of purchasing food products for sale to its members, such a purchasing cooperative corporation having gross receipts from such sales of less than five hundred thousand dollars in a calendar year, shall pay to the commissioner of taxation and finance an annual fee of ten dollars, in lieu of all franchise or license or corporation taxes.

2. Each cooperative corporation organized without capital stock, with federal internal revenue code section 501(c)12 status, for the purpose of producing and/or distributing district heating and/or cooling service solely for the use of its members where: (a) the heating or cooling facility of such cooperative corporation is located in a city with a population of more than two hundred thousand and less than three hundred thousand and (b) either (i) at least thirty-five percent of such heating and/or cooling service as measured by relative thermal usage is distributed to and used by members which qualify as organizations described in paragraph one, two or four of subdivision (a) of section eleven hundred sixteen of the tax law, or which qualify as cooperative corporations organized without capital stock with federal internal revenue code section 501(c)12 status, or (ii) is a member of a cooperative corporation organized without capital stock which satisfies the requirements of clause (a) and item (i) of clause (b) of this subdivision shall pay to the commissioner of taxation and finance an annual fee of ten dollars, in lieu of all franchise, license or corporation taxes, or the tax imposed under section one hundred eighty-six-a of the tax law.

3. Such annual fee shall be paid for each calendar year on the fifteenth day of March next succeeding the close of such calendar year but shall not be payable after January first, two thousand twenty; provided, however, that cooperative corporations described in subdivisions one or two of this section shall continue to not be subject to the franchise, license, and corporation taxes referenced in such subdivisions or, in the case of cooperative cooperations described in



subdivision two of this section, the tax imposed under section one-hundred eighty-six-a of the tax law.

