

Syracuse

REAL FOOD

Co-op

*Board of Directors
Recommended Bylaw Revisions*

-TOOL KIT-

OWNER FORUM

JUNE 25, 2009

6:00pm – 8:30pm

Syracuse Real Food Cooperative
618 Kensington Road, Syracuse, NY 13210
(315) 472-1385

Owner Forum
Tool Kit

Table of Contents

Board of Directors & Bylaws: A brief explanation	2
Recommended Bylaws Revisions Summary	3
Draft Revised Bylaws	4
Bylaws of the Syracuse Real Food Cooperative (Revised Fall 2002)	12
Patronage Dividends, A Primer	23



Board of Directors & Bylaws: *A Brief Explanation*

SRFC is a cooperative organization, organized under the New York Cooperative Corporations Law. That law dictates the structure of the organization, and requires us to have a *Board of Directors*, and *bylaws*.

Board of Directors

What is the Board of Directors (BOD)?

The BOD is a group of 9 elected individuals who represent the owners of SRFC.

How can I be sure that the BOD is representing my interests?

Ah-ha! So glad you asked. As a co-op owner, we need your input and your participation. The Board is working to bring information to you about current trends affecting the co-op, and wants you to be part of the conversation. There are lots of ways to get involved. You can attend an annual owner meeting, come to a board meeting, or e-mail the board of directors with your input (board@syracuserealfood.coop); or you come to our special Owner Forum, June 25th; or you come to our special **Owner Forum, June 25th**.

What's the forum about?

The forum is a chance for the cooperative owners to be heard about the proposed bylaw revisions, and other matters concerning your co-op. The BOD will be there to listen to your input and answer your questions. It's an opportunity for the BOD to hear about your expectations for the future of your co-op!

***Owner Forum
June 25th, 2009;
6:00 – 8:30***

*SRFC will provide light snacks
and refreshments*

Bylaws

What are bylaws?

Bylaws set forth basic legal requirements for the organization. The bylaws answer questions like:

How does SRFC give notice of meetings?

How are board members elected?

What is the quorum for decision making?

How are bylaws formed or changed?

The bylaws are created by the owners and can be revised by the owners. NY Co-op Corporations Law allows the board to make revisions to the bylaws on its own, but these revisions must be approved by the owners in a vote.

Why are we talking about this now?

SRFC's current bylaws have been in place since 2002, and are pretty close the original bylaws created at the co-ops' inception in 1972. It's time to make some serious changes that we think will benefit the cooperative community.

What kind of changes?

The BOD has proposed broad, **substantive changes** as well as specific, **style and form changes**. Please see page ___ of this booklet for specific information examples of proposed revisions. We've also included the current bylaws, as well as a draft of the revised bylaws. Please look through these documents and bring your input to the **Owner Forum** being held at the Co-op on June 25th, 2009.



Recommended Bylaw Revisions Summary

The Syracuse Real Food Cooperative's current bylaws were put into place in 2002. Those bylaws are similar to the original bylaws created in 1972, when the Co-op was founded. Over the past thirty years, a lot has changed with our cooperative. Revised bylaws should reflect those changes and set boundaries for future governance. The Board of Directors has been working on proposed bylaw revisions which will bring relevancy to Co-op's current condition, and benefit our owners and the cooperative community at large.

Some of the recommendations the BOD has proposed are as follows:

- Restructure the capital system so that we can bring more funds into the cooperative to allow us to expand and grow.
See Article VII, VIII, IX of Draft Revised Bylaws; December 7, 2008
- Issue capital stock to evidence capital contributions
See Article VIII of Draft Revised Bylaws; December 7, 2008
- Declare and distribute patronage dividends in accordance with section 1835 of the IRS Code.
See Article VII of Draft Revised Bylaws; December 7, 2008. See also page 23 of this pamphlet for information about patronage dividends.
- Allow any kind of entity to be an owner, not just individuals
See Article II, A of Draft Revised Bylaws; December 7, 2008
- Set quorum at 5% for decisions by owners
See Article II, E of Draft Revised Bylaws; December 7, 2008
- Allow voting by mail
See Article II, D of Draft Revised Bylaws; December 7, 2008
- Add office of Vice President to Board of Directors
See Article VI, A of Draft Revised Bylaws; December 7, 2008
- Change the fiscal year
See Article IX, A of Draft Revised Bylaws; December 7, 2008
- Require one (1) annual meeting, instead of two (2)
See Article III, A of Draft Revised Bylaws; December 7, 2008
- Require an annual financial report to be circulated at the annual meeting
See Article III, A, ii. of Draft Revised Bylaws; December 7, 2008



Syracuse Real Food Cooperative
Draft Revised Bylaws
December 7, 2008

I. NAME

This Cooperative shall be known as the Syracuse Real Food Cooperative, Inc., incorporated as a not-for-profit cooperative corporation under Article 2 of the Cooperative Corporation Law of the State of New York. The principal office of the corporation shall be in the City of Syracuse, County of Onondaga, and State of New York.

II. OWNERSHIP

A. Eligibility and Acceptance

- i. Any person, household, firm, cooperative, non-profit corporation or corporation may, on approval of his, her or its application and payment of any required fees and purchase of any required stock, be accepted into ownership on terms established by the Board of Directors.
- ii. This Cooperative shall not discriminate on social or political grounds, on the basis of race, creed, age, sex, handicap, sexual preference or marital status.
- iii. Each owner of the Cooperative shall purchase or subscribe to hold one share of common stock at a price that is in accordance with the current level of investment determined by the Board of Directors. Such share purchase requirement may be increased at the discretion of the Board of Directors based on its assessment of the reasonable capital needs of the Cooperative.
- iv. Each owner that is not an individual shall designate a person to act on the owner's behalf in conducting the affairs of this Cooperative. That designation shall remain in effect until written notice of a properly authorized change in the designated person shall be received by the Cooperative.

B. Termination

- i. Ownership may be terminated voluntarily by a owner upon notice to the Cooperative or automatically if a owner shall die, cease to exist, or fail to patronize the Cooperative for a period of time determined by the Board of Directors.
- ii. The Board of Directors may in its sole discretion terminate the ownership of any owner if the Board of Directors determines to its satisfaction that the owner has conducted activities contrary to the best interests of the Cooperative, or if the Board of Directors determines that the owner has violated the terms of its application, subscription, or any other contract with the Cooperative, provided that the Board of Directors has provided written notice of the reason for such termination is provided to the owner and the owner is afforded a reasonable opportunity not to exceed ten days to respond to such notice.
- iii. Upon termination of ownership, regardless of the reasons therefor, all rights and interests in the Cooperative shall cease except for rights to redemption of capital funds pursuant to these bylaws.

C. Rights

- i. Each owner in good standing shall have one vote in the affairs of the Cooperative.
- ii. Each owner in good standing shall be eligible for other benefits as may be offered from time to time by the Cooperative.

III. MEETINGS OF OWNERS

A. Annual Meeting.

i. The annual meeting of the owners of this Cooperative shall be held at the principal place of business of the Cooperative or at any other place conveniently located within the area served by it at such time as the Board of Directors shall determine, within 6 months after the close of the fiscal year.

ii. A written report including a balance sheet showing the true assets and liabilities of the Cooperative, and an operating statement for the fiscal period under review, shall be submitted to the annual meeting of the Cooperative.

B. Special Meetings.

Special meetings of the owners of the Cooperative may be called when a majority of directors, or 10% per cent of the owners, or 250 owners, whichever is less, submit a petition in writing and request a special ownership meeting, which shall be called by the Board of Directors within thirty days of that request.

C. Notice. Written notice of every regular and special meeting of owners shall be prepared and mailed to the last known post office address of each owner, or posted on prominent signs at all Cooperative locations, not less than 10 (ten) days before such meeting. Such notice shall state the nature of the business expected to be conducted and the time and place of the meeting. No business shall be transacted at any special meeting other than that referred to in the notice. In all decisions to amend the articles or bylaws, as the case may be, the owners shall be informed of those decisions at least thirty (30) days in advance through a mailing or a prominent notice at all Cooperative locations.

D. Voting.

- i. Each owner shall have one vote upon any matter submitted to a vote of the owners.
- ii. Voting may be by written ballots which must be sent to all owners with the notice of a meeting, if authorized by the Board of Directors. Voting to elect directors, except to fill a vacancy, must be by written ballots, as authorized by the Board of Directors, and shall commence at the annual General Membership Meeting and continue with point-or-purchase balloting for a period of 30 days immediately following said Meeting. Owners shall be allowed to vote on written ballots until the close of the election period as set by the Board of Directors.
- iii. There shall be no proxy voting.
- iv. Unless otherwise stated in the articles of incorporation, or these bylaws, or required by applicable law, all questions shall be decided by a vote of a majority of the owners voting thereon, and each owner shall be entitled to only one vote.

E. Quorum. At any regular or special meeting of the owners, a quorum necessary for the transaction of business shall be at least five percent (5%) of the total number of owners of the Cooperative. Only owners in actual attendance at the meeting shall count towards a quorum, except for matters submitted to the ownership by mail. Mail ballots cast shall be counted towards fulfillment of the quorum requirement.

IV. Board of Directors

A. Number, Eligibility. The Cooperative shall have a Board of Directors of 9 directors, each of whom shall be a owner of the cooperative in good standing, or, for those owners who are not natural persons, a designated representative of such owner. Paid employees and spouses or domestic partners of paid employees may not serve as Directors. A person with a conflict of interest so continuing and pervasive that he is unable to effectively fulfill the responsibilities of a director with the Cooperative shall not be qualified to serve as a director.

B. Terms, Limits. Directors will be elected for three year terms at the annual meeting or owners. Terms of office shall be so staggered that one-third shall expire in each year. Directors shall hold office until their successors are elected.

C. Termination. The term of office of a director may be terminated prior to its expiration in any of the following ways: (i) voluntarily by a director upon notice to the Cooperative; (ii) automatically upon termination of ownership in the Cooperative; (iii) by action at a meeting of owners whenever the best interests of the Cooperative would thereby be served; and (iv) for cause by owners or by the Board of Directors provided that the accused director is accorded the opportunity to respond to the charges in person or in writing. A director who is absent from two consecutive regularly scheduled Board of Directors meetings, unless excused by the Board of Directors, shall be presumed to have resigned.

?? Here's the language from the NY Cooperative Corporations Law on termination of Directors. Question: Does this language preclude removal for cause 1) at Board initiative or 2) by owners without cause as in the above language which we lifted verbatim from Lexington's bylaws?? "Any member may bring charges against a director by filing them in writing with the secretary, together with a petition signed by five per centum of the members, requesting removal. The corporation may thereupon remove the director by the affirmative vote of three-fourths of the members voting thereon at a meeting promptly held after due notice in writing setting forth accurately the purpose for which such meeting is called, provided that at such meeting not less than ten per centum of the entire membership vote, personally or by mail. The director involved shall be given a copy of the charges reasonably in advance of the meeting, and he and the complainant shall have an opportunity at the meeting to be heard in person or by counsel and to present and cross examine witnesses"

D. Vacancies. Any vacancy among Directors elected by the owners may be

filled by appointment by the Board of Directors. A Director so appointed shall act as Director and shall serve until the next annual meeting, at which the owners shall elect a Director to complete the pertinent term.

E. Compensation. Compensation of the Board of Directors shall be determined by resolution of the Board of Directors. All decisions regarding directors' compensation shall be announced to the ownership of the Cooperative at the next regular or special meeting of the owners. Officers and directors shall also be entitled to reimbursement for actual expenses incurred in attending Board of Directors meetings or other business of the Cooperative. Such expense claims shall be approved by a majority of the Board of Directors.

F. Contracts for Profit. During her or his term of office, a director shall not be a party to a contract for profit with the Cooperative which in substance shall differ in any way from similar contracts by it with owners or with others, or which shall vary from terms generally current among owners.

G. Conflict of Interest. Directors shall be under an affirmative duty to disclose their actual or potential conflicts of interest in any matter under consideration by the Board of Directors. Directors having such an interest may not participate in the discussion or decision of the matter. A transaction in which a director has an interest shall be prohibited unless the transaction is fair to the Cooperative and is approved by no less than a two-thirds majority of all disinterested directors.

H. Standard of Conduct. Directors shall be responsible at all times for discharging their duties in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.

I. Powers and Duties. The business and affairs of the Cooperative shall be managed under the direction of the Board of Directors. The Board of Directors shall make all necessary rules and regulations not inconsistent with law or with these bylaws. The Board of Directors shall have power to hire, oversee and dismiss a General Manager to coordinate and facilitate the daily functioning of the Cooperative.

J. Indemnification. In order to attract and retain qualified people to serve as directors and officers, the Cooperative shall indemnify its directors and officers as required or permitted under New York law. Indemnification payments shall be made on a priority basis but only in such increments and at such times as will not jeopardize the ability of the Cooperative to pay its other obligations as they become due.

K. Committees. The Board of Directors may establish and dissolve standing and ad hoc committees.

L. Election. All directors shall be elected by secret ballot, and the candidate(s) receiving the greatest number of votes shall be elected.

V. MEETINGS OF BOARD OF DIRECTORS

A. Meetings. Regular meetings of the Board of Directors shall be held at least quarterly, at such times and places as the Board of Directors may determine. The Board of Directors shall meet within thirty (30) days after the conclusion of voting for new board members.

B. Action without a meeting. Decisions of the Board of Directors may be made without a meeting if a consent in writing, stating the action to be taken, is signed by all directors by all of the directors of the Cooperative who would be eligible to attend and vote at a regular meeting of the Board of Directors and filed with the minutes.

C. Special Meetings. A special meeting of the Board of Directors shall be held whenever called by the president or by a majority of the directors. Each call for a special meeting shall be in writing, shall be signed by the person or persons calling the meeting, shall be addressed and delivered to the secretary, and shall state the time and place of such meeting. Only the business specified in the written notice shall be transacted at a special meeting.

D. Notification. Written notice of each meeting of the Board of Directors shall be given each director by, or under the supervision of, the secretary of the Cooperative not less than seventy-two (72) hours prior to the time of meeting. Notice may be waived by any director, and appearance at a meeting shall constitute a waiver of notice.

E. Quorum. A simple majority of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors.

VI. OFFICERS

A. At the first meeting following the annual meeting of owners, the Board of Directors shall elect a President and Vice President, Secretary and Treasurer from among the Directors, and may, in their discretion, combine the office of Secretary and Treasurer. All such officers shall hold office for a term of one year, or until their successors have been elected and qualified. Such officers shall serve at the will of the Board of Directors and may be removed by the Board of Directors and successors elected at any Board of Directors meeting.

B. The officers shall perform such duties as are ordinarily assigned to such officers in the normal course of business. The President and Secretary shall have authority to sign all documents within the scope of the implied or express authorization of the Board of Directors, the Cooperative Law, and the Articles of Incorporation and Bylaws of this Cooperative. The Secretary and Treasurer shall perform the usual duties of those offices. The Vice President shall act as President in the absence or disability of the President.

VII. PATRONAGE REFUNDS

A. Distribution of Net Savings. The realized net savings of the Cooperative, to the extent that it is attributable to the patronage of owners, shall be received and held by the Cooperative for and as the property of its owners, the basis of each owner's interest therein being as set forth in this article. Such net savings shall be allocated and distributed among owners as patronage refunds in proportion to their patronage and in such a manner as to constitute patronage dividends within the meaning of federal income tax law. In determining and allocating such adjusted net savings, the Cooperative shall use a single allocation unit

B. Allocation of losses. If this association has sustained an annual loss in net savings from member patronage, it shall have the power and authority to allocate such losses from member-patron business in the following manners: 1) to the member patrons for such year or years on a patronage basis and apply such losses against the equity credits or stock of said member-patrons; 2) to apply the loss to the association's capital reserve 3) or to carry forward or back such loss, as determined by the Board of Directors.

C. Exceptions. Net savings may be reduced by such reasonable reserves for necessary business purposes as is determined by the Board of Directors. Any allocations of such a nominal amount as not to justify the expenses of distribution may, as determined by the Board of Directors, be excluded from distribution provided that they are not then or later distributed to other patrons. Owners shall retain the right to waive in whole or in part, by action at a meeting of owners, any patronage refunds to which they may be entitled.

D. Consent of Owners. By obtaining or retaining ownership in the Cooperative, each owner shall thereby consent to take into account, in the manner and to the extent required by Section 1385 of the Internal Revenue Code, the stated dollar amount of any written notice of allocation in the taxable year in which such notice is received.

E. Retentions. A portion of patronage refunds may be retained for the reasonable capital needs of the Cooperative. Such retentions shall be credited to revolving capital accounts in the names of recipient owners, shall accrue no monetary return on investment, shall not be transferable. They shall be re-deemed when determined by the Board of Directors to be no longer needed for capital purposes. At that time they shall be redeemed in the order of the oldest out-standing amounts and on a pro rata basis among such amounts. Retentions may also be redeemed under compelling circumstances as determined by associates. Retentions shall be subject at all times to being offset by amounts otherwise due and payable to the Cooperative.

VIII. CAPITAL STOCK

A. Issuance. To evidence capital funds provided by owners, the Cooperative shall issue its common stock. Shares may be issued only to persons eligible for and admitted to ownership in the Cooperative. Shares shall be issued only upon full payment of their purchase or subscription price which shall not be less than the par value of the shares and which shall include capital funds paid prior to adoption of these bylaws. Any owner who has paid the full capital contribution required on the date of adoption of these bylaws shall receive one share of

common stock; and any person who has paid any portion of that capital contribution shall receive credit toward purchase of such stock in the amount of such partial payment.

- B. To evidence capital funds provided by owners in excess of the value of common stock or funds provided by non-owners, the Cooperative shall issue preferred stock.

??The NY Cooperative Corporations Law is silent on the subject of preferred stock, and Lexington does not use it. I see it in Viroqua's articles of incorporation citing specifically to Wisc. Law on the subject. 1) can we really do this? 2) if so, what does it look like??

- C. Certificates. Owners of fully-paid shares shall be entitled to receive one or more certificates evidencing such holdings. All certificates shall be signed by the President and Secretary and shall be numbered and registered by the Cooperative. The Cooperative may issue a replacement for any certificate alleged to have been lost, stolen or destroyed without requiring the giving of a bond or other security against losses.
- D. Redemption. Upon request made within two years following termination of ownership, common shares shall be redeemed at the discretion of the Board of Directors. The Board shall have the authority to defer the refund of shares provided that all members are treated equitably. Shares shall also be redeemed as soon as practicable upon involuntary termination of ownership, upon death of a owner, and under other compelling circumstances as determined by the Board of Directors. Shares shall be redeemable at their carrying value on the books of the Cooperative. Redemption proceeds shall be subject to offset by amounts due and payable to the Cooperative by the owner. In the case of voluntary termination of ownership, a reasonable processing fee may be imposed by the Board of Directors. Reapplications for ownership after full or partial redemption shall be subject to full repayment of redemption proceeds and a reasonable processing fee, if any, as determined by the Board of Directors.

IX. FISCAL MATTERS:

- A. Fiscal year. The fiscal year of the Cooperative shall end on the Sunday closest to June 30.
- B. Annual audit and report. The operations of the Cooperative for each fiscal year shall be audited by an experienced bookkeeper or accountant or firm of accountants not regularly employed by the Cooperative. A written report of the audit, including a statement of services rendered by the Coop, with total amount of business transacted, balance sheet, and income and expense statement, shall be submitted to the annual meeting of owners, and shall at all times be available for inspection by any owner.

Article X. MISCELLANEOUS

- A. Reserved Rights of the Ownership. Only the owners, voting according to these bylaws can amend the articles of Incorporation for the Cooperative. Only two-

thirds of the owners voting according to these bylaws can dissolve the Cooperative.

B. Amendments to the Certificate of Incorporation. Only a majority of the owners voting according these bylaws can amend the Certificate of Incorporation.

C. Amendments to the Bylaws. These bylaws can be amended by the affirmative vote of two-thirds of owners at a meeting held after due written notice setting forth the proposed action and the purpose of the meeting. These bylaws can also be amended by the Board of Directors, but any amendment adopted by the Board of Directors shall be reported to the next annual meeting of owners and, if not affirmatively approved thereat, shall cease to be in effect.

D. Dissolution of the Cooperative. Dissolution can proceed only with two-thirds vote of owners present in person or by written ballots at a meeting called and conducted in accordance these bylaws. A committee of three owners, selected by the ownership, acting on behalf of the Cooperative will distribute its assets, liquidate its assets, pay its debts and expenses and divide remaining assets among the owners according to the provisions in the bylaws. Notice of dissolution must be provided to the owners of the Cooperative.

E. Severability In the event that any provision of these bylaws is determined to be invalid or unenforceable under any statute or rule of law, then such provision shall be deemed inoperative to such extent and shall be deemed modified to confirm with such statute or rule of law without affecting the validity or enforceability of any other provision of these bylaws.

BYLAWS OF THE SYRACUSE REAL FOOD
COOPERATIVE

(Revised Fall 2002)

I. NAME

II. PURPOSES

III. MEMBERSHIP -- Eligibility, rights and responsibilities.

IV. MEMBERSHIP MEETINGS -- Frequency, notification, quorum, voting, conduct of meetings.

V. CO-OP COUNCIL -- Responsibilities, authority & limits, election, meetings, recall.

VI. OFFICERS -- Selection, responsibilities.

VII. AUDIT & OVERSIGHT BOARD -- Responsibility, auditing, authority, selection, recall.

VIII. COMMITTEES -- Standing committees, responsibilities, ad-hoc committees.

IX. REFERENDA -- When, how.

X. FISCAL YEAR

XI. AMENDMENT

XII. DISSOLUTION

BYLAWS OF THE SYRACUSE REAL FOOD COOPERATIVE

ARTICLE I -- NAME

Sect. 1. This association shall be known as the Syracuse Real Food Cooperative, Inc., incorporated as a not-for-profit cooperative corporation under Article 2 of the Cooperative Corporation Law of the State of New York. The principal office of the corporation shall be in the City of Syracuse, County of Onondaga, and State of New York.

ARTICLE II -- PURPOSES

Sect. 1. To provide the facilities and services required for the purchase, storage, preparation, distribution, and sale of products compatible with general Cooperative philosophy.

Sect. 2. To help create a just society through the development of a cooperative economy that meets real human needs in ways that are ecologically sound and peaceful.

Sect. 3. To associate with other cooperative societies for mutual assistance and development.

Sect. 4. To support and encourage sustainable, organic farming in the local agricultural community.

Sect. 5. To transform exploitative and competitive relations among people into mutually supportive and cooperative relations.

Sect. 6 To propagate the cooperative movement, its principles, practices and organizations.

Sect. 7. To do those things that are necessary to meet these goals, purposes and values.

ARTICLE III -- MEMBERSHIP

Sect. 1. Membership in the Co-op is broadly inclusive of all in agreement with Cooperative principles who are willing to accept the associated responsibilities. Discrimination in any form, not limited to gender, age, ethnicity, racial category, sexual orientation, marital status, ability, national origin, creed or political affiliation, is prohibited.

Sect. 2. Any consumer cooperative, worker cooperative or any other society or organization not operating for profit and not in opposition to the purposes of this cooperative may be admitted to membership on equitable terms including fees or services to be determined by the Council. Each society or organization admitted to membership is entitled to one vote at General Membership Meetings.

Sect. 3. The financial requirements for membership are:

- A. Payment of nonrefundable annual dues. Changes in the annual dues must be proposed by the Council and approved by affirmative vote of a majority of members present at a General Membership Meeting.
- B. Payment of a noninterest bearing Capital Contribution, the amount of which is derived from household aggregate income. This amount is expected to change with the member's financial situation and must be reviewed and altered as necessary. Changes in the amount or apportionment of the Capital Contribution must be proposed by the Council and approved by affirmative vote of a majority of members present at a General Membership Meeting.
- C. Capital Contributions are refundable upon request in the case of termination of membership, however. 1) dues in arrears, or other debts or obligations to the Co-op may be deducted from the Capital Contribution at any time, 2) the Council shall have authority to defer the refund of Capital Contributions provided that all members are treated equitably, 3) Requests for refunds of Capital Contribution must be made within two years of termination of membership. If a refund is not requested within this period the Capital Contribution shall be forfeited.
- D. No person shall be denied membership because they cannot meet the financial requirements. The Council shall provide for alternatives of barter of services or products in lieu of regular payment of dues or Capital Contribution. The Council may defer, reduce or set aside financial requirement

in cases of hardship.

E. Failure to meet the financial requirements for membership, or to make alternative arrangements as above, shall be cause for termination of membership. The Council shall establish reasonable procedures for such terminations.

Sect. 4. A nontransferable instrument of membership is issued by the Co-op to each new member upon completion of membership application and after payment of appropriate financial requirements.

Sect. 5. The Council may establish a variable pricing structure of discounts and/or surcharges and/or dividends based on patronage and the level of services provided by members.

Sect. 6. The Council may establish temporary and trial usage periods, but, for the purposes of these by-laws, persons so enrolled are not considered members and enjoy no member rights, are not owners of the Co-op, are ineligible to vote or hold office, and are not counted in the official tally of members.

Sect. 7. **All** members in good standing are eligible to:

A. cast one vote in any general or special membership meeting,

B. Serve on any standing or ad hoc committee;

C. run for election for Co-op offices, if otherwise qualified;

D. circulate and present petitions, claims or grievances;

E. have reasonable access to official Co-op documents, records, minutes and financial statements;

F. have reasonable access to any editorial publication (New Leaf).

Sect. 8. Members retain the right to due process, to dissent and to free effective speech, and do not forfeit any civil rights by joining the Co-op. In the exercise of their rights, members have the responsibility not to interfere with the operations of the Coop or the rights of others. The Council may establish guidelines to optimize members' rights.

Sect. 9. The Membership owns the Cooperative and has the right to control the Co-op through participatory democracy. The Members retain the sole right to elect the Council, to recall any official as provided in these bylaws, to control product policy, to decide the Co-op's position and actions in regard to important social issues.

Sect. 10. Voluntary withdrawal from the cooperative is effective at the end of the calendar month during which written notice of intent is received.

Sect. 11. A member whose actions are contrary to Co-op Bylaws, purposes or rules or who interferes with Co-op operations may be suspended or expelled following reasonable procedures established by the Council. The member must be notified in writing of the causes of such an action either in person or by first class mail to the last known address of the member. If a member is to be expelled, notification must occur 30 days prior to the effective date of expulsion. The expelled-member retains all rights of response and appeal. Appeal can be made to the Council, the Audit & Oversight Board and ultimately to the General Membership Meeting. Final appeal can be made no later than the second regular General Membership Meeting following notification.

ARTICLE IV - MEMBERSHIP MEETINGS

Sect. 1. Two regular General Membership Meetings are convened annually, Spring, and Fall. The meetings shall be called during the following periodsthe Spring meeting between March 1 and May 31; and the Fall meeting between October 1 and December 31. The exact time and place of the meeting shall be set by the Co-op Council to enable the fullest possible attendance.

Sect. 2. Notification of the date, time, place and agenda of each regular General Membership Meeting must be posted in a prominent place at least 30 days prior to each meeting.

Sect. 3. The annual Financial & Budget report and discussion shall be part of the regular [Winter] Spring General Membership Meeting. At this meeting the Treasurer shall present (a) a complete Annual Financial Report including income/expense statement and balance sheet, and (b) a formal Budget and business projection for the current fiscal year. The Co-op Council shall see that an Annual Report on Operations for the year past and a Business Plan for the current year are presented at this meeting. All of these reports and documents shall be posted in a prominent place not later than 5 days following the Winter meeting.

Sect. 4. The election for the Co-op Council shall commence at the Fall General Membership Meeting.

Sect. 5. A Special General Membership Meeting must be convened by the Secretary in the event of any of the following.

- A. an affirmative vote of a majority of members present at any General Membership Meeting.
- B. an affirmative vote of a majority of the Co-op Council.
- C. an affirmative vote of a majority of the Audit & Oversight Board.
- D. in an emergency the President of the Co-op may order a Special Meeting.

Sect. 6. Notification of the date, time, place and agenda of a Special General Membership Meeting must be either. 1) posted in a prominent place for at least 30 days before the meeting, or 2) sent by first class mail not less than 7 days before the meeting, to the last known addresses of the general membership.

Sect. 7. Except as otherwise provided in these bylaws, business may be conducted at a general membership meeting by a majority vote of members attending such meeting.

Sect. 8 Each member present at any General Membership Meeting is entitled to one vote. Proxy voting is prohibited. Members other than natural persons (such as organizations) may send one voting delegate provided that the delegate is duly authorized in writing.

Sect. 9. At any General Membership Meeting, the written vote of an absent member shall be received and counted, provided that the vote is indicated on a copy of the exact motion or list of nominees on which the vote is taken; these must be enclosed in an envelope with the absent member's name, address and signature on the outside.

Sect.10. The conduct of General Membership Meetings shall combine aspects of consensus process with majority rule. Ordinarily the process of decision making will proceed in stages:

1. Defining the Issue. Members make a case that the Co-op should act upon an issue. If the meeting agrees to take up the issue, proceed to the next stage.
2. Examine the Facts. Members share the facts relating to the issue, and raise questions regarding these.
3. Develop Alternatives -- Members and committees are encouraged to propose various approaches to the problem. The issue may be sent to a committee to allow more consideration, research & discussion.
4. Evaluate Alternatives -- Members discuss proposals' practicality, cost, effectiveness, social responsibility, etc.
5. Selecting an Alternative -- Members attempt to negotiate a consensus based on the most popular alternative or set of alternatives. Failing to achieve a consensus, the majority rules after other viewpoints are heard and considered. Civility, toleration for diversity, equal rights including the right to be heard, and a cooperative spirit shall govern the deliberations of this Co-op.

ARTICLE V -- CO-OP COUNCIL

Sect. 1. The Council is the executive body of the Co-op. The Co-op Council is empowered by the General Membership to manage the business and affairs of the Co-op and is entrusted with fulfilling the Co-op's objectives. It is specifically obligated to implement these Bylaws. The Council shall be broadly responsive to the will of the General Membership, subject to its fiduciary responsibilities regarding financially imprudent or illegal actions.

Sect. 2. The Council may delegate certain functions to, and authorize resources for, any responsible officer, staff or committee, provided that such delegation conforms to these bylaws and is circumscribed and meets general cooperative business standards: such as acting in good faith, exercising ordinary care and serving the best interests of the Co-op. It is the responsibility of the Council to oversee staff and committees and to make sure that any task delegated to any responsible officer, staff or committee is being properly performed.

Sect. 3. Every officer, employee or agent of the association before handling funds or securities amounting to \$1,000 or more in any one year shall be covered by an adequate bond to be approved as to the form and amount by the Council.

Sect. 4. Limiting Conflict of Interests:

- A. No Council member may decide any issue which involves the member's pecuniary interest, directly or indirectly. The material facts of the transaction and the Council member's interest must be disclosed or known to the Council. The Council must take extraordinary care that such transactions are fair to the Co-op. The Secretary of the Council shall see that a separate record shall be kept of all such transactions and posted in a prominent place.
- B. No Council member may directly or indirectly materially benefit from any transactions with the Co-op to an extent which exceeds on an annual basis an amount equal to one & a half percent of the median annual income for a family of four in the Syracuse Standard Metropolitan Area.
- C. No Council member may be employed by the Co-op for financial compensation which exceeds on an annual basis an amount equal to one and a half percent of the median annual income for a family of four in the Syracuse Standard Metropolitan Area.

Sect. 5. The Council consists of nine members. The size of the Council may be changed by an affirmative vote of a majority of members present at the regular spring General Membership Meeting: Such a change in size becomes effective at the following fall election. No reduction in size may be made unless corresponding vacancies will exist at the fall election. The size of the Council must be set at an odd number of members between 5 and 11, including the Co-op President

Sect. 6. The Council members serve in staggered 2 year terms and hold office until their successors take office. Council members shall take office at the first Council meeting following their election. Vacancies, including Co-op President, may be temporarily filled by the Council until the next general or special membership meeting at which time a by-election is held to fill the unexpired term.

Sect. 7. A Nominating Committee is appointed by the Council at least 90 days before the regular Fall General Membership Meeting. The Nominating Committee must present to the General Membership a list of candidates exceeding by at least one the number of open Council seats. This list must be posted in a prominent place in the Co-op for at least 30 days before the Fall General Membership Meeting. Nominees must be members in good standing.

Sect. 8. All candidates for the Co-op Council must either be present at the Fall General Membership Meeting to respond to questions or have a prepared statement read. Further nominations from the floor, including self-nominations, are permitted.

Sect. 9. Elections:

- A. Voting for Co-op Council shall commence at the regular Fall General Membership Meeting. Voting shall be continued with point-of-purchase balloting for a period of 30 days, immediately following the Fall General Membership Meeting.
- B. Each member may cast votes up to the number of positions open. Votes may be cast in the affirmative or negative. When votes are tallied for each candidate the number of negative votes shall be subtracted from the affirmative votes to arrive at the final vote count.
- C. All continuing Council members and nominees for Council are eligible to run for Co-op President, however any nominee who is not elected to the council is ineligible to be Co-op President. A separate selection for Co-op President shall be provided on the ballot. Preferential voting shall be used to elect the Co-op President, with each voter able to cast a first, second and third choice. If a voter's first choice is disqualified by not being elected to the council, then the second choice will be counted, and so on.
- D. Each member voting shall place the ballot in an envelope with the member's name, address and signature on the outside. Ballots are placed in (a) secure ballot box(es). The Council shall see that the ballots are counted in an open and impartial manner within three days of the close of balloting. Votes are counted in a three step process to assure a secret ballot: 1) establishing the validity of the vote, 2) removing the ballots from the envelopes, 3) tallying the votes and declaring those elected. Any member may observe the counting process and may challenge the validity of any vote.

Sect. 10. If persistent factions or minorities exist, a system of proportional representation should be instituted to assure representation of diverse viewpoints on the Council. Upon petition of 5% of the

General Membership the Co-op Council shall empower a special Proportional Representation Bylaw Committee to develop proposal(s) for a proportional representation system. Such changes in these bylaws may be adopted by a majority vote of those present at a General Membership Meeting, provided that such consideration is part of the announced agenda and the proposals are posted for a period of 30 days prior to the meeting.

Sect. 11. The Co-op Council shall meet at least monthly with a simple majority constituting a quorum. Meetings are chaired by the Co-op President or a delegate. A special Council meeting must be called upon the request of a simple majority of Council members or, in an emergency, by the President.

Sect. 12. If a Council member is absent from 3 consecutive meetings or 4 out of any 12 consecutive meetings the members seat may be declared vacant by an affirmative vote of a majority of the Council.

Sect. 13. Voluntary resignation from office by a Council member is effective at the next regular monthly meeting of the Council following receipt of written notice.

Sect. 14. Members can request a recall of any or all Council members by a petition signed by 5% of the membership. Upon receipt of such a petition the Audit & Oversight Board shall call a special General Membership meeting, unless a regular General Membership meeting is scheduled within 35 days. The membership and the Council members challenged must be notified that recall will be on the agenda as stated in meeting notification requirements. A 2/3 affirmative vote of members present at a General Membership Meeting is required to recall.

Sect. 15. The Co-op Council may authorize any officer or officers, agent or agents, to enter into any contract or execute any contract or instrument in the name of and on behalf of the Co-op, and such authority may be general or confined to specific instances.

ARTICLE VI -- OFFICERS

Sect. 1. The officers of the Co-op shall consist of a President, a Secretary and a Treasurer. No person shall hold more than one office.

Sect. 2. The Co-op Council, at the first Council meeting following the regular fall election of new members, shall select from among its number a Secretary and a Treasurer, and any assistants to these offices as it deems necessary. These officers and assistants serve at the pleasure of the Council and may be replaced by a vote of a majority of Council members.

Sect. 3. The Co-op President is elected by the membership each year at the regular fall election and serves until a successor is elected. The Co-op President:

A. is the designated spokesperson for the Co-op and its symbolic head. The Co-op President is the Chief Executive Officer of the Co-op, entrusted and obliged to keep things together, and promote the continuity of effort by officials and staff. The President shall report on the progress of projects and committees to the General Membership.

B. shall see that there is competent facilitation at all Council meetings and General Membership meetings.

C. signs, along with the Treasurer, all contracts and obligations authorized by the Council.

D. performs such duties and activities as the Council may from time to time designate.

Sect. 4. The Secretary:

- A. is responsible for seeing that complete and accurate minutes are recorded of all Council meetings and of all General Membership meetings. The Secretary is also responsible for the seeing to the safekeeping of existing records, Bylaws and amendments, archives, corporate seal (if any), membership records and the reports of committees.
- B. serves as official correspondent for the Co-op. Except as noted elsewhere in these Bylaws, any official communication to the Co-op shall be transmitted to the Secretary.
- C. reports at each membership meeting on the current membership strength and gives such notice of meetings and provides such information as mandated by the Bylaws.
- D. is responsible for maintaining any written Policy guidelines including, without limitation, policies concerning (a) personnel, (b) pricing structure, (c) health and safety, (d) product policy (e) cash practices and security (f) and other major policy guidelines, in an updated and accessible format. E. attest, sign and execute with the President such legal documents in the name of the Co-op as may be required.
- F. performs such duties and activities as the Council may from time to time designate.

Sect. 5. The Treasurer,

- A. sees that a complete and accurate account of the financial transactions of the Co-op is maintained.
- B. reports to the General Membership on all financial matters as mandated by the Bylaws, including the posting of quarterly and annual financial reports, budget, and business plan.
- C. signs, along with the Co-op President, all notes, bonds, and mortgages of the Co-op.
- D. performs such duties and activities as the Council may from time to time designate.

ARTICLE VII -- AUDIT & OVERSIGHT BOARD

Sect. 1. This board is the audit and oversight body of the Co-op. The Audit & Oversight Board shall conduct an annual audit of the Co-op. The board shall report on its activities and findings to the Council & the General Membership.

Sect. 2. The Audit & Oversight Board shall consist of between 3 and 5 members. The size of the Audit & Oversight Board may be changed by resolution of the Council provided that no reduction in size is made unless corresponding vacancies exist. The members serve in staggered 2 year terms and hold office until their successors take office.

Sect. 3. Each year, at the regular Spring General Membership Meeting, the Co-op Council shall submit candidates for all open seats on the Audit & Oversight Board. An affirmative vote of the members present is necessary to confirm each appointment. In the event that a seat shall become vacant, the Council may appoint a replacement, subject to confirmation at the next General Membership Meeting.

Sect. 4. Audit & Oversight Board members must be members in good standing of the Co-op and must have at least 2 years experience in the cooperative movement before taking office. Not more than one Council Member may serve on the Audit & Oversight Board. No officer of the Council or employee of the Co-op may be appointed, nor may any person whose activity would be subject to audit during the period of service on this board (e.g. volunteer cashier, bookkeeper, supplier, etc.).

Sect. 5. Any member can submit a written complaint to the Audit & Oversight Board. The Audit & Oversight Board will investigate alleged violations of law, regulations, the bylaws, established policies or procedures, fairness, reasonable business practices or cooperative principles; and breach of contract, trust, good faith, or duties of office. The Audit & Oversight Board must respond in writing within 30 days describing the results of its investigations and deliberations.

Sect. 6. The findings of the Audit & Oversight Board may be appealed to the General Membership Meeting, except in cases involving personnel grievances, or otherwise requiring confidentiality. In these cases, the Audit & Oversight Board is the final body of appeal.

Sect. 7. By an affirmative vote of a majority of its members, the Audit & Oversight Board may call a special General Membership Meeting to consider any practice of the Co-op which the Audit & Oversight Board deems improper, unsafe or unauthorized. The Audit & Oversight Board may impound records of

the Co-op.

Sect. 8. Upon evidence of impropriety, the Audit & Oversight Board may, by unanimous vote, suspend any official or staff until the next meeting of members. In the event of such a suspension, the Audit & Oversight Board shall call a special General Membership meeting without delay.

Sect. 9. Audit & Oversight Board members can be removed from office on grounds of misfeasance, malfeasance or nonfeasance of duty, by a 2/3 affirmative vote at any General Membership Meeting called for that purpose.

ARTICLE VIII -- COMMITTEES

Sect. 1. The Co-op empowers a number of Standing Committees and may have a number of ad hoc Committees operating at any one time. These working groups, which are composed of interested Co-op members, assist in developing and reviewing the Coop's policies, practices and operations.

Sect. 2. Committees are created by majority affirmative vote of the members present at any general membership meeting or by simple majority of the co-op council. Each committee shall take reasonable measures to keep the members informed of the committee's activities.

Sect. 3. Examples of Committees and their charges are, without limitation:

A. Communications and Outreach - Responsible for public and community affairs, including official Co-op publications, advertising and liaison with other cooperatives. Assists with and may initiate fundraising activities.

B. Membership - Responsible for membership policies, procedures and education. Works with others on membership recruitment and is responsible for developing and implementing programs for member orientation, integration and retention; progressive development of volunteers' skills and commitment; education about cooperative principles, goals, movement, etc.; focused educational programming (e.g. kids).

C. Finance - Responsible, in concert with the Treasurer, for reviewing finances and making recommendations to the Council: Includes reviewing financial statements, evaluating performance, developing the annual plan, and assisting with long term planning.

D. Personnel - Responsible for developing and implementing policy and procedures for personnel practices, including such areas as hiring and firing, periodic performance reviews, wages and salaries, job descriptions, health insurance, sick leave, parental leave, vacations and other benefits. Addresses and attempts to resolve personnel grievances, and makes recommendations to the Council.

E. Building and Grounds - Responsible for maintaining and enhancing the physical environment of the Co-op and its structures: including overseeing maintenance and repair, safety, energy efficiency, renovations, floor-plan, landscaping/ gardening, compost, etc. and assisting in fundraising for its projects.

Sect. 4. Committees must post reasonable notice of the time and place of meetings and agenda. Committees maintain written minutes, and report to the Council and to the General Membership Meetings; copies of all minutes and reports shall be conveyed to the Secretary. Committees may form subcommittees as needed.

ARTICLE IX -- REFERENDA

Sect. 1. General Membership Referenda are generated by an affirmative vote of a majority of members present at any General Membership Meeting, or by written petition of 5% of the membership, or by a majority vote of the Co-op Council. The Co-op Council supervises such referenda and insures that questions are fairly presented with adequate and equitable space given to opposing viewpoints.

Sect. 2. Referenda are conducted during two scheduled balloting periods. The balloting periods commence at the Fall and Spring General Membership Meetings and continue with point-of-purchase balloting lasting for 30 days. Unscheduled referenda can be called by affirmative vote of two thirds of members present at any General Membership Meeting, or by a 2/3 affirmative vote of the Co-op Council.

Sect. 3. An exact copy of the question being presented for consideration by the General Membership, together with a fair and adequate representation of all facets of the question, must be posted in a prominent place no later than 30 days prior to the beginning of the voting period.

Sect. 4. A 2/3 affirmative vote by at least 10% of the General Membership is necessary to decide the questions presented in referenda.

ARTICLE X -- FISCAL YEAR

Sect. 1. The fiscal year ends on 31 December.

ARTICLE XI -- AMENDMENTS

Sect. 1. The bylaws may be amended by the Council, provided any amendment so adopted shall be reported at the next occurring General Membership Meeting and, if not affirmatively approved thereat, shall cease to be in effect. Amendments may be proposed by the Council, any committee, or by interested member(s). The proposer(s) must constitute an ad hoc committee for at least 90 days before the amendment(s) may be considered by the General Membership Meeting. The ad hoc amendment committee [may hold at least one open meeting to consider alternative approaches and wording, with notice posted in a prominent place for at least 2 weeks before the meeting.

Sect. 2. The text of the amendment(s), or sets of alternative amendment(s), along with the original Bylaws, must be posted in a prominent place for at least 60 days before consideration by a General Membership Meeting. Any member may propose other alternative approaches and amendments, provided that these are posted for 30 days before consideration by a General Membership Meeting.

Sect. 3. Except where otherwise stipulated in these Bylaws, Amendments to the Bylaws can only be approved by a 2/3 affirmative vote of members voting. Balloting will commence at a General Membership Meeting. If an affirmative vote of a majority of members present is achieved at this meeting, extended balloting at point of purchase will follow for a period of 30 days. The combined vote from the meeting and extended balloting must be at least a 2/3 affirmative vote to approve a change in Bylaws.

ARTICLE XII -- DISSOLUTION

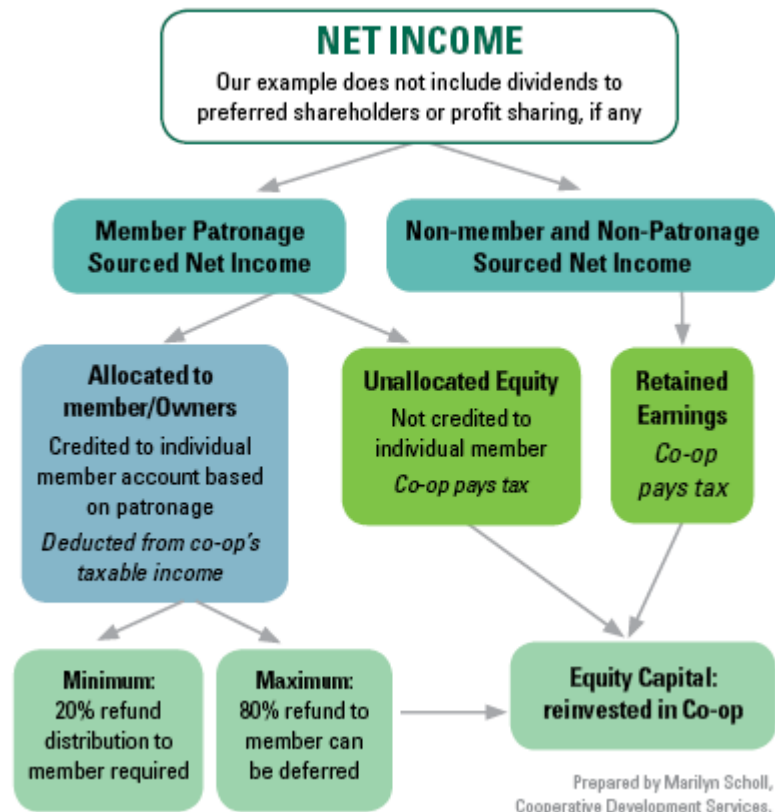
Sect. 1. Dissolution of the Co-op can only be accomplished by a 2/3 affirmative vote at a general or special membership meeting called for the purpose of considering dissolution, at which at least 10% of the General Membership is present and voting. Upon dissolution, any surplus will be donated to organizations having cooperative and not-for-profit purposes or to organizations to which a deductible contribution can be made according to the Internal Revenue Code.

Patronage Dividends: A Primer

BY BRUCE MAYER

Should your cooperative consider patronage dividends to owners? If you are already issuing patronage dividends, is your cooperative following the rules? If your cooperative receives patronage dividends from other cooperatives, do you understand what the rules are?

Patronage dividends represent a unique opportunity for retail food cooperatives to avoid taxation at any level on some or all of the cooperative's earnings. The tax laws allow patronage dividends to your individual members to be exempt from taxation. Since these are deductible by the cooperative and not taxable to members, the patronage dividend amount is not taxed at either level. While there are potential under-capitalization problems if a cooperative distributes 100 percent of the patronage dividend, avoidance of taxation is a significant advantage to patronage refunds for retail food cooperatives.



Prepared by Marilyn Scholl,
Cooperative Development Services.

Patronage dividends originated with the Rochdale Society cooperative principles that included “net margins distributed according to patronage.” Since cooperatives had a long history prior to the enactment of the U.S. income tax laws, cooperatives were accommodated in the tax code. The Internal Revenue Service (IRS) rules formalize the procedures that result in a tax deduction. These rules treat a cooperative as having the option of operating as a pass-through entity where profits are considered an overcharge to be returned to patrons.

Subchapter T

The IRS rules for patronage dividends are outlined in Subchapter T of the Internal Revenue Code. The five code sections comprising Subchapter T are: * 1381-what is a cooperative under Subchapter T? * 1382-how are income and patronage dividends calculated? * 1383-what is nonqualified patronage? * 1385-how are patrons taxed on the dividend? * 1388-what do the terms mean?

These rules apply to non-exempt cooperatives. There are exempt cooperatives, normally only agricultural, which must apply for exempt status and follow somewhat different rules. All cooperative accountants and their outside accounting advisors should be familiar with Subchapter T, even if the cooperative only receives patronage dividends from other cooperatives. Accountants should also utilize the accounting guidance available in the American Institute of CPAs (AICPA) Audit and Accounting Guide, Agricultural Producers and Agricultural Cooperatives. Additional information on accounting and tax issues is available by joining the National Society of Accountants for Cooperatives (www.nsac.coop). Your accountant on staff and your outside advisor should both be members of NSAC in order to keep up on cooperative tax and financial issues.

Subchapter T lays out three basic criteria for patronage dividends. To be deductible the patronage dividend must be paid:

1. “on the basis of quantity or value of business done with or for such patron,
2. “under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount paid, and
3. “which is determined by reference to the net earnings of the organization from business done with or for its patrons.”

Item 1 requires the cooperative to specify the basis for calculating patronage. For a consumer-owned cooperative it will be sales. For a worker-owned cooperative it will be hours worked by workers or dollars paid to workers. We will use consumer-owned cooperatives in the examples below. The patronage dividend must be proportionally allocated based on business done with everyone, including non-members.

Item 2 requires that the cooperative operate under a pre-existing obligation to pay patronage dividends. This is normally part of the bylaws but may also be in the form of a written agreement with the members. State law normally allows a board of directors to determine that some or all of income be set aside as a reserve not to be paid out as patronage. This tempers the pre-existing obligation. But patronage dividends are not allowed if there was not an obligation established at the beginning of the tax year from which patronage is paid. Part of establishing the obligation is informing members that they may receive a patronage dividend. This is one reason cooperatives should distribute their bylaws to new members. Be sure you consult a qualified attorney on the precise wording of your bylaws, since they must be in accordance with the IRS rules and with applicable state laws.

Item 3 specifies that the base for patronage is net income. The IRS prefers taxable income as the patronage base. This is what most cooperatives use, although book income may also be used. The basis for patronage should be used consistently and should be specified in the bylaws.

Determine amount eligible for patronage dividend

The starting place in allocating patronage is to determine net income for tax or for book purposes. Using this, most cooperatives simply apply a percentage of sales to members and to non-members to determine the net income generated by members (patronage income) and the net income generated by non-members (non-patronage income). A more detailed analysis might allocate revenue and expense items such as member discounts, member only sales, advertising, member communications, and non-member mark-ups to the appropriate member or non-member calculation of net income. The member (patronage) net income is then allocated to each member based on the percentage of that member's purchases of total member purchases. The non-member (non-patronage) net income is not allocated to members and will potentially be subject to taxation.

The practical method of determining the patronage allocation to each member is to download the annual sales by member from your point of sale system to a spreadsheet. This can then be sorted from largest to smallest. A ratio of each member's sales to all sales is then an easy calculation, as is multiplying this percentage times net income to calculate the amount of patronage that could be allocated to each member. A mail merge can then be used to generate the actual notices to members of their patronage. Most cooperatives apply a minimum dividend amount that they will process. For instance, anyone who would receive under \$2 could be cut out of further processing. This does mean that the cooperative will pay tax on those earnings of members who would have received under \$2.

The board will determine the actual dividend payout. The maximum dividend amount will be the net income earned from members. The dividend may be paid out with a minimum of 20 percent either as cash or as a store certificate, with the balance being held by the cooperative as equity in the name of the member.

Qualified notices

In order for the cooperative to retain part of the patronage dividend, members must receive a qualified notice of allocation. This notice indicates that by cashing their check, or using their certificate, they also accept the non-cash portion retained by the cooperative. This notice must specify a deadline to cash the check/certificate of at least 90 days after issuance. The IRS allows the cooperative, through the issuance of a qualified notice of allocation, to deduct the non-cash portion of the patronage dividend. Food cooperatives will normally only use qualified patronage dividends. The non-qualified patronage dividend is non-deductible at the time it is issued but is deductible when cash is paid. The National Cooperative Grocers Association issued non-qualified patronage dividends on 2005 income as a tax-planning tool.

Form of payment

The minimum 20 percent paid out portion of a patronage dividend may be in the form of a store certificate that is redeemable in the store for purchases. You must also allow members to ask for cash if they prefer that option. This is much easier than issuing checks and limits the problems with un-cashed checks. Using a certificate also encourages members to use the dividend on groceries and keep the funds in the cooperative.

Anyone who does not cash a check or use a certificate by the deadline you specify in the written allocation notice gives up his or her claim to the patronage dividend including the non-cash portion. The cooperative will then need to pay tax on the entire patronage allocation to that member. Due to timing and practicality many cooperatives adjust for the unclaimed patronage in the next year, paying the tax at that time.

Some patrons may deliberately not cash their patronage check/certificate, thinking they are making a contribution to the cooperative. One way to encourage cashing the checks/certificates is to set up a donation fund either to the cooperative or as part of the

community contributions program of the cooperative. If the person gives the cash portion back, it is taxable to the cooperative in the next year, but the retained portion of equity would still be held in that member's name and would not be taxed.

Payouts to members from the income of a given tax year must be made no later than 8.5 months after that year-end. This allowable timeframe is called the payment period. The deadline for cashing the check/certificate must be no later than 90 days after the end of the payment period. The IRS is very particular about this and will classify any payment made outside of the allowable payment period as an ordinary corporate dividend-nondeductible for the cooperative and taxable to the recipient. A 1099-DIV would need to be issued to each member. Any non-cash portion held by the cooperative would also not be deductible.

Filing 1099-PATR forms is not required

Food cooperatives should file IRS form 3491 to elect not to issue the 1099-PATR form. Form 3491 is filed in the first year patronage dividends are paid and does not need to be filed again. This exemption is allowed for cooperatives that have at least 85 percent of gross receipts from the sale of "personal, living, or family items." The tax code allows persons who purchase such items from a cooperative to exclude any patronage dividend from taxable income even if they receive a 1099-PATR. The reasoning is that individuals may not deduct personal use items and therefore any dividend on them is not taxable. Not issuing the 1099-PATR does not relieve members who are required to claim the patronage dividend as income from doing so. Examples of some possible members who should claim a patronage dividend as income are restaurants and day care centers.

One more issue with patronage dividends is the financial statement presentation. There is no definitive requirement for treating patronage as a deduction from income or as an equity transaction similar to corporate dividends. The guidance from the AICPA in the Audit and Accounting Guide mentioned earlier is that patronage is an equity transaction.

The reporting examples given in the AICPA Guide follow that format. On the other hand, the CoCoFiSt format uses the income statement treatment.

In considering your cooperative's treatment, a question to ask is: we are retaining 80 percent of the payment, so why should it be expensed? Showing patronage dividends as an expense reduces net income, which may make your cooperative look weaker to a banker or other evaluator who does not understand cooperatives.

Related issues include the balance sheet presentation of the retained patronage dividend and the policy for eventually paying it out to members. The retained portion of a patronage dividend is equity of the cooperative and should be presented along with retained earnings and member shares in the balance sheet. This retained patronage is only paid out by the decision of the board. Most cooperatives do not return the retained patronage even if a member requests it back. This is also generally the case in agricultural cooperatives.

One advantage food cooperatives have in withholding retained patronage is that almost all members never paid tax on it and already received some cash. This removes the basic fairness argument that agricultural cooperatives must face since their members normally did pay tax on the retained patronage. If your cooperative does plan to revolve back this equity, it should lay out a plan for it. If it does not plan to revolve it back, that should be made clear. Most cooperative members should be receptive to the idea that they get some cash back and the rest is an easy way to avoid paying taxes and keeping the money in the cooperative working for them.

Patronage involves a simple set of rules but you need to actually learn them and keep them in mind so your cooperative can follow the applicable laws and make sound decisions.

Form 1120-C

New for 2006 was a specific IRS income tax form for cooperatives, the 1120-C. This will be mandatory for all cooperatives starting with the 2007 tax form. The primary difference from the 1120 is the addition of Schedule G that specifically requires the allocation of all income and expense items into patronage and non-patronage columns for all cooperatives with over \$250,000 in gross receipts. Previously such an allocation was only explicitly required for cooperatives over \$10 million in gross receipts. This allocation has always been required for all cooperatives but has generally been ignored by smaller entities.

One result of allocating income in Schedule G is that net operating losses stay segregated by patronage and non-patronage sources. The IRS rules prevent patronage losses from offsetting non-patronage income. This can result in some pitfalls as a cooperative uses up a net operating loss. In loss years the loss is normally not allocated to members, resulting in an accumulation of patronage and non-patronage net operating losses. When the cooperative begins generating a positive net income, it may issue patronage dividends before its patron net operating loss is used. This can result in a situation where it will not be able to use up its patronage net operating loss and will pay more tax on its non-patronage income than would be expected by only looking at the overall net operating loss carry-forward.

(Schedule B) Compensation of Officers (See instructions for line 1, page 1)
Complete Schedule B only if total receipts (see Lines 1 through 5 of page 1) are \$20,000 or more.

(a) Name of officer	(b) Social security number	(c) Percent of net income to business	(d) Percent of compensation paid to officer		(e) Amount of compensation
			(i) Cash	(ii) Non-cash	
1					
2 Total compensation of officers					2
3 Compensation of officers claimed on Schedule A and elsewhere as return					3
4 Subtract line 3 from line 2. Enter the result here and on line 11, page 1					4

(Schedule C) Allocation of Patronage and Nonpatronage Income and Deductions. Before completing, see Division 12 of Schedule K.

	(a) Patronage	(b) Nonpatronage
1 Gross receipts or sales	1	
2 Cost of goods sold	2	
3 Gross profit. Subtract line 2 from line 1	3	
4 Other income	4	
5 Total income. Add lines 3 and 4	5	
6 a. Domestic production activities deduction (attach Form 990)	6a	
b. Other deductions	6b	
c. Total deductions (add lines 6a and 6b)	6c	
7 Taxable income before section 1362, NOL, and special deduction. Subtract line 6c from line 5	7	
8 Deductions and adjustments under section 1362	8	
9 a. Net operating loss deduction (attach schedule)	9a	
b. Special deductions (see instructions)	9b	
10 Taxable income. Subtract the total of lines 8, 9a, and 9b from line 7	10	
11 Dividend patronage less (see instructions)	11	
12 Dividend nonpatronage less (see instructions)	12	

(Schedule H) Deductions and Adjustments Under Section 1362 (see instructions)

1 Dividends paid on capital stock (section 521 cooperatives only)	1
2 Nonpatronage income allocated to patron (section 521 cooperatives only)	2
3 Patronage dividend:	
a. Money	3a
b. Qualified written notice of allocation	3b
c. Other property (except unqualified written notice of allocation)	3c
d. Money or other property (except written notice of allocation) in redemption of unqualified written notice of allocation	3d
4 Domestic production activities deduction allocated to patron	4 ()
5 Total. Combine lines 1 through 4. Enter here and on line 26a, page 1	5