

UPSTATE NIAGARA COOPERATIVE, INC.

AMENDED AND RESTATED BY-LAWS

As of _____ February __7, 202__

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ARTICLE I

NAME AND OFFICE

SECTION 1 This Cooperative shall be known as UPSTATE NIAGARA COOPERATIVE, INC. and is incorporated under the 1951 Cooperative Corporations Law of the State of New York. The principal office of the Cooperative shall be at 368 Pleasant View Drive, Lancaster, New York 14086.

ARTICLE II

OBJECTS AND PURPOSES

SECTION 1 The objects for which the Cooperative was incorporated are mutual help, not having capital stock, to assist its members or any of them by performing services connected with the production, manufacture, preservation, drying, canning, storing, handling, utilization, marketing or sale of products produced by them, and for the purposes of each such member, or for performing services in connection with the purchasing or hiring for or use by them of supplies, including livestock, machinery and equipment, and the hiring of labor, or any one or more of the kinds of services specified above, or for performing such services as agent for non-members, or for conducting non-patron business as permitted by law.

ARTICLE III

MEMBERSHIP

SECTION 1 Any individual, partnership, corporation, association, or other business combination, actively engaged in the production of milk in the marketing territories of the Cooperative, shall be eligible for producer membership in the Cooperative; ~~any cooperative corporations, marketing associations in common or such other corporations whose members produce milk in the marketing territories of the Cooperative shall be eligible for Associate Membership in the Cooperative; any cooperative corporations, marketing associations in common or other such corporations~~ ~~whose members produce milk in the marketing territory of the Cooperative, as well as areas other than the marketing territory of the Cooperative, shall be eligible for membership as Affiliate Members of the Cooperative.~~ When used in these by-laws, the term "member(s)", unless specifically qualified, shall mean all categories of membership, producer, affiliate and associate. Should a producer member cease production for reasons of force majeure, the producer member shall not forfeit its membership provided the producer member notifies the Cooperative in writing within 60 days after it has discontinued production of its intention to resume shipping, and, in fact, resumes production within one year thereafter. Where the producer has given the required notice and has otherwise acted in good faith to resume production, the Board of Directors may for good cause shown extend the time required by the producer to resume production beyond the one-year period.

SECTION 2 There shall be three types of members as follows:

- a. **Producer Members.** Any individual, partnership, corporation, association, or other business combination, actively engaged in the production of milk or dairy products in the marketing territory of the Cooperative shall be eligible for producer membership in the Cooperative. Any such producer shall become a member of the Cooperative when accepted as such by the Membership Committee of the Board of Directors or by the Board of Directors, and upon signing a ~~p~~Producer ~~c~~Contract with the Cooperative, and agreeing to be bound by any and all marketing agreements of the Cooperative, the by-laws of the Cooperative, other corporate

documents, membership resolutions of the Board of Directors, and any and all programs, rules and regulations promulgated by the membership, the delegates, or the Board of Directors of the Cooperative, from time to time. Each ~~member production unit~~ of the Cooperative shall be entitled to one (1) vote at meetings of the Cooperative, so long as it is represented by an authorized representative of such member member or members in good standing. ~~Should a producer member cease production for reasons of force majeure, the producer member shall not forfeit its membership provided it notifies the Cooperative in writing within 60 days after it has discontinued production of its intention to resume shipping, and, in fact, resumes production within one year thereafter. Where the producer has given the required notice and has otherwise acted in good faith to resume production, the Board of Directors may for good cause shown extend the time required by the producer to resume production beyond the one-year period.~~

- b. Associate Members.** Any Cooperative corporation organized under the laws of any state and in good standing thereunder all of whose members are persons engaged in the production of milk or dairy products for market in the marketing territory of the Cooperative, are eligible to become associate members of the Cooperative, if and when approved for membership by the Board of Directors, or the Membership Committee of the Board of Directors. Producer members of an associate member shall have no vote at the meetings of the Cooperative; however, producer members of an associate member shall elect from their members, a voting delegate and directors in accordance with the associate's membership agreement with the Cooperative, to sit on either the Upstate Niagara Cooperative, Inc. Board of Directors, or an Upstate Niagara Cooperative, Inc. Associate Board of Directors, as may be approved by the Upstate Niagara Board of Directors, and who will represent the associate member and its producer members at all regular and special meetings of the Cooperative. The Associate member may designate in writing by letter to the Secretary of the Cooperative on an annual basis an alternate delegate who may attend and vote at cooperative delegate's meetings when their designated delegate is unavailable to do so. The marketing agreement of the associate member with the Cooperative shall contain such terms and conditions as may be required by the Board of Directors, including provision for the payment by the Associate Member of its own corporate operating expense. At such time as the producer members of the associate member unanimously elect to execute producer contracts with the Cooperative the Board of Directors may accept them for producer membership and they shall then be entitled to vote in the meetings of the Cooperative so long as they remain producer members in good standing, as is provided in Article IV, Sections 2 and 3.
- c. Affiliate Members.** Any cooperative, corporation, marketing association in common, or similar corporation organized under the laws of any state, an acceptable number of whose members are persons engaged in the production of milk or dairy products for market in the marketing territory of the Cooperative, as well as areas other than the marketing territory of the Cooperative, may become affiliate members of the Cooperative at such time as an appropriate membership and marketing agreement, containing such terms and conditions as shall be approved by the Board of Directors, ~~including provisions for the payment by the affiliate of its own corporate operating expenses, is executed by the affiliate.~~ Producer members of an affiliate member shall have no vote at the meetings of the Cooperative; however, producer members of an affiliate member shall elect from their members, a voting delegate and directors, in accordance with the affiliate's membership agreement with the Cooperative, to sit on either the Upstate Niagara Cooperative, Inc. Board of Directors, or an Upstate Niagara Cooperative Affiliate Board of Directors, as may be approved by the Upstate Niagara Board of Directors, and who will represent the affiliate member and its producer members at all regular and special meetings of the Cooperative. The Affiliate member may

designate in writing by letter to the Secretary of the Cooperative on an annual basis an alternate delegate who may attend and vote at cooperative delegate's meetings when their designated delegate is unavailable to do so.

- d. The terms of such delegate and directors, their qualifications, and the manner of their election shall be provided in the marketing and/or membership agreement executed between the associate or affiliate and the Cooperative. The duties of the Associate or Affiliate Directors and/or Delegates shall be as set forth in Article V and VI hereinafter, as limited to the scope of the Associate or Affiliate member's business, and as may be further defined in the marketing and/or membership agreement executed between the associate or affiliate and the cooperative.
- e. Participation of an Associate or Affiliate member in the Upstate Niagara ~~Member Producer~~ Investment Program shall be within the discretion of the Board of Directors on such terms and conditions as may be fair and equitable in the premises to the new member(s) and to existing producer members, and associate or affiliate members and as may be further defined by the marketing and/or membership agreement between an associate or affiliate member and the cooperative.
- f. The Board of Directors shall have the power to enter into a contract of affiliation with another Cooperative, appointing such other Cooperative as its agent in the marketing of the milk of its members, and agreeing that each member covered by the contract shall be a member of such other Cooperative during the continuance of such contract of affiliation and in accordance with the provisions of such contract.

SECTION 3 At no time shall the number of delegates and/or directors who are also members of an associate or affiliate member on the Upstate Niagara Board of Directors or on an Associate or Affiliate Board, as the case may be, exceed a maximum percentage, which shall be established from time to time by the Board of Directors (including associate and/or affiliate directors) of the total number of delegates and/or directors of the Cooperative.

SECTION 4 Except as may be otherwise provided in any separate marketing agreement between an associate or an affiliate member and the Cooperative, as well as in any producer contract or other agreement between a member and the Cooperative, all members of the Cooperative shall be bound by the following provisions:

- a. The member agrees to sell to the Cooperative and the Cooperative agrees to purchase all milk and dairy products of the producer member wherever produced except such as are retained for consumption on the premises where produced. Such milk and dairy products shall be produced, kept and delivered in conformity with (i) the requirements of the Cooperative, (ii) the requirements as approved by the Cooperative of the entity to whom the milk is sold by the Cooperative, and (iii) by applicable federal, state and local laws, rules and regulations duly enacted in the marketing territory of the Cooperative.
- b. The producer member agrees that title to the milk or dairy products sold to the Cooperative shall pass to the Cooperative upon acceptance by the Cooperative of the milk or dairy products conforming to its quality control requirements. "Acceptance" by the Cooperative shall be such time as the milk is commingled with other milk.
- c. The Cooperative agrees that it will pay members the proceeds received from the sale of such milk and dairy products, after taking into account adjustments for such differentials as the

Cooperative may from time to time determine to be equitable, and after deducting costs and expenses of handling and of conducting the business of the Cooperative, including such amounts as may from time to time be allocated to reserve funds, all as may be determined by the Board of Directors, and after deducting funds retained for capital and other purposes in accordance with the by-laws, or as may be further defined by the marketing and/or membership agreement between an associate and/or affiliate member and the cooperative.

- d. The Cooperative may, in satisfaction of its obligations hereunder, blend the proceeds received from its sale of milk and other dairy products of the members with proceeds received from sale of such products of some or all other members and may distribute such blended proceeds subject to adjustment for differentials and deductions described above, by uniform method applicable to such members.
- e. Except as may be provided in any separate written agreements between the members and the Cooperative, including but not limited to producer contracts and marketing agreements, membership in the cooperative may be terminated by written notice given by the member to the Cooperative or by the Cooperative to the member at any time and such termination shall become effective at the end of the thirty (30) day period next succeeding that in which the notice has been given, provided, however, that where the member has executed a separate marketing agreement- and/or producer contract with the Cooperative, membership may be terminated only in the manner and the time provided in such marketing Agreement, and/or producer contract.

SECTION 5 Upon acceptance for membership by the Cooperative, all members, whether producer, associate or affiliate, shall be given the Upstate Membership Manual, which shall contain copies of the by-laws of the Cooperative, and such other agreements, corporate documents, programs rules or regulations, deemed by the Cooperative to govern terms and conditions of membership and each such member shall ~~ratify such documents and~~ agree to be bound by their provisions pursuant to the producer contract.

SECTION 6 Any Producer Member shall forfeit its membership when in the opinion of the Board of Directors of the Cooperative such member has ceased to market milk and has ceased to produce milk. Any Associate or Affiliate members shall forfeit its membership when in the opinion of the Board of Directors of the Cooperative, such member has ceased to market the milk of its producers in the marketing territories of the Cooperative, or such member has otherwise failed to perform the terms and conditions of its membership agreements with the Cooperative.

SECTION 7 The Board of Directors may by a majority vote of those present:

- a. Terminate a Producer Member's pProducer cContract and membership in the Cooperative, or place a Producer Member on an appropriate probationary status if such Member has:
 - i violated any of the provisions of the pProducer cContract, the by-laws, or any applicable Cooperative policy or program;
 - ii conducted itself in a manner which could be detrimental to the general welfare of the Cooperative, including but not limited, to mistreatment of animals or failure to follow the animal welfare requirements of the Cooperative; and/or
 - iii misleading the Cooperative or a certifying agency with regard to satisfying the requirements of an organic or rabbinically supervised kosher milk pProgram in which the

Member participates, or intentionally failing to satisfy the requirements of an organic, or rabbinically supervised kosher ~~p~~Program in which the Member participates.;

- b. Change or withdraw a Member's participation in a ~~p~~Program due to a failure to satisfy any requirements of such Program, including, but not limited to, if a Member fails to comply with any requirements for an organic or rabbinically supervised kosher Program that the Member participates in.

SECTION 8 Terminations of membership for any cause shall not affect any existing rights, title or interest of the member in the property of the Cooperative nor right or lien which the Cooperative has against the member or its property. However, in the event of termination, any and all obligations of the Cooperative to the member not otherwise subject to contractual limitations between the parties, as for example, in the ~~Member -Pproducer-I~~investment ~~P~~program, shall be finally ascertained and determined no later than eight and one-half (8 1/2) months following the end of the fiscal year in which the membership was terminated, with payments being made on terms and conditions as set forth in membership or other agreements between the parties, -or as per the resolutions of the Board of Directors.

SECTION 9 Contract rights in and with the Cooperative are not transferable except as and when authorized by vote of the Board of Directors. No member shall be permitted to withdraw or resign except in the manner provided in its producer contract or membership agreements with the Cooperative or otherwise in the by-laws, or as may be further defined by the marketing and/or membership agreement between an associate or affiliate member and the cooperative.

SECTION 10 Membership in the Cooperative shall be terminated by death of the producer member; provided, however, that until the transfer or other disposition of the milk producing assets of the deceased member's estate has been made, the administrator or executor of the deceased member's estate shall have and may continue to exercise all of the deceased member's rights under his producer contract, or other membership or marketing agreement for a period not to exceed the contract period or such renewal period as may be approved by the Board or its Membership Committee. For partnership or corporate members, membership in the Cooperative shall be terminated by legal dissolution of the entity.

SECTION 11 In addition to the provisions of these by-laws, the services to be rendered by the Cooperative for each member and the obligations of each member to the Cooperative shall be determined by the ~~p~~Producer ~~c~~Contract and/or ~~m~~Marketing ~~a~~Agreement, and other ~~programs, rules, regulations and~~ agreements of the Cooperative governing membership and the resolutions of the Board of Directors and/or Delegate Body, as may be adopted from time to time.

ARTICLE IV

DELEGATES, ~~AND DIRECTORS,~~ ELECTIONS ~~AND PROCEEDINGS~~

SECTION 1 The Board shall have fifteen (15) directors, ~~consisting of: (i) three area directors from each of the three areas nominated and elected as provided by Article IV, Section 9 with staggered terms with fiveone (51) being elected each year in each area each year; and (ii) six (6) at large directors with staggered terms with two (2) being elected each year as provided by Article IV, Section 11.~~ Each director shall be a member of the delegate body, except for associate and/or affiliate directors. Delegates' terms shall commence and expire at the time of election at ~~the annual meeting~~ Area Meetings. The delegate's term of a director who fails to gain re-election as ~~a an area~~ delegate forthwith expires, but his or her directorship term does not expire until the new Board is seated. ~~at the annual Delegates Meeting of the Cooperative.~~ The terms of delegates elected directors for full terms or to fill vacancies shall be extended or reduced to coincide with the directorship term, if necessary, and will expire at the time of the ~~area~~

delegates meeting preceding the expiration of the directorship term, but effective upon the seating of the new Board as contemplated herein. -An incumbent director not elected a delegate at the ~~area~~ meeting preceding the expiration of his or her term as director shall not be eligible to vote at any ~~d~~Delegate's Meeting of the Cooperative.

SECTION 2 ~~Producer members shall be entitled to vote in the area in which they produce milk.~~ Each ~~producer member~~production unit operated as a separate legal entity ~~(whether one or more production facilities)~~ shall be deemed a producer member entitled to one vote as evidenced by the applicable producer contract. The books and records of the Cooperative regarding the number of members and authorized representatives thereof shall be deemed conclusively correct absent manifest administrative error. -Not more than one partner, one shareholder, one member or one officer from each partnership or corporate production unit operated as a separate legal entity (whether one or more production facilities) shall be eligible to hold an elected position as a delegate and/or director, except in the situation of a director whose term is expiring and who failed to be re-elected as a delegate. ~~In the event a production unit has production facilities in more than one area, it must designate in writing the local area in which its producer member will vote.~~

SECTION 3 Producer members must vote in person ~~at area meetings~~ through their authorized representative, except that, if a producer member reasonably expects that its authorized representative will not be able to attend the ~~area~~ meeting for any reason, that producer member may request, in the manner prescribed in the annual ~~area~~ membership meeting notice, a proxy ballot and may vote by proxy for the number of delegates being selected at that meeting if the proxy ballot is delivered to the Cooperative by the close of business on the last business day before the annual that producer member's area meeting. Provided they meet the requisite confidentiality, technology and security requirements as determined by the Cooperative, such proxy ballot may be filled out and submitted electronically in the time prescribed by the Cooperative for such purpose.

SECTION 4 The President, or, in his or her absence, the member of the Executive Committee, or Director, as the President may designate, shall act as Chair of the annual delegate's meeting~~Annual Area Delegates Meeting~~ called for the purpose of electing the ~~area~~ directors. -Any and all notices contemplated or required hereunder to any person may be provided electronically in accordance with applicable law.

SECTION 5 The annual meeting area membership meetings of each area shall be held not later than 180 days following the end of the fiscal year, with the precise date being fixed by the Board of Directors, and written notice thereof, in the manner prescribed herein, -being given to each producer member in the area at least ten (10) days prior to the scheduled date of ~~each the annual~~ meeting. The quorum requirements for the annual meeting area meetings of the producer membership shall be twenty percent (20%) of the total ~~area~~ producer membership. In matters other than elections, majority vote of ~~area~~ producer's present shall be sufficient for approval.

SECTION 6 Protocol for nomination and election procedures at ~~each such meeting any meeting~~ shall be governed by Roberts Rules of Order and all elections shall be by secret ballot. Provided they meet the requisite confidentiality, technology and security requirements as determined by the Cooperative, such ballots may be filled out and submitted electronically. The election of delegates by the members ~~and the election of the nominating committee for the following year~~ shall constitute the business agenda at the ~~annual area~~ meeting unless otherwise specified in the notices. ~~Members of the nominating committee may be elected by voice vote at the annual area membership meetings; provided, however, if there are more nominees for an area nominating committee than seats, then the election of such area nominating committee members shall be by secret ballot. Provided they meet the requisite confidentiality, technology and security requirements as determined by the Cooperative, ballots for any of the foregoing purposes may be filled out and submitted electronically. The election and ballot process for nominating committee~~

~~candidates, if applicable, shall be conducted in the same manner as the election and ballot process for delegates set forth below.~~ The remainder of the annual meeting agenda, reports, etc. shall be for purposes of information and communication. ~~The annual member meeting requires in-person attendance or proxy as set forth above; however, if offered by the Cooperative, a member may participate in the non-business remainder of the annual meeting by conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.~~

SECTION 7 The first order of business at the annual meeting ~~Area Meetings~~ shall be the election of delegates in the number and by the method hereinafter set forth in Section 8 of this article. ~~The second order of business at each area annual meeting shall be the election of four (4) persons from the area producer membership who will serve both on that area's nominating committee and on the cooperative-wide nominating committee. The four (4) nominees who receive the highest number of votes will be elected for a one (1) year term beginning after the upcoming Annual Delegates Meeting and continuing until the Annual Delegates Meeting the following year. If applicable, the nominee who receives the next highest number of votes will be elected as an alternate for that year. If a member of the area's nominating committee resigns or becomes unable to perform the duties of the area and cooperative wide nominating committees, then the alternate shall replace that member on the area and cooperative wide nominating committees. If, in any event, there shall be two (2) or less members in any area nominating committee, the Board shall be empowered to fill the vacancies therein such that the affected area nominating committee shall have four (4) members prior to performing its required duties though an area nominating committee shall be able to perform its duties hereunder with less than such number. Directors shall not be eligible to serve on an area or cooperative wide nominating committee. The area nominating committee shall elect a Chair. It is the function of the area and cooperative wide nominating committees to select objectively the most qualified candidates, to insure that qualified candidates are not excluded, and to insure that nominations are equitably distributed throughout each area and throughout the Cooperative. On a day at least two (2) business days after the last area annual meeting and at least five (5) business days prior to that year's annual delegates meeting, the area nominating committees and the cooperative-wide nominating committee shall meet at the same location at approximately the same time, or alternatively be available to each other by means of conference telephone or similar communications equipment, allowing all persons participating in the meeting to hear each other at the same time, so that the nominating committee area nominating committees and the cooperative wide nominating committee can share names and information as they determine their list of nominees for director qualified to meet the Cooperative's strategic needs referring to, and guided by, the annual needs assessment previously conducted by the Board of Directors and provided to the nominating committee.~~

SECTION 8 ~~At each annual area meeting, the area-~~The nominating committee shall nominate at least two (2) more candidates than the total number of delegates required for election, to serve as delegates of the Cooperative for terms as follows. ~~The terms of elected delegates shall be three (3) years, except that delegates may be elected to fill terms of two (2) years or (1) year if such shorter terms are pursuant to Sections 14 or 15 of this article.- If some of the terms being filled are less than three (3) years in length, the candidates receiving more votes shall receive longer terms.~~

SECTION 9 At the annual delegates meeting, the Delegate Body shall elect ~~area directors prior to the election of at large directors. The election for area directors shall be~~ by individual balloting amongst for all of the nominees who ~~are delegates from that area and who~~ are nominated either by the area nominating committee or from the floor. ~~Provided they meet the requisite confidentiality, technology and security requirements as determined by the Cooperative, such ballots may be filled out and submitted electronically.~~ A ~~n~~ area director shall be elected by a simple majority vote of the delegates present who actually vote for an eligible nominee on that ballot. Where there are more than two (2) nominees and a majority vote is not obtained by any candidate, the candidate(s) receiving or tying for the lowest vote total, ~~or candidates that tie for the lowest vote total,~~ will be dropped on each successive ballot until a

majority is obtained and/or there are only two candidates.- If dropping such candidate(s) who tie for the lowest vote total would result in a single candidate remaining who has not received a majority, the candidates who are tied will participate in a run-off election (or elections) until one of the tied candidates achieves a higher vote total than the other. -The winner of such run-off election will then be entered into the unfinished election with the remaining candidate who had not received a majority.- Unelected nominees are automatically nominated for subsequent director election until the elections have concluded and five (5) directors are elected-as an at large director that year. -A nominee for area director may not decline to run in the area election prescribed above in order to run only in the at large election, i.e., he or she must first participate in the appropriate area election.

SECTION 10 ~~The annual meeting of the Cooperative as required by law shall be the annual delegates meeting.~~The annual delegates meeting of the Cooperative shall be held not later than one hundred eighty (180) days after the close of the fiscal year of the Cooperative, and thereafter in the same month each year (if possible) on such dates as may be designated by the Board of Directors. Written notice, as prescribed herein, thereof shall be given to each delegate at least ten (10) days prior to the scheduled date of each meeting. Participation in the annual delegates meeting shall require in-person attendance unless a delegate would experience a hardship doing so, as determined by the Executive Committee, in which case, he or she may participate by conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time.

SECTION 11 Effective at the conclusion of the election of delegates at the 2026 annual meeting (at which there will be no member-elected nominating committee proceeding), tThe six (6) person nominating committee shall be elected at the annual delegates meeting for staggered terms of three (3) years following the election of directors. The elections for nominating committee members shall be conducted in the same manner as members elect delegates, albeit by the Delegate Body electing such nominating committee members. Candidates for the nominating committee shall submit their interest in so serving to the membership office and may attend the annual delegates meeting at which they may be elected. There shall be one (1) more nominating committee candidate than open seats. Directors are ineligible to serve as nominating committee members and nominating committee candidates should have a record of prior service in governance. If a nominating committee member will be identified as potential candidate to serve for an incomplete delegate or director term, such nominating committee shall resign his or her position reasonably advance of the appointment or election therefor. A vacancy in the nominating committee shall be filled by the Delegate Body with such individual to serve for the balance of the term of the vacated seat. Until the nominating committee contemplated hereby is seated, the currently comprised nominating committee shall continue to serve as such.~~twelve (12) person cooperative-wide nominating committee shall elect a Chair and shall nominate candidates for at large director from the delegate body of the Cooperative as constituted at the end of the immediately preceding area annual meetings. The Chair of the cooperative wide nominating committee shall be a member of the by law review committee. The number of nominations shall include the nominating slate, together with any nominations from the floor. Each at large seat to be filled will be by individual balloting and the Chair shall call for nominations from the floor before the election for each seat. Terms shall be three (3) years. At large directors shall be elected by a simple majority vote of the delegates present who actually vote for an eligible nominee on that ballot in individual elections for each seat to be filled. Where there are more than two (2) nominees and a majority vote is not obtained by any candidate, the candidate receiving the lowest vote total, or candidates that tie for the lowest vote total, will be dropped on each successive ballot until a majority is obtained and/or there are only two candidates. If dropping candidates who tie for the lowest vote total would result in a single candidate remaining who has not received a majority, the candidates who are tied will participate in a run off election (or elections) until one of the tied candidates achieves a higher vote total than the other. The winner of such run off election will then be entered into the unfinished election with the remaining candidate who had not received a majority. Unelected nominees are automatically eligible for election to the next at large director vacancy in that year.~~

SECTION 12 Terms of newly elected ~~area and at large~~ directors do not commence until the entire board for that year is constituted at the first board regularly scheduled meeting following the election of directors as determined by the Cooperative. New directors may be invited to any special meetings that occur in the interim. ~~after the at large director elections at the annual delegate meeting.~~

SECTION 13 The ratio of delegates to directors shall be three (3) delegates to one (1) director, e.g. forty-five (45) for a fifteen (15) person Board of directors. The number of directors and/or delegates may only be changed by amendment of these by-laws. ~~Subject to ratification by an affirmative vote of a majority of the Delegate Body present, the Board of Directors shall have the authority to establish and change the territorial limits of the three (3) representation areas as well as the delegate to member representation ratio. The representation ratio shall be based on the number of members as of October 31 of each year. The territorial limits of the three (3) areas and the delegate to member representation ratio shall be established and periodically adjusted so as to give the membership of the Cooperative fair and equitable representation on the Delegate Body and the Board of Directors. In making these computations, ½ or more shall be rounded upward and less than ½ shall be rounded downward.~~

SECTION 14 All notices to members, delegates, directors, committee members or others required or contemplated hereby may be provided electronically in accordance with applicable law. ~~In reviewing the boundaries and composition of the Cooperative areas, the representation ratio, and the future terms of delegates, the Board of Directors shall act at least once in each year to make adjustments, if necessary. In so doing, the Board of Directors shall base its determination on current membership figures as they may affect the existing delegate to producer ratios and on the best estimate of how many delegates will come up for re-election in future years. In the event that a change in area boundaries, the ratio, or the future terms of delegates is deemed necessary by the Board of Directors, any such change must be approved by the affirmative vote of 70% of the total number of Directors, subject also to ratification by a majority of the Delegate body present. The goal is to have a Delegate body of approximately fifty (50) delegates and to have approximately one third of the delegates from an area elected each year.~~

SECTION 15 Delegate vacancies during a term shall be filled from the remaining delegate(s) nominee(s) ~~in the area~~ who received the next highest vote total to previously elected ~~or designated area~~ delegates. If there is a tie in applying these selection criteria, the tie shall be broken by a ~~n-area~~ delegates meeting. Any delegate designated to fill a vacated term shall serve only for the balance of the term of such vacated seat ~~the year, with the seat being up for election at the next annual area meeting to fill the balance of the original term.~~

SECTION 16 In the event a ~~n-area~~ directorship becomes vacant during the term, the delegates at their next regularly scheduled meeting or at a special meeting shall elect a successor from the ~~area~~ delegate body to fill the unexpired term. If such an election becomes necessary, the nominating Chair of the area nominating ~~committee~~ shall convene a meeting ~~of the area nominating committee~~ and notify all of the delegates at least five (5) business days prior to the election.

SECTION 17 Upon the request of the Chief Executive Officer, and with the approval of the Executive Committee, there may be appointed one (1) outside director, non-voting, to the Board of Directors, which person is not required to be delegate, for a term of one (1) year with compensation to be set forth in the request of the Chief Executive Officer and approval of the Executive Committee, respectively and collectively, all of which shall be reported to the Board of Directors. ~~In the event an at large directorship becomes vacant during the term, the delegates at their next regularly scheduled meeting or at a special meeting shall elect a successor from the delegate body to fill the unexpired term. If such an election becomes necessary, the Chair of the cooperative wide nominating committee shall convene a meeting of the cooperative wide nominating committee and notify all of the delegates at least five (5) business days prior to the election.~~

SECTION 18 In addition to the annual ~~area~~ meetings, there may be called from time to time by the Board of Directors ~~area~~ meetings of delegates and producer members on at least ten (10) days written notice to each ~~area~~ delegate and producer, as applicable. ~~With advance permission of the Chair, and provided the Cooperative can accommodate, a~~ Any one or more of the delegates or producers ~~area delegates~~ may participate in such a meeting ~~of the area delegates~~ by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

SECTION 19 The President of the Cooperative shall be the Chair of the Delegate Body and the President shall have the authority to call meetings of that Body or upon the petition in writing of not less than twenty-five percent (25%) of the entire Delegate Body on at least ten (10) Days' notice. ~~In the~~ In the President's absence, the President shall designate a member of the Executive Committee of the Board of Directors, or such other director, to serve as Chair of the Delegate Body.

SECTION 20 ~~Reserved. In addition to the annual meeting of the entire Delegate Body of the Cooperative, there will be called additional meetings of the entire Delegate Body on at least ten (10) days notice in writing to each member of the Delegate Body, either by the President or on the petition in writing of not less than twenty-five percent (25%) of the entire Delegate Body.~~

SECTION 21 The Board of Directors may convene meetings of the producer membership of the Cooperative on at least ten (10) days' notice in writing to each producer member.

SECTION 22 In the event procedural or voting eligibility questions beyond the letter of these ~~bBy-L~~ laws arise at election meetings, binding rulings shall be made for the meeting by the meeting Chair in consultation with the parliamentarian and management personnel, subject to the approval of the Executive Committee of the Board of Directors sitting as an Election Committee, consistent with the provisions, intent, and purposes of these ~~bBy-L~~ laws. In the event such rulings are to be used to govern procedure in subsequent meetings, they must first be submitted to the Board of Directors for approval and/or modification, and ratification by the Delegate Body, if necessary.

SECTION 23 Where there is a tie vote for five successive ballots for any elective position, including, without limitation, directorships, officers, and delegates, the Chair of the meeting may entertain a motion to adjourn the election and proceed with the remainder of the ~~aA~~ agenda.

SECTION 24 Any person who is a director, delegate or member of a ~~special~~ committee or who is a nominee for such a position must satisfy the following requirements:

- a. The person must have active member status in the Cooperative (for example, he or she must be bound by the standard 12-month producer contract agreement).
- b. The person's commitment to the dairy farm enterprise must be substantial from a financial interest (for example, he or she must be a major supplier of equity or capital at risk).
- c. The person's commitment to the dairy farm enterprise must be substantial from a managerial interest (for example, he or she must have a major input in key management decisions).
- d. The person's equity commitment in the Upstate Niagara Member Investment Program must be commensurate with his or her dairy farming enterprise and involvement and commitment.
- e. The person should not have a conflict of interest that would create an appearance of affecting the exercise of his or her responsibilities and should avoid such conflicts of interest while serving.
- f. The person, or the dairy farm enterprise he or she represents, cannot currently be party, or otherwise subject, to a Quality Contract with the Cooperative. A "Quality Contract" is a

probationary contract under which the member must meet certain quality standards and other obligations in order to maintain active member status in the Cooperative.

- g. The person, or the dairy farm enterprise he or she represents, cannot be a debtor subject to Federal bankruptcy or State insolvency proceeding

The ~~nominating committee~~ ~~Nominating Committee~~ shall review the background of each potential nominee to determine if he or she satisfies these requirements and shall review the background of any person who is elected after being nominated from the floor to determine if he or she satisfies these requirements.

If a director, or the dairy farm enterprise he or she represents, becomes a party, or otherwise subject, to (i) a Quality Contract or (ii) a Federal bankruptcy or State insolvency proceeding, such director shall be ineligible to continue to serve and be deemed to have automatically resigned such director position without any further action. For purposes of clarification, Article V, Section 10 of these ~~b~~By-laws (removal) shall not apply in these circumstances and the vacancy shall be filled as set forth in Article IV, Sections 15 and 16 of these ~~b~~By-laws.

ARTICLE V

DUTIES OF DIRECTORS

SECTION 1 The Board of Directors shall develop policy for direction of the Cooperative, cause the Annual Audit of the financial statements of the Cooperative to be made by independent public accountants, work as necessary with management, and develop the closest possible working relationship with the Delegate Body, and make the necessary rules and regulations, not inconsistent with the law or with these ~~b~~By-laws, for the management of the business and the guidance of the officers, employees, and agents of the Cooperative.

SECTION 2 The Board of Directors shall not, without the approval ~~or prior authorization~~ of seventy-five percent (75%) of the entire Delegate Body of the Cooperative, given at a special meeting of the Cooperative (notice of which shall specify the action covered hereby as one of the purposes of the meeting):

- a. Approve of the sale or lease of tangible physical property of the Cooperative for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.
- b. Approve for any single purpose, of a proposal to expend, incur any indebtedness or pledge the credit of the Cooperative for any amount in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.
- c. Approve of proposed business acquisitions, business divestitures, mergers, consolidations, joint ventures, dissolutions, or liquidations, for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year or involving amendment, restatement or revocation of the Certificate of Incorporation of the Cooperative.

SECTION 3 Seventy percent (70%) of the members of the Board of Directors shall constitute a quorum for the transaction of the business at any regular or special meeting of the Board. ~~-With advance permission of the Chair, a~~Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of the Board or of such committee by means of a conference

telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

SECTION 4 A majority vote of the total number of directors present, unless otherwise provided herein, shall be required to govern all transactions of the Board.

SECTION 5 The following matters shall require a concurring vote of seventy percent (70%) of the total number of directors:

- a. Internal reblending.
- b. Changes in bargaining agency composition, voting or membership.
- c. Changes in market orders.
- ~~d.~~ Membership assessments.
- ~~e.d.~~ ~~e.~~ ~~Re-establishment of area boundary lines, or delegate to producer, or director to producer representation for voting ratios, or adjustment of the future term of any Delegate to less than three years.~~
- ~~f.e.~~ ~~f~~ Proposed associate or affiliate memberships in Upstate Niagara or by Upstate Niagara.
- ~~f.~~ ~~g~~ Amendments to the ~~b~~ By-laws or Member ~~Producer~~ Investment Program.
- g. The transactions contemplated in Section 2 of this Article above.

~~Section 6~~ ~~h.~~ ~~Approval of the sale or lease of tangible physical property of the Cooperative for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.~~

~~Section 7~~ ~~i.~~ ~~Approval for any single purpose, of a proposal to expend, incur any indebtedness or pledge the credit of the Cooperative for any amount in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.~~

~~Section 8~~ **SECTION 6** ~~j.~~ ~~Approval of proposed business acquisitions, business divestitures, mergers, consolidations, joint ventures, dissolutions, or liquidations, for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year or involving amendment, restatement or revocation of the Certificate of Incorporation of the Cooperative.~~ The officers of the Cooperative shall be a President, a Vice-President, a Secretary, a Treasurer, an Assistant Secretary, and an Assistant Treasurer elected from members of the Board of Directors. The office of Secretary and Treasurer may be combined. These officers shall be elected by the affirmative vote of a simple majority of directors present. Officers shall hold office for terms of one (1) year, or until their successors are elected and qualified. The election and ballot process for officers, if applicable, shall be conducted in the same manner as the election and ballot process for directors set forth above.

~~Section 9~~ **SECTION 7** The Board of Directors may appoint one or more assistant secretaries and/or assistant treasurers and/or assistant secretary-treasurers to serve at the discretion of the Board of Directors.

~~Section 10~~ **SECTION 8** The Board of Directors shall elect an executive committee consisting of the six officers elected pursuant to Article V, Section 6 (plus such additional directors as the Board of Directors may, at its discretion, elect) whose authority, quorum and related matters shall be as set forth in the enabling resolution of the Board of Directors creating said executive committee.

~~Section 11~~**SECTION 9** A director shall hold office until his or her successor shall have been elected and seated as provided in Article IV, Section 12; provided, however, that if a director ceases to be a producer member of the Cooperative, his or her position as director shall be terminated immediately. Vacancies on the Board of Directors shall be filled pursuant to the provisions of the prior section of these by-laws dealing with the question.

~~Section 12~~**SECTION 10** Any director or officer of the Cooperative may at any annual meeting or any special meeting called for that purpose be removed from office by a vote of seventy-five percent (75%) of the delegates of the Cooperative, provided, however, that any objection to his or her serving out his or her term first be screened by ~~at~~ the Qualifications Committee of the Board of Directors and be certified by that Committee to the Delegate Body for its consideration on the merits.- Notice of the time and place and object of any such meeting shall be ~~provided mailed by the secretary~~ to the delegates of the Cooperative not less than ten (10) nor more than fifty (50) days previous to the date of such meeting. Such officer or director shall be informed of the reasons for his or her proposed removal at least twenty (20) days prior to such meeting of the entire delegate body and at such meeting shall have an opportunity to be heard in person, by counsel and by witness with regard thereto, and shall be provided a stenographic transcript of such meeting.

~~Section 13~~**SECTION 11** Producer members shall receive reimbursement for authorized expenses incurred in the service of the Cooperative. From time to time, the Board shall establish per diems ~~(or self-effectuating programs therefor)~~ for directors, delegates, members of special committees, and other producer members under appropriate circumstances (including but not limited to Young Cooperators who attend Board or Delegates Meetings and producer members who represent the Cooperative at public hearings); provided that per diems ~~(or self-effectuating programs therefor)~~ for directors or any Board officer must be ratified by the Delegate Body. Per diems shall be in lieu of other expenses, including but not limited to, expenses caused by a producer member's absence from the farm.- The per diem rate may be increased to any director or individual Board officer if, in the judgment of the Board and Delegate Body, such director or Board officer has been required to expend extraordinary responsibilities in the performance of his or her duties.

~~Section 14~~**SECTION 12** ~~Except for the nominating committee elected by the delegates, t~~The Board of Directors may from time to time appoint such other committees from the directors, ~~area~~ officers and delegates and/or the producer members, as they may deem advisable for the proper conduct of the business of the Cooperative. The President shall be an ex officio member of all committees. Any such committee must be appointed by the affirmative vote of the majority of directors constituting a quorum, and such committee shall have and may exercise all of its authority delegated to it by the Board of Directors in its enabling resolution. All committees, except the executive committee, and members of all such committees except the President, shall serve for such terms as the Board may deem appropriate.

~~Section 15~~**SECTION 13** The Board of Directors shall cause the books of the Cooperative to be audited as required by law and shall install an accounting system which shall be adequate to the requirements of the business of the Cooperative.

~~Section 16~~**SECTION 14** The Board of Directors shall employ or authorize the employment of a Chief Executive Officer, ~~an Executive Vice President and/or General Manager,~~ and fix the terms of his or her employment and his or her compensation. ~~The Chief Executive Officer~~ The Chief Executive Officer ~~The Executive Vice President and/or General Manager~~ shall have charge of the business of the Cooperative under the direction of the Board of Directors.- No director shall serve as the Chief Executive Officer ~~Executive Vice President and/or General Manager~~ of the Cooperative or as a salaried employee of the Cooperative. ~~The Board of Directors may also employ or authorize the employment of a Chief Financial Officer, Chief Legal Officer, Chief Personnel Officer, and/or Chief Operating Officer.~~

~~Section 17~~**SECTION 15** The Board of Directors shall require the Chief Executive Officer~~Executive Vice President and/or General Manager and~~ and/or all other officers, agents and employees charged by the Cooperative with responsibility for the custody of any of its funds to give adequate bonds as and when appropriate. ~~Such bonds shall be furnished by licensed bonding companies subject to the approval of the Board of Directors, and the cost thereof shall be paid by the Cooperative.~~

~~Section 18~~**SECTION 16** The Board of Directors shall have the power to adopt and alter from time to time the form of the producer contract, subject to approval by the Delegate Body, to be signed by the members and to establish the terms of and carry out the marketing agreements of the Cooperative with its members in every way advantageous to the Cooperative representing its members collectively.

~~Section 19~~**SECTION 17** The Board of Directors shall have the power to select one or more banks to act as depositories of the funds of the Cooperative and to determine the manner of receiving, depositing and disbursing the same, and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

~~Section 20~~**SECTION 18** In the case of death, resignation or disability of an officer, the Board of Directors may declare the office vacant and elect his or her successor.

~~Section 21~~**SECTION 19** Each Director, dDelegate, and mManagement employee (as designated by the Board of Directors) of the Cooperative recognizes that he or she will in the exercise of their duties become privy to proprietary information concerning the business affairs of the Cooperative of a sensitive and confidential nature, and each such person will observe a strict code of confidentiality concerning the disclosure of proprietary information, and the deliberations of the Board of Directors, and the Delegate Body, both while in office, or in the employ of the Cooperative, and ~~thereafter for the five year period following~~. Each director, delegate, and management employee of the Cooperative shall execute an acknowledgment thereof oath of office on an annual basis in form and with penalties as the Board of Directors may deem appropriate.

~~Section 22~~**SECTION 20** Any action required or permitted to be taken by the Board of Directors or the Executive Committee at a duly held meeting may be taken without a meeting if all of the members of the Board of Directors or Executive Committee, as the case may be, consent in writing, including by electronic means, to the adoption of resolutions authorizing the action. ~~Such resolutions and such written consents shall be filed with the minutes of the proceedings of the Board of Directors or Executive Committee, as applicable.~~

ARTICLE VI

DUTIES OF DELEGATES

SECTION 1 The annual delegate meeting of the Cooperative shall be held within one hundred and eighty (180) days of the close of the fiscal year and at such time and place within the State of New York as shall be determined by the Board of Directors.

SECTION 2 Notice of the time and place of the annual delegate meeting of the Cooperative or of special meetings of the Cooperative shall ~~be provided be mailed by the Secretary~~ not less than ten (10) nor more than fifty (50) days previous to such meeting to the delegate at his or her residence or his or her place of business, as the same shall appear on the books of the Cooperative. ~~Sixty percent (60%) of the delegates of the Cooperative shall constitute a quorum for the transaction of the Cooperative business at any meeting of this Cooperative. At area delegate meetings, sixty percent (60%) of the area delegates shall constitute a quorum for the transaction of business at such area delegates meeting. Area delegates~~

~~may participate in area delegate meetings by means of telecommunications equipment (as set forth in Article IV, Section 18), but Delegates~~ may not participate in annual or designated special meetings of the ~~entire delegate body Delegate Body~~ by means of telecommunications equipment, except in the following limited circumstances:

- a. to participate in the election of ~~area and at large~~ directors; but only if the delegate is unable to attend the election in person due to: (i) a medical restriction; or (ii) some other hardship outside the control of the delegate as approved on a case-by-case basis by the Executive Committee of the Board of Directors sitting as an Election Committee;
- b. to participate in proceedings related to voting on a matter that requires the approval, ratification or prior authorization of seventy-five percent (75%) of the entire Delegate Body of the Cooperative (see Article V, Section 2; Article V, Section 10); but only if the delegate is unable to attend the proceedings in person due to: (i) a medical restriction; or (ii) some other hardship outside the control of the delegate as approved on a case by case basis by the Executive Committee of the Board of Directors sitting as an Election Committee.
- c. In order to participate by means of telecommunications pursuant to Article VI, Section 2(a) or (b), each participant must be able to hear all of the other participants at the same time and the non-attending participant must request to participate by electronic or telecommunications ~~reasonably at least five (5) business days~~ in advance of the meeting as otherwise set forth herein, ~~or such longer time in advance as may be needed to make the necessary arrangements.~~

SECTION 3 The order of business at meetings of the Cooperative may be changed at any meetings for that meeting by a majority vote of the delegates present. In parliamentary matters "Roberts Rules of Order" shall govern in all cases to which they are applicable subject to the Certificate of Incorporation and ~~b~~By-Laws of this Cooperative, and requirements of law.

SECTION 4 Except as otherwise provided in these by-laws, any matters submitted to the Delegate Body for approval shall become effective only upon the affirmative vote of seventy percent (70%) of the Delegate Body present.

~~Section 6~~**SECTION 5** Matters for vote by the delegate body of the Cooperative shall be the following:

- a. Election of directors ~~area directors and at large directors~~.
- b. Terms and conditions of associate and affiliate membership.
- c. Changes or amendments to the Articles of Incorporation and the by-laws ~~By-Laws~~ of the Cooperative (see Article XII AMENDMENTS, SECTION 1, following).
- d. Vacancies in directorships ~~area and at large directorships~~.
- e. Other matters referred by the Board for Delegate vote.
- f. The form of the producer contract.

~~Section 7~~**SECTION 6** Matters for r~~R~~atification by the Delegate Body of the Cooperative after Board approval shall be as follows:

- a. Amendment of the by-laws. ~~Board approval of election procedures, or the re-establishment of area boundary lines, or delegate to producer, or director to producer representation or voting ratios.~~
- b. Board approval of the sale or lease of tangible physical property of the Cooperative for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative

- as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.
- c. Board approval for any single purpose, of a proposal to expend, incur any indebtedness or pledge the credit of the Cooperative for any amount in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year.
 - d. Board approval of proposed business acquisitions, business divestitures, mergers, consolidations, joint ventures, dissolutions, or liquidations, for consideration valued in excess of twenty percent (20%) of the total assets of the Cooperative as shown on the audited financial statements of the Cooperative for the immediately preceding fiscal year or involving amendment, restatement or revocation of the Certificate of Incorporation of the Cooperative.
 - e. Other matters referred by the Board for delegate ratification.

~~Section 8~~**SECTION 7** Matters for review by the Delegate Body of the Cooperative shall include the following:

- a. Review of the financial condition of the Cooperative.
- b. Matters involving communication with membership.
- c. The development of policy positions.
- d. Public relations programs and positions.
- e. Other matters as referred by the Board of Directors.

~~Section 9~~**SECTION 8** In addition to the matters as above, it shall be the on-going function of the Delegate Body of the Cooperative, whether meeting in areas with producer members or at Cooperative meetings, to perform, without limitation, the following functions:

- a. To assist in educational programs for members and to develop leadership for the Cooperative.
- b. To assist in educational and public relations activities that will help develop member understanding of the Cooperative and further the interests of the Cooperative movement in the area.
- c. To help create a closer liaison between local members, Board of Directors and management of the Cooperative.
- d. To encourage greater participation of members in the democratic control of the Cooperative.
- e. To promote the full use of Cooperative services and facilities by producer members.
- f. To keep fully informed on the Cooperative's policies, principles, progress and operation, and use every available opportunity to communicate this information to the membership.
- g. To assist the Board and management in assessing, adjusting, or correcting misunderstandings and complaints of members which may arise in the conduct of business of the Cooperative and its facilities in the community.
- h. To assist in preserving the integrity of the Cooperative in the community through keeping in touch with local conditions and communicating relevant information to the Board and management.
- i. To provide liaison with other cooperative organizations in the community.
- j. To help assume the citizenship responsibilities the Cooperative has in the community by actively participating in community affairs.
- k. To assist in the establishment of policy positions for the Cooperative.

ARTICLE VII

DUTIES OF OFFICERS

SECTION 1 The President shall serve as Chairman of the Board of Directors and shall:

- a. Preside over all meetings of the Cooperative and of the Board of Directors.
- b. Sign as President, with the Treasurer, all notes, deeds and other instruments on behalf of the Cooperative except that the President need not be required to sign checks.
- c. Call special meetings of the Cooperative, the Board of Directors, the Delegate Body, the area delegates, and the producer membership.
- d. Perform all acts and duties required of an executive and presiding officer.

SECTION 2 The Vice-President shall, in the absence, disability or refusal to serve of the President, perform all duties of the office.

SECTION 3 The Secretary, or one person designated by him or her with the approval of the Board of Directors, shall:

- a. Keep a complete record of all the meetings of the cooperative and of the Board of Directors.
- b. Serve all notices required by law and these by-laws.
- c. Shall cause the seal of the corporation to be affixed to instruments, on behalf of the corporation.
- d. Keep a complete list of members and their addresses.
- e. Notify the officers and all members of the ~~c~~Committees of their appointment.
- f. Perform such other duties as may be required of him or her by the Board of Directors.

SECTION 4 The Treasurer, or a person designated by him or her with the approval of the Board of Directors, shall:

- a. Sign as Treasurer all checks, and with the President, sign all notes and other obligations of the Corporation.
- b. Receive and disburse all funds, and be the custodian of all the securities of the corporation.
- c. Keep a full and accurate account of all the financial transactions of the corporation in books belonging to the ~~Cooperative Corporation~~, and deliver such books to his or her successor in office when qualified.
- d. Make a full report of all matters and business pertaining to this office to the members at the annual meeting and to the directors whenever required, and make all reports required by law.
- e. Deposit all monies of the corporation in the name of the corporation and to the credit of the corporation.
- f. Perform such other duties as may be required of him or her by the Board of Directors.
- g. Be a member of the finance committee and serve as its Chair.

SECTION 5 The Assistant Secretary shall, in the absence, disability or refusal to serve of the Secretary, perform all duties of the office.

SECTION 6 The Assistant Treasurer shall, in the absence, disability or refusal to serve of the Treasurer, perform all duties of the office and be a member of the finance committee.

ARTICLE VIII

METHOD OF OPERATION

SECTION 1 The Board of Directors of this Cooperative is authorized to prescribe programs, rules and regulations relative to the time and manner of delivery of milk and milk products handled by the

Cooperative, and the condition in which such milk and milk products shall be at the time of delivery and programs, rules and regulations governing the grading and inspections thereof; and the milk and milk products of every patron of the Cooperative and affiliate and/or associate member handled by the Cooperative shall be subject to such rules and regulations. The Cooperative may decline to receive the milk and milk products of patron and affiliate and/or associate members who do not comply with such programs, rules and regulations or whose milk and milk products are found unfit or undesirable for marketing by the Cooperative.

SECTION 2 Programs, rRules and regulations adopted by the Board of Directors may in the best interest of the Cooperative and its members, deal with contamination or adulteration of said milk but shall not be limited to these subject areas. The Board of Directors may adopt and impose such monetary penalties or otherwise as shall be determined in their discretion to be for the best interest of this Cooperative and its members. Upon the adoption of any policy concerning the imposition of penalties, the Board of Directors shall cause to be delivered to each of its members a schedule of such penalties and the effective date thereof.

SECTION 3 Title to all milk and milk products shall pass to the Cooperative at such times as the milk and milk products are commingled. However, notwithstanding the passage of title, producers remain responsible, pursuant to quality rules, regulations, and standards approved from time to time by the Board of Directors, for the consequences of providing contaminated or adulterated milk. With regard to milk and milk products of the same grade and quality received from its various patrons, the Cooperative shall have the power to borrow money for any legitimate purpose on the security of such milk or products derived therefrom or on any evidence of such milk or by-products or cash accounts derived from the same, and to give a lien of any character on any of them.

SECTION 4 Within the requirements of applicable Federal and State regulations, and as the Board of Directors may direct, the Cooperative may engage and deal in businesses unrelated to the marketing and sale of milk and milk products, and may engage in such businesses with non-members and/or non-patrons provided further that such businesses are consistent with the Cooperative's current status as a non-exempt cooperative under applicable tax law and regulations.

SECTION 5 For each calendar month, the Cooperative shall make such uniform advances to patrons on milk and milk products of the same grade and quality following its delivery as in the discretion of the Board of Directors may be reasonable in view of market conditions and the financial condition of the Cooperative. In making any such payments, the Board of Directors shall have the right to establish equitable differentials based upon, but not limited to variations in market prices, grades, quality, location of product delivered, and transportation, and may deduct and retain out of the amount payable to patrons such sums per hundred-weight of milk delivered as the directors may determine from time to time to be necessary or desirable.

SECTION 6 The fiscal year of the Cooperative shall commence on the first day of January and end on the last day of December.

SECTION 7 As soon as practicable following the end of each fiscal year, the Cooperative shall separately determine the net proceeds from member, non-member and non-patron business. -The net proceeds for each of these business categories shall be determined by deducting from applicable gross proceeds the payments to patrons and/or costs and expenses as allocated to each business category on a basis deemed appropriate. Net proceeds from member business shall be allocated to members in the proportion that the pounds of milk or milk equivalent marketed by each member through the Cooperative during the fiscal year bears to the total pounds of milk or milk equivalent marketed by all such members through the Cooperative during such fiscal year or on such other equitable basis as approved by the Board

of Directors. If the Cooperative has a loss from member business in a fiscal year, such loss shall be equitably recovered from members or otherwise allocated based on authorization by the Board. The net proceeds (loss) after applicable income taxes, from non-member and non-patronage business shall be added to (deducted from) the retained earnings of the Cooperative.

SECTION 8 The net proceeds allocated to members (patrons) shall be distributed within eight and one-half (8 1/2) months following the close of the fiscal year. The distribution as approved by the Board of Directors shall be consistent with law and regulation then in effect.

~~Section 9~~—The Board of Directors shall annually establish the amount of capital deemed adequate to finance the Cooperative's business as well as to redeem such capital as is no longer necessary to meet base capital requirements or which is held by persons or organizations who are not current members of this Cooperative. -The Cooperative shall establish and maintain a Producer Investment Equity account for each member. -Each member shall receive an annual notice from the Cooperative summarizing the status of the member's Producer Investment Equity account.

~~Section 10~~—

~~Section 11~~—A record of all holders of Producer Investment Equity Credits shall be kept and maintained by the Cooperative. Such credits shall be transferable only to the Cooperative or to a member of the Cooperative on the books of the Cooperative in the manner established by the Board of Directors, and no transfer thereof shall be binding upon the Cooperative unless so transferred.

~~Section 12~~—

~~Section 13~~**SECTION 9** No interest shall be paid on Producer Investment Equity Credits. All debts of the Cooperative, both secured and unsecured, shall be entitled to priority over all outstanding Producer Investment Equity Credits.

~~Section 14~~**SECTION 10** The Cooperative shall be entitled to set off against any claims which it may have against any member or former member any amounts which the Cooperative may owe the member or former member.

~~Section 15~~**SECTION 11** Upon the dissolution or winding up of the Cooperative or its business in any manner, the assets shall be used first to pay all debts and obligations of the Cooperative, and next to retire all Producer Investment Equity Credits. Any balance remaining shall be distributed on an equitable basis determined by the Board of Directors.

~~Section 16~~**SECTION 12**

- a. Each producer, affiliate, or associate member that hereafter applies for and is accepted to membership in the Cooperative and each member of this Cooperative on the effective date of this by-law, who continues a member after such date shall, by such act alone consent that the amount of any distributions with respect to the member's patronage, which are made in qualified written notices of allocation in accordance with applicable law ~~(as defined in 26 USC 1388)~~, and which are received by the member from the Cooperative, will be taken into account by the member at their stated dollar amounts in the manner provided ~~in accordance with applicable law 26 USC 1388 (a)~~ in the taxable year in which such qualified written notices of allocation are received by the member.

- b. Anything in these by-laws to the contrary notwithstanding, a member's membership in the Cooperative constitutes an agreement by such member to take into account for federal income tax purposes each per-unit retain certificate received by such member in connection with milk marketed by the Cooperative, the stated dollar amount of such per-unit retain certificate as provided in accordance with applicable law-Section 1385 (a) of the Internal Revenue Code of 1954, as amended, as such Section was constituted on March 14, 1957, or as it may thereafter have been amended, added to or changed, and including any other provision of similar purpose which may hereafter become applicable to the Cooperative.

ARTICLE IX

CONFLICTS OF INTEREST AND INDEMNIFICATION OF OFFICERS AND DIRECTORS

SECTION 1 Conflicts of Interest.— Subject to provisions of the Cooperative Corporation Law, Business Corporation Law, and Agriculture and Markets Law, of the State of New York, and rRegulations promulgated pursuant thereto, a director or delegate may be interested in any contract or agreement for collective sales or purchases by the Cooperative or the sale of the director's or delegate's individual products through the Cooperative. A director or delegate shall not be interested either directly or indirectly in any contract relating to the operations conducted by the Cooperative which does not affect the members in their collective capacity or in any contract for the furnishing of supplies to the Cooperative unless the contract is authorized by the bBy-Laws of the Cooperative or by a concurring vote of all directors. No director or delegate shall receive, directly or indirectly, any salary, compensation or emolument from the Cooperative, either for services as an officer or director or delegate or in any other capacity, except as provided herein or by a concurring vote of a majority of the entire Board of Directors. The Board shall develop a policy and procedure for the disclosure, determination and documentation of declared conflicts of interest.

SECTION 2 Indemnification Generally.— Each person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that such person or such person's testator or intestate (a) is or was a delegate, director or officer of the Cooperative or (b) is or was a delegate, director or officer of the Cooperative who serves or served, in any capacity, any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise at the request of the Cooperative (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Cooperative against all expense, liability and loss, including without limitation ERISA excise taxes or penalties, judgments, fines, penalties, amounts paid in settlement (provided the Board of Directors shall have given its prior consent to such settlement, which consent shall not be unreasonably withheld by it) and reasonable expenses, including attorneys' fees, suffered or incurred by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a delegate, director or officer and shall inure to the benefit of the indemnitee's heirs and fiduciaries; provided, however, that no indemnification may be made to or on behalf of any delegate, director or officer if such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or otherwise disposed of, or if such person personally gained in fact a financial profit or other advantage to which such person was not legally entitled. Notwithstanding the foregoing, except as contemplated by Section 4 of this Article, the Cooperative shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

SECTION 3 Advancement of Expenses.— All expenses reasonably incurred by an indemnitee in connection with a threatened or actual proceeding with respect to which such indemnitee is or may be entitled to indemnification under this Article shall be advanced to such indemnitee or promptly reimbursed by the Cooperative in advance of the final disposition of such proceeding, upon receipt of an undertaking by such indemnitee or on such indemnitee's behalf to repay the amount of such advances, if any, as to which such indemnitee is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which such indemnitee is entitled. All indemnitees shall cooperate in good faith with any request by the Cooperative that common counsel be used by the parties to any proceeding who are similarly situated unless to do so would be inappropriate due to an actual or potential conflict of interest.

SECTION 4 Procedure for Indemnification.

- a. Not later than thirty (30) days following final disposition of a proceeding with respect to which the Cooperative has received written request by an indemnitee for indemnification pursuant to this Article or with respect to which there has been an advancement of expenses pursuant to Section 3 of this Article, if such indemnification has not been ordered by a court, the Board of Directors shall meet and find whether the indemnitee met the standard of conduct set forth in Section 2 of this Article and, if it finds that such person did, or to the extent it so finds, the Board shall authorize such indemnification.
- b. The standard of conduct set forth in Section 2 of this Article shall be found to have been met unless (i) a judgment or other final adjudication adverse to the indemnitee established that the standard of conduct set forth in Section 2 of this Article was not met, or (ii) if the proceeding was disposed of other than by judgment or other final adjudication, the Board of Directors finds in good faith that, if it had been disposed of by judgment or other final adjudication, such judgment or other final adjudication would have been adverse to the indemnitee and would have established that the standard of conduct set forth in Section 2 of this Article was not met.
- c. If the Board of Directors fails or is unable to make the determination called for by paragraph (a) of this Section 4, or if indemnification is denied, in whole or part, because of an adverse finding by the Board of Directors, or because the Board of Directors believes the expenses for which indemnification is requested to be unreasonable, such action, inaction or inability of the Board of Directors shall in no way affect the right of the indemnitee to make application therefore in any court having jurisdiction therein. In such action or proceeding, or in a suit brought by the Cooperative to recover an advancement of expenses pursuant to the terms of an undertaking, the issue shall be whether the indemnitee met the standard of conduct set forth in Section 2 of this Article, or whether the expenses were reasonable, as the case may be (not whether the finding of the Board of Directors with respect thereto was correct). —If the judgment or other final adjudication in such action or proceeding establishes that the indemnitee met the standard set forth in Section 2 of this Article, or that the disallowed expenses were reasonable, or to the extent that it does, the Board of Directors shall then find such standard to have been met or the expenses to be reasonable, as the case may be, and shall grant such indemnification, and shall also grant to the indemnitee indemnification of the expenses incurred by such person in connection with the action or proceeding resulting in the judgment or other final adjudication that such standard of conduct was met, or if pursuant to such court determination such person is entitled to less than the full amount of indemnification denied by the Cooperative, the portion of such expenses proportionate to the amount of such indemnification so awarded. Neither the failure of the Board of Directors to have made timely a determination prior to the commencement of such suit that

indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in Section 2 of this Article, nor an actual determination by the Board of Directors that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct. In any suit brought by the indemnitee to enforce a right to indemnification, or by the Cooperative to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to indemnification, under this Article or otherwise, shall be on the Cooperative.

- d. A finding by the Board of Directors pursuant to this Section 4 that the standard of conduct set forth in Section 2 of this Article has been met shall mean a finding (i) by the Board of Directors acting by a quorum consisting of directors who are not parties to such proceeding, or (ii) if such a quorum is not obtainable, or if obtainable, such a quorum so directs, by the Board of Directors upon the written opinion of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct has been met, or (iii) by the Delegates upon a finding that such standard of conduct has been met.

SECTION 5 Contractual Article.- The rights conferred by this Article are contract rights which shall not be abrogated by any amendment or repeal of this Article with respect to events occurring prior to such amendment or repeal and shall, to the fullest extent permitted by law, be retroactive to events occurring prior to the adoption of this Article. No amendment of the Business Corporation Law or the New York Cooperative Corporation Law, insofar as it may reduce the permissible extent of the right of indemnification of an indemnitee under this Article, shall be effective as to such person with respect to any event, act or omission occurring or allegedly occurring prior to the effective date of such amendment, irrespective of the date of any claim or legal action in respect thereof.- This Article shall be binding on any successor to the Cooperative, including without limitation any person or entity which acquires all or substantially all of the Cooperative's assets.

SECTION 6 Non-Exclusivity.- The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person covered hereby may be entitled other than pursuant to this Article. The Cooperative is authorized to enter into agreements with any such person providing rights to indemnification or advancement of expenses in addition to the provisions therefore in this Article, and the Delegates and the Board of Directors are authorized to adopt, in their discretion, resolutions providing any such person with any such rights.

SECTION 7 Insurance.- The Cooperative may, to the extent authorized from time to time by the Board of Directors, maintain insurance, at its expense, to protect itself and any delegate, director, officer, employee or agent of the Cooperative or of any other corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Cooperative would have the power to indemnify such person against such expense, liability or loss under this Article or applicable law.

SECTION 8 Indemnification of Employees and Agents of the Cooperative.- The Cooperative may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and the advancement of expenses to any employee or agent of the Cooperative with the same scope and effect as provided by this Article to delegates, directors and officers of the Cooperative.

ARTICLE X

DUTIES AND RIGHTS OF MEMBERS

SECTION 1 Any member having a grievance or complaint against the Cooperative shall submit same in writing to the Board of Directors-Membership Committee. In the event the complaint cannot be satisfactorily resolved by the Board of Directors-Membership Committee, it may submit same to the Delegate Body at its next regularly scheduled meeting for their review and disposition.

ARTICLE XI

SEAL

SECTION 1 The seal of the Cooperative shall be in the form of a circle and shall bear the name of the Corporation and the year of its incorporation.

ARTICLE XII

AMENDMENTS

SECTION 1 By-laws of this Cooperative may be adopted, amended or repealed at any meeting of the delegate body of the Cooperative on proper notice by a vote of delegates representing seventy percent (70%) of the delegates present, provided, however, that written notice setting forth the proposed action and the purpose of the meeting shall be mailed to all delegates and to all members in the manner set forth in Article VI of these by-laws.