

To: Agricultural and Agricultural Related Cooperative Committee
From: Tom Geu, Reporter
Date: October 15, 2004

The draft for the November 12-14, 2004, committee meeting, will be the same draft as used for the annual meeting.

The discussion at the annual meeting focused on Articles 1 through 4. Many of those provisions govern items like filing which require many technical corrections for the next full draft but which the Committee may postpone discussion in order to review the language of substantive provisions of first impression. That is, the annual meeting draft contains many provisions drafted based on discussion at the last committee meeting but which have not yet been vetted by the Committee or at the annual meeting.

The primary substantive provisions discussed at the annual meeting included the definition of "Agricultural and Agricultural Related" (§ 102(1)); number of organizers (§ 201) and its relationship to the general notion of the number of members required during the operation of the business (§ 1001); and the transferability of members interests (§ 403 and § 404). The substantive issue raised regarding transferability was the ability under this draft to sever interests "horizontally" as well as "vertically." Horizontal severance means separating the balance sheet equity account rights from income distribution rights and it calls into play the greater issue of what it "means to be a member." Another policy questioned at the annual meeting related to weighted voting by board of directors allowed by section 616 and there was question on dual capacity (§115) and control.

I suggest the Committee begin this meeting with a brief orientation discussion about the definition of "agricultural and agricultural related" and the scope of the draft Act followed by a line-by-line review of the draft beginning with Article 4 ("Membership Interests") and, then, continue with Article 6 ("Directors and Officers"), Article 8 ("Contributions, Fees, and Distributions") and Article 9 ("Dissociation") including a discussion about its relationship to "Dissenters Rights" and, more generally, a discussion about how dissenters' rights fit into the provisions of this draft.

That leaves Article 13 ("Amendment of Articles and Bylaws") as the last remaining substantive article to be discussed. When the discussion of Article 13 is completed the major interrelated provisions of this draft will have been discussed (either at the annual meeting or by the drafting committee) and the submission of a complete new draft will be ripe.

If time permits, the Committee could return to the substantive provisions receiving the most comment at the annual meeting (identified in the second paragraph of this memorandum). Although it is not yet in "final form", I suggest continued discussion of Article 5 ("Marketing Contracts") be postponed until the Spring committee meeting. The Committee has discussed Article 5 at some length in both of its previous meetings.