

**USE OF LLC-COOPERATIVE STATUTES:  
Status of New Business Formation in Wyoming, Minnesota, Tennessee, and Iowa  
Organized Through 2005**

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In 2001, Wyoming enacted the Wyoming Processing Cooperative Statute. Similar laws have been adopted in three other States: the Minnesota Cooperative Associations Act in 2003; and the Iowa Cooperative Associations Act and the Tennessee Processing Cooperative Law, both taking effect in 2005. While entities formed under these statutes are called cooperatives and have some characteristics of traditional cooperatives, these new acts also borrow liberally from limited liability company laws. Thus they are referred to here as “LLC-Cooperative” statutes.

Each of these statutes provides for a new cooperative business model allowing two classes of voting stock--patron member and investor member. Entities formed under these laws are unincorporated associations and, like LLC's, are eligible under the IRS check-the-box regulations to be taxed as a partnership under Subchapter K of the Internal Revenue Code.

The intent of these laws is to attract equity from investors who do not patronize the cooperative, thus providing an additional source of equity capital to the business. Each law sets slightly varying limits in the areas of patron governance and financial rights. Most of the associations formed to date are patron-based and have not taken advantage of the opportunity to include investor members.

Relying on information provided by their respective Secretaries of State, we have identified 22 new “cooperatives” formed under these statutes through the end of 2005. The breakdown by States is: Wyoming 4, Minnesota 17, Tennessee 1, and Iowa 0. The web site for the Wyoming Secretary of State mistakenly lists four out-of-State cooperatives that have merely filed papers to do business in Wyoming as reorganized under that State's new law.

Sixteen of the 22 new associations are currently operating in some fashion and one is awaiting State regulatory approval to participate in its designated line of business. In four instances the business venture did not materialize and the association is not now and is not likely to become operational in the future. Thus far we have been unable to find any information on one association and assume it also is not operational.

The scope of the Wyoming law is limited to agricultural purposes. The Minnesota law can be used by firms in any line of business. Information technology firms and innovative agriculturally-based marketers have been its primary users.

The Tennessee and Iowa laws focus on value-added agricultural associations, but can be used to organize a business for any other lawful purpose. Both statutes are newly enacted and, as this is written, only one entity has been formed under them, a Tennessee cotton marketing association.

Following is a summary of information about each of the new businesses formed, gleaned from State government sources, company websites, and other sources. In each subsection the firms are listed by State in chronological order by date of enactment of the new State law and, under the State, in the order their organizational documents were filed with the State.

## **Operating**

### **Wyoming**

#### *Great Plains Buffalo Company*

1001 W. 11th Street  
Sioux Falls, SD 57104  
Web: [www.gpbuffalo.com](http://www.gpbuffalo.com)

Filing Date: 12/3/2001

Great Plains Buffalo is an association of producers who raise buffalo whose meat can be marketed as an all-natural product. The association is allied with Golden Valley Natural of Idaho Falls, ID, which specializes in "natural" beef and other meats. Golden Valley is a supplier to the Whole Foods supermarket chain, based in Austin, Texas, a major player in the fast-growing natural foods trade. Great Plains also sells a variety of all natural buffalo products online.

#### *MN Valley Co-Op Supply*

600 4th Street. S.W.  
Montgomery, MN 56069

Filing Date: 12/31/2001

This is a full-service local farm supply operation. The company, originally organized as a traditional cooperative, went bankrupt. The assets were purchased by another traditional cooperative, Farmers Union Co-op Oil Co. of South Saint Paul, MN (FUCO). There are some potential environmental liabilities surrounding a truck stop owned by MN Valley. FUCO wanted to shield its members from that liability, so it restructured MN Valley as a separate company that is wholly owned by FUCO. It used the new Wyoming law because it is the only member of MN Valley and an LLC-statute approach seemed more appropriate for operating a wholly owned subsidiary than a traditional cooperative law.

## Minnesota

### CoopMetrics

606 N. Greensboro, Suite D1  
Carrboro, NC 27510  
Web: [www.coopmetrics.coop](http://www.coopmetrics.coop)

Filing Date: 8/1/2003

CoopMetrics is an information sharing alliance, formed by cooperative consultants, to facilitate improvements in member companies operations by working in partnership to build virtual chains of similar enterprises. Members access comparisons of financial and operating data within a framework of peer collaboration, allowing them to take advantage of the knowledge and experience of their industry peers and make improvements in their organization. CoopMetrics is a hybrid consumer/worker/LLC--45 percent is owned by investors, 35 percent by the workers, and 25 percent by customers. Profits at the end of the year are refunded to each group in proportion. If there is more than one investor their 45 percent would be divided between them proportionally. The workers' share is allocated based on hours worked, and customers' in proportion to the amount of their purchases.

### Bushmills Ethanol, Inc.

P.O. Box 628  
West Hwy 12  
Atwater, MN 56209  
Web: [www.bushmillsethanol.com](http://www.bushmillsethanol.com)

Filing Date: 2/7/2004

Bushmills Ethanol is a group of roughly 400 local agricultural producers and investors working together to build an ethanol facility near Litchfield, Minnesota. They recently completed a \$14 million equity drive -- \$1 million more than they were required to raise. Sixty-two percent of the funds are from producer-members, and the remaining support came primarily from residents within a 60 mile radius of the plant. This project is expected to produce 40 million gallons of ethanol each year as well as distillers grains, a high quality animal feed, and carbon dioxide for use in carbonating soft drinks.

### Iceberg Technology Group

3636 Edmund Boulevard  
Minneapolis, MN 55406

Web: [www.iceberggroup.org](http://www.iceberggroup.org)

Filing Date: 2/17/2004

Iceberg was created to give substance to a consortium of small, independent technology consulting firms operating in the Twin Cities. Members are using Iceberg to gain a marketing identity that is helping them win jobs that would otherwise go to larger firms. In the past, members could often only get longer-term jobs by subcontracting with a large firm that kept up to half the fee for “overhead.” Iceberg is a virtually-no-overhead operation (a phone and a modest fee to the vice-president who handles billings and other paperwork from his office). Members can now charge lower rates for their work and still make more money by eliminating middleman charges.

*Avalanche Corporate Technology Cooperative*

Web: [www.avalanchecorporatetechnology.net](http://www.avalanchecorporatetechnology.net)

Filing Date: 2/26/2004

This is a private exchange that enables members to share intellectual property (IP). Membership is open to corporations that buy technology or build technology in house, consulting companies that provide technology services, and hardware and software vendors that supply technology. Members deposit their IP in a “repository” and receive a royalty-free license and right to download all IP in the repository. Members also participate in collaborative forums and joint projects to develop IP in cooperation with other members. The current annual membership fee is \$30,000 and is set each year by the Avalanche board of directors. Excess revenues in any given year are used for the benefit of the members and the use of these excess revenues is determined by the board of directors.

*Plantavit Cooperative*

3810 Concorde Parkway, Suite 100

Dulles, VA 20151-1111

Web: [www.plantavit.com](http://www.plantavit.com)

[www.edenspace.com](http://www.edenspace.com)

Filing Date: 5/28/2004

Edenspace Systems Corporation develops and markets plants that identify soil contaminants, remove contaminants from the soil, and serve as possible new raw products for bio-energy production. It formed Plantavit Cooperative to serve as a vehicle for organizing farmers who are testing new biotechnologies created by Edenspace.

Premier Distribution Cooperative

Filing Date: 12/22/2004

It appears that no information on this entity is publicly available. An attorney familiar with the association reports that it is an operating purchasing cooperative for independent businesses engaged in the heating, ventilation, air conditioning, plumbing, and refrigeration markets. He notes that the association has consolidated the purchasing power of firms that buy close to \$1 billion in such products a year. He did not provide any information on the governance or financial structures of the association.

Forest Management Systems

8937 Slate Street  
Mountain Iron, MN 55768  
Web: [www.fmscoop.com](http://www.fmscoop.com)

Filing Date: 12/24/2002

The cooperative is a group of 12 independent logging companies. Their mission is “To provide site-specific timber harvesting services that are environmentally responsible, responsive to the landowner’s needs, and exceeds the landowner’s expectations.” Services include land management plans, wildlife enhancement plans, cut-to-length or conventional logging crews, thinning, clear cuts, selective/customized harvests, road and trail building, tree planting, and chipping, as well as quality woods. Customers are primarily paper mills, saw mills, and landowners. They have not yet taken advantage of the 308B flexibility which allows non-patron investment. In the future, however, they hope to expand into the biomass processing industry, at which point they would hope to utilize the investment flexibility allowed by the new cooperative statute.

Three Rivers Market

937 North Broadway  
Knoxville, TN 37917

Filing Date: 12/30/2004

Three Rivers Market is a natural food store cooperative in Knoxville, TN, which reorganized under 308B. It converted from a dues-based membership structure to a cooperative ownership structure in order to raise capital for expansion and relocation. Sale of shares began in September, 2005. Ownership begins with the purchase of one \$25 share. Owners who hold 8 shares or more are 'Fair Shareholders' and are eligible for an annual patronage refund. The patronage refund is determined by the board of directors at the end of

each fiscal year. The amount of the refund is in direct proportion to the amount that the owner spends at the co-op during the year.

Organic Farmers' Agency for Relationship Marketing (OFARM)

9896 Co. Hwy D  
Brussels, WI 54204  
Web: [www.ofarm.org](http://www.ofarm.org)

Filing Date: 2/1/2005

OFARM is a marketing agency in common for associations of organic farmers. Its mission is to coordinate the efforts of organic producer marketing groups. Member organizations are located throughout the upper Midwest and in Ontario, Canada. Its objectives include price and market information sharing, developing markets for organics and strengthening member marketing programs, and promoting public policy, research and education programs for sustainable agriculture. This is a producers-only organization.

Integrated Media Cooperative

1440 N Wells Street, Unit I  
Chicago, IL 60610

Filing Date: 3/7/2005

This is a buying cooperative that gives small to medium-sized publishers (\$3 million-\$200 million in annual revenue) the benefits of lower costs on printing, paper, shipping and general office expenses by consolidating purchasing. IMC member companies publish more than 80 magazines with a circulation of over 4 million copies and generate \$300 million in annual revenues.

Independent Natural Food Retailers Association

2727 26th Avenue South  
Minneapolis, MN 55406  
Web: [www.naturalfoodretailers.net](http://www.naturalfoodretailers.net)

Filing Date: 9/2/2005

This is a nationwide cooperative of natural foods retail stores. In addition to joint purchasing programs, the association offers members opportunities to engage in secure dialogue aimed at improving their business practices, develop better marketing tools including consumer education initiatives, and participate as one voice in discussions with suppliers on issues such as product development and supply chain management.

The association has two classes of voting stock. All patron members have Class A voting stock which controls at least 85 percent of the governance rights on issues. The members vote their Class A stock on a one-member one-vote basis. Two individuals who helped found the association and the four original patron members have special, limited governance and financial rights.

Agricultural Labor Cooperative of America

j Marketing Company, LLC  
P.O. Box 262  
Charleston, IL  
web: [www.aalca.org](http://www.aalca.org)

Filing Date: 12/05/2005

This is a nationwide federated cooperative whose members are other cooperatives and producer associations. The objective is to provide a better system for producer-members of the association's members to acquire legal, farm-skilled labor to harvest their crops. It is already working with approved labor contractors to source workers. It offers services to its members and their members that include worker transportation and housing, visa applications, insurance, and payroll.

The association used section 308B to organize so the promoter could participate as an equity investor in the venture. Current plans do not call for additional outside investors.

Life Source Alliance

Seattle, WA, area

Filing Date: 12/22/2005

This cooperative was created by an association of alternative health care providers whose services are not covered by traditional health care insurance. The vision of the organizers is to develop an entity that gives both the practitioners and their client/patients an ownership interest and an opportunity to build something of value. This brand new association is still developing its business plan and governance structure. While it doesn't see a role for nonpatron members at this time, it appreciates the flexibility to accept them in the future.

**Tennessee**

Signia Cotton Cooperative

8000 Centerview Parkway, Suite 501  
Cordova, TN 38108

Web: [www.signiafiber.com](http://www.signiafiber.com)

Filing Date: 5/16/2005

Signia Cotton is in its first year of operation. Although formed under the new LLC-Cooperative law, it is organized as and currently operates as a traditional cotton marketing association, entirely owned and controlled by cotton producers. The manager anticipates that it will continue to do so for the foreseeable future.

### **Awaiting Regulatory Approval to Operate (Minnesota)**

#### *Innovative Health Solutions*

Filing Date: 10/27/2003

Three traditional farm supply cooperatives (United Farmers, Cannon Valley, and Harvest Land) created a new cooperative self-insured entity to offer affordable, quality health insurance to their members and other rural residents of central Minnesota. The entity has funding and tentative contracts for reinsurance and is currently seeking approval to operate from the Minnesota Department of Commerce.

### **Not Operating**

#### **Wyoming**

#### *Mountain States Lamb and Wool Cooperative*

327 East Center Street  
Douglas, WY 82633  
Web: [www.mslamb.com](http://www.mslamb.com)

Filing Date: 7/2/2001

Mountain States Lamb Cooperative was organized in 1999 as a traditional, producer-owned cooperative by sheep producers and feeders in several Western States to develop lamb and sheep products and markets for those products. The Wyoming Processing Cooperative Law, the first LLC-Cooperative act, was drafted and enacted at the request of these lamb and sheep ranchers specifically to allow them to attract nonpatron equity investors by offering them voting memberships in an entity called a cooperative.

Mountain States Lamb & Wool Cooperative (MSL&W) was organized as a separate entity by Mountain States Lamb Cooperative, which is its sole member. MSL&W was intended to attract outside equity, preferably from other firms in the lamb and sheep industry, and serve as a vehicle for the lamb and sheep producers to integrate forward into lamb meat and woolens marketing. However, that plan has not been implemented. In 2003, Mountain

States Lamb Cooperative and B. Rosen & Sons, an established lamb and veal processor and distributor, entered into a joint venture called Mountain States/Rosen LLC, to perform many of the functions originally envisioned for MSL&W. MSL&W remains a wholly owned and non-operating affiliate of Mountain States Lamb Cooperative.

LM Holdings (Landmark Services Cooperative)

PO Box 277  
Cottage Grove, WI 53527-0277  
Web: [www.landmark.coop](http://www.landmark.coop)

Filing Date: 9/21/2001

LM Holdings was formed as a joint venture between Cottage Grove Cooperative and Union Cooperative (both of Wisconsin) to merge their respective agronomy departments and purchase the agronomy centers of another cooperative in their trade territory. In 2003, Cottage Grove and Union merged their entire operations and the agronomy function was folded back into the traditional cooperative structure, renamed Landmark Services Cooperative. This leaves LM Holdings as a “shell” for possible future ventures.

**Minnesota**

Agdeavor Renewable Energy

Web: [www.heartlandagdeavor.com](http://www.heartlandagdeavor.com)

Filing date: 2/22/2004

Heartland Agdeavor is a nonprofit corporation headquartered in Columbus, OH. It promotes and invests in value-added agricultural business opportunities, mainly in Ohio. Agdeavor Renewable Energy was created as an LLC-Cooperative to develop an ethanol plant in northeast Ohio. Roughly 60 producers and Heartland Agdeavor were to have ownership interests, with the producers owning transferable delivery rights to provide corn to the venture. However, the facility was not constructed, initial capital investments have been refunded, and the project was abandoned.

Charter Partners Cooperative

33A Rupell Road  
Hampton, NJ 08827  
Web: [www.charterpartners.com](http://www.charterpartners.com)

Filing Date: 5/13/2005

Charter Partners USA is a membership organization for owners of independent and family businesses, primarily in the construction and transportation industries. Charter Partners Cooperative was created to purchase diesel fuel for and distribute it to the members. However, the bulk fuel purchasing project was abandoned, the cooperative structure is dormant, and may well be dissolved in the near future.

### **Status Unknown (Minnesota)**

#### *Builders One*

Filing Date: 8/6/2003

No information is available on this association. The "Articles of Incorporation" indicate membership is limited to licensed builders and its purpose is to purchase products, equipment and supplies for members on a group basis. The Articles indicate the organizer of the association resides in Waconia, Minnesota, a town west of the Twin Cities.

### **Mistakenly listed as LLC-Cooperatives in Wyoming**

As mentioned earlier, the Secretary of State in Wyoming has mistakenly listed four long-standing traditional cooperatives organized and headquartered in other States as Wyoming LLC-Cooperatives. They are Farmers Union Oil Company of Williston, a full service farm supply cooperative in Williston, ND; Farmers Union Oil Company of Union Center, a full service farm supply cooperative in Sturgis, SD; Tri-State Breeders Cooperative (dba Accelerated Genetics), a major artificial insemination cooperative in Baraboo, WI; and Western Sugar Cooperative, a substantial sugar beet processor and marketer in Denver, CO. Each was misclassified when it applied for a license to do business in Wyoming.

### **Conclusion**

While commentators may continue to debate whether the advent of LLC-Cooperatives is a plus or minus for cooperatives as a whole and for the patron-members of such entities, they are now a small but growing segment of the business community. And whether other States enact similar laws is of limited importance because a majority of the businesses formed under the existing laws are entities organized and operated in other States. Anyone who wants to form an LLC-Cooperative can do so in Minnesota or another State with an LLC-Cooperative law and do business as a foreign entity in their home State and other States as well.

It is interesting that the vast majority of the associations formed under these laws intend to operate, at least for the foreseeable future, as traditional cooperatives. So an obvious question is why use the new LLC-Cooperative laws when the business plan can be carried out just as effectively under traditional cooperative statutes? Professional advisers working with people forming businesses under these laws gave similar explanations.

Daniel C. Mott, an attorney with the Minneapolis-based firm Fredrikson & Byron, has started associations under the new Minnesota statute. He notes two reasons persons are forming businesses under this law. "First, the member-patrons want to give non-patrons involved in the venture, such as promoters and employees, a way to share in the firm's profits. And second, even if the venture is originally structured like a traditional cooperative, the member-patrons want the flexibility to offer both governance and financial rights as a tool to attract outside investors in the future. While a traditional cooperative can achieve some of the same results through a joint venture with non-patron investors, having all parties involved in a single cooperative is a simpler, cleaner way to organize and operate the business."

William A. Gillon, currently a sole practitioner in Memphis, TN, helped organize the first association formed under Tennessee's new law. Mr. Gillon indicated he didn't start with any goal in mind other than forming a traditional cooperative. However, he found some provisions in the longstanding traditional Tennessee cooperative act awkward to work with. For example, the traditional statute requires 11 incorporators, a number larger than the pool of producers interested in forming a new association. While he was considering traditional cooperative laws in neighboring states, Tennessee's new LLC-Cooperative law was enacted and he liked what he saw.

"Using this law we were able to create a traditional cooperative but gain operational flexibility," Mr. Gillon reported. "We also have the option, should the need or opportunity arise, to move in new directions without reorganizing the association. I would consider the new law as the vehicle of choice for forming new cooperatives, including traditional cooperatives, in the future."

So it is likely that the number of associations formed under these laws will grow, whether more States enact them or not. Many of the entities formed will likely operate as traditional cooperatives, owned and controlled by patron members. But they will be able, if the need or opportunity presents itself, to accept nonpatron investor members. It will be interesting to follow these associations and see how well they meet their objectives in the years ahead.