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RECENT DEVELOPMENTS IN

AGRICULTURAL LAW

by

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The author is Professor of Agricultural and Applied Economics and Adjunct Professor of Law, University of Minnesota, St. Paul, Minnesota. This paper was presented at The Legal Aspects of Agriculture Conference, University of Texas Law School and Texas A & M University, Dallas, Texas, December 7-8, 1978.

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RECENT DEVELOPMENTS IN AGRICULTURAL LAW *

by

Dale C. Dahl **

This paper is divided into three major sections. First, a limited set of introductory remarks is presented in an effort to define "agricultural law" in terms of its scope and content. Second, this paper contains a review of some of the major developments in federal law, including a judgment of the likely legislative thrust that will be made in the next session of Congress. Third, a limited summary of state law developments for selected agricultural states is offered. A short concluding section directs the reader to some emerging ideas and procedures in agricultural law.

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** Professor of Agricultural and Applied Economics and Adjunct Professor of Law, University of Minnesota. The author wishes to thank the following individuals for their contributions of materials and ideas and to absolve them from errors of omission, commission, and judgment (those deserving special thanks have an asterisk after their names): University of Minnesota—Timothy Burke, J.D.,* my legal research assistant, and Professor Leo J. Raskind; U.S. Department of Agriculture—John C. Chernauskas and John Donnaud (Office of General Counsel), William T. Manley, John Helmuth, and Sandra K. Bryte* (Agricultural Marketing Service), John Lee, William Boehm, and Tanya Roberts* (Economics, Statistics, and Cooperatives Service); Office of Special Trade Representatives—Leo Mayer; House Budget Committee—Allen Crommet; National Association of the State Departments of Agriculture—J. B. Grant; and the following state officials: Robert W. Anderson, Arkansas; Richard Rominger, California; Doyle Conner, Florida; Thomas T. Irvin, Georgia; John Forias, Hawaii; Wilson Kellogg, Idaho; Young D. Hance, Maryland; B. Dale Ball, Michigan; Jim Buck Ross, Mississippi; W. Gordon McOmber, Montana; Roger Sandman, Nebraska; Thomas W. Ballow, Nevada; David Stratton, Oklahoma; G. Brian Patrick, Jr., South Carolina; Dr. Kenneth Creer, Utah; S. Mason Carbaugh, Virginia; and Gus R. Douglas, West Virginia.

INTRODUCTION

Some would argue that there is no such thing as "agricultural law" but that law applies to agriculture as it does to other industrial segments of our economy. ^{1/} Others will argue that since agriculture is one of the most regulated of industries, it is possible to isolate large segments of the law for which the words "agricultural law" are an appropriate label. ^{2/}

Definition and Scope

Regardless of your position in the above argument, anyone who has undertaken the task of defining the words "agriculture," "farm," or "farmers" appreciates the definitional difficulties involved in distinguishing between a "bona fide farm" and "hobby farm" for tax purposes, or characterizing an "association of farmers" for antitrust reasons. ^{3/}

^{1/} See, Beuscher's Law and the Farmer (Fourth Edition), Harold W. Hannah (reviser), Springer Publishing Company, New York, 1975, p. 31: "The name Farm Law used in this book does not describe a recognized division of the law. It is only a way of focusing attention on some legal rules that have special importance to farmers.... There is not, of course, one law for farmers and another for everyone else."

^{2/} See, H. W. Hannah and N. G. P. Krause, Law and Court Decisions on Agriculture, Stipes Publishing Company, Champaign, Illinois, 1968, p. 2: "The selection of those points which should be organized and discussed under the heading of 'agricultural law' is not easy nor will it ever be done with finality.... Law and agriculture have much in common in America because rural institutions and rural political organizations have served to create an interest in law and at the same time have been a force in molding law to fit rural economic and social needs."

^{3/} See, John C. O'Byrne, Farm Income Tax Manual (Fifth Edition), The Allen Smith Company, Indianapolis, Indiana, 1977, Section 100; and Legal Phases of Farmer Cooperatives: Antitrust Laws (Volume 3), Information Bulletin 100, Farmer Cooperative Service, U.S. Department of Agriculture, Washington, D.C., May 1976.

While these words suffer from the oft met difficulty encountered by lawyers that "everybody knows what agriculture is until you are forced to define it," the concern here is merely to define it in such a way that it will address the several current and important legal and economic issues that impinge upon that broad sector of the U.S. economy which is involved in the production of basic food and fiber products and how they are stored, transported, processed, and distributed.

Various authors have presented definitions of this broader view of "agriculture" using changing relationships and events in economic history as the criterial basis for their conceptual treatment. ^{4/} Without arguing these rationales which underlie this broader view of the term "agriculture," it is employed for the purposes of this paper, principally because it is useful to look upon the "agricultural economy" in terms of the extensive law and policy forthcoming at federal and state levels since it affects farms and agribusinessmen directly or has its impact in terms of their planning activities.

^{4/} John H. Davis and Ray A. Goldberg, A Concept of Agriculture, Division of Research, Graduate School of Business Administration, Harvard University, 1957, pp. 1, 6: "The concept of agriculture as an industry in and of itself or as a distinct phase of our economy was appropriate 150 years ago" (but because of a dispersion of functions once performed by farmers to businesses around it) "... it has evolved from an agricultural to an agribusiness status ... agribusiness means the sum total of all operations involved in the manufacture of farm supplies; production operations on the farm; and the storage, processing, and distribution of farm commodities and items made from them;" and Harold F. Breimyer, "The Three Economies of Agriculture," Journal of Farm Economics, August 1962, p. 679: "... /M/odern agriculture as broadly defined to embrace the distributive destiny of its products is a composite, or sequence, of three separate and distinct economies ... the production of primary products from the soil, the conversion of feedstuffs into livestock products, and the marketing or products from farm to retail."

Some of us have too long thought of "agricultural law" in separate "micro-legal" or "macro-legal" contexts. Accordingly, we have tended to segment those practitioners and scholars who deal with the individual decision-making problems of the farmer from those concerned with the broader policies enacted at federal and state levels for the benefit of farmers and others involved in food and fiber processing and distribution.

The words "agricultural policy" too frequently are taken to simply mean the price and income strategies employed by the federal government that attempt to resolve welfare problems of the American farmer. Rather, agricultural policy, as a macro-legal concept, should include that broad range of associated policies directed to protect, facilitate, organize, and insure the production, processing, and distribution of agriculturally derived products of reasonable quality and quantity for the population of this country and the world with equity and efficiency considerations being given to the participants within this economic subsystem. ^{5/}

Having issued such a broad conceptual role for the words "agricultural law," it is a humbling assignment to try to categorize this law in a way that is meaningful to the several types of practitioners and scholars who use this information for professional

^{5/} Dale C. Dahl, "Public Policy Changes Needed to Cope with Changing Structure," American Journal of Agricultural Economics, May 1975, p. 213: "It is increasingly evident that it is impossible to carry out any agricultural policy without having a substantial influence on a wide range of other economic policies throughout our food and fiber system and vice versa."

purposes. There are few useful guidelines available for this taxonomic effort. As noted in the publication entitled Bibliography of Agricultural and Food Law: 1960-1978, an attempt has been made to organize a broad range of law review articles, government publications, various treatises, and commentaries relating to the defined subject matter into what are hoped to be reasonable groupings. ^{6/}

Developments and Trends

Let us first look at recent legislation at the federal and state levels relating to agricultural law by reviewing copies of bills and statutes.

The primary sources used for researching recent federal legislation and pending bills and resolutions were the Congressional Record, the United States Code Congressional and Administrative News, the Digest of Public General Bills and Resolutions, the Congressional Information Service Index, and the Monthly Catalog of U.S. Government Publications. The Federal Register and the Code of Federal Regulations were used as sources for the regulatory and administrative material. The Supreme Court and federal court cases were taken mainly from U.S. Law Week.

^{6/} Winston W. Grant and Dale C. Dahl, Bibliography of Agricultural and Food Law: 1960-1978, Minnesota Economic Regulation Monograph No. 1, NC-117 Special Report No. 1, Minnesota Agricultural Experiment Station Bulletin No. 523, University of Minnesota, St. Paul, Minnesota, August 1978.

On the state level, the primary sources were the current state session laws and the various state legislative services.

Letters were written to several professionals in the Washington, D.C., area requesting information on recent law that pertains to agriculture. The administrator in charge of each state department of agriculture in the United States was also contacted for developments in the law administered by his agency. These individuals supplied many slip laws in their responses as well as observations about what developments are likely in their states. In addition, meetings were held with representatives of the U.S. Department of Agriculture in the Office of General Counsel, the Deputy Administrator and his staff for the Agricultural Marketing Service, the Director of the National Agricultural Economics Division of the Economics, Statistics, and Cooperatives Service of the U.S. Department of Agriculture and his staff, and I obtained a number of copies of materials from the Congressional Research Service of the Library of Congress.

FEDERAL AGRICULTURAL LAW

Federal agricultural law refers to enactments, regulations, and judicial and executive decisions relating to agriculture as previously defined. The following synopsis of developments of recent law or law in the making is categorized into (1) agricultural resource use and planning, (2) agricultural business and estate

planning, (3) antitrust and market regulation, (4) food protection programs, (5) traditional agricultural policy, and (6) agricultural taxation and planning. A final section to this part entitled "Agriculture and the 96th Congress" attempts to review the major developments that will be addressed in the 96th Congress.

Agricultural Resource Use and Planning

There are four major categories of law relating to agricultural resource use and planning: (1) environmental policy, (2) land use, (3) water use, and (4) miscellaneous resource issues.

In August 1977, the Department of Energy was established by statute. ^{7/} At about the same time, the Carter Administration embarked upon a major reorganization review of natural resource and environmental programs. Major environmental and natural resource functions were spread among seven agencies and departments, and a good deal of discussion has developed in both the executive branch and in Congress on how to coordinate the various policies of these diverse administrative groups. A number of options are being considered at the present time. These include the strengthening of interagency coordinative processes, the creation of a single survey agency for mapping and charting, and even extending to the consideration of a "Department of Natural Resources" that would include most of natural resource management functions, excluding those of EPA.

^{7/} Department of Energy Act, Pub. L. No. 95-91, 91 Stat. 565 (1977).

Another important environmental question under consideration at the federal level deals with the amendment of the Federal Environmental Pesticide Control Act of 1972 ^{8/} which had previously amended the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA). ^{9/} It appears that the Environmental Protection Agency has had difficulty implementing the amended FIFRA, the principal problem being the existence of difficult-to-interpret terms and provisions in the amended act.

A related concern regarding pesticide use has arisen with the onset of some farm worker illness being reported from contact with pesticide residues on recently sprayed crops. California has already established standards that regulate reentry into fields after spraying. Some consideration is being given to whether federal action is appropriate, whether EPA should be charged with this responsibility, and what standards appear to be most practical and needed.

There are several land use issues under consideration at the federal level at the present time. One of the more recent developments was the Agricultural Foreign Investment Disclosure Act. ^{10/} This law requires foreign persons who acquire, transfer, or hold interest in land used for agricultural or forest production to report such transactions and holdings to the Secretary of Agriculture. It

^{8/} Pub. L. No. 92-516, 86 Stat. 973 (1972).

^{9/} Act of June 25, 1947, Ch. 125, 61 Stat. 163.

^{10/} Pub. L. No. 95-460, 92 Stat. 1263 (1978). See, Senate Committee on Agriculture, Nutrition, and Forestry, Agricultural Foreign Investment Information Act of 1978, S. Rep. No. 1072, 95th Congress, 2^d Sess. (1978).

also directs the Secretary to analyze information contained in these reports to determine the effects of such transactions and holdings on family farms and rural communities. This bill was the result of a 1975 Commerce Department study which was authorized by the Foreign Investment Study Act of 1974. ^{11/} As part of this concern, there was a GAO report ^{12/} issued in 1978 on foreign ownership of U.S. farmland.

These federal studies and enactments follow several laws that place some restrictions on alien ownership. As of May 1978, 25 individual states had either general prohibitions or reporting requirements. It is difficult to judge whether this issue is likely to arise again in the next session of Congress. If it does, some of the other GAO recommendations (in addition to reporting) might come to the forefront.

The conversion of cropland into housing subdivisions, water reservoirs, highways, and other land uses that preempt agriculture has become a subject of increased debate at all levels of government. Estimates by the Soil Conservation Service of the U.S. Department of Agriculture for the period 1967-1975 indicate that about 3 million acres of rural land were annually acquired for nonagricultural use. Legislation addressing this issue was proposed in the 95th Congress. ^{13/} The legislation would establish a commission to study agricultural

^{11/} Pub. L. No. 93-479, 88 Stat. 1661 (1974).

^{12/} U.S. General Accounting Office, Office of the Comptroller General of the United States, Foreign Ownership of U.S. Farmland-- Much Concern, Little Data, CED-78-132, June 12, 1978.

^{13/} An important piece of legislation in this area is H.R. 11122, 95th Congress, 2^d Sess. (1978), the proposed Agricultural Land Retention Act. Similar Senate bills are S.1616, 95th Congress, 1st Sess. (1977), and S.2757, 95th Congress, 2^d Sess. (1978).

land conversion and to make recommendations to the Congress for the possible modification of federal policy. Legislation would also set up a demonstration program to finance innovative state and local efforts to protect farmland. To the best of my knowledge, this legislative proposal did not pass the 95th Congress and likely will be under consideration when Congress reconvenes.

Major revision in federal cooperation in forest research and aids to private owners are under congressional consideration. The Subcommittee on Forests of the House Agriculture Committee currently is considering four forestry and renewable resource bills. ^{14/} The legislation aims at increasing production and improving management on the 300 million acres of private woodlots which constitute 60 percent of the nation's productive forest. Some of these considerations became public law through the Cooperative Forestry Assistance Act, ^{15/} which was signed into law July 1, 1978. This act brings together in one statute the authority for nine programs in cooperative forestry assistance. These include the cooperative

^{14/} The four bills are H.R. 8020, which would provide cooperative forest resources assistance to state and local agencies; H.R. 8021, which would finance a comprehensive program of forest and rangeland renewable resources and research dissemination; H.R. 8022, which would provide for an expanded forest resources extension program aimed at private forest landowners; and H.R. 10618, which is a bill based on H.R. 8022, would provide for an expanded and comprehensive program for forest and rangeland renewable resources.

^{15/} Pub. L. No. 95-313, 92 Stat. 365 (1978). The report accompanying this act is House Committee on Agriculture, Cooperative Forestry Assistance Act of 1978, H.R. Report No. 1183, 95th Congress, 2^d Sess. (1978).

tree, seed, and plant program, the cooperative forest management program, the cooperative tree improvement program, the forestry incentive program, the urban forestry technical assistance program, the insect and disease control program, the white pine blister rust protection program, the cooperative forest fire program, and the rural community fire program. The bill authorizes consolidated payments to states participating in cooperative forestry assistance rather than functional matching grants. This gives the states some flexibility in the disbursements of funds so that they can better respond to forestry situations requiring immediate action.

The Public Rangelands Improvement Act, ^{16/} which was approved by the President on October 25, 1978, establishes a new grazing fee system for ranchers whose livestock feed on the nearly 260 million acres of federal rangeland. It requires the Secretaries of Agriculture and Interior to draw up and periodically update an inventory of range conditions, authorizes some \$365 million for range improvements, and adopts a formula for setting grazing fees that are tied to beef prices and forage values. The act also provides that some funds will be used in stipulated ways with provisions for leasing periods, grassland exemptions, and incentive programs to improve range conditions.

^{16/} Pub. L. No. 95-514, 92 Stat. 1803 (1978).

Legislation relating to the status of federal lands in Alaska is likely to emerge once again in the 96th Congress. At the beginning of the last session of Congress, the Carter Administration asked Congress to set aside over 90 million acres of federal land in Alaska for various public uses since existing land withdrawals under the 1971 Alaska Native Claims Settlement Act ^{17/} were scheduled to expire on December 17, 1978. The House of Representatives did pass a compromise Alaska land bill, but the Senate failed to pass the bill prior to adjourning. The bill had been opposed by members of the Alaska congressional delegation, as well as by mining and logging interests, because it would have created millions of acres of national monuments in Alaska (it requires an act of Congress to remove land from the monument category). Because Congress failed to act on the Alaska lands proposal before adjourning, the President relied on the Antiquities Act of 1906 ^{18/} to designate nearly 56 million acres of Alaskan land as national monuments on December 1, 1978. ^{19/} In addition, the President directed Interior Secretary Andrus to set aside another 40 million acres as national wildlife refuges. The President indicated that he took these actions in the hope that the 96th Congress would act promptly to pass Alaska lands legislation. It, therefore, seems likely that this issue will surface once again in 1979.

^{17/} 43 U.S.C. § 1601, *et seq.* (1976).

^{18/} 16 U.S.C. § 431 (1976).

^{19/} 14 Weekly Comp. of Pres. Doc. 2111 (1978).

Also expiring in 1979 is the Great Plains Conservation Program. Although this is not a significant program, congressional reauthorization may broaden it into a thorough evaluation of several other programs, such as the Rural Clean Water Program, the Water Bank, and other cost-share conservation programs.

The drought of 1976/77 focused attention on water supply problems, especially in areas of the Western and Plains states. The basic issue is how to allocate scarce water resources among the needs for environmental enhancement and recreation, food and energy production, and municipal and industrial water supplies. These concerns brought forth two recent pieces of legislation: the Soil and Water Resources Conservation Act of 1977 ^{20/} and Public Law 95-226. The Soil and Water Resources Conservation Act of 1977 provided for furthering the conservation protection of the nation's land, water, and related resources for sustained use. The second law authorizes the Secretary of the Interior to allow continuation and completion of construction undertaken to mitigate the effects of the recent drought, where unanticipated and unavoidable circumstances prevented completion before the end of January 1978. We can anticipate the extension of such authority in the next session of Congress.

Another issue relating to water use is the 1978 "Bingo Bill" ^{21/} which authorized construction of the new Lock and Dam 26 on the

^{20/} Pub. L. No. 95-192, 91 Stat. 1407 (1977).

^{21/} Pub. L. No. 95-502, 92 Stat. 1693 (1978).

Mississippi River. It levies on the waterway user a charge of 4 cents per gallon of fuel used in commercial operations beginning in 1978, rising sequentially to as high as 10 cents in 1985. This bill was signed by the President on October 21st of this year.

An interesting component of the Natural Gas Policy Act of 1978 is that it has provisions that give authority to the Secretary of Agriculture in determining the quantities of natural gas essential to agricultural uses in the establishment and implementation of agricultural and industrial priorities. It is my understanding that the Secretary of Agriculture will issue a set of proposals relating to the uses and priorities at or near the time of this conference.

A 1970 congressional policies declaration stated that the highest priority must be given to the revitalization of the development of rural areas. The nature of the role of the federal government in this type of activity has been a continued subject of debate. The U.S. Department of Agriculture has been identified as the lead agency for the administration of the Rural Development Act of 1972. ^{22/} The Carter Administration has undertaken several studies that will result in recommendations related to rural policies. These include a reorganizational study of local community development programs and the study of federal rural policy alternatives.

^{22/} Pub. L. No. 92-419, 86 Stat. 756 (1972).

Agricultural Business and Estate Planning

The Agricultural Credit Act of 1978 ^{23/} was passed by the 95th Congress and signed into law. It amends the Consolidated Farm and Rural Development Act to provide new emergency loans of up to \$400,000 to farmers and ranchers in economic distress conditions. It increased operating loan levels from \$50,000 to \$100,000 for direct loans and up to \$200,000 for guaranteed loans. It extended the eligibility for farm real estate and operating loan programs to private domestic corporations, cooperatives, and partnerships meeting the same requirements as individual borrowers. The act also extended the Emergency Livestock Credit Act of 1974 ^{24/} to provide 90 percent government guaranteed loans of up to \$350,000 to livestock producers.

There were two new crop insurance laws. One increased the capital stock of the Federal Crop Insurance Corporation from \$100 million to \$150 million. ^{25/} The second act ^{26/} increased capital stock of the Federal Crop Insurance Corporation and provided that up to \$200,000 in funds be utilized for a study by the Secretary regarding the possible alternative of all-risk crop insurance programs to help provide protection from crop losses and floods, drought, and other natural disasters.

^{23/} Pub. L. No. 95-334, 92 Stat. 420 (1978).

^{24/} Pub. L. No. 93-357, 88 Stat. 438 (1974).

^{25/} Pub. L. No. 95-47, 91 Stat. 228 (1977).

^{26/} Pub. L. No. 95-181, 91 Stat. 1373 (1977).

Other legislation ^{27/} was introduced in the 95th Congress to provide for a comprehensive, voluntary self-help program designed to assist producers of agricultural products to protect themselves against loss of production when natural or uncontrollable conditions adversely affect production. But no action was taken on this set of bills. They probably will be reintroduced in the 96th Congress.

In the estate planning area, the long-awaited Treasury regulations relating to IR Section 2032A on special farm valuation came in the form of proposed regulations of farmland valuation issued in July. Apparently, the IRS plans to amend these regulations affecting the special transition rule as indicated in Regulation Section 20.2032A-8(d). ^{28/}

Antitrust and Market Regulation

A good deal of attention has been paid to the so-called anti-trust "exemptions" for agriculture during 1978. A recent Supreme Court case ^{29/} provided an interpretation of the Capper-Volstead Act in regard to who is considered to be a "farmer" under the act. The case was brought against the National Broiler Marketing Association, a nonprofit cooperative group whose members are integrated producers of broiler chickens. The complaint charged that the association had conspired with others, including its members, in violation of Section 1

^{27/} S. 3029 and H.R. 12636, 95th Congress, 2d Sess. (1978).

^{28/} See, Internal Revenue Service, Department of the Treasury, News Release of October 26, 1978 (IR-2046).

^{29/} National Broiler Marketing Association v. U.S., 46 U.S.L.W. 4620 (1978).

of the Sherman Act. The National Broiler Marketing Association defended itself by claiming that it was protected by Section 1 of the Capper-Volstead Act.

The Court indicated that some of the members of this particular association were not directly involved in the production of broiler chickens and that a variation of the "other persons doctrine" would apply in this definitional battle. Accordingly, the National Broiler Marketing Association was denied the Capper-Volstead exemption privilege.

The National Commission for the Review of the Antitrust Laws and Procedures issued a staff paper on agriculture in October of 1978 that further addressed the question of agricultural cooperative exemptions from the antitrust laws: the "exemption" and the Agricultural Marketing Agreement Act of 1937 which permits marketing orders. While no firm conclusions have yet been reached, some commentators are suggesting that the cooperative exemption may become presumptive in character, i.e., the co-op must demonstrate that it needs the exemption and that it qualifies in terms of the original intent indicated by Congress in passage of the exemption privilege.

There is considerable discussion beyond the meetings of the review commission regarding marketing orders. Producers and consumers may end up having a greater say in negotiations regarding terms of trade on the products covered by these orders. Marketing orders are also under attack internally within the executive branch in the name of inflation control.

Considerable effort was devoted in 1978 to the issuance of a national collective bargaining bill. ^{30/} It is sure to be brought up again in the 96th Congress. In addition, proposed legislation is likely in meat marketing, pricing, and transportation, considering the amount of attention that has been devoted to it in hearings, committees, and special task forces during 1978.

The Commodity Futures Trading Commission Act was extended in 1978, continuing the powers of the Commodity Futures Trading Commission for an additional four years. ^{31/} It bans the sale of most commodity options to the general public, clarifies the role of states in helping to enforce the Commodity Futures Trading Commission Act, and tightens penalties for some violations of the law. In addition, it provides for a USDA study of potato marketing and potato futures trading. On the basis of earlier investigation, it appears that there is some consideration for an amendment to this act that might bring forward contracts under regulation as well.

Executive rate-making and penalty provisions have been brought under closer scrutiny by some recent judicial actions. The Packers and Stockyards Act was reviewed in a recent Court of Appeals case ^{32/} in which the penalty provision of the Perishable Agricultural Commodities Act was challenged.

^{30/} Legislation was introduced in the 95th Congress (H.R. 13869 and S. 2482) but no action was taken.

^{31/} Pub. L. No. 94-405, 90 Stat. 1225 (1976).

^{32/} Giles Lowery Stockyards, Inc. v. U.S. Department of Agriculture, 565 F. 2d 321 (5th Cir. 1977), cert. den., 46 U.S.L.W. 3766 (June 13, 1978).

The Humane Methods of Slaughter Act passed both Houses during 1978. ^{33/} It requires the Secretary of Agriculture to survey all inspected establishments to determine what methods of slaughter and handling (in connection with slaughter) are being used.

Food Protection

Several food protection issues were in the limelight in 1978 at the federal level. The use of saccharin in food received considerable attention. Two bills were passed relating to this issue: (1) to limit the use of funds that would put a ban on the use of saccharin until a study of its use could be made ^{34/} and (2) a "study bill" that authorized the investigation of the use of toxic and carcinogenic substances in foods, including saccharin. ^{35/} The National Academy of Science will be issuing a report in February 1979 analyzing congressional and FDA regulatory options. There probably will be considerable debate over the Delaney Clause.

The use of drugs in animals has come under study by the U.S. Department of Agriculture and may receive some attention by the 96th Congress as a result. ^{36/}

^{33/} The bill was H.R. 1464, 95th Congress, 2d Sess. (1978).

^{34/} Pub. L. No. 95-97, 91 Stat. 810 (1977).

^{35/} Pub. L. No. 95-203, 91 Stat. 1451 (1977).

^{36/} See, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Economic Effects of a Prohibition on the Use of Selected Animal Drugs, Agricultural Economic Report No. 414, November 1978.

The Food Safety and Quality Service will be revamping the USDA meat and poultry inspection program next year. The thrust of this alteration will not be to make the inspection service more inclusive but rather to allow some inspection activities to be assumed.

It appears that new FDA standards for substitute food products will be issued in late 1978 or 1979.

Nutrition has been the subject of the National School Lunch Act and Child Nutrition Amendments ^{37/} as well as of recent case developments that attempt to limit FTC authority regarding advertising that relates to child nutrition. A case of some possible significance may be on the Supreme Court docket in 1979 relating to egg nutrition. ^{38/} The FTC challenged a trade association formed by members of the egg industry to counteract negative publicity linking the consumption of eggs with higher serum cholesterol and an increased incidence of heart disease.

Traditional Agricultural Policy

The Food and Agricultural Act of 1977 ^{39/} extended the major commodity programs and the food-for-peace program for four years and revised and extended the disaster payment program for two years.

^{37/} Pub. L. No. 95-166, 91 Stat. 1325 (1977).

^{38/} National Commission on Egg Nutrition v. FTC., 570 F2d 157, 7th Cir. 1977), appeal docketed, No. 77-1551 (S. Ct., April 28, 1978).

^{39/} Pub. L. No. 95-133, 91 Stat. 913 (1977).

It established new payment limitations for commodity programs and set target prices and loan rates for wheat, feed grains, cotton, and rice from 1978 through 1981. It also set new price supports for wheat and feed grains. The bill did away with the allotment system for wheat, feed grains, and cotton but provided for a set-aside program. It established a new peanut support program and encouraged on-farm grain storage. It further authorized several new rural development and conservation programs and authorized rural, solar energy, and agricultural research programs. The Emergency Agricultural Act of 1978 ^{40/} provided that whenever a set-aside is in effect for any of the crops of wheat, feed grain, and upland cotton during 1978 through 1981, the Secretary may increase the target price for any such commodity by such an amount as he determines appropriate to compensate producers for participation in the set-aside. It also changes the formula in existing law for computing the loan rate for upland cotton and provides that the loan rate would, in no event, be less than 48 cents per pound for each of the 1978-81 crops. It gave the Secretary of Agriculture discretionary authority to permit production on set-aside acreage of commodities to be converted into gasahol ingredients. It also increased the borrowing authority of the Commodity Credit Corporation and amended the Agricultural Marketing Agreement Act of 1937 to permit marketing orders to include provisions concerning marketing promotion.

^{40/} Pub. L. No. 95-279, 92 Stat. 240 (1978).

It appears that agricultural product promotion will be stressed for other commodities in 1979. The recently revised food stamp program may again be adjusted next year, with the probable identification of a new, higher ceiling in anticipation of recessionary forces that may be underway in the economy at the present time.

The legislation that was proposed regarding sugar price supports during the 95th Congress will probably be reintroduced in 1979. This proposal essentially attempts to develop purchase and support efforts to bolster sagging prices of sugar in relation to production costs for U.S. producers.

A development in international trade that made news in 1978 was the meat import bill, recently vetoed by Carter and which will probably be reintroduced this next year. The bill, designed to assure a continual supply of this product to consumers as U.S. meat production increases and decreases over time, proposed counter-cyclical regulations on the import of meat. A similar countervailing duty concept may be applied in other product areas should such a meat import bill be introduced that will overcome the Carter objection.

Another significant international issue that will continue into 1979 will be the international food reserve proposal that has had a long history of congressional debate. Some minor adjustments in the U.S. foreign aid program were passed into law in 1978. ^{41/}

^{41/} Pub. L. No. 95-88, 91 Stat. 553 (1977).

Other major agricultural policy issues included more intensified search for ways in which to slow the rise in food prices. New wage and price standards, along with a "monitoring" activity, are currently part of the Carter war on inflation and undoubtedly will continue to be a significant and debatable topic in Congress in 1979.

A rather substantial study of the entire transportation system is the focus of an interagency task force ^{42/} and probably will result in recommendations for deregulation of trucking and railroad industries and a further investigation of the effect of regulation by the federal government on the transportation complex.

Agricultural Taxation and Planning

Close to the heels of the Tax Reform Act of 1976, which some commentators feel still needs further clarification, are the changes brought about by the Revenue Act of 1978 ^{43/} as it applies to agriculture.

The main change that has come about has been with respect to the accounting method for farm corporations. The 1976 Tax Reform Act required farm corporations to use the accrual method of accounting for farm income. It also required them to capitalize preproductive-period expenses. The 1976 act did allow some limited exceptions to these requirements. The new 1978 act has liberalized these exceptions somewhat.

^{42/} Pub. L. 95-580, 92 Stat. 2475 (1978) provides for the establishment of a 16-member rural transportation advisory task force to be chaired jointly by the Secretary of Transportation and the Secretary of Agriculture.

^{43/} Pub. L. No. 95-600, 92 Stat. 2763 (1978).

The 1976 act exempted family corporations in which one family owns at least 50 percent of the stock from the stricter accounting requirements. However, under the 1978 act, corporations controlled by two or three families can now also choose which accounting method they use, provided they meet certain requirements. These requirements include that the corporation must have engaged in farming continuously since October 1976 and must have met the test that two families own at least 65 percent of the voting power of all classes of voting stock and at least 65 percent of the total number of shares of all other classes of stock, or that three families own at least 50 percent of the voting power of all classes of stock entitled to vote and at least 50 percent of the total number of shares of all other classes of stock. There are some other minor requirements as well.

The 1978 act also created a special exception for corporations and partnerships that operate sod farms. They need not comply with the general rule requiring the accrual method of accounting and the capitalization of the preproductive-period expense.

The Revenue Act of 1978 provides some new options for farmers, nurserymen, and florists. They may now elect to switch to the cash method of accounting without first seeking the approval of the IRS for their business activities which involve the growing of crops. Those who wish to remain on the accrual method may do so, and under the new law they are not required to maintain inventories for their growing crops.

One important feature of the new act is that it clarifies existing law in regard to the investment credit and certain farm buildings. The investment credit, which was restored in 1971, does not generally apply to buildings and their structural components. In the past, some taxpayers had successfully argued that certain poultry and livestock structures designed for food production should qualify for the credit. The 1978 act specifically extends the investment credit to livestock and horticultural facilities designed, constructed, and utilized for single-purpose food and plant production. The term "livestock" includes poultry. The structure must house the equipment necessary for the care and feeding of the livestock, but its expected life need not be contemporaneous with that of the equipment it houses. This extension of the investment credit is made retroactive to August 15, 1971.

Agriculture and the 96th Congress

It is always speculative to predict what Congress will do regarding legislative enactments prior to the beginning of a session. But there does appear to be some agreement as to certain major issues that will face the new Congress.

Item 1. Sugar Legislation. It is expected that sugar producers will again seek legislation in the coming Congress as sugar legislation unexpectedly died in the waning days of the 95th Congress. Its failure to obtain passage of a bill left a pending international sugar agreement without ratification and domestic producers with an expiring price support program. In the final House-Senate

conference, conferees had agreed to a base 15 cents-per-pound price for fiscal year 1979 with a 75-cent supplementary payment for that year only. Thereafter, the price objective would rise 1 percent per year. Conferees had dropped an automatic inflation adjustment provision. They had retained a "veto insurance" provision in the final bill extending the President's authority to waive countervailing duties. Sugar producers viewed the conference agreement as barely adequate. But it would keep them going until next year when hopefully there would be a more generous support. Producers are now claiming production costs of 16 to 17 cents per pound; anything below that, they say, will guarantee their bankruptcy. The corn sweetener people objected to the provisions for direct payments.

According to observers, these dissatisfactions with the bill plus opposition to an unrelated tariff provision, shaped the House negative vote of 177 yeas and 194 nays, which killed the bill. While the conferees had retained a much sought provision to extend the President's authority to waive countervailing duties, the import-sensitive textile industry opposed extension of such authority and, therefore, influenced some members to vote against the bill for that reason.

Item 2. Countervailing Duties. Legislation to extend the President's authority to waive countervailing duties may surface again in the 96th Congress as it became entangled with some key trade bills, as well as the sugar legislation, all of which failed in the final hours of the 95th Congress. European governments

had pressed for an extension of the President's authority to waive countervailing duties as a gesture of U.S. support of the effort to devise a new code for the treatment of government subsidies. Both European and U.S. officials are concerned that lapse of the waiver authority could hamper multilateral trade negotiations in Geneva. Supporters of the legislation ^{44/} said the legislation was defeated because the assistance and welfare amendments were added by the Senate.

Item 3. International Wheat Reserve. The Administration's proposal to establish an international wheat reserve program of up to 6 million metric tons for emergency food needs in developing countries died at the end of the last Congress. The Administration had hoped to have the bill enacted before the conclusion of ongoing negotiations for a food aid convention as part of the new international wheat agreement. The United States had pledged to provide a minimum of nearly 4½ million metric tons of grain annually under the new convention. This is more than twice the existing U.S. obligation. If the food aid convention negotiations are completed by the target date of December 15 and there is a new international wheat agreement in effect, the Administration will send implementing legislation into the Congress to fulfill the U.S. commitment.

^{44/} H.R. 11711, 95th Congress, 2d Sess. (1978).

Item 4. Farm Bargaining. Legislation to force handlers of agricultural commodities to bargain in good faith with accredited producer associations will be on the agenda for the 96th Congress. The legislation was introduced in the 95th Congress ^{45/} but no action was taken. Key provisions of the proposal are that it would (1) allow for the producers of any farm product to form a bargaining association that would be accredited by the Secretary of Agriculture, (2) require that the handlers of that farm product bargain with the accredited association in good faith, and (3) prevent both the handlers and the accredited association from engaging in unfair practices. The bill would not force handlers to agree to a specific price or other terms of trade. It would, however, require that handlers give accredited associations price and terms of trade that are just as good as those they have given to any other producer. An accredited association would have to represent enough growers and production of specified farm products so that they could function as an effective agent for producers as well as be controlled by producers. It would also have to meet the same restrictions against unfair practices as those the handlers must meet. These unfair practices would include failure to bargain in good faith, coercion or intimidation, breaching contracts with other associations, and making or circulating false reports about the finances or activities of an association or handler. Support for this type of legislation is coming from the major farm

^{45/} H.R. 13869 and S. 3482, 95th Congress, 2d Sess. (1978).

organization, with a notable exception being the NFO. Opposition to the bill comes from most of the processor groups.

Item 5. Farm Protection Plan. The legislation ^{46/} introduced in the 95th Congress to provide a voluntary self-help program designed to assist producers of agricultural products to protect themselves against the loss of production when natural, uncontrollable conditions adversely affect production will be reintroduced into the 96th Congress. The nationwide all-risk crop insurance reform bill would consolidate four present disaster assistance programs (Federal Crop Insurance, Disaster Payments Program, Emergency Loan Program of the Farm and Home Administration, and the Emergency Loan Program of the Small Business Administration) into a single, comprehensive, share-the-cost program to insure crops against natural disasters and some other uncontrollable risks. The coverage would be provided during the first year for 18 major crops which account for 89 percent of all cropland range, with the potential of expansion over 10 years to cover all farm products, including livestock. Each farmer who participates in the voluntary program would pay a premium based upon the level of protection he chooses and the risk involved in his farming operation. The cost of the insurance would be shared between the farmer and the government. The program would be marketed through private insurance

^{46/} S. 3029 and H.R. 12636, 95th Congress, 2d Sess. (1978).

agents and country ASCS offices, and would be funded through the USDA Commodity Credit Corporation. The 18 crops covered in the initial phase of the program are wheat, corn, cotton, barley, grain sorghum, rice, sugar cane, sunflowers, citrus, dried beans, soybeans, oats, flax, peanuts, tobacco, raisins, sugar beets, and rye.

Item 6. Meat Marketing, Pricing, and Transportation. Hearings were held in the 95th Congress by the House Agriculture Committee and the Small Business Committee on problems encountered in the marketing, pricing, and transportation of meat. House Small Business in addition conducted an investigation in this area and released its findings in late 1978 in two reports. ^{47/} Legislation was introduced to rectify problems in meat marketing, pricing, and transportation. Hearings are anticipated early in the 96th Congress. They will include items related to the method and procedure for selling all meat commodities, provide for licensing and regulating market price reporting services, insure proper market basis for sale to prevent manipulation of prices in meat trading, create a meat industry standard board to implement objectives of the legislation, and provide for research in establishing a centralized national marketing system. Legislation will undoubtedly surface early in the 96th Congress along with a USDA report on meat pricing expected to be released later this year.

^{47/} H.R. Report Nos. 1787 and 1788, 95th Congress, 2d Sess. (1978).

Item 7. Wage and Price Standards. Food has been identified as a special problem sector, along with housing and health, in Carter's war against inflation. Some actions which might be taken include a reexamination of import restrictions, a "sunset" review of some existing regulations, limitations on price support increases, reducing the amount of land set aside from planting and eligible for payments, requiring that all export transactions in excess of \$5 million seeking Eximbank assistance follow the wage and price guidelines, and the limiting of federal procurement to firms following the guidelines.

Item 8. Food Protection. There will be considerable activity on the subject of food protection in the 96th Congress. The Senate Committee on Agriculture will be conducting hearings in early 1979 and will be issuing a committee print on this subject early in the 96th Congress. There will be issuances of various studies out of the FDA and the Economics, Statistics, and Cooperatives Service of the U.S. Department of Agriculture. This will include studies of drugs in animal feed, the use of nitrates and nitrites, standards of identity, the use of saccharin, as well as meat and poultry inspection program revamping. Increased amounts of information will be brought to the attention of Congress on the issue of dietary goals and food labeling.

Item 9. Antitrust and Market Regulation. We can clearly expect legislative proposals to develop relating to agriculture's exemptions from the antitrust laws. There will be proposals to alter the exemption provided co-ops by the Capper-Volstead Act and a questioning of the use of market orders and agreements, with even broader consumer input.

Many of the several product market regulations that are administered by the U.S. Department of Agriculture will come under scrutiny as various task forces on transportation, inflation, and studies of the impact of regulation generally bring forth new information.

The mood in Washington appears to be undergoing change in the light of consumer and environmental interests, inflationary pressures, and the threat of a recession on the horizon. These forces, combined with traditional influences, will likely create additional unexpected sets of economic issues within the next year.

STATE AGRICULTURAL LAW

For purposes of this presentation, those states were selected which rank in the top three 1977 gross sales classifications for each of the major agricultural products produced in the United States. The individual session laws or codes were used to determine what types of statutory developments had occurred in their last legislative sessions that related to the various subject matters listed under the rubric of agricultural law. ^{48/}

In addition, letters were sent to each administrator in charge of the 50 state departments of agriculture, requesting that they provide a summary of new statutory law or changes in regulations

^{48/} These states included Arkansas, California, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Missouri, Montana, Nebraska, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, Wisconsin, and Wyoming.

that relate to agriculture. A substantial number of state officials responded to this request with letters and slip laws. ^{49/} This information was also summarized and combined with that gained from the first library research effort.

As in the review of federal agricultural law, subject matter was organized into six major categories, as follows: (1) agricultural resource use and planning, (2) agricultural business and estate planning, (3) antitrust and market regulation, (4) food protection programs, (5) traditional agricultural policy, and (6) agricultural taxation and planning. At the end of this part, there is a brief section entitled "Summary of State Law Developments."

Agricultural Resource Use and Planning

On environmental questions, four states recently have developed legislation relating to the use of pesticides. Arkansas has newly regulated the labelling, distribution, storage, transportation, and disposal of pesticides and thus brought its law into general conformance with many other state pesticide regulations. ^{50/} Nevada recently passed a law allowing inspectors from the state department of agriculture to take pesticide samples. ^{51/} They may enter upon any public or private premises at reasonable times. In Montana, its pesticide law was recently amended to no longer allow retail outlets to obtain an annual license from the department of agriculture

^{49/} These states included Arkansas, California, Florida, Georgia, Hawaii, Idaho, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, Oklahoma, South Carolina, Utah, Virginia, and West Virginia.

^{50/} Ark. Stat. Ann. § 77-227 to 77-247 (Bobbs-Merril Supp. 1977).

^{51/} Nevada Assembly Bill No. 60, Committee on Agriculture, January 19, 1977.

but still to allow the department to retain the power to decide which pesticides may be sold at the retail level. ^{52/} California has exempted the issuance of pesticide-use permits from the California Environmental Quality Act. ^{53/} The regulatory programs of the department and county agricultural commissioners are to be certified as functionally equivalent to the California Environmental Quality Act requirements in terms of protecting the environment.

Three states have enacted pest control laws. Idaho has a new law that authorizes the implementation of a predator-control program and indicates that any toxic material used for predatory control must be approved by the director of the department of agriculture. ^{54/} Mississippi has enacted legislation to control fire ants, and it establishes a state authority to manufacture insecticides to deal with the problem. ^{55/} Nebraska legislation allows its department of agriculture to enter into cooperative agreements with any state or federal agency for the purpose of controlling insects and plant disease outbreaks. ^{56/}

In Texas, persons who use insecticides and other chemicals for pest control on their own property are now exempt from state pest control licensing requirements. ^{57/} This 1977 amendment also allows an employee to use these chemicals on his employer's property without

^{52/} Mont. S.B. 124 (1978).

^{53/} Act of June 30, 1978, Ch. 308, 1978 Calif. Legis. Serv. 810 (West).

^{54/} Act of March 24, 1978, Ch. 288, 1978 Idaho Sess. Laws 238.

^{55/} Miss. S.B. 3100 (1978).

^{56/} Neb. Rev. Stat. § 2-1, 067 (Supp. 1978).

^{57/} Texas Structural Pest Control Act, Tex. Rev. Civ. Stat. Ann., art. 135b-6, § 5(c) (Vernon 1978 Supp.).

a license if he was hired primarily for another purpose. However, it does not authorize the use of chemicals which have restricted uses under EPA rules.

A significant environmental problem for farmers is the proximity of powerlines to agricultural land. A New York law now requires that a copy of an application for a certificate of environmental compatibility be sent to the Commissioner of Agriculture and Markets prior to the construction of any major utility transmission facility. ^{58/} It further requires that the Department of Agriculture and Markets be a party to certification proceedings.

Another new law in that state gives the Department of Environmental Conservation the power to delegate certain of its functions to the state soil and water conservation districts. ^{59/} These include the authority to review and approve plans as well as the authority to issue permits.

Foreign ownership of agricultural land has been the subject of interest in three more states this last year. Missouri passed a law which allows aliens to acquire real estate there except for "agricultural land," which is defined as any tract of land consisting of more than five acres which is capable of supporting an agricultural enterprise. ^{60/} A Montana official has indicated that

^{58/} Act of May 9, 1978, Ch. 119, 1978 N.Y. Sess. Laws 291 (McKinney).

^{59/} Act of May 16, 1978, Ch. 134, 1978 N.Y. Sess. Laws 303 (McKinney).

^{60/} Act of April 28, 1978, S.B. 685, 1978 Mo. Legis. Serv. 48 (Vernon).

there will be a good deal of interest in foreign ownership of farm land in the next session of its legislature. ^{61/} Maryland set forth a resolution urging the governor to direct state agencies to study and report to the General Assembly on the extent of foreign ownership of farm land within the state. ^{62/} At present, there are no laws in Maryland which restrict the right of foreign ownership.

States have continued to develop laws that are directed to the preservation of agricultural land for farm uses. Maryland, in 1977, established a program for the purchase of agricultural land preservation easements by the Maryland Agricultural Land Preservation Foundation. ^{63/} This law was designed to prevent conversion of farm land into more intensive uses. Such an easement restricts the land to agricultural purposes. In 1978, a new bill was passed to fund this agricultural preservation program. ^{64/} In New Hampshire a similar proposal may be considered in that state next year. ^{65/} Instead of buying easements, however, the state would probably be buying development rights. The purpose, however, is basically the same as the Maryland statute. In West Virginia, an agricultural preservation statute is likely to develop there as well. ^{66/}

^{61/} Letter from W. Ralph Peck, Montana Department of Agriculture, November 16, 1978.

^{62/} Md. H.J. Res. 72 (1978).

^{63/} Md. S.B. 297 (1977).

^{64/} Md. S.B. 679 (1978).

^{65/} Letter dated November 15, 1978, from Howard C. Townsend, Commissioner, Department of Agriculture, State of New Hampshire.

^{66/} Letter dated November 13, 1978, from Wm. Gillespie, Department of Agriculture, State of West Virginia.

During the 1978 legislative session in Virginia, a bill was introduced which would have created a state agricultural land preservation foundation within the Department of Agriculture and Commerce. ^{67/} Under this bill, the foundation would attempt to preserve agricultural land by acquiring easements through gift, purchase, devise, bequest, or grant. The purchase price of agricultural land preservation easements would be based on the difference between fair market value and present use value. The bill was not passed in 1978 but has been carried over to the current session.

In Oklahoma, new law allows mining on prime farmland only when certain conditions are met. ^{68/} The conditions generally include the restoration of the land and the proper disposal of waste materials coming from the mining process. Nebraska has enacted a water resources law which controls runoff of ground water on a state-wide basis. ^{69/} South Carolina recently amended its fertilizer law in which it changed registration and guarantee requirements as well as some changes in labelling requirements. ^{70/}

In 1977, Texas gave agricultural use a priority in receiving natural gas supplies, except to the extent that those supplies are required to maintain residences or hospitals, or are required for other uses vital to public health and safety. ^{71/} In November

^{67/} Va. H.B. 997 (1978).
^{68/} Act of February 2, 1978, Ch. 10, 1978 Oklahoma Sess.
Laws 11.
^{69/} Nebraska Rev. Stat. §§ 46-644, 46-646 (Supp. 1978).
^{70/} Act of July 18, 1978, No. 578, 1978 S.C. Acts 1689.
^{71/} Texas Rev. Civ. Stat. Ann., art. 6066f (Vernon 1978 Supp.).

of 1978 a bill was filed in the Texas House of Representatives which would make increased supplies of natural gas available for water pumps used to irrigate agricultural land. 72/

New York has recently amended its Soil and Water Conservation Districts Law. 73/ The amendment makes the president of the College of Environmental Science and Forestry at the State University of New York an ex-officio member of the Agricultural Resources Commission and the state's Soil and Water Conservation Committee.

Several states enacted legislation relating to farm animal protection and production. South Carolina has a new act designed to control swamp fever. 74/ Nevada newly regulates retail sales of veterinary drugs. 75/ Nebraska's new law allows animal technicians to perform veterinary services formerly performed only by veterinarians. 76/ The purpose of this law is to make more effective utilization of its limited supply of veterinarians by allowing them to delegate veterinary tasks to animal technicians.

The State of New York has enacted more stringent provisions regulating the feeding of cattle, swine, and poultry. 77/ The law previously had prohibited the feeding of garbage to these animals. The 1978 amendment added offal and carcasses to the list of items that may not be fed to cattle, swine, or poultry.

72/ Texas H.B. 1, filed November 13, 1978.

73/ Act of June 19, 1978, Ch. 320, 1978 N.Y. Laws.

74/ Act of February 14, 1978, No. 400, 1978 S.C. Acts 1284.

75/ Nevada S.B. 437 (1977).

76/ Nebraska Rev. Stat. §§ 71-1, 168 to 7-101, 185 (Supp. 1978).

77/ Act of March 28, 1978, Ch. 34, 1978 N.Y. Laws.

In California, a law was enacted to provide that a person whose animal is destroyed in eradicating or controlling a disease not be indemnified for his loss if he is in violation of any provision or regulation relating to quarantine measures. ^{78/} California also allows a board of veterinary examiners to make random, unannounced inspections of veterinary premises and also has developed stricter sanitation requirements for those premises. ^{79/}

Recent legislation in Michigan created a state Toxic Substance Loan Commission to receive and consider loan applications from residents who have suffered a financial loss as a result of contamination of livestock by a toxic substance. ^{80/} The Commission is an autonomous entity within the Department of Public Health.

Farm labor laws have seen some development in Pennsylvania and Minnesota. In Pennsylvania, a seasonal farm labor policy has been enacted. ^{81/} This act establishes minimum wages and hours for labor of seasonal farm workers and provides for the inspection of seasonal farm workers' farm labor camps and requires certain records to be kept. The act allows the state's Environmental Quality Board to adopt regulations to assure safe and healthful

^{78/} Act of September 7, 1978, Ch. 599, 1978 California Legis. Serv. 2089 (West).

^{79/} Act of September 28, 1978, Ch. 1314, 1978 California Legis. Serv. 4573 (West).

^{80/} 1978 Michigan Pub. Acts 273.

^{81/} Act of June 23, 1978, Act No. 93, 1978 Pennsylvania Legis. Serv. 466.

farm labor employment and also establishes a seasonal farm labor committee within the Department of Environmental Resources. There were certain changes in Minnesota's farm labor laws. ^{82/} They were amended so that Workmen's Compensation will provide for coverage of certain farm owners and employees if they elect the coverage. Minnesota further has a new law which requires employers of corn detassellers to provide transportation for the workers they terminate or who become injured or sick to the location where the employer picked them up that day. Virginia has created a Migrant and Seasonal Farm Workers' Commission to bring about greater coordination between federal and state agencies in the inspection of migrant camp facilities. ^{83/}

Agricultural Business and Estate Planning

A number of new corporate farming statutes has been enacted at the state level. Iowa recently amended its corporate farming statute. ^{84/} The 1978 amendment adds some new definitions to Iowa's Corporate Farming Act. The new definitions include the terms "nonresident alien," "beneficial ownership," and "actively engaged in farming." The amendment clarifies one point in the old law. Generally, corporations are prohibited from acquiring or leasing any agricultural lands for a period of five years, beginning August 15, 1975. However, there are some exceptions to this rule, and one of them is for agricultural land acquired for research or experimental

^{82/} Act of April 5, 1978, Ch. 731, 1978 Minnesota Sess. Law Serv. 741 (West).

^{83/} Act of March 25, 1978, Ch. 270, 1978 Va. Acts.

^{84/} Act of June 27, 1978, H.F. 2021, 1978 Iowa Legis. Serv. 495 (West).

purposes, if the commercial sales from this land are incidental to the research or experimental objectives of the corporation. The amendment states that these sales will be considered incidental when they constitute less than 25 percent of the gross sales of the primary product of the research. A new exception established by the 1978 Iowa amendment exempts agricultural land acquired by a trust for immediate use in nonfarming purposes. The amendment further requires additional information to be provided by a corporation in its annual report of agricultural activity. There are some new civil penalties provided for failing to file the annual report in a timely manner. New penalties are also provided by the Iowa amendment for those who violate the prohibition of acquiring agricultural land. A corporation can be fined up to \$50,000 and can be ordered to divest itself of any land obtained in violation of the act. The Iowa amendment further requires that conveyances or leases of agricultural land, with certain exceptions, must be recorded by the grantee or lessee not later than 180 days after the date of the conveyance of lease. If the grantee or lessee is a nonresident alien, an affidavit must be filed at the time of the recording showing the name, address, and citizenship of the nonresident alien. If the nonresident alien happens to be a partnership, limited partnership, corporation, or trust, the affidavit must disclose the names, addresses, and citizenship of the nonresident alien individuals who are the beneficiaries or the owners of that entity.

In Wisconsin, corporate farming statutes were changed to bring trusts within the scope of the corporate farming statute. ^{85/} This act amended Wisconsin's corporate farming statute and provided that a trust be subject to the same restrictions as a corporation in regard to owning land or carrying on a farming operation. All beneficiaries of a trust, other than estate, must be natural persons to qualify under the statute. Furthermore, there can be no more than 15 beneficiaries.

Oklahoma has recently amended its law regulating farming and ranching business corporations to eliminate a provision requiring annual reports and financial statements to be filed with the state's Board of Agriculture. ^{86/} A farming or ranching corporation may be dissolved and liquidated, at the discretion of the court, upon a petition of 25 percent or more of the shareholders. The amendment also limits the entities which may own or lease land for the purpose of farming or ranching.

An amendment to the Minnesota Farm Corporation Law provides that beef and hog producing corporations may be limited to five shareholders so long as a majority of those shareholders live on the farm. ^{87/} However, corporations currently engaged in hog or cattle production may continue operations.

^{85/} Act of May 27, 1978, Ch. 411, 1978 Wisconsin Legis. Serv. 1870 (West).

^{86/} Oklahoma H.B. 1809 and S.B. 522 (1978).

^{87/} Act of April 4, 1978, Ch. 722, 1978 Minnesota Sess. Law Serv. 700 (West).

Interestingly, North Dakota has amended its Uniform Commercial Code sections, adding a new subsection to deal with seller's remedies on the discovery of the buyer's insolvency. The new subsection provides that a producer of agricultural products, upon discovery of the buyer's insolvency, can reclaim the products within 10 days after receipt. This 10-day limitation does not apply if a misrepresentation of the buyer's insolvency had been made in writing to the producer within three months before the delivery. Furthermore, the producer's right to reclaim is not subject to the rights of a buyer in the ordinary course of business or other good-faith purchaser. ^{88/}

South Carolina now has a statute that gives the state department of agriculture the authority to issue bonds for the construction of or improvements to existing farmer markets. ^{89/}

In California, an act was recently passed that increased the maximum credit life insurance available to any agricultural borrower from \$40,000 to \$100,000. ^{90/}

Antitrust and Market Regulation

California and Georgia have adopted new regulations relating to the marketing of agricultural products. In California, the present law defines a handler, including distributors, for purposes

^{88/} Act of March 19, 1977, Ch. 395, North Dakota Sess. Laws 869.

^{89/} 1978 S.C. Acts 616.

^{90/} Act of September 29, 1978, Ch. 1357, 1978 California Legis. Serv. 4761 (West).

of milk market stabilization and marketing provisions and provides for the licensing of handlers. A handler is prohibited from dealing in marketing milk unless such a handler first obtains a license from the Director of Food and Agriculture. ^{91/} The existing law includes, for the purposes of these provisions, any person defined as a distributor under designated provisions regulating the marketing of milk and other dairy products.

The 1978 act in California redefining "distributors" by including persons operating, owning, or servicing automatic vending machines dispensing market milk or market cream includes a person who sells market milk or market cream from a mobile vehicle and further includes a person who sells market milk or cream to documented or foreign registry vessels. Each distributor is required to obtain a license and must pay a prescribed fee to the Department of Food and Agriculture.

Present California law requires producers of agricultural commodities to pay fees to the Department of Food and Agriculture. A new act allows the Director of Food and Agriculture to collect fees owed by producers from a handler of the commodity being regulated and then allows the handler to deduct the fee from any money owed by the handler to the producer. ^{92/}

^{91/} Act of September 15, 1978, Ch. 804, 1978 California Legis. Serv. 2760 (West).

^{92/} Act of September 15, 1978, Ch. 816, 1978 California Legis. Serv. 2788 (West).

Another California act requires that manufacturing milk produced within the state comply with the rules, regulations, and standards of the U.S. Department of Agriculture, which governs quality standards for raw milk. ^{93/} The act also requires that market milk produced and marketed as guaranteed raw milk and as Grade A raw milk comply with certain regulations already established for market milk produced and marketed as certified milk. These regulations govern the required percentages of milkfat and nonfat milk solids. Another new law in California is called the California Milk Pooling Act. ^{94/} It provides for the establishment of pooling plans for fluid milk in the state and for the allocation of milk pool quotas in production basis. The existing law provides that producers who do not (in the months of September, October, November of any year) market the amount of fluid milk equal to their pool quota shall lose this prescribed amount of their production basis. This 1978 act authorizes the Director of Food and Agriculture to waive these provisions if it is determined prior to June 1 of any such year that there will be sufficient market milk during such months to satisfy market milk needs.

Recent legislation in New York allows the Commissioner of Agriculture and Markets to call a special hearing for the sole purpose of establishing a new rate of assessment for purposes of carrying

^{93/} Act of March 9, 1978, Ch. 28, 1978 California Legis. Serv. 99 (West).

^{94/} Act of May 24, 1978, Ch. 166, 1978 California Legis. Serv. 2187 (West).

out dairy promotion orders. ^{95/} Such a hearing can be called upon the written petition of at least 25 percent of the milk producers within an affected area. Proposed changes in the rate of assessment can be submitted to a producer referendum without otherwise affecting the other provisions of the order.

Under another California law enacted in 1978, an exemption is provided for any licensee who purchases livestock for slaughter and is bonded under the federal Packers and Stockyards Act from earlier California law which required licensed processors and commission merchants or dealers of farm products, except cash buyers, to pay an annual fee to the farm products trust fund. ^{96/} The fund is used to indemnify producers when purchasers, subject to the payment of a fee, default in payment for farm products. Other new California laws (1) govern the marketing of nursery stock, ^{97/} (2) give the Director of Food and Agriculture authority to establish new labelling requirements, and (3) require commission merchants to communicate price, quantity, and quality adjustments to growers only when such information is specifically requested. ^{98/}

^{95/} Act of July 24, 1978, Ch. 613, 1978 New York Laws.

^{96/} Act of September 8, 1978, Ch. 660, 1978 California Legis. Serv. 2187 (West).

^{97/} Act of September 26, 1978, Ch. 1202, 1978 California Legis. Serv. 4152 (West).

^{98/} Act of September 6, 1978, Ch. 588, 1978 California Legis. Serv. 2064 (West).

In Georgia, a 1977 law requires surety bonding for each location of a grain-dealing entity operating at multiple locations. 99/

In Nebraska, there is a new law which governs the inspection and testing of grain moisture measuring devices. 100/ In Mississippi, they amended their grain warehousing statute to provide that a producer can now get a warehouse receipt on his own grain stored in his own warehouse. 101/ If the producer does not desire a receipt for grain stored in his own warehouse, the act does not require him to obtain a license. A warehouseman to whom warehouse receipts are issued is required to insure the grain.

In Mississippi, another act also affecting grain marketing is known as the Mississippi Grain Dealers' Law of 1978. 102/ It provides for the licensing and regulation of grain dealers by the state's Department of Agriculture and Commerce. Grain dealers are required in Mississippi to furnish a surety bond, and the amount is dependent upon their sales and net worth. Licensed dealers are subject to annual inspection by the Commissioner of Agriculture and Commerce. Mississippi law also provides for the testing and inspection of devices used in measuring the moisture content of agricultural products. 103/ In Nevada, an act governing the issuance of livestock receipts by operators of livestock auctions was amended. 104/ Receipts must still be issued to the purchasers

99/ Georgia, H.B. 55 (1977).
100/ Nebraska Rev. Stat. §§ 89-1, 104 to 89-1, 108 (Supp. 1978).
101/ Mississippi S.B. 2664 (1978).
102/ Mississippi S.B. 2665 (1978).
103/ Mississippi H.B. 783 (1978).
104/ Nevada S.B. 36 (1977).

of livestock, but it is no longer required that a copy of the receipt be sent to the department of agriculture. In Mississippi, there is a new regulation relating to its farm milk tank law that will allow for measurement in metric terms rather than in inches. 105/

A good deal of legislation has developed relating to the promotion of agricultural products at the state level this last year. In Nebraska, a new law allows check-off by corn growers for the purpose of promoting the sale and consumption of corn. 106/ This marketing program for corn producers is patterned after a number of other Nebraska commodity programs previously enacted, including those for wheat, soybeans, potatoes, poultry, and eggs.

A beef industry council was recently created in Louisiana 107/ to develop and expand domestic and foreign markets for cattle and beef raised in that state. The council is responsible for developing a beef promotion and research program. It is given the power to levy an assessment on cattle marketed within the state as a means of raising revenue for these programs.

Louisiana has also created a special committee to study the livestock marketing practices and procedures utilized in that state. 108/

105/ Mississippi H.B. 975 (1978).

106/ Nebraska Rev. Stat. §§ 2-3601 to 2-3635 (Supp. 1978).

107/ Louisiana S.B. 909 (1978).

108/ Louisiana H. Con. Res. 203 (1978).

Among the areas to be studied are the operation of livestock auction barns and facilities, the chartering of these barns and facilities, bonding requirements, and escrow accounts and financial transactions in connection with the marketing and sale of livestock.

In Oklahoma, a new act amends the statute relating to the Oklahoma Peanut Growers' Association and provides an assessment of \$2 per net ton of peanuts on the farmers' stock basis market. 109/

In New York, promotion of producer-to-consumer direct marketing has been devised and patterned somewhat after the federal law that was enacted in 1977. 110/ New York has also established a milk marketing advisory council to advise the Commissioner of Agriculture and Markets in planning programs and policy related to milk marketing. 111/ Members of the council are appointed by the commissioner. In South Dakota, a state agricultural marketing commission was created to consult with and aid the state's Secretary of Agriculture. 112/ Its purpose is to promote the sale, distribution, and merchandising of farm products, to furnish information concerning farm products to the public, and to study and recommend efficient and economic methods of marketing. In California, marketing orders may contain provisions for the advertising and sales promotion of a regulated commodity. 113/

109/ Oklahoma S.B. 542 (1978).

110/ Act of May 23, 1978, Ch. 189, 1978 McKinney's N.Y. Sess. Law Serv. 379 (West).

111/ Act of June 5, 1978, Ch. 236, 1978 N.Y. Laws.

112/ Act of March 8, 1978, Ch. 281, 1978 South Dakota Sess. Laws 472.

113/ Act of June 30, 1978, Ch. 309, 1978 California Legis. Serv. 814 (West).

Food Protection Programs

Several state laws have been enacted that are aimed at protecting food destined for the consumer. Recent Oklahoma law exempts certain slaughterhouses from inspection, but not retail stores and restaurants. ^{114/} In Nevada, an act was passed which requires the state's Department of Agriculture to establish a program and system of inspection fees for grading and certifying meats, prepared meats, and meat products. ^{115/}

Mississippi has a new truth-in-labelling law for honey. ^{116/} The product may not be labelled "pure honey" unless it is, in fact, 100 percent pure honey by weight, and any honey product that is less than 100 percent pure honey must be labelled as "artificial honey." The Georgia Commissioner of Agriculture is now permitted to place inspectors on a 24-hour basis at milk facilities if he/she has reason to believe that their milk or milk products are dangerous for human consumption. ^{117/} Inspectors will remain for as long as the commissioner deems necessary, and the cost of this inspection must be paid by the firm or corporation under inspection. In California, the Director of Food and Agriculture is to establish

^{114/} Oklahoma S.B. 584 (1978).
^{115/} Nevada A.B. 183 (1977).
^{116/} Mississippi H.B. 1031 (1978).
^{117/} Georgia S.B. 447 (1978).

standards for evaluating the efficiency and performance of both state and local inspection services. 118/ This law also provides an advisory committee to assist the director in the administration of inspection services and lowers the maximum fees that the department can charge for dairy farm inspections. The director also has the authority to assign all inspection services in a particular milk product plant to a single agency.

Another new California law requires restaurants that serve butter substitutes to inform their customers that they serve oleomargarine, margarine, or butter substitutes. 119/ This information can be conveyed via individual menus or by wall means.

A California resolution requests that the state's Senate Committee on Agriculture and Water Resources and the Assembly Committee on Agriculture jointly convene interim hearings on wine labelling standards. 120/ The findings are to be reported to the legislature and the governor this next year.

The Alcoholic Beverage Control Law in New York was recently amended to prohibit a licensed farm winery from manufacturing or selling wine not produced exclusively from grapes or other fruits grown within the state. 121/ The amendment also permits a farm

118/ Act of September 19, 1978, Ch. 927, 1978 California Legis. Serv. 3237 (West).

119/ Act of September 25, 1978, Ch. 1129, 1978 California Legis. Serv. 3781 (West).

120/ California S. Con. Res. 80, Res. Ch. 102 (1978).

121/ Act of June 19, 1978, Ch. 432, 1978 N.Y. Laws.

winery to manufacture or sell wine produced from grapes grown by other persons not having a financial interest in the license.

The California legislature requested the governor to call a statewide conference on nutrition in the winter of 1978/79 to establish state nutrition policies, including a policy on nutrition education. ^{122/} Another California act requires that 50 percent of all food sold in school snack bars and vending machines be nutritious food comprised of milk and dairy products, fruit and vegetable juices and drinks, and the like. ^{123/}

Traditional Agricultural Policy

States have entered the agricultural policy arena, particularly as it relates to beef imports. Some states have passed resolutions urging particular federal action in regard to beef imports. A North Dakota resolution urges the President of the United States to exercise his authority to limit the import of fresh, chilled, and frozen beef into the United States. ^{124/} Copies of this resolution were forwarded to the President, Secretary of Agriculture, Secretary of State, and to the North Dakota congressional delegation. In South Dakota, an act was passed that sets forth the state's policy on beef imports. ^{125/} The act requires state agencies and representatives to adhere to certain principles when representing the State of South

^{122/} California Sen. Con. Res. 61, Res. Ch. 75 (1978).

^{123/} Act of September 18, 1978, Ch. 863, 1978 California Legis. Serv. 2909 (West).

^{124/} H. Con. Res. 3049, 1977 North Dakota Sess. Laws 1452.

^{125/} Act of February 13, 1978, Ch. 283, 1978 South Dakota Sess. Laws 475.

Dakota before the United States Congress, the President, the U.S. Department of Agriculture, or any other federal agency in any matter concerning the cattle industry. One such principle is that fed-beef import quotas be broadened to cover all classifications of cattle, beef, and beef products. Fed-beef import quotas should be correlated with domestic beef production so that beef imports will increase when domestic production is low and decrease when domestic production is high. There are various other principles that are enunciated by this South Dakota law.

In Montana, a resolution was passed urging the U.S. Congress to enact legislation which would require the labelling of all beef as either "domestic beef" or "imported beef" and which would insure that imported beef is subject to the same inspection requirements as domestic beef and meat products. ^{126/}

California law now allows reimbursement payments to offset commodity transportation costs to foreign markets. ^{127/}

Agricultural Taxation Planning

Several taxation statutes have been passed at the state level which affect farmers. For example, in North Dakota, a new act allows the deferral of certain disaster payments for state income tax purposes. ^{128/} A new Maryland law relating to the inheritance tax

^{126/} H.J. Res. 96, 1977 Montana Laws 2130.
^{127/} Act of June 30, 1978, Ch. 309, 1978 California Legis. Serv. 815 (West).
^{128/} Act of March 9, 1977, Ch. 539, 1977 North Dakota Sess. Laws 1153.

on farmland provides for the election of a special valuation that allows farmland to be valued according to its current use rather than its market value. ^{129/} Additional inheritance taxes in Maryland may be imposed if the agricultural use is discontinued within five years after the election was filed.

Maryland property tax law now excludes silos from consideration in the valuation of property. ^{130/} An amendment to the Texas constitution called the Tax Relief Amendment was approved in the November general election. ^{131/} This amendment provides for various forms of property tax relief, including tax relief for residential homesteads, elderly persons, disabled persons, and agricultural land. The amendment basically gives the legislature the authority to pass a special law giving preferential assessment to agricultural land for property tax purposes based on the land's productive capacity rather than its highest and best use. This would result in a lower assessment and lower property taxes for agricultural land. The purpose of the amendment is to promote the preservation of open-space land. However, only land devoted to farming, ranching, or timber production qualifies for the preferential assessment.

^{129/} Maryland H.D. 275 (1978).

^{130/} Maryland H.D. 1793 (1978).

^{131/} Tax Relief Amendment, H.J. Res. No. 1, 1978 Texas Sess. Law Serv. A-2 (West).

New York has amended its Real Property Tax Law to give a special tax break to certain farm buildings and structures. ^{132/} Any building or structure built between January 1, 1969, and January 1, 1989, and devoted to agricultural or horticultural use is exempted from taxation for a period of 10 years.

In California, a new law gives property tax breaks to the owner of land which has been restricted to open-space use through a contractual arrangement. ^{133/} It provides that the assessed valuation computed according to the capitalization-of-income method should not exceed the valuation that would have resulted by the consideration of sales from otherwise comparable land.

A recent North Dakota sales tax statute lowered taxes on farm machinery and irrigation equipment. ^{134/} Georgia has provided a sales tax exemption to farmers for machinery and equipment used exclusively for irrigation of farm crops. ^{135/} The new act eliminates former requirements that a piece of farm machinery must increase both the employment and production capacity of the farm. Maryland has added grain bins and grain handling equipment to the list of farm equipment subject to a two percent sales tax rather than the general five percent sales tax. ^{136/}

^{132/} Act of August 7, 1978, Ch. 743, 1978 New York Laws.
^{133/} Act of September 25, 1978, Ch. 1104, 1978 California Legis. Serv. 3696 (West).
^{134/} Initiation Measure No. 1, approved November 2, 1976, Ch. 593, 1977 North Dakota Sess. Laws 1369.
^{135/} Georgia H.B. 1499 (1978).
^{136/} Maryland H.B. 181 (1978).

Michigan recently revised its law relating to the sales tax to exclude the proceeds from the sale of most foods (i.e., milk, juices, fresh fruit, candy, nuts, chewing gum, cookies, crackers, and chips) from vending machines or mobile vendors. ^{137/}

Recent New York legislation provides for the refund of the sales tax paid on drugs or medicine used by a veterinarian to treat livestock or poultry produced for sale. ^{138/}

The State of Virginia has amended its statute imposing an excise tax on the sale of apples. ^{139/} In the past, the tax was levied on producers selling apples to processors. In recent years, many growers began processing their own apples, while processors moved into the production area, thus escaping the excise tax. The amendment was passed to correct this inequity.

Summary of State Law Developments

It appears that there is an increased interest in land and water use planning at the state level with particular concern expressed regarding foreign investment in farmland. In addition, there appears to be a general increase in the number of state food protection and market regulations and a continual effort to influence federal agricultural policies through various resolutions on behalf of agricultural states. State legislation

^{137/} Michigan Comp. Laws Ann. § 205.54g (1978-79 Supp.).
^{138/} Act of July 24, 1978, Ch. 604, 1978 New York Laws.
^{139/} Act of April 1, 1978, Ch. 473, 1978 Virginia Acts.

continues to identify particular tax breaks of one type or another for farmers as a means of aiding farm populations in these states, in terms of their income situation.

CONCLUSIONS

It is easy to appreciate the broad scope of law that pertains to agriculture. Your author came to appreciate this fact after embarking on a summary of Minnesota statutory law dealing with agriculture, resulting in a 540-page document currently in review processes. ^{140/} A review of other state codes would yield a similarly large summary piece.

The seemingly endless web of federal and state law that pervades our agricultural economy and rural society is sorely in need of comprehensive review and revision. Agricultural policy development has been a patchwork exercise, too frequently responsive to short-term situations rather than an ordered consideration of what we, as a society, want to achieve and how best to accomplish it.

It is valuable to be involved in a conference like this because it is within such forums that we can question the value of our current law and begin to fashion more objective rules and procedures to strengthen that segment of our economy that has long been characterized as the bastion of American economic might.

^{140/} Michael Maus and Dale C. Dahl, Minnesota Agricultural and Food Law, Minnesota Economic Regulation Monograph, Minnesota Agricultural Experiment Station, University of Minnesota, St. Paul, Minnesota (scheduled for publication in 1979).