Agricultural Law Update

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INSIDE

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"Dictum is what a court thinks but is afraid to decide."

—Henry Waldorf Francis

Supreme Court to review portions of FIFRA registration laws

The U.S. Supreme Court will decide this term whether laws governing the use and disclosure of pesticide registration data violate a manufacturer's Fifth Amendment protection against uncompensated "takings." See *Monsanto Co. v. Acting Administrator, Environmental Protection Agency,* 564 F. Supp. 552 (E.D. Mo. 1983), prob, juris, noted, *Ruckelshaus v. Monsanto Co.,* 104 S.Ct. 230 (1983).

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) makes the Environmental Protection Agency (EPA) responsible for the regulation of all pesticides. As part of the licensing process, an applicant must submit test data to the EPA showing the product to be both effective and safe.

The development of test data in support of an application can be costly. This data is usually provided by the manufacturer of the pesticide under review. But § 3 of FIFRA authorizes the administrator of the EPA to consider data submitted by a previous applicant in support of a subsequent application for registration of similar pesticides. See § 3 (c)(1)(D), 7 U.S.C. §136a (c)(1)(D). In other words, a subsequent applicant can "piggy-back" its registration upon the efforts of a prior applicant. The second applicant must offer reasonable compensation for the data, however, and the parties must submit to binding arbitration if they cannot agree on a sum.

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Redetermined basis under ACRS

The Internal Revenue Code requires the basis of an asset to be redetermined after it is partially depreciated in some situations. For example, if the asset is purchased on the installment method and is subject to the imputed interest rules of I.R.C. § 483, the basis of the asset is determined at the time of purchase by substracting the unstated interest from the purchase price agreed upon by the parties. The calculation of unstated interest is based on the payment schedule agreed upon by the parties. If the payments that are actually made deviate from the agreed upon schedule (i.e., the buyer makes pre-payments or the seller agrees to defer payments) the unstated interest must be recalulated and the basis redetermined. Similarly, if the purchase price changes due to a contingency or because part of the purchase debt is discharged, the basis must be redetermined.

Because the ACRS depreciation rates apply to the unadjusted basis of the property, it has not been clear how the adjustment in the basis should be accounted for with respect to the years that have passed since the asset was put into service. For example, if five-year property is purchased for $100,000 and is depreciated for one year before its basis is increased by $10,000, how should the 15% depreication that was available in the first year be claimed with respect to the $10,000 increase? If the $10,000 is merely added to the $100,000 unadjusted basis and the ACRS percentages are applied for the remaining four years, only 85% (22 + 21 + 21 + 21) of the $10,000 will be claimed as a deduction. Should the additional 15% be claimed in the year of adjustment or spread over the remaining four years?

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Interest free loans

The U.S. Supreme Court has finally laid to rest the notion that interest free loans using demand notes did not produce a taxable gift. The court in *Dickman v. Commissioner,* U.S. ____ (1984), resolved a conflict between the Seventh and Eleventh Circuits and held that intra-family interest free demand loans result in gifts. If sufficiently large in amount, federal gift tax could result.

Although it is not clear yet what interest rate will be used to determine the imputed rate, loans of $100,000 or less are unlikely to cause serious problems because of availability of the $10,000 federal gift tax annual exclusion per donee for gifts of present interest. The exclusion is $20,000 per donee for gifts by a husband and wife even though only one of them owns the gift property.

— Neil E. Harl

FIFRA
CONTINUED FROM PAGE 1

In addition to these "use" provisions, FIFRA authorizes public disclosure of test data and information concerning the effects of pesticides on human, animal and plant life. See §10, 7 U.S.C. §136h. See also §3 (c)(2)(A), 7 U.S.C. §136a (c)(2)(A). Information concerning the quantity of any deliberately added inert ingredient of a pesticide, the methods of measuring such inert ingredients, and manufacturing or quality control processes may not be made public however, unless the administrator determines that disclosure "is necessary to protect against an unreasonable risk, or injury to health or environment."

In order to obtain registration of its products, Monsanto submitted to the EPA test data it values at more than 23 million dollars. The data is protected under state law as trade secrets. The company argued that the acquisition of such information by competitors and the disclosure of the data by the EPA constitute a "taking" of its property.

The federal district court agreed. In a straightforward but somewhat cryptic opinion, the court held that (1) Monsanto has a federal law property interest in the data submitted to the EPA. (2) EPA use of Monsanto's property to support the registrations of competitors is "a destruction and therefore a taking of Monsanto's property," (3) the arbitration provision is arbitrary and vague and therefore constitutes a denial of due process, (4) Monsanto does not have a remedy under the *Tucker Act,* 28 U.S.C. §1491, for such losses and (5) the purported exercise of eminent domain authority is altogether inappropriate insofar as it attempts to further private, not public, purposes. The court also held that public disclosure of health and safety data submitted by the initial applicant is "beyond Congress' regulatory powers and constitutes a taking of Monsanto's property."

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The Government filed a direct appeal to the Supreme Court, but was unsuccessful in seeking a stay of the district court order to enjoin these and related provisions of FIFRA pending the appeal. See 52 U.S.L.W. 3027 (1983). The EPA has adopted interim procedures to permit registration relying on previously submitted data only if the initial submitters have given permission. See 48 Fed. Reg. 32012-31013 (1983).

The contested provisions of FIFRA, which are much more intricate than might be suggested in this brief summary, represent a balance struck by Congress between competing interests. Under §10, Congress had to balance the desire of manufacturers to keep their test results confidential against the public's interest in learning about potential risks involved in the use of pesticides. It adopted a middle ground by providing for limited disclosure. Under §3, Congress had to balance the proprietary interests of the manufacturers against the asserted benefits of "piggy-back" applications, namely, administrative cost savings to the EPA and to registrants, and a more competitive marketplace due to easier entry by newer and smaller producers. Again, Congress attempted a compromise that would accommodate these various concerns.

Several federal courts have upheld these provisions against challenges essentially similar to those put forth in the *Monsanto* case. See e.g., *Mobay Chemical Co. v. Costle,* 517 F. Supp 252 (W.D. Pa. 1981), affirmed in part sub nom. *Mobay Chemical Co. v. Gorsuch,* 682 F. 2d 419 (3rd Cir. 1982), cert. denied, 103 S. Ct. 343 (1982); *Chevron Chemical Co. v. Costle,* 499 F. Supp. 732 (D. Del. 1980), affirmed 641 F. 2d 104 (3rd Cir. 1981), cert. denied, 452 U.S. 961 (1981); *Petrolite Corp. v. Environmental Protection Agency,* 519 F. Supp. 966 (D.D.C. 1981). See also *Union Carbide Agricultural Products Co. v. Ruckelshaus,* 571 F. Supp. 117 (S.D.N.Y. 1983) (upholding the disclosure provisions of FIFRA but invalidating the binding arbitration requirement). But the ruling in the *Monsanto* case virtually assures that the Supreme Court will have to determine whether the balance of interests struck by Congress can pass constitutional muster.

— David A. Myers

Significant farm conservation tax ruling

In a private letter ruling issued February 28, the Internal Revenue Service determined that the gift of an easement on farmland to a nonprofit organization, solely for the purpose of assuring that the land would remain as open space to permit its continued use for farming, is a "qualified conservation contribution" under Section 170(h) of the Code. The ruling is believed to be the first to recognize a "pure" agricultural conservation tax deduction, one not based on preserving the scenic, natural or recreational values of land in addition to food-production capacity.

Both the county and state where the land is located had adopted express public policies supporting the conservation of farmland. The land was zoned for agricultural use and was assessed for property tax purposes on its current use value, both indicative of a governmental commitment to conservation policy objectives. The land was located in a rapidly developing area, a fact which, coupled with the adoption of governmental farm conservation policies, was deemed by the IRS to imply that a public benefit would result from retention of the land in agricultural use. The terms of the conservation easement restricted the land to agricultural uses in perpetuity, permitting construction of farm structures and family dwellings with the approval of the grantee.

Although, under Section 6110(j)(3) of the Code, private letter rulings may not be cited as precedent, they are regarded as illustrative of the thinking of the IRS. In this respect, the ruling is significant because there has been much controversy over interpretation of Section 170(h) since the Tax Treatment Extension Act of 1980, which broadened charitable contributions to encompass "open space" easements. Proposed rules to implement this provision were not issued until May 23, 1983 (at 48 *Fed. Reg.* 22940) and final rules are still pending. The unsettled nature of IRS policy may have been responsible for the lapse of 18 months between the taxpayer's request for the ruling and its issuance.

— Edward Thompson, Jr.

Protective election

A recently published private letter ruling, *Ltr. Rul. 8407005,* November 8, 1983, made it clear that a protective election may be filed for purposes of special use valuation even though the pre-death requirements were all met and the estate could have made the special use election rather than protective election. The ruling is in accord with the final regulations adopted in 1980. When issued in proposed form in 1978, a protective election would have been allowed only if the pre-death requirements were not met or no federal estate tax was due. Those conditions were dropped in the regulations as adopted.

— Neil E. Harl

The FmHA foreclosure moratorium provision in the courts

by John H. Davidson

It is generally acknowledged that the Secretary of Agriculture administers a breadth of programs which serve diverse constituent groups, including consumers, the impoverished, agribusiness, the forest industry, conservationists and farmers. The interests of these various groups are often in conflict, thus making the Secretary's job one of the more interesting in Washington. Usually unnoticed is the fact that "farmers" are not a uniform or homogeneous constituency of the Secretary, nor is there a uniformity of purpose among the legislative programs which Congress has enacted to benefit "farmers." There are programs such as price stabilization, and marketing orders, that serve established, commercial farms. In contrast, there are the small, struggling, farms, representing a group of farmers that is distinct and may be served poorly by programs designed for commercial farmers. Small farms are, however, the focus of a number of special legislative programs, such as the Farmers Home Administration [FmHA], that seek to deal with the unique problems of the small, economically troubled, farmer. Because of these very real differences among "farmers," the Secretary inevitably courts trouble when he chooses to treat all "farmers" as established, commercial producers.

The Agricultural Credit Act of 1978 was an attempt by Congress to revise the statutory authorization of the FmHA in a way that reflected the changes that were then occurring in the farm economy. The following provision was included in that Act:

> [I]n addition to any other authority that the Secretary may have to defer principal and interest and forego foreclosure, the Secretary may permit at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured, or held by the Secretary under this title, or under the provisons of any other law administered by the Farmers Home Administration, and may forego foreclosure of any such loan, for such period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower. The Secretary may permit interest that accrues during the deferral period on any loan deferred under this section to bear no interest during or after such period: *Provided,* that if the security instrument securing such loan is foreclosed such interest as is included in the purchase price at such foreclosure shall become part of the principal and draw interest from the date of foreclosure at the rate prescribed by law.
>
> 7 U.S.C.A. ' 1981a

The provision is similar, but not identical, to one found in FmHA's rural housing authorization, 42 U.S.C.A. § 1475, and apparently expressed Congressional concern that "...a high priority is placed on keeping existing farm operations operating." 92 Stat. 429. The Secretary took no steps to implement the amendment, and when, in the years that followed, greater numbers of FmHA borrowers were faced with the prospect of default and foreclosure, the amendment was discovered. This note will review the judicial decisions that have resulted from conflicting interpretations of the statute.

In *Curry v. Block,* 541 F. Supp. 506 (S.D. Ga. 1982) a federal district court enforced § 1981a and provided a scholarly, interesting, opinion as well. *Curry* was a class action brought in behalf of all Georgia farmers with FmHA farm ownership, operating or emergency loans who were either in or threatened by foreclosure. Plaintiffs asserted that § 1981a required the Secretary to give borrowers personal notice of the availability of moratorium relief, the opportunity to apply for relief *before* loan acceleration is commenced, and, that FmHA has a duty to issue regulations implementing the statute. Essentially, the Secretary took the position that the FmHA is in the business of making loans and the statute should be applied with a business bias. The plaintiffs, in sharp contrast, argued that the FmHA program was social welfare legislation designed to raise the living standard of lower echelon farmers and should therefore be interpreted liberally.

The Court approached the matter as one requiring statutory interpretation and undertook an extensive historical analysis of the legislative programs that now repose in FmHA. It noted correctly that FmHA programs arise out of New Deal social legislation, and FmHA is the agricultural lender of last resort whose pnrpose is to aid the family farmer who cannot obtain financing from a different source. The object of the program, it observed, was to aid the underprivileged farmer, and, therefore, the farmers loan program is a unique mixture of social welfare legislation and legislation carefully designed to supplement the business needs of high credit risk farmers." *541 F. Supp.* at 513. According to the Court, the FmHA is not strictly a business venture, and is not authorized by legislation to behave as such.

After a careful review of legislative history the Court came to the conclusion that § 1981a creates a mandatory duty upon the FmHA to see that borrowers receive personal notice of their right to apply for moratorium relief, and an opportunity to be heard upon their application. Further, the Court concluded that there is a duty to issue regulations implemenring a moratorium program. The regulations are to follow the model already in place for the rural housing program.

Curry was appealed, and has been argued before the Eleventh Circuit Court of Appeals. A series of substantially similar decisions have been reported since *Curry: U.S. v. Henderson,* 707 F.2d 853 (5th Cir. 1983); *U.S. v. Hamrick,* 713 F.2d 69 (4th Cir. 1983); *Allison v. Block,* 723 F.2d 631 (8th Cir. 1983); *Jacoby v. Schuman,* 568 F. Supp. 843 (E.D. Mo. 1983); *Matzke v. Block,* 564 F. Supp (D. Ks. 1983); and, *Neighbors v. Block,* 564 F. Supp. 1075 (E.D. Ark. 1983).

In *Allison,* the plaintiffs were individual farmers who, after a series of years in which they were struck with either poor growing weather or low commodity prices, had their FmHA loans foreclosed upon. When the plainriffs read of the moratorium provision in a farm magazine they requested relief and were turned down. Litigation was initiated. The Secretary took the position in this case that § 1981a merely gave him an additional discretionary tool to be used in loan servicing, and required no administrative action. The district court issued an injunction and the Eighth Circuit affirmed, holding that § 1981a requires the Secretary to establish uniform procedural and substantive standards. The procedural standards must include notice and an opportunity to be heard. It found that the legislative history demonstrates that Congress had in mind an effective and uniform program of relief for defaulting farmers. The Court also held that: "Good faith consideration of the § 1981a deferral alternative by the Secretary requires the existence of some substantive standards which, if met, entitled the borrower to relief. ...1981a also requires the development of substantive standards at the agency level to guide the Secretary's discretion in making individual deferral [moratorium] decisions," 723 F.2d at 636-37. The Court did not require that the substantive standards be established by formal rulemaking, and allowed that ... the Secretary may decide to develop the criteria through adjudicative processes which give some precedential effect to prior FmHA loan deferral decisions." 723 F.2d at 638.

(continued on next page)

The Fourth Circuit did not accept the line of thinking suggested by *Curry*. In *Hamrick* a farmer-borrower had sold liened crops and, in violation of the loan agreement with FmHA, had not applied the sale proceeds against the mortgage notes; in fact, the borrower had already been convicted of intentionally defrauding the FmHA. The district court refused § 1981a relief because the borrower had never "met his responsibility" to apply for moratorium relief and, given the circumstances, the prospects of positive relief were remote. The Fourth Circuit reversed on the ground that the decision whether to grant relief is one for the Secretary of Agriculture, not the court, and that relief is by its terms permissive; no mandatory duty of performance is placed upon the Secretary. On remand, the borrower was given a reasonable period in which to apply for moratorium relief, which the Secretary could grant or deny in his discretion.

In *Jacoby, Matzke,* and *Neighbors,* district courts in Arkansas, Kansas and Missouri, respectively, held that in varying degrees § 1981a imposes duties on the Secretary, including in all cases an obligation to accept and consider applications for moratorium relief. In *Jacoby* and *Matzke* the courts granted injunctive relief and ruled that the Secretary must apply substantive criteria when considering applications.

Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983)[1] is a case that was initiated while *Allison* was pending before the Eighth Circuit. Begun as an action for injunction on behalf of all North Dakota farmers who hold farmer program loans from the FmHA, a national class was ultimately certified. The class included all FmHA farmer program borrowers except for borrowers in states where a state-wide class has been requested or certified on similar legal issues.

The litigation in *Coleman* was before the district court when the *Allison* decision, which was of course binding in *Coleman,* issued. This resulted in a national order enjoining the Secretary from proceeding with loan acceleration, foreclosure, repossession of chattels or demanding voluntary transfer in lieu of foreclosure unless the borrowers were first given 30-days notice. Notice, at the minimum, must consist of a statement of the borrowers right to a hearing, a statement by FmHA of the reasons for the action, a statement of the factors that determine eligibility for a loans moratorium, and identification of the official who will preside at the hearing. Additionally, FmHA was *not* bound to utilize formal rulemaking but could implement the statute by whatever procedures it deemed adequate.

The case as pleaded in *Coleman,* however, takes it well beyond *Allison,* by seeking protection for the borrower prior to the termination of allowances for farm operation and family living expenses. The practice of the FmHA is to prepare a farm and personal living budget for its borrowers prior to making a loan. When crops or livestock are subsequently sold, the FmHA releases its lien so that the borrower may make the payments called for by the budget, including payments against the indebtedness. Under this system, then, loan proceeds often are the source of money for necessary farm and family expenditures. Under normal circumstances, this system works well, but when a loan is in default, and the FmHA decides to "liquidate" (accelerate), the agency's lien will not be released. "This in effect cuts off the borrower's income stream, unless the borrower has another source of income." 562 F. Supp. at 1363. The borrower is not notified prior to termination, a fact which the district court found to be insufficient to protect the borrower against the possibility of wrongful termination. The permanent injunction therefore required that before FmHA could terminate the living and operating allowance "previously determined in the administration of any existing loan" they must provide the borrower 30-days notice, an informal hearing to determine eligibility for § 1981a moratorium relief, a statement of the reasons for the proposed termination, and again, a statement of the factors that will determine eligibility for the grant or denial of a moratorium.

In its opinion of February 17, 1984, the district court in *Coleman* also went beyond *Allison* by taking-up the question of the type of administrative appeal that is required from FmHA foreclosure, acceleration, and moratorium hearings, and more specifically, whether the existing appeal procedures meet minimal due process requirements. While finding that the specific provisions of the Administrative Procedure Act, 5 U.S.C.A. § 554, do not apply to FmHA appeals, the court held that the appeal procedure in use does not meet minimal standards of due process; no right to appeal from the decision to accelerate is brought to the borrowers attention until 60 days after FmHA has acted by refusing to release crop proceeds. The base of the district court's opinion is found in the following paragraph:

> There is deeply embedded in the law, and the Uniform Commercial Code reflects a distinction between farm products (U.C.C. § 9-109(3)), on the one hand, and equipment (U.C.C. § 9-109 (2)) and inventory (U.C.C. § 9-109(4)), on the other hand. This difference, although not precise, is important because it points us towards a fundamental element of our social thinking, *i.e.*, the biblical injunction that 'a laborer is worthy of his hire.' The 'hire' of the farm operator is basically the crop he raises, whether it be a crop of produce for commerce (wool), produce for animal use (hay), or produce for human use (vegetables or fruit). Various examples in the law, such as wage protection in garnishment statutes, wage claims priorities in bankruptcy proceedings, specific exemptions of growing crops from process, *e.g.*, N.D.C.C. 28-22-02 (1974), and specific restraints as to crop production liens, *e.g.*, N.D.C.C. ch. 35-07, -08, -09 (1972), all reflect a concern for the person without whose labor the production would not occur. The farmer's interest in his produce is as real as that of the worker's interest in his wages. *See Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). In fact, intentionally or otherwise, FmHA recognizes the concept of products of 'hire.'

See 7 C.F.R. §1962.17(a), (b).

A decision to liquidate freezes the debtor's income stream. Given the significance of the FmHA decision, and the fact that an appeal process is provided for, the court required that the process be at a meaningful time and in a meaningful manner. Relying upon *Goss v. Lopez,* 419 U.S. 565 (1975), it ordered that the appeal process must be prior to an agency decision to liquidate.

The clear effect of the decisions summarized above will be to assure FmHA borrowers of a substantial procedural opportunity to contest agency decisions to liquidate or foreclose. Absent Congressional intervention, they will also point the agency more in the direction of its historic mission of agricultural relief. The short-term effect has surely been to delay action on FmHA loans that are in default. In the longer run, however, the question remains whether, but for new procedural safeguards, everything remains the same for hard-pressed farm borrowers. The substantive standard of § 1981a states that a moratorium may be granted "upon a showing that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower."

Assuming that procedures are proper, in what cases should the Secretary grant substantive relief? The easy answers have already been recognized in agency directives, that is, the relief may be considered when there is a natural disaster, such as damaging weather, plant and animal disease, or a major illness or injury to a borrower who contributes labor to the farm enterprise or income through off-farm employment. But are there other circumstances which constitute "circumstances beyond the control of the borrower"?

[1] The district court's opinion on the motion for preliminary injunction is at 562 F. Supp. 1353 (D.N.D. 1983). The memoranda and orders recognizing a national class were filed on October 28, 1983 and November 14, 1983. The memorandum and order of a permanent injunction was filed February 17,1984. No reporter citations are as yet available for the last three orders.

The primary focus of the 1978 legislation of which § 1981a is part, was the burden placed on farmers by off-farm economic events. Should relief therefore be granted when crop and livestock prices drop below a level contemplated by the FmHA budget? When the federal executive embargoes grain destined for sale abroad? When crops are declared unsalable due to the presence of a carcinogenic chemical? When laborers at grain ports refuse to load ships? When international events cause the price of fossil fuels, chemicals, and fertilizers to increase? When a federal price-support program is terminated or substantially reduced? Circumstances of this type are in fact those that many of the plaintiffs in the § 1981a decisions consider to be "beyond their control." Look for further developments.

John H. Davidson, Member, State Bar of South Dakota. Professor of Law, The University of South Dakota School of Law. Former Director, A.A.L.A.

The proposed ACRS regulations answer that question by spreading the change in the basis (whether it is an increase or a decrease) over the remaining life of the asset. *Prop. Reg.* §1.168-2(d)(3). That is done by defining the recovery allowance for each of those years as the redetermined adjusted basis multiplied by the redetermined applicable percentage. The redetermined adjusted basis is defined as the original unadjusted basis increased (or decreased) by the change in the purchase price and decreased by the depreciation previously allowed or allowable. The redetermined applicable percentage is defined as the ACRS percentage specified for that year divided by 100% minus the total ACRS percentages for the recovery years prior to the basis adjustment.

Therefore, in the example above, the purchase price was increased by $10,000 and the depreciation for the first year was $15,000. The redetermined adjusted basis is therefore $100,000 + $10,000 − $15,000 = $95,000. In year two, the redetermined applicable percentage is 22% ÷ (100% − 15%) = 25.88%. Therefore, the depreciation for the second year is $24,588.23. The redetermined applicable percentage for the third through fifth years is 21% ÷ (100% − 15%) = 24.71%. Therefore, the depreciation for each of those years is $23,470.59. After five years, a total of $110,000 ($15,000 + $24,588.23 + $23,470.59 + $23,470.59 + $23,470.59) has been claimed which equals the original unadjusted basis plus the increase in basis at the end of year one.

The proposed regulations do not limit this procedure to adjustments in basis that are made during the recovery period of the asset. However, a strict application of the formula leads to nonsense because the denominator of the redetermined applicable percentage becomes zero which means the redetermined applicable percentage is infinity. A logical application of the formula to years after the recovery period would limit the redetermined applicable percentage to 100%. (That is the redetermined applicable percentage in the last year of the recovery period.) Therefore, any increase in the basis after the recovery period could all be claimed as a deduction in the year of the increase. Presumably, a decrease in the basis after the recovery period (or a decrease during the recovery period that exceeds the adjusted basis) would lead to a negative depreciation deduction.

— Philip E. Harris

New ACRS regulations

Proposed regulations were published on February 16, 1984, on the Accelerated Cost Recovery System (ACRS) for depreciating eligible property placed in service after 1980. Written comments are due by May 16, 1984.

The proposed regulations provide guidance in several areas beyond what is contained in the statute. However, the regulations do not resolve all of the problems in the "anti-churning" rules that deny ACRS status for some property placed in service before 1981. On the issue of who is the user, which is crucial for acquisition of farm property under lease to a tenant, the proposed regulations impose a three-month test. If property is used by the same person (or a related person) who used the property before the transfer for more than three months, ACRS status is denied.

The regulations do not deal explicitly with property rented under crop share or livestock share leases. One example, Example 21 in *Prop. Treas. Reg.* §1.168-4(e), deals with a sale of property under lease to a tenant where the tenant did not change.

Quite clearly, guidance beyond the proposed regulations will be needed to resolve the problems on ACRS eligibility under the various anti-churning rules.

— Neil E. Harl

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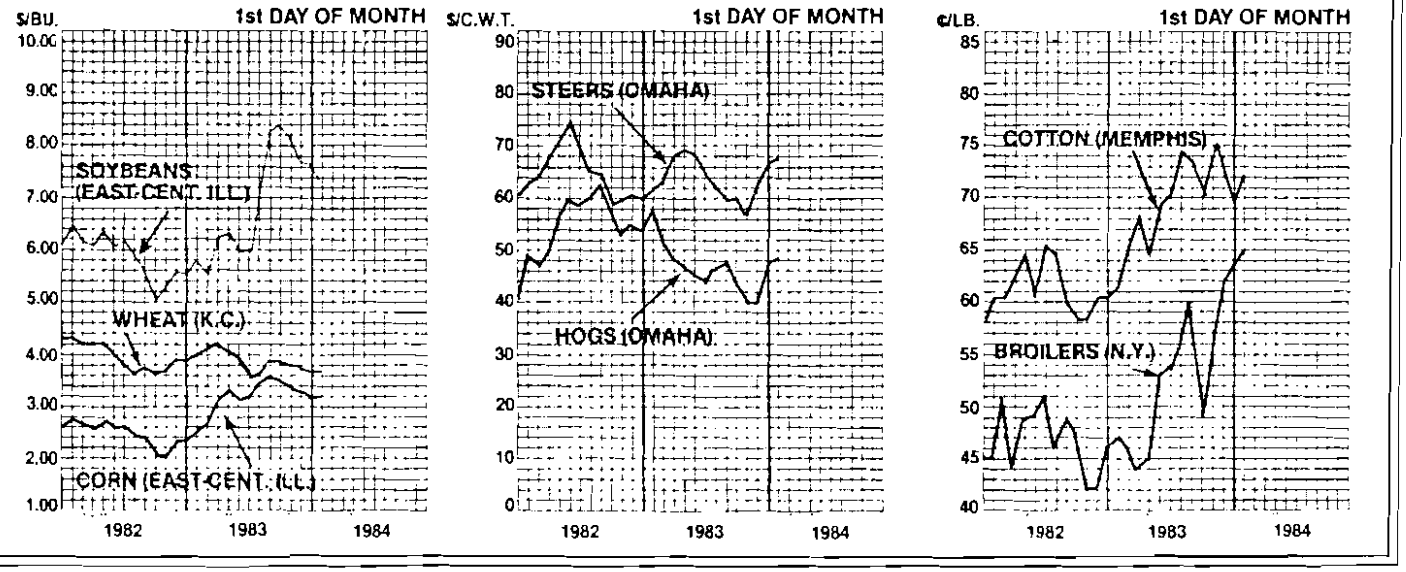

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AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

AALA Distinguished Service Award

The American Agricultural Law Association invites nominations for the "Distinguished Service Award."* Any member of the Association may nominate another member for selection by submitting the name to the Chair of the Awards Committee. Any member making a nomination should submit biographical information in five copies of no more than four pages each in support of the nominee. A nominee must be a current member of the Association and must have been a member thereof for at least the preceding three years. Nominations for this year must be made by May 1, 1984.

The Association is also sponsoring its first annual student writing competition. This year, the Association will award a cash prize in the amount of $750 to the author of the winning paper. The competition is open to all undergraduate, graduate or law students currently enrolled at any of the nation's colleges or law schools. The winning paper must demonstrate original thought on a question of current interest in agricultural law. Articles will be judged for perceptive analysis of the issues, thorough research, originality, timeliness, and writing clarity and style. Papers must be submitted to the Association by May 1, 1984.

Inquiries concerning both programs should be directed to:

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*The Award is designed to recognize distinguished contributions to agricultural law in practice, research, teaching, extension, administration, or business.