Draft Guidance Manual for CAFOs available for public comment

On August 6, 1999 EPA published its draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations (CAFOs) pursuant to the recently released USDA/EPA Unified National Strategy for Animal Feeding Operations. While this draft guidance has no legal effect, it explains EPA’s approach to enforcing existing law and regulations governing CAFOs. EPA has requested that written public comments on the draft guidance be submitted to Gregory Beatty, 401 M Street, S.W., Mail Code 4203, Washington, D.C. 20460 or by e-mail at: beatty.gregory@epa.gov. The closing date for public comments is October 6, 1999. The draft guidance may be found at: http://www.epa.gov/awn/afo.htm

The draft guidance clarifies the definition of a CAFO by specifying both the manner by which EPA will count days and determine the applicable 12-month period. It also distinguishes between pasture and grazing land on the one hand and lots with no or minimal vegetation on the other. EPA also indicates that it will apply the holdings in CARE v. Southview Farm, 34 F.2d 114 (2d Cir. 1994) and CARE v. Sid Koopman Dairy, 1999 U.S. Dist. LEXIS 8348 (E.D. Wash. 1999) [Editor’s note: see “CAFOs as point sources” on page 3] as these decisions apply to land application of wastes. The draft guidance clarifies other definitional issues such as EPA’s approach to calculating the size of the animal feeding operation (AFO). The draft guidance states EPA’s belief that virtually all AFOs with more than 1,000 animal units are CAFOs that require NPDES permits. The draft guidance indicates that the burden of proof is on the AFO to show that discharges occur only in the event of a 25-year, 24-hour storm event. The procedure by which an AFO must prove this is to apply for a NPDES permit and provide the required technical documentation in the permit application. The draft guidance states EPA’s position that most if not all AFOs with more than 1,000 animal units cannot meet this burden. The draft guidance states EPA’s position that AFOs with 301 to 1,000 animal units may be CAFOs if any one of three discharge conditions are met. These three methods of discharge include 1) discharges into waters of the United States through man-made ditches, flushing systems, or other similar man-made devices, 2) discharges directly into waters of the United States that originate outside the facility and pass...
over, across, or through the facility or otherwise come into direct contact with
the confined animals, or 3) discharges to
groundwater with a direct hydrological
connection to surface water. AFOs with
up to 300 animal units may be CAFOs
only by designation of a regulatory au-
thority. CAFOs so designated are not
subject to the 25-year, 24-hour storm
event exemption. Such an AFO must be
inspected by a regulatory authority be-
fore such a designation can be made.
Regulatory authorities may grant AFOs
of up to 1,000 animal units “good faith”
waivers to the NPDES permit re-
quirements if they have a Comprehensive
Nutrient Management Plan (CNMP) in
place. Note, however, that the draft guid-
ance states that the existence of a CNMP
does not constitute compliance with the
CAFO rules.

The draft guidance clarifies that it is
the responsibility of the operator of the
AFO to apply for the NPDES permit.
Where the AFO is substantially controlled
by another company (the draft guidance
does not use the term integrator; how-
ever, it is fairly clear that it is EPA’s in-
tent to include integrators in this defi-
nition), that company must apply with
the operator as a co-applicant for the
NPDES permit.

Effluent Limit Guidelines (ELGs) are
discussed in the draft guidance. The ELGs
apply only to CAFOs with more than
1,000 animal units. For smaller CAFOs,
effluent limits will have to be developed
on a case-by-case basis. The ELGs apply
only to feedlots and not to the land ap-
lication of manure and wastewater. The
EPA anticipates developing efficient
limits for land application of manure and
wastewater.

The EPA notes that where a CAFO
controls the land upon which manure
and wastewater are applied, that opera-
tion must be included in its NPDES per-
mit application. Where the recipient of
manure does not have a CNMP, it may be
required to apply for a NPDES permit.

General NPDES permits are encouraged
except where the draft guidance indi-
cates otherwise. CAFOs that require
individual permits include exceptionally
large operations, operations undergoing
significant expansion, operations with a
history of compliance problems, opera-
tions that have significant environmen-
tal concerns, and new CAFOs. Smaller
CAFOs are encouraged to upgrade so
that they can exit the NPDES regulatory
program. Coordination with total maxi-
mum daily loads (TMDLs) is required.
The draft guidance provides details on
other issues not included in this sum-
mmary.

—Theodore A. Feitshans, North
Carolina State University

Prevented planting interpreted

In Smell v. Glickman, No. 98-2190, 1999
U.S. App. LEXIS 6034 (10th Cir. Apr. 2,
1999), the plaintiff was a dryland wheat
farmer in New Mexico in a region that
had been affected by drought conditions
for the previous three to four years. The
plaintiff did not plant a wheat crop after
determining that the moisture level in
the soil was too low and would likely
cause a wheat crop to not mature and the
land to suffer wind erosion. The plaintiff’s
neighbors did plant wheat and their crops
failed to mature resulting in severe wind
erosion to the land. The plaintiff ap-
plied to recover crop insurance benefits
on the basis that the drought prevented
him from planting his wheat crop. Cover-
age under the policy was provided for
“prevented plantings,” defined in part as
the inability “to plant the insured crop
due to an insured cause of loss that is
general in the area (i.e., most producers
in the surrounding area are unable to
plant due to similar insurable causes)”.

The Local Farm Service Agency denied
the plaintiff’s claim, and the plaintiff
appealed to the USDA’s National Ap-
peals Division (NAD). The NAD hearing
officer denied the claim, noting that the
plaintiff’s concern for conservation was
secondary with respect to the terms of
the crop insurance policy. Because the
plaintiff’s neighbors were able to and did
plant wheat, the plaintiff did not meet
the insurance criteria for “prevented
plantings.” The hearing officer’s decision
was upheld in a subsequent administra-
tive appeal.

On appeal to the Tenth Circuit, the
plaintiff claimed that the “prevented
planting” provision in the policy was
unreasonable because it required the
plaintiff to violate sound conservation
practices to be eligible to recover under
the policy. The court upheld the admin-
istrative findings on the basis that the
plaintiff had not demonstrated that the
insurance program’s general reliance on
what other farmers do as a measure for
determining whether planting is “pre-
vented” was unreasonable or not in ac-
cordance with law.

—Roger A. McEowen, Kansas State
University

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9 Hurd, supra note 38, at 333.
10 United States Commission on Civil Rights, Equal
Opportunity in Farm Programs (1969).
11 See, e.g., John Casagrande, Acquiring Property
Through Forced Partition Sales: Missouri and Remedies,
27 B.C. L. Rev. 755 (1986); Christopher R. Kelley,
Stemming the Loss of Black Owned Farmland Through
Forced Partition Sales: Abuses and Remedies, supra
note 42, at 179-90.

African American farmers/Cont. on page 3


CAFOs as point sources


The Koopman defendants, including separate dairies, admitted that portions of their dairy operations were point sources but argued that issues for the trier of fact remained as to the specific portions that were point sources. The court agreed and found genuine issues of material fact as to the extent to which the defendants’ lands, operations of facilities, and actions of manure-spreading equipment are point sources.

On the issue of what parts of defendants’ lands were part of a CAFO, the court was able to grant plaintiffs partial summary judgment. The court determined that the defendants’ CAFOs included confinement areas, lagoons and systems used to transfer the animal wastes to the lagoons, and equipment which distribute and/or apply animal wastes produced at the confinement area to fields outside the animal confinement area.

The court declined to grant summary judgment on whether the drains, ditches, and canals at issue were considered to be within the Clean Water Act’s definition of “[w]aters of the United States.” [33 U.S.C. §§ 1311(a), 1362(12), 1362(7)].

-Terence J. Centner, The University of Georgia, Athens, GA

New York Right to Farm/Cont. from p. 1

which houses up to 1,000 pigs. After an investigation and examination had been conducted at the Trengo Farm, Opinion Number 97-1 was issued on January 8, 1997. The Opinion concluded that the livestock housing and manure spreading practices on the Trengo Farm as they relate to odor were sound.

The plaintiff was Pure Air and Water, Inc. of Chemung County (PAW). PAW represented the interests of various nearby residents who were concerned with the environmental and other impacts of the Trengo Farm. PAW alleged that deficient practices employed by the Trengo Feedlot have resulted in severe air quality degradation that has jeopardized the health and quality of life of nearby residents. PAW wanted the courts of New York to declare the New York Right to Farm Law unconstitutional because it deprives PAW’s members of property without compensation and due process by allowing a private party to unreasonably interfere with their properties. PAW claimed that the New York Right to Farm Law violated the State and Federal Constitutions, and the decision from Commissioner Davidsen was illegal and unconstitutional.

In a prior suit (Matter of Pure Air and Water Inc. of Chemung City v. Davidsen, 246 A.D.2d 786, appeal dismissed 91 N.Y.2d 955), involving the same parties and similar challenges, PAW denominated the suit as an article 78 proceeding for the recovery of fees and expenses in certain private nuisance actions. The court declined to grant summary judgment. The court agreed and found genuine issues of material fact as to the extent to which the drains, ditches, systems used to transfer the animal wastes to the lagoons, and equipment which distribute and/or apply animal wastes produced at the confinement area to fields outside the animal confinement area.

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-Terence J. Centner, The University of Georgia, Athens, GA

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Word & Gilbert, supra note 1, at 6.

Effertz, supra note 1, at 19.

USDA, Econ. Research Serv., Rural Conditions and Trends, Feb. 1998, at 111. A “limited resource farm” is “any small farm with (1) gross sales less than $100,000, (2) total farm assets less than $500,000, and (3) total operator household income less than $50,000.” Id. at 108.


See Pugh et al., supra, at 15.
Notes on African American farmers

By Christopher R. Kelley

With estimates of the current numbers of African American farmers as low as 15,000, it is ironic that Africans were brought to and held in this country for their “ability to work the land...” Although blacks have been closely attached to the land for much of their history in America, American farming today is overwhelming dominated by whites. "African agriculture's entrepreneurial class is roughly ninety-eight percent white—a higher concentration of whites than in almost any other economic endeavor in the United States.

Moreover, while the numbers of farmers who are members of other under-represented groups, including Hispanics and women, have stabilized or increased, the number of black farmers continues to decline.

That blacks have labored on farms since they were first brought to America as slaves is well-known. Less well-known is the fact that blacks have operated their own farms for almost as long. Since no other group of farmers has faced greater obstacles to their advancement in this country, the history of this nation’s black farm operators is extraordinary. The notes that follow offer a brief chronology of the gains and losses of black farmers in America.

Black farmers before the Civil War

Until the end of the Civil War, farm ownership by blacks was almost exclusively limited to blacks who were free. Though the number of free blacks was always relatively small, the path from slavery to freedom was never entirely blocked. The first blacks imported as slaves in this country during the seventeenth century were brought to the southern mainland British colonies, initially Maryland, Virginia, and South Carolina, and later North Carolina and Georgia. Few in number, “they were allowed a large measure of autonomy” working on small farms or “isolated cowpens.” Some were able to use this autonomy to acquire cash and to purchase themselves. In the Virginia colony, some of the first blacks to arrive apparently came to the colony as indentured servants, and they received their freedom after serving their indenture. Others were freed by their masters or had their freedom purchased by missionary and religious organizations or previously freed relatives.

By the 1650s, a small number of free blacks in Virginia had become landowners. Notably industrious, they raised tobacco, corn, wheat, vegetables, and livestock and used the proceeds to acquire more land. Some also acquired slaves and were not hesitant to assert their rights as property owners and slaveholders. For example, in 1655, Anthony Johnson, a black owner of a 250-acre Virginia farm successfully sued his white neighbor for the return of a runaway slave. In the 1660s, after Virginia began to restrict the activities of free blacks, he moved his family to Maryland. There, both his son and his grandson acquired farms. By 1677, “fifty-eight years after the arrival of the first slaves on American soil,” the Johnson family could boast of three generations of farm ownership.

As illustrated by Mr. Johnson’s willingness to sue a white neighbor, free “black farmers in early Virginia considered themselves equal to white colonists.” As more slaves arrived, however, whites became increasingly fearful of freed slaves, and in 1691 the Virginia Assembly prohibited future manumissions. Thereafter, the number of free black farms declined in Virginia and elsewhere in the South. By 1770, only 1.5 percent of Southern blacks were free.

The American Revolution reversed this decline. Both during and following the Revolution, a substantial number of slaves gained their freedom. Some were freed by the British while others were freed for fighting the British. In 1782, Virginia repealed its prohibition against private manumissions and over the next eight years over 12,000 Virginia slaves were freed. Slaves were also freed elsewhere in the South, but in substantially smaller numbers in the Lower South. Nonetheless, by 1800, “the number of free blacks had grown an astonishing 1,700 percent; one out of every twelve blacks in the South was free.”

In the 1780s and 1790s, freed slaves began acquiring land in the Lower South. Some even acquired large plantations. By 1786, for example, James Pendarvis, a former slave, had acquired a 3,250 acre plantation in South Carolina and owned 113 black slaves, placing him “among the largest individual black slave owners in American history.” Like Pendarvis, whose father was a white planter and his mother a black slave, most of those who acquired farms in South Carolina “were direct descendants of whites who had granted them large tracts of land...” Freed slaves, usually of French or Spanish and black ancestry, also entered the planter class in Louisiana.

Prior to the end of the Civil War, however, most blacks remained slaves. Rarely were slaves able to acquire land, though many acquired livestock and other personal property through the widespread practice of allowing slaves to tend a portion of their masters’ lands for their own use. While this practice began to permit slaves to supplement their meager diet, in some locations it expanded into a “domestic slave economy” that allowed slaves to produce cash crops which were sold to the slaves’ masters or local merchants. Livestock and other property was also acquired through self-hire. “Self-hire had a long tradition in American slavery, stretching back to the earliest colonial period when some slaves, usually the most skilled and trustworthy, were allowed to contact a potential employer, make arrangements for wages and working conditions, and secure their own food and lodging.” Despite laws forbidding self-hire throughout the South, the practice persisted because both slaves and masters benefitted from it. Even though self-hired slaves usually paid their masters a portion of their earnings, the arrangement gave them a degree of autonomy as well as income. Slave masters benefitted because they “did not have to pay for the slave’s clothing or lodging and also saved the 5 to 8 percent fee charged by a hiring broker as well as the aggravation of taking care of the matter themselves.”

Some black farm operators were “quasi-free,” or “virtually free” slaves. While still nominally slaves, “quasi-free” slaves included those who were illegally manumitted or simply left unsupervised by their owners. Most of these slaves resided in cities and towns where it was easier to avoid detection, but a few occupied and farmed land owned by their masters or took up residence on deserted farms. A small number of “quasi-free” slaves acquired land by posing as free.

Despite laws prohibiting property ownership by slaves throughout the South, by the eve of the Civil War “considerable numbers of slaves had become property owners.” The ownership of livestock was particularly widespread. Indeed, in commenting on the General Sherman’s confiscation and consumption of most of the livestock his army encountered in its advance on Georgia, an historian has observed that “Little did he realize... that some of the possessions and livestock being seized [by his troops] belonged to the very slaves he had marched to the sea to liberate.”

Black farmers following the Civil War

Notwithstanding the extraordinary rise

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of some blacks from slaves to farm owners during the antebellum period, most blacks were landless at the end of the Civil War. In 1880, 75 percent lived in the former Confederate states and were primarily engaged in agricultural work as sharecroppers or tenants. Though the distinction between a sharecropper and a tenant is sometimes blurred in accounts of both, sharecroppers were wage laborers. "The courts in every southern state came to the same conclusion: the cropper was a wage laborer, his wages being a portion of what he produced paid to him by the landlord. The tenant was a renter who paid to the landlord for use of the land; it did not alter the relationship if the rent was a portion of the crop produced..." In theory at least, sharecropping offered the possibility of higher income than fixed wages. While the question of whether this theory matched reality remained subject to debate, sharecropping predominated in places like the Arkansas Delta until World War II.

Even those blacks who had the capital to purchase farmland found that whites, who "looked upon land as their only important capital investment, ... were reluctant to sell land to blacks, whom they did not want to enjoy the power that came from the ownership of land in the South." Remarkably, however, some blacks were able to work up the "agricultural ladder," a phrase used to describe the transition from "landless laborer to sharecropper to renter to landowner." The patterns of black farmland ownership varied across the South, but almost invariably blacks were able only to acquire land deemed undesirable by whites: [t]he proportions of black farmers who owned land were greatest in the Upper South, along the coastal regions, and in the trans-Mississippi states. Very few blacks owned land in the Black Belt that cut across the region. Black landowning was the greatest, in other words, where the concentration of cotton was lowest and where blacks made up a relatively small part of the population. Blacks owned farms where land was cheap, where railroads had not arrived, and where stores were few; they got the "backbone and spare ribs" that white farmers did not value.

Black landownership in 1910 embraced an estimated 15 million acres. Most of that land was in the South, where 91 percent of all African Americans lived. In 1910 blacks constituted one-half of the South's population, and owned 158,479 farms. Southern whites, on the other hand, owned 1,078,635 farms. Black-operated farms totaled 212,972. The number of black-operated farms stood at about 926,000 in 1920. Black farmers, including sharecroppers and tenants, constituted one-seventh of all of the nation's farmers. However, nearly one-half of all farms in the South in 1920 were less than fifty acres. "Tenancy remained a 50 percent for the white farmers, and tenancy rates for African-American farmers reached as high as 90 percent in some areas." Though the peak of black landownership generally coincided with World War I, "[t]he outbreak of World War I marked the beginning of the long and tragic decline of black agriculture and land tenure in the South." When European nations ceased importing cotton, cotton prices collapsed. "The cotton disaster of 1914 ruined millions of black and white farmers, and affected agriculture for years to come." The boll weevil was even more destructive, since few black sharecroppers or owner-operators could afford insecticides. Added to these problems were worsening race relations, soil erosion and depletion, and the monopolistic control that white planters and their allies held over credit and other factors of agricultural production. "Given the structure of the domestic economy, it was inevitable that black farmers would be forced off the land and evicted from their homes to work at factory jobs in the cities of the New South and the urban ghettos of the North." The farm programs of the New Deal did little to help black farmers. Some successes were achieved by the efforts of the Resettlement Administration and the loan programs administered by the Farm Security Administration, although the successes of these programs were diluted by racial discrimination in their administration. In the main, however, the New Deal programs worked against black farmers by protecting white planters and shifting the risks to tenants, white and black:

[Under the [Agricultural Adjustment Act (AAA)] the government actually assumed most of the landowners' risks and shifted them to tenants. The owners were protected from overproduction by fixed quotas with rents for their retired lands, while the tenants, whose share was pitifully small or nil carried most of the reduced acreage burden. The risks of price fluctuation for the owners was met with loans of ten cents a pound or more to help maintain prices; and the government credit production corporations and the [Farm Credit Administration] offered them credit at a rate unavailable to the tenant unless the landlord waived his first lien on the crop. The owner's likelihood of losing the equity in his farm also was lessened by the opportunities available to him to refinance and scale down debts owed them by croppers and share-tenants. The only way a tenant could escape assuming risks under the AAA and the existing system, in other words, was by becoming a landowner."

In the years following the Great Depression blacks lost their land for a host of reasons, including "legal trickery perpetuated by southern white lawyers, land speculators, and county officials taking advantage of unsophisticated rural blacks." The failure to devise land by will also resulted in the loss of land by making it vulnerable to sale through forced partition actions. Tax sales, eminent domain, and voluntary sales also eroded black farmland ownership.

Following World War II, changes in Southern agriculture caused it to lose its distinctiveness and to become "more like farming elsewhere in the nation... [with an emphasis] on capitalization, mechanization, and labor efficiency." This change had a profound effect on black farmers. As one observer has noted, "most black farmers were forced off the land by technology in the form of cotton pickers and tractors, science in the form of herbicides, and government programs that favored landowners. They simply were not needed in the fields anymore." The migration that followed this change in Southern agriculture was captured in a remark attributed by Anthony Walton to his father. Noting that the tracks of the Illinois Central Railroad run through the agricultural lands of the Mississippi Delta, Mr. Walton recounts that his father used to say, "It wasn't Lincoln who freed the slaves, it was the Illinois Central..."

Discrimination by the USDA also impeded the ability of many black farmers to flourish or even to survive as farmers. In addition to the USDA's lack of attention to black farmers during the New Deal, much of the public agricultural infrastructure largely ignored the plight of the black farmer for decades thereafter:

[during the late twentieth century, the USDA, agricultural colleges, and state experiment stations remained devoted to helping the most capital-intensive and economically viable farmers, and those agriculturalists were invariably white. The USDA ignored black farmers because they had neither the land nor capital to maintain productive, efficient, and profitable agricultural operations, nor did the agency provide educational and developmental programs to help those unneeded and often displaced farmers to build a new life.]

For its part, the USDA compounded its
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intention to black farmers by discriminating against them. In 1965, the U.S. Civil Rights Commission concluded that the USDA treated white and black farmers differently, to the disadvantage of black farmers. Subsequent reports of the Commission found that the USDA had not made significant improvement. In 1990, following hearings, the House Government Operations Committee found that as many as two-thirds of all black farmers received loans from the USDA and concluded that discrimination by the USDA in its loan programs had been "a catalyst in the decline of minority farming." 2

Between 1920 and 1969, a 90 percent decrease in the number of black farmers had occurred. By 1992, this decrease had risen to 98 percent. The number of white farmers also decreased, but for the same period, 1920 to 1992, the decline of white farmers was 65 percent.

The decline in the number of black farmers can only be described as dramatic. For every decade following World War II, the loss of black farmers approached 50 percent. That race was a factor is supported by the finding that "[b]lack-operated farms have decreased at a faster rate than white-operated farms regardless of size." 3 Black farmers today are mostly Southern states. In 1992, 94 percent of all black-owned farms were in seventeen Southern states. The largest number were in Texas (2,861), followed by Mississippi (2,480); North Carolina (1,866); South Carolina (1,765); Alabama (1,381); Virginia (1,298); Louisiana (1,097); and Georgia (1,080). These eight states accounted for 75 percent of the nation's African American farmers. The remaining Southern states had fewer than 1,000 black-owned farms. "Most black-operated farms engage primarily in livestock production, with some field crops and cash grains." 4 Livestock production appears to be favored because of its relatively flexible labor requirements that allow time for an off-farm job. 5

Most black-operated farms are smaller than 140 acres and generate gross sales less than $10,000. In the eight Southern states accounting for 75 percent of all black farmers, the average farm size in 1992 was 117 acres, up seven acres from the 1987 average of 110 acres. Except in North Carolina and Virginia, the majority of the income of black farm operators is derived from off-farm sources. 6

In 1992, the overwhelming majority of black farmers were male, and their average age was 59. Thirty-eight percent of all black farmers were 65 years or older. Based on 1966 data, black farm households have an average household income of $19,600. This figure is substantially lower than the average household income of white farmers, $52,300. About 43 percent of black farmers operate limited-resource farms, compared to 13 percent of white farmers. 7

The future of black farmers in America is uncertain. Some promise is offered by the success of cooperatives such as the Indian Springs Farmers Association in Mississippi which helps its black farmer members market their fruits and vegetables, 8 the efforts of the Federation of Southern Cooperatives/Land Assistance Fund to expand its marketing efforts into the international arena, 9 and the recent settlement of a discrimination action against the USDA. 10 The trend represented by the decline in the numbers of black farmers, however, is not favorable to the survival of black farming in this country. By all accounts, the emergence of black farm operators before and after the Civil War is a tribute to their collective industriousness and skill. Whether this industriousness and skill will remain a part of this nation's agricultural sector is a question faced by all who ponder the full scope of the future of American agriculture.

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1 Spencer D. Wood & Jess Gilbert, Re-entering African American Farmers: Recent Trends and a Policy Rationale (Land Tenure Center, Univ. of Wis., Mar. 1998) at 2 (Wood & Gilbert). The most recent USDA estimates indicate that in 1992 there were 15,800 black farmers. Arne B. W. Effendart et al., Minority & Women Farmers in the U.S., Agric. Outlook (USDA, Econ. Research Serv., May 1998) at 16 (Effendart et al.).


3 U.S. Congress, House, Rural Development and the Black, 48, Vand. L. Rev. 1261, 1306-07 (1995) (footnotes omitted) (also noting that "The civilian occupations with the most comparable racial profiles are geologists and geologists.") B. at 137 n. 396.

4 Effendart, supra note 1, at 16. In 1992, there were 20,956 Hispanic farm operators and 145,156 female farm operators. B. at 20. A current trend in American agriculture is an increase in the number of immigrants from Asia and elsewhere who have become farmers. See Scott Kline & Joel Millman, Field of Dreams: Immigrants Find Hope In a Life of Farming As Others Sour On It, Wall Street J., Aug. 12, 1999, at Al.

5 Also well-known is the considerable contribution of black slaves to the development of American agriculture. Less well known is that the slave trade stimulated the growth of agriculture in coastal Africa in response to the need for supplies for slave ships and slave ships. See Hugh Thomas, The Slave Trade 766 (1997).

6 Lorn Scheringer, Black People Own the Streets, 170, 1912-19 (1992) (Scheringer).

7 B. at 15.

8 B. at 16. Roland Kohn, supra note 2, at 99 noting that, a small number of freed blacks owned slaves and that the "Leaders of the Cherokee, Chickasaw, Choctaw, and Creek nations consciously appropriated the culture of white Americans—including the ownership of black slaves."

9 Scheringer, supra note 6, at 15.

10 B. at 17.

11 B. at 18.
Published comments by Glickman on the future of agriculture

Some of Secretary of Agriculture Dan Glickman’s comments April 29, 1999, at Purdue University follow:

[T]his seemed an ideal place to have a forward-looking discussion about the place agriculture may occupy in American life in the 21st century... We have to ask and begin to answer the questions: What might American agriculture look like in the 21st century? And perhaps more importantly: What do we want it to look like?...

Government... will spend $15 billion this year in direct payments to farmers, the highest of any fiscal year on record. But notwithstanding that, with the passage of the 1996 Farm Bill, we are in the process of minimizing the government role, of stripping USDA of many of its authorities to intervene in the market on farmers' behalf and deal with issues of supply and demand. So we have to rely on different tools... The '96 Farm Bill offered no hard guidelines. In fact, the part of the bill covering farm programs is called the "American market transition act."[W]e have to start thinking in terms of partnerships rather than supports... Government can no longer assume complete production and marketing risks... We can and should find sensible ways to strengthen the farm safety net, with a strong crop insurance program and other risk management tools...

[T]he National Commission on Small Farms [in its 93 page report, A Time to Act, issues January 22, 1998, and containing 146 recommendations]...has... suggested a Beginning Farmer Development Program, which would establish training and assistance centers for beginning farmers; a small farm research initiative; and an entrepreneurial development initiative for small farmers...

[T]o be successful, agriculture must always stay ahead of the consumer curve... Agriculture can't be taught the way it was in the past...[W]hat we're seeing goes beyond just farm consolidation... Now, at every link along the food production chain, there are concentrated markets, clusters and alliances, relationships both formal and informal that may present serious challenges to the small and medium-sized producer trying to move goods to market. This is especially true when it comes to livestock processing... In the beef industry, four meatpacking plants now control 80% of the steer and heifer slaughter market... Since 1967 the number of hog operations has fallen by 90%. Large operators of more than 2,000 hogs represent just under 6% of producers, but account for almost two-thirds of inventory... Concentration can force producers into accepting lopsided contractual terms... Most poultry production now operates under contract...

I don't think we want to live under a system of agricultural Darwinism, with survival of the fittest becoming survival of the biggest. We don't want to get to the point where farmers lose control of their economic destiny and are reduced to serfs in a kind of feudal agricultural system... USDA and the Justice Department [are] keeping a watchful eye on some of these major mergers and, within the framework of our authorities, vigilantly monitoring for anti-competitive behavior.

Just a few weeks ago, USDA filed a complaint against Excel Corporation, alleging that the company violated the Packers and Stockyards Act by engaging in unfair pricing practices affecting about 1,200 producers. That case is now in litigation, and it is my belief that more cases will be filed under the Packers and Stockyards Act in the months to come... If the larger agricultural interests can form clusters and alliances, so too can smaller producers—in the form of cooperatives...

To help co-ops, USDA offers a variety of tools, worth up to $200 million a year, including everything from an initial feasibility study to the implementation of a business plan... In some countries, like Ireland for example, co-ops can become publicly traded entities by issuing stock, they can increase their capital base and enhance their ability to compete... When we began collecting data on farmers' markets in 1994, there were only about 1,700 of them in the country. Today, we estimate that there are nearly 3,000. There is the added benefit that it strengthens the relationship between grower and consumer...

There are also niche markets to explore, for example the rapidly growing demand for organic products...

We believe the [uniform national] standards will improve consumer confidence in organic products and open new opportunities, both domestic and international, for our producers...to an estimated $6.6 billion market in the next year...

Biotechnology can be an indispensable tool as we try to serve global agricultural demand in a sustainable manner... We cannot be science's blind servant. We have to understand its ethical, safety, and environmental implications... While people around the world have embraced biotechnology's twin, information technology, the fact is that they're still quite cautious about biotech... Dismissing the skepticism that's out there is not only arrogant, it's also a bad business strategy...[T]he public opinion poll is just as powerful a research tool as the test tube...

USDA extend[s] loans and grants that invest in rural businesses, rural utilities and rural housing. Over 50 rural areas have been targeted for tax incentives and other economic development support as part of President Clinton's Empowerment Zone/Enterprise Community initiative...

We're beginning to see people move to the country in search of a different kind of lifestyle. Rural counties have actually grown by about 3 million in the 1990's... People who live in rural areas are vested in their community. They know their neighbors; they watch each other's children; they treat each other as extended family. And by living these kind of values, rural towns send a message to and set an example for communities around the country... If we're going to preserve and cultivate rural America's unique qualities, we have to keep it economically viable... In addition to clean water and decent housing, rural communities have to have a trained workforce, good schools, first-rate medical care, child care options, adequate telephone and electricity service and Internet connectivity... We also have to preserve the open spaces and natural resources that make rural life unique and draw people there in the first place...

We cannot and should not approach the future by trying to recapture the past... In 1900, farmers represented 38% of the labor force... by 1990, farmers made up 2.6% of the workforce. Sixty years of aggressive farm programs have not been able to reverse this trend."