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University of Arkansas
System Division of Agriculture

NatAgLaw@uark.edu | (479) 575-7646

An Agricultural Law Research Article

Introduction: Recent Federal Legislation

by

John H. Davidson

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INTRODUCTION: RECENT FEDERAL LEGISLATION

by JOHN H. DAVIDSON*

This is the Sixth Annual Symposium on Agricultural Law to be published by the South Dakota Law Review. When the Symposium was conceived in 1973, there were doubts expressed whether agricultural law was a subject area that could be taken up logically by lawyers and students of the law. It was argued, after all, that most problems of the farmer and of agribusiness arise in traditional legal disciplines such as real property, water law, corporations, estate planning and commercial transactions, and can be adequately addressed within those specialized contexts. While there is technical validity to this position, the continuing success and broad acceptance of this Symposium indicates that there is a segment of the bar that is well served by specialized agricultural law research. The emerging significance of the field is also evidenced by the recent proliferation of specialized publications and legal education conferences in agricultural law.

American agriculture has for most of the nation's history been nurtured by the federal government. This involvement has intensified since the 1930's when compensation policies were initiated to counterbalance the effects of the earlier development policies. In 1949, James A. Durham wrote:

Literally hundreds of statutes designed to aid and protect farmer interests are now firmly embedded in our law, constituting approximately 85 programs presently administered by the Department of Agriculture. The variety and scope of these programs . . . are sometimes surprising even to those living in farming areas. Credit, cooperative marketing, foreign purchases, conservation, surplus fishery products, protection of game, crop insurance, forestry, land utilization, flood control, irrigation, livestock disease control, regulation of stockyards, quality standards for various commodities, commodity exchanges, standards for boxes and containers, numerous inspection programs, minimum and maximum prices, and marketing and production quotas are only some of the programs which Congress has directed the Department to undertake. It requires but little reflection to realize that in spite of the traditional independence of the American farmer, governmental direction and regulation are more extensive and complex in the agricultural segment of our economy than in any other.¹

* B.A., 1964, Wake Forest; J.D., 1967, Univ. of Pitt.; L.L.M., 1972, George Washington; Professor of Law, University of South Dakota School of Law.

1. Durham, *A Suggested Course In Agricultural Law*, 34 IOWA L. REV. 286, 288 (1949).

Federal law and regulation in the areas mentioned by Durham have grown and, in addition, a considerable list of new statutes and regulations have been adopted. It is largely to this body of law, along with its counterpart in state law, that this Symposium is directed.

Recognizing the importance of federal legislation to the agricultural lawyer, I shall attempt to make this Introduction useful by summarizing the agricultural legislation enacted by the Second Session of the 95th Congress, covering the calendar year of 1978.

Land Tenure

During the last session Congress was confronted with evidence and expressions of concern that the price of farmland was being driven up at a rate that must ultimately cause serious disruption in the nation's system of agricultural land tenure. This concern received expression in agricultural credit legislation and passage of the Agricultural Foreign Investment Disclosure Act of 1978, which requires foreigners who invest in agricultural land in the United States to report all such transactions to the Secretary of Agriculture.²

After extensive and diverse hearings the House Committee on Agriculture took note of the facts that the United States has over one-half of all the prime farm land in the world, and it is still priced considerably below that of comparable lands in other developed nations.³ Prices have now reached the point where farm land has greater value as an investment asset than as a productive asset.⁴ This has resulted in intense competition for farm land among young farmers seeking entry-level opportunities, established farmers seeking to expand, and outside investors seeking to capitalize on appreciation.⁵ It was alleged by supporters of this Act that foreign investment is driving up the price of farm land, thereby threatening to disrupt our system of family farms, increasing the risk of loss of domestic control over certain agriculture markets, encouraging tenancy and reducing incentives for soil and water conservation.⁶ While these concerns are taken seriously by Congress, the fact that only a reporting requirement was enacted—rather than the outright prohibition on foreign ownership urged by many—is indicative of Congress' present indecision whether investments of this type are, on balance, beneficial or detrimental.⁷

Under the new Act the Secretary of Agriculture is required to

2. Pub. L. No. 95-460, 92 Stat. 1263 (to be codified at 7 U.S.C. § 3501 (1978)).

3. H.R. REP. NO. 95-1570, 95th Cong., 2d Sess. 16 (1978).

4. *Id.* at 17.

5. *Id.* at 15.

6. *Id.* at 7.

7. Full discussion of the facts and issues will be found in Morrison, *Limitations on Alien Investments in American Real Estate*, 60 MINN. L. REV. 621 (1976); Comment, *Alien Ownership of South Dakota Farmland: A Menace to the Family Farm?* 23 S.D.L. REV. 735 (1978).

maintain a registry of foreign investments in farm land. Any individual citizen of a foreign country, business entity organized in a foreign country, or domestic business entity in which a significant interest or substantial control is directly or indirectly controlled by a foreign person must register all acquisitions or transfers in agricultural land.⁸ Information required of registrants includes such things as the nature of the legal entity, the type of interest acquired, the purchase price paid, and the agricultural use intended.⁹ If a transaction is not registered or if the registration is incomplete, misleading, or false, the violator is subject to a civil penalty to be established by the Secretary which may not exceed twenty five percent of the fair market value of the land.¹⁰

The Secretary of Agriculture is required to submit periodic reports to the President and Congress analyzing the registration data to "determine the effects of foreign persons acquiring, transferring, and holding agricultural land, particularly the effects . . . on family farms and rural communities; . . ." ¹¹ This provision is interpreted to include analysis of the effects of foreign investment on land conservation policies.¹²

The Act is a cautious first step rather than a strong move in opposition to foreign ownership of agricultural land. Congress, which is so often ahead of the states, did not act boldly in this case. Already existing in a number of states were either similar reporting requirements or actual limitations on foreign ownership.¹³ Whether the data that results from the Act will stimulate prohibitions or limitations in later legislation may not be easily presumed.¹⁴ There is a point of view represented in Congress and the bureaucracy arguing that foreign investment in agricultural land is beneficial because it provides new sources of capital for the expansion of farming and ranching operations and helps ameliorate the United States' balance of payment problem.¹⁵ What the Act does insure, however, is that as the data emerges through the Secretary's reports, this fundamental policy area will again be the subject of discussion.

8. Pub. L. No. 95-460, § 2(a), 92 Stat. 1263 (to be codified at 7 U.S.C. § 3501 (1978)).

9. *Id.* § 2(a)(1)-(9).

10. *Id.* § 3, 92 Stat. 1265 (to be codified at 7 U.S.C. § 3502 (1978)).

11. *Id.* § 5 (to be codified at 7 U.S.C. § 3504 (1978)).

12. H.R. REP. NO. 95-1570, 95th Cong., 2d Sess. 21 (1978).

13. *E.g.*, IOWA CODE ANN. § 172C *et seq.* (West Supp. 1978) and NEB. REV. STAT. § 76-402 *et seq.* (Supp. 1978). As of May, 1978, twenty-five individual states had either general prohibitions or reporting requirements. Dahl, Recent Developments In Agricultural Law. Paper presented at conference on The Legal Aspects of Agriculture, Dallas, Dec. 7-8, 1978, at 11.

14. A bill has been introduced before the ninety-sixth Congress that would limit foreign investments in United States agricultural land to family-sized units and to a minority interest in such ownership. National Farmers Union, *Washington Newsletter* (Jan. 26, 1979).

15. H.R. REP. NO. 95-1570, 95th Cong. 2d Sess. 7 (1978).

Farm Credit

Credit shortages are a perennial problem for farm producers, and the Second Session of the 95th Congress enacted farm credit legislation. Lawyers who serve the farm sector will recognize that inflation in land prices and input costs have caused the demand for farm credit to inflate accordingly. The Agricultural Credit Act of 1978¹⁶ is important because it expands and redefines basic programs of the Farmers Home Administration.

Among the components of the federal farm credit program, the Farmers Home Administration (FmHA) is the "lender of last resort," inheriting in part the roles of the earlier Resettlement Administration, Federal Emergency Relief Administration, Farm Security Administration and the Emergency Crop and Feed Loan Division of the Farm Credit Administration.¹⁷ In recent years it has focused on several major functions: (1) farm ownership, improvement and operating loans for farmers of family-size farms who cannot obtain financing elsewhere; (2) emergency financing for farmers in disaster areas; (3) soil and water conservation development in rural areas; (4) subsidized housing loans in rural areas after the model of the Federal Housing Administration; and (5) loans for community facilities in rural areas. While these are the key functions, the agency also supervises a miscellany of additional programs.

The Agricultural Credit Act of 1978 (the Act) first redefines the types of persons and entities that may receive loans through the FmHA. Heretofore, farm ownership loans and operating loans could be made to individual family-size farmers who were not able to secure reasonable credit from other sources.¹⁸ The Act expands the category of qualified applicants to include "farm cooperatives and private domestic corporations and partnerships that are controlled by farmers and ranchers and engaged primarily and directly in farming and ranching . . ."¹⁹ To qualify, cooperatives, corporations or partnerships must have a majority of members, stockholders or partners who are citizens, have farm training or experience "sufficient to assure reasonable prospects of success," and who will become owner-operators of a family farm.²⁰ If the corporate, partnership or cooperative entity is controlled by individuals related by marriage or blood, at least one such individual must become the operator of a family-size farm.²¹

The purpose of this change is to bring eligibility requirements

16. Pub. L. No. 95-334, 92 Stat. 420 (amending 7 U.S.C. § 1921 *et. seq.* (1976)).

17. KORPELA, FEDERAL FARM LAW MANUAL 5-16-18 (1956).

18. 7 U.S.C. §§ 1922 and 1941 (1976) (amended 1978); H.R. REP. NO. 95-986, 95th Cong., 2d Sess. 6 (1978).

19. Pub. L. No. 95-334 § 101, 92 Stat. 420 (amending 7 U.S.C. § 1922 (1976)).

20. *Id.*

21. *Id.* The Act allows farm cooperatives, corporations and partnerships to qualify for emergency loans free of the family farm and farm training requirements that attach when applications are made for farm ownership loans. *Id.* § 118.

into line with the current trend to organize farms as corporations or partnerships for purposes of facilitating intergenerational transfers and relieving tax burdens. The desire to reorganize an individual proprietorship will not now be encumbered by the necessity of FmHA financing.

A question posed by the Act is whether the cooperative form has an appropriate role to play in organizing the family farm. Some established programs of the FmHA provide examples of possible uses of the cooperative. For example, pasture and grazing associations, wherein three or more farmers or ranchers purchase grazing land in common, are routinely financed by FmHA.²² It is readily imagined, in a period of rising costs and scarcity of resources, that enterprises after the grazing model will seem more attractive for farmers who seek to expand their operations. Whether the cooperative form is suited for these purposes should be the topic of further analysis.²³

The scope of FmHA lending authority includes loans for such purposes as soil and water conservation projects on farms as well as small business enterprises in rural areas.²⁴ The Act expands this authority to include loans to cover the costs of constructing or modifying facilities that would bring the borrower into compliance with pollution abatement requirements.²⁵ Because pollution abatement regulation may be expected to bear increasingly on agricultural pollution, this source of financing may take on significance.²⁶ This credit is also available to commercial farms because the enabling provision specifically exempts borrowers from the family farm requirement that binds applicants for farm ownership loans.²⁷

A further indication of congressional awareness of inflation in the cost of land and other essential inputs is the increase in the overall loan levels for FmHA loans. Limitations on individual farm ownership loans are increased to \$200,000 for direct and insured loans and \$300,000 for loans from private lenders carrying a guarantee by the Secretary of Agriculture.²⁸ The limits on operating loans are raised to \$100,000 for direct and insured loans and

22. 7 C.F.R. § 1823.55 (1978).

23. See Pearson, *The Farm Cooperative and the Federal Income Tax*, 44 N.D.L. Rev. 490, 502-03 (1968) discussing this question in the context of utilizing the cooperative farm for estate planning and for circumventing North Dakota's anti-corporate farming statute.

24. 7 U.S.C. § 1924 (1976). The small business enterprise loans available under this title are limited to those that provide rural residents with essential income.

25. Pub. L. No. 95-334, § 102, 92 Stat. 421 (amending 7 U.S.C. § 1924 (1976)). See the Clean Water Act of 1977, Pub. L. No. 95-217, 91 Stat. 1566 (1977) for a related source of federal financing for pollution abatement facilities.

26. See Clean Water Act of 1977, *supra* note 25; Note, *The Clean Water Act of 1977: Midcourse Correction in the Section 404 Program*, 57 NEB. L. REV. 1092 (1978); Note, *A Procedural Framework for Implementing Nonpoint Source Water Pollution Control in Iowa*, 63 IOWA L. REV. 184 (1977).

27. Pub. L. No. 95-334, § 102, 92 Stat. 421 (amending 7 U.S.C. § 1924 (1976)).

28. *Id.* § 103.

\$200,000 for loans guaranteed by the Secretary.²⁹ The Act increases the amount authorized for water and water facility grants and loans—covering such things as rural water systems—to \$500 million; more significantly, it raises the percentage of federal financial contribution in such projects from fifty percent to seventy-five percent.³⁰

While these changes are important short-term steps in making FmHA programs reflect current conditions in the farm sector, they do not alter the basic structure. Other provisions of the Act suggest, however, an attempt to change the method by which FmHA programs affect the flow of capital. Of primary importance is the attempted redirection of FmHA lending from reliance on insured loans to the use of guaranteed loans. While past legislation has authorized the use of guaranteed loans, the program has not been well received, and FmHA has relied on insured loans. Direct loans out of appropriated funds are authorized but are not in common use. The insured loans are not actually “insured” in the correct sense of that word, but are loans from revolving funds—the Agricultural Credit Insurance Fund³¹ and the Rural Development Insurance Fund.³² The former supports farm loans and the latter rural development loans. The two Funds acquire money from private investors who purchase one of several types of government certificates of beneficial ownership. The federal government fully insures the investor against any loss of either principal or interest.³³

Guaranteed loans are made by private lenders with a FmHA guarantee to make up losses of principal and interest resulting from default.³⁴ Two aspects of guaranteed loans that private lenders and the secondary markets have disliked are the fixed interest rate and the graduation requirement. The Act provides that the interest rate on guaranteed loans will be at a rate negotiated between the lender and the borrower “but not in excess of a rate as may be determined by the Secretary. . . .”³⁵ The graduation requirement gave to the Secretary the power to require any borrower to refinance upon demand when credit from private sources became available. The Act repeals this requirement as it applies to guaranteed loans.³⁶

Interest rates on direct and insured FmHA loans are also raised by the Act. The reason given by Congress for this change is

29. *Id.* § 116.

30. *Id.* § 105.

31. 7 U.S.C. § 1929 (1976).

32. 7 U.S.C. § 1929a (1976).

33. H.R. REP. NO. 95-986, 95th Cong., 2d Sess. 20 (1978) and S. REP. NO. 95-752, 95th Cong., 2d Sess. 98-102 (1978).

34. 7 U.S.C. § 1929(h) (1976).

35. Pub. L. No. 95-334, § 108(5), 92 Stat. 423 (amending 7 U.S.C. § 1927 (1976)).

36. *Id.* at § 123(s) (amending 7 U.S.C. § 1983(c)).

that it is hoped it will result in increased appropriations. According to the House Report:

The decision to increase the interest rate on direct or insured farm ownership loans from 5 percent to the Government's cost of money, plus 1 percent, was based on the experience of increased credit availability that resulted when a similar change was made on the FmHA operating loans.

...
It is believed that the Congress and the administration will be more amenable to increasing the authorized funding in the absence of an interest subsidy.³⁷

It might appear initially, at least, that if the statutory goal is to entice Congress to make available greater appropriations for the benefit of farmers who are "unable to obtain sufficient credit elsewhere . . . at reasonable rates and terms," an increase in interest rates is a purpose-defeating strategy. Presumably, the increase in rates would cause the FmHA money to be too costly to the poorest of the farmers—the very people that the program is intended to assist.³⁸

The Act's response to this criticism is a new provision addressing the needs of low-income farmers.³⁹ Farmers who are unable to obtain sufficient credit under the established farm ownership loan programs (which will now carry a higher interest rate) may apply for direct or insured loans at an interest rate that will not exceed five percent.⁴⁰ The usual family farm requirements adhere, and farm cooperatives, corporations and partnerships are eligible. The Secretary may establish terms at his discretion, and repayment terms should provide for reduced payments during the initial repayment period. The House Committee on Agriculture describes the group to be benefited by the low-income provisions as follows:

[T]hose with limited resources, beginning farmers, and owners or operators of small or family farms with a low income, such as young farm families which have had an opportunity to buy its first piece of land, small minority farmers, especially in the South and Southwest, and many Indian farmers.⁴¹

37. H.R. REP. NO. 95-986, 95th Cong., 2d Sess. 10 (1978). Section 107(2) of the Act provides "[t]he interest rate on any loan under this subtitle as a guaranteed loan shall be as determined by the Secretary, but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed 1 per centum, as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum."

38. It should be noted that this interest increase does not apply to water and waste facilities loans, pollution control loans, and small business loans in rural areas, all of which will continue to enjoy subsidized interest rates.

39. Pub. L. No. 95-334, § 113, 92 Stat. 424 (amending 7 U.S.C. § 1934 (1976)).

40. In addition to farm ownership loans, "low-income" farmers may apply for all the loan purposes stated in 7 U.S.C. § 1923 (1976), to-wit, acquiring, enlarging, or improving farms, land and water development and conservation, recreational use and facilities, business enterprises needed to supplement farm income, refinancing, and installation of non-fossil residential energy systems.

41. H.R. REP. NO. 95-986, 95th Cong., 2d Sess. 11 (1978).

It appears that the significance of the Act is that it greatly increases the economic range of farmers and other rural residents who qualify for FmHA loans. It can be argued that the new "low-income" category is the category that the earlier legislation was intended to benefit. The increased interest rates and new emphasis on guaranteed loans, however, have made conventional FmHA loans potentially beyond the reach of the "low-income" group. In other words, any commercial farmer who finds rates at such traditional sources as the Federal Land Bank Association and Production Credit Associations "unreasonable" may now look to the FmHA programs. There may be a risk that the low-income farmer who is the historical constituent of the FmHA may now find himself in a minority program within the agency and a low priority at appropriation time.

The lawyer representing the farmer in financial distress should be aware of the specific moratorium provisions of the Act. Section 122 states:

[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 provisions 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.⁴²

A timely petition for relief under this provision might, in appropriate cases, be of great value to a disaster-stricken farmer, provided that the procedures that are developed in support of it are not unduly cumbersome and time-consuming.⁴³

Also significant is the Secretary's authority to provide for appeals from the recommendations of the County Committees. Under the existing law, applicants for FmHA loans must have the certification by a County Committee comprised of farmers that the applicant is qualified. As competition for credit increases and in-

42. Pub. L. No. 95-334, § 122, 92 Stat. 427-28 (amending 7 U.S.C. § 1981(a) (1976)).

43. The Act states that "[i]t is the sense of Congress that . . . a high priority is placed on keeping existing farm operations operating." Pub. L. No. 95-334, § 126(2), 92 Stat. 429 (amending 7 U.S.C. § 1921).

ability to obtain FmHA loans becomes critical to the survival of certain farms, it may be necessary to appeal the refusal of the Committee and local FmHA office to certify a loan.⁴⁴

An additional source of funds is Title II of the Act, also known as the Emergency Agricultural Credit Adjustment Act of 1978.⁴⁵ Its purpose is to provide credit to farmers, including cooperatives, corporations, and partnerships, who are unable to obtain sufficient credit "to finance actual needs at reasonable rates and terms due to national or areawide economic stresses, such as a general tightening of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities."⁴⁶ Loan purposes exclude new land purchases, but cover refinancing, reorganization, supplies, livestock, equipment, essential land and water development and family subsistence. Up to \$400,000 may be borrowed under Title II, so long as total FmHA loans to any one borrower do not exceed \$650,000.⁴⁷

Title II places great emphasis on guaranteed loans, although insured loans are also authorized. Interest rates for guaranteed loans are those agreed upon by the lender and borrower. Passage of Title II was predicated upon a congressional finding of financial stress among farmers:

The American farmer is in the midst of the most stressed economic conditions which have prevailed for decades. Net income per farm has plummeted from \$10,610 in 1973 to \$7,540 in 1977 on a current dollar basis. Sagging commodity prices, skyrocketing production costs and reduced yields for some farmers due to the 1977 drought are major factors in the current agricultural situation.⁴⁸

While the findings of Congress may be subject to discussion, it cannot be denied that Title II represents a major source of potential credit for credit-short farmers.

Title III of the Act extends for an additional year the Emergency Livestock Credit Act of 1974, which provides a special source of emergency credit for livestock producers who are short of reasonable credit.⁴⁹

A second enactment that may become important as a source of agricultural credit is the National Consumer Cooperative Bank Act. During the early part of this century agricultural cooperatives had great difficulty establishing themselves. Antitrust protection, special recognition in the federal tax code and the development of a reliable and knowledgeable source of credit in the various Banks for Cooperatives of the Farm Credit Administration, however, en-

44. *Id.* § 123(1), amending 7 U.S.C. § 1983.

45. *Id.* § 201, amending 7 U.S.C. § 1961.

46. *Id.* § 202(C). The only limitations on cooperatives, corporations and partnerships under the provisions of Title II are that the members, stockholders or partners who are directly engaged in agricultural production must hold a majority interest. The family farm requirement does not apply.

47. *Id.* § 207(b), amending 7 U.S.C. § 1922.

48. H.R. REP. NO. 95-986, 95th Cong., 2d Sess. 12 (1978).

49. Pub. L. No. 95-334, § 301, 92 Stat. 433 (1978).

couraged the development of successful farm cooperations. Federally chartered and capitalized originally with federal funds, the Banks for Cooperatives have retired all government investment and become the dominant source of borrowed capital for agricultural cooperatives.

The success of the federal credit initiative in the area of agricultural cooperatives has apparently inspired Congress to test its luck by repeating the experiment—this time in an attempt to stimulate the growth of consumer cooperatives. The purpose of the legislation is to provide diversity in the consumer economy while stimulating the use of a device that might help consumers hold down prices of goods, services and facilities. Congress took note of many cooperative efforts, especially in food marketing, health care and housing, and concluded that, as was the case with agricultural cooperatives earlier in this century, the consumer cooperative movement is suffering from a lack of willing and knowledgeable lenders.⁵⁰

The Act establishes by federal charter an independent National Consumer Cooperative Bank as a mixed ownership government corporation. The seed capital is to be provided by the United States Treasury, although this will hopefully be repaid, as happened in the cases of the Federal Land Banks, the Banks for Cooperatives, and the Federal Intermediate Credit Banks. The Bank will raise its operating capital by marketing securities in national money markets.

For a cooperative to obtain funds from the Bank, it must be "producing or furnishing goods, services or facilities, primarily for the benefit of its members or voting stockholders who are ultimate consumers of such goods, services, or facilities. . . ."⁵¹ In addition the borrower may only borrow if it:

(1) makes such goods, services or facilities directly or indirectly available to its members or voting stockholders on a not-for-profit basis;

(2) does not pay dividends on voting stock or membership capital in excess of such percentage per annum as may be approved under the bylaws of the Bank;

(3) provides that its net savings shall be allocated or distributed to all members or patrons, in proportion to their patronage, or shall be retained for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for such other purposes as may be authorized by its membership not inconsistent with its purposes;

(4) makes membership available on a voluntary basis, without any social, political, racial, or religious discrimination and without any discrimination on the basis of age, sex, or marital status, to all persons who can make use of its services and are willing to accept the responsibilities

50. S. REP. NO. 95-795, 95th Cong., 2d Sess. 9 (1978).

51. Pub. L. No. 95-351, § 105(a), 92 Stat. 506 (to be codified at 12 U.S.C. § 3015).

of membership, subject only to limitations under applicable Federal or State laws or regulations;

(5) in the case of primary cooperative organizations restricts its voting control to members or voting stockholders on a one vote per person basis and takes positive steps to insure economic democracy and maximum participation by members of the cooperative including the holding of annual meetings and, in the case of organizations owned by groups of cooperatives, provides positive protections to insure economic democracy; and

(6) is not a credit union, mutual savings bank, or mutual savings and loan association.⁵²

Whether this source of credit will be available to farmer cooperatives is not entirely clear. Section 105(b) states:

No organization shall be ineligible because it produces, markets, or furnishes goods, services, or facilities on behalf of its members as primary producers, unless the dollar volume of loans made by the Bank to such organizations exceeds 10 per centum of the gross assets of the Bank.⁵³

Thus, producer cooperatives may not account for more than ten percent of the Bank's assets. Later in the same section, the Act states:

An eligible cooperative which also has been determined to be eligible for credit assistance from the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, the Rural Telephone Bank, the Banks for Cooperatives or other institutions of the Farm Credit System, or the Farmers Home Administration may receive the assistance authorized by this Act only (1) if the Bank determines that a request for assistance from any such source or sources has been rejected or denied solely because of the unavailability of funds from such source or sources, or (2) by agreement between the Bank and the agency or agencies involved.⁵⁴

Agricultural producer and other types of farm cooperatives will qualify as borrowers, but the limitations are awkward. A producer cooperative, for example, would first have to show that its loan would not cause the Bank's total loans to producer cooperatives to exceed ten percent of the Bank's assets. It would then have to apply for credit with the Farm Credit Banks, the FmHA or other relevant federal lenders, and be turned down either because of lack of funds or because the bank applied to agreed that the credit should be extended by the Consumer Cooperative Bank. The same limitations appear to apply to farm purchasing cooperatives, which are also eligible for credit assistance from the Bank for Cooperatives. When a small cooperative applies for credit from the Bank for Cooperatives, it will most likely be turned down because it is not a sound risk. In that case, if the Bank for Cooperatives will not agree with the Consumer Cooperative Bank that the latter should make

52. *Id.*

53. *Id.* § 105(b).

54. *Id.* § 105(d).

the loan, no loan may issue. In summary, the Act does create a useful source of credit for farm cooperatives—especially the small, innovative type that might not qualify for credit elsewhere in the Farm Credit System. This new source of credit will not, however, be available until the lengthy process of applying elsewhere and seeking inter-Bank agreement is complete.

It is clear that Congress intends this Bank to serve as a vehicle for improving the delivery of goods and services to low-income persons. The Board of Directors is charged with the duty of using "its best efforts" to insure that at least thirty-five percent of its outstanding loans are to cooperatives that will provide a facility or service used predominantly by low-income persons.⁵⁵ At the same time, the Bank is not to be a charity, and in making lending decisions is to determine

that the applicant has or will have a sound organizational and financial structure, income in excess of its operating costs and assets in excess of its obligations, and a reasonable expectation of a continuing demand for its production, goods, commodities, or services, or the use of its facilities, so that the loan will be fully repayable in accordance with its terms and conditions.⁵⁶

At first, these goals may appear to be in conflict, for it will be difficult for low-income persons, with typically poor training in business and, by definition, modest resources with which to capitalize a cooperative, to structure an organization that will qualify for credit. It should be remembered, however, that there was a time when agricultural cooperatives failed in great number as a result of inadequate credit and lack of sophisticated business counsel. The modern success of the farm cooperative movement is generally attributed to the development of adequate credit facilities along with the provision of modern management skills and counsel through the Farm Credit System and the Department of Agriculture.

Perhaps with this history in mind, Congress included in the Consumer Cooperative Act a provision establishing within the Bank an Office of Self-Help Development and Technical Assistance,⁵⁷ which is charged with providing organizational assistance, financial analysis, market surveys, director and management training, and other related skills and methods essential in establishing a successful business enterprise. Where necessary, this office may advance initial capital.

With adequate leadership it is conceivable that the type of cooperative envisioned by this Act will play a positive role in farm and rural development. The legislative history describes a number of consumer cooperatives that have been successful, covering such areas as health care, food purchases, housing, optical care, pharmacy, alternative energy sources, education, and legal services.⁵⁸

55. *Id.* § 108(a).

56. *Id.*

57. *Id.* § 201-210.

58. S. REP. NO. 95-795, 95th Cong., 2d Sess. 1-9 (1978).

These services are typical of those needed by rural town residents (especially retired persons) and family farmers. In the larger sense, the encouragement of the "new wave" of cooperatives may be quite positive for all farmer cooperatives. At a time when the influence of the agricultural bloc in Congress continues to ebb, the new cooperatives may result in the education of urban congressmen who, for the first time, are hearing from their own constituents and thus are becoming increasingly sensitive to the special problems of cooperatives.⁵⁹

Agricultural Tax

During the Second Session Congress passed another major revenue bill. Described as a tax relief measure, the Revenue Act of 1978 covers 183 pages of text and includes 111 principal sections. It is beyond the scope of this summary to describe every way that the Act potentially effects agriculture, but key provisions will be noted.

A. Investment Tax Credit

Tax credits available for pollution control facilities have been limited to one-half of the investment when the five-year amortization has been elected.⁶⁰ The 1978 Act allows for a 100 percent credit where pollution control facilities are amortized over a five-year period.⁶¹

Perhaps even more significant is the inclusion of "single purpose agricultural or horticultural structures" among the items that qualify for tax credits.⁶² Under existing law, buildings had not been eligible for credits, and the Internal Revenue Service ruled that such structures as hog parlors, chicken houses and stables were part of this exclusion.⁶³ The 1978 change is described in this way:

This provision makes structures or enclosures used for single purpose food or plant production specifically eligible for the investment tax credit. To be eligible . . . , the structure must be both specially designed and used solely for the production of poultry, eggs, livestock or plants. For example, if a portion of a greenhouse is used to sell plants, the greenhouse will not qualify for the credits. . . . Also, a structure ceases to be a qualifying structure if it is used for a purpose (such as for storage of feed or equipment) which does not qualify it for the investment credit

. . . .
The amendment is not intended to apply to general purpose agricultural structures such as barns . . . which can

59. Mohn, *Recent Cooperative Developments—Implications For The Future*, 23 S.D.L. REV. 524, 532 (1978).

60. I.R.C. § 46(c)(5).

61. Pub. L. No. 95-600, § 313, 92 Stat. 2826 (amending I.R.C. § 46 (c)(5)).

62. Pub. L. No. 95-600, § 314, 92 Stat. 2827 (amending I.R.C. § 48 (a)(1)).

63. Rev. Rul. 66-89, 1966-1 C. B. 7.

be adapted to a variety of uses.⁶⁴

The investment credit available to cooperatives is also liberalized by the 1978 Act. Under prior law cooperatives were limited in their ability to claim investment tax credits by a fraction in which the numerator is the cooperative's taxable income and the denominator is the taxable income plus the deductible payments made to patrons and shareholders.⁶⁵ The reason given to justify this special limitation was that cooperatives are allowed to deduct patronage refunds and similar distributions.⁶⁶ The new rule, which is intended to provide additional capital finances to cooperatives and increase the amount of patronage distributions to members,⁶⁷ allows cooperatives to claim the investment tax credit to the same extent it is available to taxpayers in general, and the credit will not be reduced to reflect the deduction for patronage dividends. Cooperatives may also pass through to members, on the basis of patronage, such portions of the credit as they are unable to use in a particular taxable year.⁶⁸ There is some suggestion in the legislative history that the reason for the liberalized tax credits for cooperatives is to equalize, as between corporations and cooperatives, the impact of the 1978 corporate income tax reductions.⁶⁹

B. *Accounting Methods for Family Farm Corporations*

The Tax Reform Act of 1976 required that farming corporations, or farm partnerships in which a partner is a corporation, report income on the basis of the accrual method of accounting. This change was a response to criticisms of tax laws that permitted high-income individuals to undertake farm investments primarily designed to create deductions that offset their regular income. An exception to the 1976 Act, however, allowed corporations "of which at least 50 percent of the total combined 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 of the corporation, are owned by members of the same family, . . ." to use cash accounting.⁷⁰ The 1978 Act extends this exception to include farm corporations in which two families own at least sixty-five percent of the voting stock and at least sixty-five percent of the total number of shares of all other classes of stock, or, in which three families own at least fifty percent of the voting stock, and at least fifty percent of the total number of shares of all other classes of stock.⁷¹ The Senate Report on the bill states:

64. S. REP. NO. 95-1263, 95th Cong., 2d Sess. 117 (1978). Section 315 also extends investment tax credits to cover rehabilitation of buildings that are more than twenty years of age.

65. I.R.C. § 46(e).

66. S. REP. NO. 95-1263, 95th Cong., 2d Sess. 118 (1978).

67. *Id.*

68. Pub. L. No. 95-600, 92 Stat. 2863, § 316, amending I.R.C. § 46; S. REP. NO. 95-1263, 95th Cong., 2d Sess. 118 (1978).

69. S. REP. NO. 95-1263, 95th Cong., 2d Sess. 118 (1978).

70. I.R.C. § 447(c)(2).

71. Pub. L. No. 95-600, 92 Stat. 2846, § 351, amending I.R.C. § 447.

Congress recognized a distinction between large, widely held farming corporations (and sophisticated tax shelter partnerships with corporate general partners) that have ready access to skilled accounting assistance which is often required to apply the accrual method of accounting to farming operations and small or family corporations for whom the simpler cash method of accounting was retained. In general, the committee believes that it is desirable to retain the cash method of accounting for certain corporations controlled by two or three families just as it remains available for corporations controlled by one family. These multi-family situations are generally thought to be similar to the situations of corporations controlled by a single family.⁷²

C. *Accounting for Growing Crops*

Until 1976 it was accepted that farmers, florists or nurserymen, regardless of whether they used cash or accrual methods of accounting, need not inventory growing crops, flowers and trees. A 1976 Revenue Ruling held, however, that such crops should now be inventoried when the accrual method is employed.⁷³ Congress has determined that this ruling is adverse to the best interests of farmers, florists and nurserymen who have been using the accrual method without inventorying growing crops. The 1978 Act thus relieves accrual method taxpayers of the need to inventory growing crops.⁷⁴ More importantly, however, this provision also allows accrual taxpayers to change to a cash accounting method, without consent of the Internal Revenue Service, at any time between December 31, 1977 and January 1, 1981.⁷⁵

Resources and Environment—Pesticide Regulation

The regulation of pesticides is of fundamental importance to agriculture, which has come to rely heavily on these substances at all levels of the production process. When unsafe and environmentally harmful products are marketed, the producer is not only endangered directly, but the willingness of the public to accept widespread distribution of sophisticated chemicals in the environment is tested as well. On the other hand, when regulation becomes overly complex, the vitality and competitiveness of the pesticide industry may be diminished, with the resulting possibility that new pesticides will not move into market channels.

The federal process of regulating pesticides began in 1910 and has evolved from mere labeling measures to a modern system of registration as a precondition of sale.⁷⁶ Applicants for registration

72. S. REP. NO. 95-1263, 95th Cong., 2d Sess. 162 (1978).

73. Rev. Rul. 76-242, 1976-1 C.B. 132.

74. Pub. L. No. 95-600, 92 Stat. 2846, § 352, amending I.R.C. § 447.

75. Pub. L. No. 95-600, 92 Stat. 2847, § 352(d), amending I.R.C. § 447.

76. See Insecticide Act of 1910, Act of April 26, 1910. 36 Stat. 331; Federal Insecticide, Fungicide and Rodenticide Act, Pub. L. No. 80-104, 61 Stat. 163 (1947); Federal Environmental Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973 (1972).

must submit data to prove that a particular product "when used in accordance with widespread and commonly recognized practice . . . will not generally cause unreasonable adverse effects on the environment."⁷⁷ This registration process, which is at the heart of the pesticide regulatory scheme, was substantially modified by the Federal Pesticide Act of 1978.⁷⁸

While the statute makes a number of technical changes in prior law, this description will refer only to the five major changes: (1) Revision of the data compensation and trade secret provisions; (2) Authorization of conditional registration; (3) Separation of classification from registration; (4) Provision for waiver of efficacy information; and, (5) Authorization for E.P.A. to review pesticides on a generic rather than an individual product basis.

The Federal Environmental Pesticide Control Act of 1972 set out to protect the public from unreasonable harm to the environment. Determination that a particular product is safe requires that the regulator have controlled access to the scientific information and research data developed by the proprietor. This essential goal conflicts with the objective of preserving trade secrets and ownership rights in research information. If the small pesticide formulator is denied access to data filed in support of registration by other formulators, he may not be able to compete with the dominant chemical firms that are best able to support research. Providing this class of formulator with access to data should enhance competition in the pesticide business. Providing full access to all registration data, however, might have the effect of discouraging continued research and development of new pesticides and infringing upon valid trade secrets that might be of considerable value to competitors. Running through both proprietary considerations is the need to have the E.P.A. disclose to the public sufficient information to support its registration decision.⁷⁹

The law existing prior to passage of the 1978 Act authorized applicants to rely on data other than trade secrets submitted by prior applicants providing that permission was received or reasonable compensation paid.⁸⁰ The prior applicant could identify all material submitted in support of an application "which in his opinion are trade secrets or commercial or financial information. . . ."⁸¹ The Administrator was not authorized to make such data public nor allow it to be used in support of subsequent applications for registration. The inability of the E.P.A. to refer to ear-

77. 7 U.S.C. § 136a(c)(5)(1976).

78. For a good overview of this regulatory scheme see RODGERS, ENVIRONMENTAL LAW 835 (1978).

79. H.R. REP. No. 95-343, 95th Cong., 2d Sess. 18 (1978). See generally Schulberg, *The Proposed FIFRA Amendments of 1977: Untangling the Knot of Pesticide Registration*, 2 HARV. ENV'T'L L. REV. 342, 346 (1978); Comment, *FIFRA Amendments: Getting the Pesticide Program Moving*, 7 ENV'T'L L. REP. 10141 (1977); Gabbay, *The Confidentiality of Test Data Under FIFRA*, 1 HARV. ENV'T'L L. REV. 378 (1977).

80. 7 U.S.C. § 136a(c)(1)(D) (amended 1978).

81. 7 U.S.C. § 136h(a) (amended 1978).

lier submitted data designated as a "trade secret" by the developer has been affirmed in at least one judicial decision⁸² and has contributed to the failure of E.P.A.'s registration program. The industry has abused the trade secret exception by attempting to use sweeping trade secret designations to gain exclusive use over information for extended periods of time.⁸³

The Federal Pesticide Act of 1978 rewrites both the data compensation and the trade secret provisions. If an applicant registers a pesticide containing a new active ingredient, he acquires a ten-year period of exclusive use of data submitted in support of the registration of that product.⁸⁴ All test data submitted after 1969 will be compensable for a period of fifteen years from the date the data is submitted.⁸⁵ A detailed system of binding arbitration is established to resolve disputed compensation cases.

The trade secrets provision is revised to more accurately define the term trade secret and to describe as well the type of information that shall be disclosed:

(1) All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public: *Provided*, That the use of such data for any registration purpose shall be governed by section 3 of this Act: *Provided further*, That this paragraph does not authorize the disclosure of any information that—

(A) discloses manufacturing or quality control processes,

(B) discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or

(C) discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide,

unless the Administrator has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.⁸⁶

The significance of this new provision is its specificity. It is hoped that the industry will no longer use trade secret provisions to slow the registration process, and that the registration and rere-

82. Dow Chemical Co. v. Train, 423 F. Supp. 1359 (E.D. Mich. 1976).

83. H.R. REP. NO. 95-343, 95th Cong., 2d Sess. 8 (1977).

84. 7 U.S.C. § 136a(c)(D), *as amended* by Federal Pesticide Act of 1978, Pub. L. No. 95-396, § 2, 92 Stat. 820.

85. *Id.*

86. 7 U.S.C. § 136h, *as amended* by Federal Pesticide Act of 1978, Pub. L. No. 95-396, § 15, 92 Stat. 830.

gistration of pesticides can now get under way. The provision just quoted is a determination of the desired balance between public disclosure, the need for efficient registration, encouragement of fair competition in the pesticide industry, and protection of legitimate trade secrets.

In a second major change, the 1978 Act creates a new registration category known as the conditional registration. Prior to the enactment of the 1972 amendments a pesticide registered with a state need not have been registered with E.P.A. After 1972, all such registrations had to reregister with E.P.A. In addition, all pesticides registered with the E.P.A. prior to 1972 were required to be reregistered to insure compliance with new standards encompassing protection of the public.⁸⁷ This one-time reregistration requirement applicable to pre-1972 registrants was qualified to allow such registrants to remain on the market pending completion of the new process. This resulted in an inequitable situation because post-1972 applications for registration of new products or old products for new uses had to successfully complete the regular registration process; this might take several years. The reregistration process, meanwhile, became hopelessly backlogged. Thus, products registered before 1972 in fact gained a significant competitive advantage. Among other problems, this was thought to have retarded growth and competition in the development of new products.⁸⁸

The 1978 Act responds to this "double standard" problem by authorizing three categories of conditional registration. First, where a pesticide product is similar to a currently registered product, or differs only in ways that would not significantly increase the risk of unreasonable adverse effects, it can be conditionally registered.⁸⁹ Second, the Act permits a conditional registration when an applicant seeks registration of new uses. This change was made necessary because until the underlying pesticide uses were reregistered, the basic safety data requirements concerning the pesticide were not yet satisfied, making consideration of new uses inappropriate.⁹⁰ The amendment would allow conditional registration of the new use if "the applicant has submitted satisfactory data pertaining to the proposed additional use, and . . . amending the registration . . . would not significantly increase the risk of any unreasonable adverse effect on the environment."⁹¹ The third type of conditional registration made available under the 1978 Act is for pesticides containing active ingredients that have not been registered before. Where the applicant has not had sufficient time to generate the data required by the Administrator, there is a deter-

87. RODGERS, *supra* note 78, at 862.

88. See Schulberg, *supra* note 79, at 348; *Pesticide Program*, *supra* note 79, at 10141.

89. 7 U.S.C. § 136a(c), as amended by Federal Pesticide Act of 1978, Pub. L. No. 95-396, § 6, 92 Stat. 825. H.R. REP. NO. 95-663, 95th Cong., 2d Sess. 28 (1977).

90. H.R. REP. NO. 95-663, 95th Cong., 2d Sess. 28 (1977).

91. 7 U.S.C. § 136a(c), as amended by Federal Pesticide Act of 1978, Pub. L. No. 95-366, § 6, 92 Stat. 825.

mination that temporary use would not cause any unreasonable adverse effect on the environment, and the registration period is limited to the time necessary to generate the data, conditional registration may be issued.⁹² All three types of conditional registration are qualified by a requirement that when the registration applied for involves use on a major food or feed crop (or a minor crop when there is an available safe alternative), the pesticide or pesticide use applied for may not meet or exceed "risk criteria" that will be established by regulation.⁹³

The conditional registration program was enacted because Congress found it necessary to expedite the registration process and achieve a form of equity by reducing the effect of a "double standard." It can be argued that this form of registration can be too easily developed into a statutory loophole which might seriously compromise the public purpose of seeking to divert from market channels chemicals that pose a threat to the population and environment. Those who make this argument point out that once a product reaches market and achieves consumer acceptance, it is considerably more difficult to remove it when subsequent investigation suggests a hazard.⁹⁴

Another major change made by the 1978 Act pertains to the separation of classification from registration. The process of classification defines whether a pesticide shall be available for general use or restricted use. Under prior law the classification process had to occur along with registration.⁹⁵ As the registration process bogged down, classification of pesticides according to hazard also became an ineffective regulatory device. The 1978 Act authorizes the Administrator to segregate registration and classification.⁹⁶ The effect of this is that a pesticide may now be registered and thereafter or during periodic reregistration, may be classified for general or restricted use.

A fourth major area of change brought about by the 1978 Act involves considerations of product efficacy during the registration process. Under prior law, registration of a pesticide could occur only if, among other requirements, "its composition is such as to warrant the proposed claims for it. . . ."⁹⁷ This meant that in addition to the more serious task of determining whether a product presents a potential hazard to the environment, the Administrator had to devote considerable energy to efficacy determinations. This was another reason put forward to explain the break-down in the registration process. The 1978 Act gives the Administrator discretionary authority to waive this requirement in particular cases.⁹⁸

92. *Id.* See H.R. REP. NO. 95-663, 95th Cong., 2d Sess. 28 (1977).

93. *Id.*

94. Schulberg, *supra* note 79, at 354.

95. 7 U.S.C. § 136a(d) (amended 1978).

96. *Id.*

97. 7 U.S.C. § 136a(c)(5)(A) (amended 1978).

98. 7 U.S.C. § 136a(c)(5)(7), *as amended* by Federal Pesticide Act of 1978, Pub. L. No. 95-366, § 5, 92 Stat. 825.

According to the House Report:

This authority would be used most commonly with respect to agricultural pesticides, due to the high level of knowledge concerning pesticidal efficacy which prevails in the agricultural community, the existence of means for communicating efficacy information to users, the organizational expertise of the Department of Agriculture, the Extension Services, and the universities in this area, and the stake the industry has in marketing products that are efficacious.⁹⁹

The fifth major area of change authorizes the E.P.A. to review pesticides on a generic, rather than an individual product basis. Under prior law, E.P.A. was required to consider the thousands of applications for registration submitted by formulators of various chemical mixtures, rather than the basic chemicals themselves. Under the new Act, the Administrator is required to prescribe simplified registration procedures. In addition, applicants who propose to purchase registered basic pest control chemicals for formulation into end-use products are exempt from submission of data pertaining to the safety of the basic chemicals, as opposed to the safety of the formulated product, and from the data compensation requirements to the person from whom the basic chemical is purchased.¹⁰⁰ In effect, this means that the purchaser of a basic chemical for formulation will also be acquiring rights in the data submitted in support of the registration of the basic chemical.

Water Resources

During the Second Session, Congress did not enact any significant water resources development, although one item is worthy of notice.

In a bill authorizing construction of a new Lock and Dam 26 on the Mississippi River, Congress enacted a waterway user excise tax of four cents per gallon of fuel used in commercial operations beginning in 1978, rising in stages to as high as ten cents in 1985.¹⁰¹ This change is significant to agriculture because the cost of maintaining inland waterways—a major carrier of agricultural produce and inputs—has previously been financed out of general revenues, representing a huge public subsidy to all who benefit from river transportation. Every President since Franklin D. Roosevelt has tried to develop alternative financing methods. While the new tax is too small to insure that users will pay their way, it is nonetheless a major change in policy.¹⁰²

99. H.R. REP. NO. 95-663, 92d Cong., 2d Sess. 27 (1977).

100. 7 U.S.C. § 136(d)(a)(2)(B), *as amended* by Federal Pesticide Act of 1978, § 4, 92 Stat. 824.

101. Pub. L. No. 95-502, § 202, 92 Stat. 1696. This is referred to as the "Bingo Bill" because it is tacked onto a revenue bill dealing with the taxation of the proceeds of certain bingo games.

102. ENVIRONMENTAL POLICY CENTER, WASHINGTON RESOURCE REPORT 4 (Nov. 1978).

Public Lands

In the Public Rangelands Improvement Act of 1978¹⁰³ Congress addressed the problem of rapid deterioration of our public lands in the west, which is due primarily to overgrazing by licensees in the ranching industry. The Act undertakes "an intensive public rangelands maintenance, management, and improvement program"¹⁰⁴ and commits the federal government to spend as much as \$360 million for rangeland improvements over the next twenty years, at least eight percent of which must be spent on maintenance and rehabilitation measures.¹⁰⁵

Of direct relevance to the agricultural sector is the provision in the Act that establishes a new mechanism for establishing grazing fees on public lands. For some time the issue of whether grazing licensees on public lands should be required to pay the fair market value for permits has been before Congress. Advocates of the fair market value position argue that there is no policy basis for granting a large subsidy, through below market value grazing fees, to licensees in the ranching industry, and that such subsidy encourages over-grazing and other mismanagement of public lands. The 1978 legislation rejects fair market value in favor of a formula tied to the cost of beef production and the price of beef.¹⁰⁶

Livestock Auction Rates

The Packers and Stockyards Act of 1921 gives the Secretary of Agriculture, through the Packers and Stockyards Administration, power to regulate the rates charged by stockyards and other livestock market agencies. Rates that are "unjust, unreasonable, or discriminatory" are prohibited.¹⁰⁷ Stockyard operators are required to file a statement of all rates and charges with the Department of Agriculture,¹⁰⁸ and the Secretary must approve the rates as being in conformity with the statutory standard.

Generally, there are two predominant methods for calculating rates charged by livestock sale agencies. The "per-head-weight" schedule bases a charge on the number of head sold, with the per-head rate increasing with the size of the animals marketed. The "valuation" rate schedule, in contrast, increases the rate as the value of the animal sold at auction increases. In recent years' the Packers and Stockyards Administration has taken the position that the valuation system of rates is unreasonable because charges

103. Pub. L. No. 95-514, 92 Stat. 1803 (to be codified at 43 U.S.C. § 1901 (1978)).

104. Pub. L. No. 95-514, § 2(a)(4), 92 Stat. 1803.

105. *Id.* § 5(a), 92 Stat. 1805 (to be codified at 43 U.S.C. § 1904 (1978)). The proposed Executive Budget for 1980 omits funds for implementation of this program. National Farmers Union, *Washington Newsletter* (Feb. 2, 1979).

106. *Id.* § 6(a), 92 Stat. 1806 (to be codified at 43 U.S.C. § 1905 (1978)). Earlier in the year Congress declared a moratorium on increases in grazing fees pending completion of the 1978 Act. See Pub. L. No. 95-312, 92 Stat. 394.

107. 7 U.S.C. § 206.

108. 7 U.S.C. § 207.

vary depending upon the price received for the animal, although the service provided by the auction barn is the same.¹⁰⁹ Furthering this position, the Administration rejected applications for new rate systems based upon the valuation system, arguing that only the per-head system is reasonable and nondiscriminatory. Imposition of the per-head system on registrants seeking valuation systems was successful in at least two adjudicated cases.¹¹⁰

In response to this development, Congress has amended the Packers and Stockyards Act to specify that the valuation method of calculating rates shall not be unlawful *per se*.¹¹¹ While a registrant must avoid the "unjust, unreasonable, or discriminatory" prohibitions of the Act, they may choose between the per-head or the valuation methods in establishing rates.

International Markets

Under the Food for Peace Act of 1966,¹¹² the Commodity Credit Corporation is authorized to offer short-term credit assistance of up to three years to purchasers of privately-held agricultural products. The Agricultural Trade Act of 1978¹¹³ expands this authority to include intermediate credit terms of up to ten years.¹¹⁴ The purpose of this enlarged credit program is not foreign aid but an attempt to expand potential markets. The Senate Report summarizes the opportunities that are perceived:

A good example of enhanced long-term market development through the CCC intermediate credit program would be sales of breeding livestock. Breeding animals produce milk or meat in the first generation. A number of nations and individuals seeking breeding stock from the United States desire a financing program geared to the expected return from the investment. This is usually in the 5 to 10-year range.

Such sales not only would benefit the U.S. livestock industry, but would hold important potential for U.S. feed grain and oilseed producers. The introduction of breeding livestock could be accompanied by the introduction of modern feed rations and other refinements of the livestock industry.¹¹⁵

The Agricultural Trade Act also directs the opening of up to twenty-five Agricultural Trade offices overseas.¹¹⁶ The purpose of this effort is to place our agricultural marketing efforts on a more aggressive footing and free them of the red-tape that is encountered in dealings with embassy offices.¹¹⁷

109. S. REP. NO. 95-1053, 95th Cong., 2d Sess. 2 (1978).

110. *Giles Lowery Stockyards, Inc. v. Dept. of Ag.*, 565 F.2d 321 (5th Cir. 1977); *Central Ark. Auction Sale, Inc. v. Bergland*, 570 F.2d 724 (8th Cir. 1978).

111. Pub. L. No. 95-409, 92 Stat. 886, amended at 7 U.S.C. § 206.

112. Pub. L. No. 89-808, § 4, 80 Stat. 1538.

113. 7 U.S.C. § 1707a.

114. Pub. L. No. 95-501, § 101, 92 Stat. 1685, 7 U.S.C. § 1707a.

115. S. REP. NO. 95-1142, 95th Cong., 2d Sess. 6-7 (1978).

116. Pub. L. No. 95-501, 605A, 92 Stat. 1688, 7 U.S.C. 1765a.

117. S. REP. NO. 95-1142, 95TH CONG., 2D SESS. 10 (1978).

Other laws enacted will undoubtedly be of long-term importance to agriculture as well. Legislation involving energy,¹¹⁸ commodity trading regulation,¹¹⁹ weather modification,¹²⁰ public research,¹²¹ rural transportation,¹²² and bankruptcy¹²³ all will play roles in the practice and development of agricultural law.

The breadth and complexity of agricultural law topics dealt with by Congress in 1978 are testimony to the rapid developments in this area of law. This is highlighted by the fact that the First Session of the 95th Congress, meeting in 1977, focused especially on agricultural topics, leaving only miscellaneous legislation for the Second Session.

118. See, Department of Energy Act of 1978—Civilian Applications, Pub. L. No. 95-238, 92 Stat. 47; Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117; Energy Tax Act of 1978, Pub. L. No. 95-618, 92 Stat. 3174; National Energy Conservation Policy Act, Pub. L. No. 95-619, 92 Stat. 3206 (1978); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. No. 95-620, 92 Stat. 3289; and the Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350. The Natural Gas Policy Act of 1978, at § 401, provides that no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, and gives the Secretary of Agriculture the authority to certify agricultural needs.

119. Futures Trading Act of 1978, Pub. L. No. 95-4051, 92 Stat. 865. This extends the operation of the Commodity Exchange Act, bans the sale of most commodity options to the general public, clarifies the role of states in helping to enforce the Commodity Exchange Act and tightens penalties for some violations of the law.

120. National Climate Program Act, Pub. L. No. 95-367, 92 Stat. 601 (1978).

121. Renewable Resources Extension Act of 1978, Pub. L. No. 95-806, 92 Stat. 349; Forest and Rangeland Renewable Resources Research Act of 1978, Pub. L. No. 95-307, 92 Stat. 353; Water Research and Development Act of 1978, Pub. L. No. 95-467, 92 Stat. 1305.

122. Rural Transportation Advisory Task Force, Pub. L. No. 95-580, 92 Stat. 2475 (1978).

123. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.