

LAW 6474

Agricultural Law and Policy

Agriculture: An Introduction

Dr. Michael T. Olexa - Fall 2019

LAW 6474 Agricultural Law and Policy: Agriculture - An Introduction

I. Defining Agriculture

A. Why define?

1. Necessary for many elements of legal practice
 - a. EXAMPLES: Some of the most common sources of disputes and litigation
 - 1) Property classification
 - 2) Anti-trust exemption
 - 3) Employment

I. Defining Agriculture continued

B. Importance of agriculture

1. Historical importance
 - a. Foundation of modern civilization
 - 1) Societal stability
2. Economic importance
 - a. U.S. Economy
 - b. Florida Economy
3. Environmental importance
 - a. Habitat preservation
 - 1) Conservation easements
 - 2) Open range

II. Agricultural Policy

A. Early 1800s

1. Getting land into agriculture

B. Mid-1800s to present

1. Establishment of USDA
2. Agricultural education
 - a. Land Grant Acts
 - 1) 1862 Morrill Act
 - 2) 1890 Morrill Act
 - 3) 1994 Improving America's School Act
 - b. Land grant assistance acts
 - 1) 1887 Hatch Act
 - 2) 1914 Smith Lever Act
 - 3) Modern land grant mission

II. Agricultural Policy continued

B. Mid-1800s to present, continued

3. Farm Lending

a. Federal Farm Credit Admin. (FFCA)

1) Oversees the Farm Credit System (FCS)

2) Farm Service Agency (FSA)

a) Farm loan guarantees

- Up to 95% for loss of principal and interest

II. Agricultural Policy: First Look at Farm Bills

B. Mid-1800s to present, continued

4. Farm Bills: George Santayana "Those who cannot remember the past are condemned to repeat it."

a. Why Farm Bills?

1) Defined: Omnibus legislation primarily addressing agricultural production and food policy

2) Purpose: Stabilize crop prices

3) Common subjects

a) Commodity support

b) Conservation

c) Rural development

d) Trade policy

4) Amended every five years

a) Not passed: Reverts back to 1949 federal price support levels

b) Congressional extension?

II. Agricultural Policy: First Look at Farm Bills continued

B. Mid-1800s to present, continued

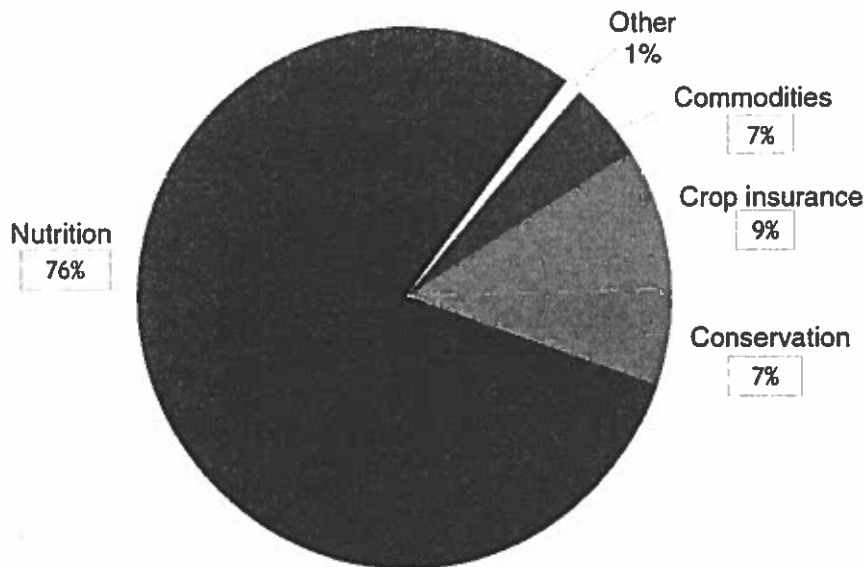
5. Deregulation of Agriculture: Free Markets
 - a. 1985 Farm Bill: Food Security Act of 1985
 - 1) Decoupling of subsidies and quotas
 - b. 1990 Farm Bill: Food Agriculture, Conservation & Trade Act of 1990
 - 1) Permission to plant to market signals
 - c. 1996 Farm Bill: Federal Agricultural Improvement and Reform Act of 1996
 - 1) Introduction of Market Transition Payments

II. Agricultural Policy: First Look at Farm Bills continued

B. Mid-1800s to present, continued

- d. Government's reentry: Free Markets?
 - 1) 2002 Farm Bill: Farm Security and Rural Investment Act of 2002
 - a) Reemphasis of government support
 - 2) 2008 Farm Bill: The Food, Conservation and Energy Act of 2008
 - a) Similar provisions of earlier bills
 - 3) 2014 Farm Bill: The Agricultural Act of 2014
 - a) New crop insurance options
 - b) Program changes
 - c) Expires September 30, 2018
 - 4) 2018 Farm Bill: Agriculture Improvement Act of 2018
 - a) SNAP reforms previously called for rejected in the 2018 Farm Bill

**Projected outlays under
2018 Farm Bill 2019 - 2023**



Source: USDA Economic Research Service using data from Congressional Budget Office, Cost Estimates for the 2018 Farm Bill

II. Agricultural Policy continued

C. U.S. Agricultural Trade

1. Vital to U.S. economy
2. Trade-based on international agreements
 - a. EXAMPLES:
 - 1) GATT of 1947
 - 2) Uruguay Round Negotiations of 1986-1994
 - a) Replaced GATT
 - b) Created World Trade Organization
 - Established trading rules
 - 3) Doha Round negotiations
 - a) Purpose: Increase economies of developing countries
 - b) Focus: Agricultural subsidies
 - c) Negotiations failed: US and EU would not reduce subsidies

II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

3. Hemispheric trade zone agreements of importance to Florida
 - a. North American Free Trade Agreement (NAFTA) of 1992
 - 1) Under NAFTA expansion: Proposed Free Trade Agreement of the Americas (FTAA)
 - b. Dominican Republic-Central America U.S. Free Trade Agreement (CAFTA-DR)
 - c. U.S. and targeted southern hemispheric trade agreements
 - 1) Goal: Establish hemispheric trade alliances
 - d. Cuba ?
 - 1) Cuba's transition to alternative agricultural production
 - a) "The Special Period"
 - Following collapse of the Soviet Bloc in 1990
 - b) Food security concerns causing agriculture to move closer to urban centers to meet food demands
 - c) Led to widespread "organic" farming practices



II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

3. - *continued*
- d. Cuba
 - c) "The world's first national experience in sustainable agriculture."
 - 2) Cuba's "Agricultural Crossroads"
 - a) As its economy improves, Cuba may begin to transition to a more industrial agricultural production system.
 - Foreign Investment Law 118/2014
 - : Assurance of protection to investors/provides greater incentives to attract foreign investment
 - Mariel Special Development Zone 313/2013
 - : Established a special system for investment within the province of Artemisa
 - b) Question: If transition occurs will Cuba continue its sustainable/organic experiment, and at what scale?
 - Norma Cubana 500/2010
 - : National organic standard modeled after the EU



II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

3. - *continued*

d. Cuba

3) Cuba's transition back to traditional agricultural production?

a) Impacts

- Increases agricultural production
- Decreases agricultural labor
- Increases pesticide use
- Increases farm worker pesticide exposure
- Increases environmental degradation
- Increases the loss of established alternative agricultural production systems



II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

3. - *continued*

d. Cuba

4) Cuba's continued emphasis on alternative agricultural production?

a) Impacts

- Decreases agricultural production
- Increases agricultural labor
- Decreases pesticide use
- Decreases farm worker pesticide exposure
- Decreases environmental degradation
- Increases Cuba's alternative agricultural systems and enhances Cuba's alternative agricultural reputation
- Enhances future organic export opportunities



II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

3. - *continued*

d. Cuba

5) US/Cuba Agricultural Trade 2019

- a) Trade Sanctions Reform Act of 2000 still in effect
- b) Trump curtails Obama's Cuba Trade Policy:
Limited effect
- c) Agricultural sector push back: Corn and Soybean
- d) Note: While limited impact on agricultural trade
tourism trade impacted through cruise ship
restriction. Air travel not restricted. (Summer
2019)



II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

4. Future of U.S./Cuba Agricultural Trade

- a. Political Impasse?
- b. Impact to Florida: Fresh fruits and vegetables

II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

5. European Union (EU) Challenge
 - a. Resistant to U.S. imports
 - 1) Food safety arguments
 - a) GMOs
 - b) Antibiotics
 - c) Additives
 - 2) Country of Origin Labeling (COOL)
 - a. 2002 Farm Bill
 - b. Rationale: Provide consumers with origin of foods
 - c. Cloaked trade restriction

II. Agricultural Policy continued

C. U.S. Agricultural Trade, continued

6. Future export trends
 - a. Decrease: Europe
 - b. Increase: Canada, Mexico, Americas and Asia
 - 1) Trump NAFTA renegotiation: United States-Mexico-Canada Agreement (USMCA). Required under the Trade Promotion and Accountability Act of 2015 (TPA).
 - a) Fresh fruit and vegetables: Issues with anti-dumping
 - b) Corn, soybeans and wheat
 - c. Trump Mexico tariff threat to curtail illegal immigration from Central America

II. Agricultural Policy continued

D. Foreign ownership of U.S. Farmland

1. Catalyst for foreign ownership
 - a. Cheap land
2. U.S.
3. Florida
4. Agricultural Foreign Investment Disclosure Act of 1978

II. Agricultural Policy continued

E. Farmland Preservation

1. Why protect?
2. Loss of farmland
 - a. U.S.
 - b. Florida
 - c. Causes
 - 1) Urban sprawl
 - 2) Economic downturn
 - 3) Technology

II. Agricultural Policy continued

E. Farmland Preservation, continued

3. National Agricultural Land Survey: 1980-81
 - a. Why study?
 - b. 1981 Farm Bill: Agriculture and Food Act
 - 1) Focus: minimize impact of converting farm lands to non-farm lands

II. Agricultural Policy continued

E. Farmland Preservation, continued

4. Future of farmland preservation
 - a. Federal protection programs
 - 1) 1996 Farm Bill
 - a) Earmarks for conservation easements
 - b) Continuous Farm Bill support
 - 2) Oversight:
 - a) USDA Natural Resource Conservation Service (NRCS)

II. Agricultural Policy continued

E. Farmland Preservation, continued

b. Farm Land Zoning

- 1) Area-based Zoning: Development fixed on acreage limits
 - a) Challenge
 - Maintaining and enforcing
- 2) Large Lot Zoning: Minimum of five acres
 - a) Challenge
 - Doesn't discourage development
- 3) Cluster Zoning: Portion developed/portion set aside for agricultural use
 - a) Challenge
 - Inhibits commercial agriculture
- 4) Buffering: Separation of farm from residential
 - a) Challenge
 - Enforcement

II. Agricultural Policy continued

E. Farmland Preservation, continued

4. Future of farmland preservation continued
 - c. Right-to-Farm Laws
 - 1) Protection from nuisance lawsuits

II. Agricultural Policy continued

F. Urban Agriculture

1. History
2. Importance
3. Challenge
 - a) Zoning
 - 1) Euclid v. Ambler Realty
272 U.S. 365 (1926)

II. Agricultural Policy continued

G. Natural Resources

1. Corn to ethanol
 - a. Impact
 - 1) Food costs
 - 2) Land values
 - 3) Environmental degradation
 - 4) Mechanical maintenance costs with increase of 10% - 15% in 2019
2. Water allocation
3. Invasives
4. Genetically Modified Organisms
 - a) Malthus versus Boserup
 - b) Environmental impact
5. Agrichemicals and non-point source pollution

II. Agricultural Policy continued

H. Agroterrorism

1. A subset of bioterrorism
 - a. Tactic since the beginning of civilization
 - 1) Roman Empire: Salting and burning of fields
 - b. World War I
 - 1) German use of infectious disease glanders
 - c. World War II
 - 1) Japanese special division Unit 731
 - d. Soviet Union
 - 1) Glanders in Afghanistan

References

Agriculture: An Introduction

1. Carter, G.V. & Dale, T. TOPSOIL AND CIVILIZATION 25, (University of Oklahoma Press, 1974).
2. Cochrane, W. THE DEVELOPMENT OF AMERICAN AGRICULTURE 195, (University of Minnesota Press, 1993).
3. *USDA Online*, (last visited May 8, 2019) <http://www.usda.gov>
4. Federal-Aid Road Act of 1916, 39 Stat. 355, as amended and supplemented.
5. NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND GRANT COLLEGES, THE LAND GRANT COLLEGE TRADITION 3 (1994).
6. The Hatch Act of 1887 (codified as amended at 7 U.S.C. §§ 351a-351i (1994 & Supp. II 1996)).
7. The Morrill Land-Grant College Act, ch 841, 26 Stat. 417 (1890) (codified as amended at 7 U.S.C. § 301 (1994)).
8. The Nelson Amendment, Act of 1907, ch. 2907, 34 Stat. 1256, 1281-82 (authorizing increases in each state's annual appropriation by \$5000 for the first year, and an additional \$5000 each year thereafter until the total was \$50,000).
9. The 1914 Smith-Lever Act, 7 U.S.C. § 341 (1994 & Supp. II 1996).
10. Improving America's Schools Act, Pub. L. No. 103-382, tit. I, § 101, 108 Stat. 3519 (codified at 20 U.S.C. § 6301 (1994)) (stating Congress recognized "the most urgent need for educational improvement is in schools with high concentration of children from low-income families").
11. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-132, § 334, 110 Stat. 888.
12. *U.S. House Committee on Agriculture*, (last visited May 8, 2019) <http://www.agriculture.house.gov>
13. *Florida Department of Agriculture and Consumer Services Online*, (last visited May 8, 2019)
14. *2012 Census of Agriculture, USDA-NASS Online*, (last visited May 13, 2019) Of note: *2017 Census of Agriculture* to be released February 2019.

15. Perishable Agricultural Commodities Act (PACA), 7 U.S.C. § 499(a), et. seq. (1930). *See also*, Michael Ruberto, *Pitfalls of Banking Practice: Traps for the Unwary*, 608 PLI/LIT (1999).
16. National Broiler Marketing Ass'n v. U. S., 436 U. S. 816, 825-26 (1978).
17. Schneider, S. *A Reconsideration of Agricultural Law; A Call For the Law of Food, Farming, and Sustainability*, 34 Wm. & Mary Env'tl. L. & Policy Rev. 935. Spring, 2010.
18. Food Quality Protection Act, Pub. L. No. 104-170, 100 Stat. 1489 (1996 (amending 7 U.S.C. § 136 et. seq. (1994), and initiating the President's Food Safety Initiative, U.S. Dept. of Health & Human Services).
19. Food Security Act of 1985, Pub. L. No. 99-198, 7 U.S.C. § 1631.
20. Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No 101-624, 7 U.S.C. § 958.
21. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-132, § 334, 110 Stat. 888.
22. The Farm Loan Act of 1916, 12 U.S.C. § 2001 (1994) (creating the Farm Credit System to provide agricultural loans. The authorizing statute states is the 'policy of Congress...that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income...by furnishing sound, adequate, and constructive credit and closely related services to [farmers], their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.'").
23. Farm Credit Act of 1971, Pub. L. No. 92-181, 12 U.S.C. § 2001, et. seq.
24. Farm Service Agency, created in 7 U.S.C. § 6932 (1994) (succeeding the USDA's agricultural Stabilization & Conservation Service, which had administered domestic commodity programs since 1961). *See also*, *Farm Service Agency Online*, (last visited May 23, 2018).
25. Green, S. Article, *The Search for a National Land Use Policy: For the Cities' Sake*, 26 FORDHAM URB. L.J. 69, 71 (1998) (noting the failure of the National Land Use Plan, and arguing for "the need for a federally mandated land use policy."). *See also* COUNCIL ON ENVIRONMENTAL QUALITY, THIRD ANNUAL REPORT, 165-197, 224-230 (1972) (pointing out three basic deficiencies in existing local land use schemes).
26. Nolan et. al., *Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State*, 17 PACE L. REV. 593 (1997).
27. Farm Security and Rural Investment Act of 2002 (7 U. S. C. Section 7901 et seq.).

28. *Farm Bill 2014, USDA Section-By-Section Summary, USDA Online*, (last visited April 28, 2014) <http://www.usda.gov/farmbill>
29. Rangeland Reform '94, Department of the Interior and Related Agencies Appropriation Act of 1994, Pub. L. No. 103-138.
30. The Taylor Grazing Act of 1934, Pub. L. No. 73-482, 43 U.S.C. § 315 et. seq. See also *Public Lands Council v. Babbitt*, 929 F. Supp. 1436, 1440 (D. Wyo. 1996) (citing the Bureau of Land Management's use preference for grazing, and finding the "Taylor Grazing Act does not permit the Secretary to issue permits allowing the permittee to put the land to any use except livestock grazing.").
31. The Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 43 U.S. C. § 1701 et. seq.
32. 1964 Wilderness Act. 16 U.S.C. § 1701 et. seq.
33. 1980 Congressional Grazing Guidelines, *Grazing in National Forest Wilderness Areas*, Conference Report on S.2009 (H.R. 96-1126) (stating guidelines and policies are to be applied nationwide, and considered in the overall context of the Wilderness Act's purposes).
34. *Bureau of Land Management Online*, (last visited May 15, 2019) <http://www.blm.gov/nhp/index.htm>
35. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, A-23-25, A-52-53, 55 U.N.T.S. 194, 212-216, 250-251.
36. North American Free Trade Agreement (NAFTA), Dec 17, 1992, U.S.-Can.-Mex., chs. 11, 14, 21 I.L.M. 296.
37. CAFTA-DR Narrowly Wins House Vote, Signed Into Law. *Bridges Weekly Trade News Digest*. Vol. 9 No. 28. August 3, 2005.
38. Agricultural Foreign Investment Disclosure Act of 1978, Pub. L. No. 95-460, 7 U.S.C. § 3508, and 7 C.F.R. § 781 (requiring "any foreign person [who] acquires or transfers" any interest (other than a security interest) in U.S. agricultural land (including, ranch lands and timberlands) to file a report of ownership within 90 days after acquisition or transfer with the USDA's Agricultural Stabilization Conservation Service, in the county office where the land is located. The Act provides penalties up to 25 % of the property's fair market value, and requires all filings to be subject to public inspection).
39. National Agricultural Law Center (last visited April 25, 2019).

40. Farm and Ranch Lands Protection Program repealed by the Agricultural Act of 2014 and replaced by the establishment of the Agricultural Conservation Easement Program (ACEP) (last visited May 12, 2016).
41. USDA Natural Resources Conservation Service Online *Farmland Protection Policy Act* <http://www.nrcs.usda.gov> (last visited May 15, 2019).
42. Centner, T. *Governments and Unconstitutional Takings: When Do Right-To-Farm Laws Go Too Far?* Boston College Env'tl. Affairs Law Rev., Vol. 33. Issue 1, Spring 2006.
43. 2014 Farm Bill *Agricultural Act of 2014*. P. L. 113-79. (last visited April 29, 2017).
44. Bellows, A. and Brown, K. The Health Benefits of Urban Agriculture, Community Food Security Coalition's North American Initiative On Urban Agriculture, 2 (2003); Jerome Kaufman and Martin Bailkey, Farm Inside Cities: Entrepreneurial Urban Agriculture in the United States, Lincoln Institute of Land Policy (2000).
45. National Agricultural Library. <http://NAL.USDA.gov/contact-US> (last visited April 25, 2019).
46. Barr, C. *Boom in Organic Farming Outpaces Regulator*. Wall-Street Journal-Marketplace, December 10, 2014.
47. *International Organic Market on an Upward Trend*. Natural Products Insider. November 8, 2010. <http://www.naturalproductsinsider.com> (last visited April 21, 2016).
48. *Global Organic Food Market to Grow Over 16% by 2020*, Concludes TechSci Research. August 27, 2015. From TechSci Research <https://www.techsciresearch.com> (last visited July 3, 2018).
49. *U.S. Organic Sales Ring Up Record 52.5 Billion In 2018*. <http://www.naturalproductsinsider.com> May 17, 2019. (last visited May 31, 2019).
50. Olexa, M. T. *Pesticide Use and Impact*. 16th Annual Conference on Legal & Policy Issues in the Americas. Gainesville, FL, May 11, 2015.
51. Ansbacher, S. F., Olexa, M.T. and Maurer, K. *Florida's Downtowns are Free to Grow Broccoli. .. and Chickens (Sometimes)*, Florida A&M Law Review. Vol.2, No.1. Fall 2015.
52. Alvarez, J. *Cuba's Agricultural Sector*. University of Florida Press, 2004.
53. *Cuba's Food and Agriculture Situation Report*, Office of Global Analysis, FAS, USDA, 2008.
54. Hagelberg & Alvarez, *Cuban Agriculture: The Return of the Campesinado*. Cuba in Transition, ASCE, 2009.

55. Hevia, W., Olexa, M. T., Ankersen, T. and Messina, W. A. Jr. *Seizing the Organic Moment: Cuba's Agricultural Crossroads and Certified Organic Export Potential*. Drake Journal of Agricultural Law. Vol. 21, No. 3. Fall 2016.
56. Olexa, M. T., Grant, L, Walker, T and Adams, D. *More Land but Fewer Fences: Limitations to Statewide Reach of Land Grant Universities*. Submitted for publication June 14, 2018.
57. *2018 Farm Bill: Background: Spending Allocation Reminder-Nutrition (SNAP) Dominates*. Farm Policy News. <https://farmpolicynews.illinois.edu> (last visited July 11, 2018).
58. *Tourism Booming in Cuba Despite Tougher New Trump Policy*. www.voanews.com January 22, 2018. (last visited July 17, 2018).
59. Sullivan, M. P. *Cuba: U.S. Policy in the 116th Congress*. Congressional Research Service. March 29, 2019. (last visited May 30, 2019).
60. Gonzalez, J. *NAFTA's Economic Impact/Council on Foreign Relations*. www.cfr.org (last visited July 18, 2018).
61. Bruorton, M. *NAFTA: A Major Challenge for Southeastern Speciality Crop Producers*. VSC News. Vol. 1, No. 1. January 2018.
62. Villarreal, M. A. and Fergusson, I. F. *NAFTA Renegotiation and the Proposed United-States-Mexico-Canada Agreement (USMCA)*. Congressional Research Service. February 26, 2019. (last visited June 3, 2019).
63. Good, Keith. *China Halts U.S. Soybean Purchases, While USMCA Prospects Unfold Under A New Threat of Tariffs On Mexico*. Farm Policy News Update, May 31, 2019. <https://farmpolicynews@illinois.edu> (last visited June 3, 2019).