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RECENT STATE DEVELOPMENTS IN AGRICULTURAL LAW

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RECENT STATE DEVELOPMENTS IN AGRICULTURAL LAW*

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This article surveys recent legislation and bills in process that deal with agricultural and food law in selected agricultural states in the United States. In addition to categorizing statutory and legislative developments, emerging issues are analyzed in terms of their background and potential for new legislation in the years ahead. Some of the law surveyed is being addressed at both federal and state levels; other legislation reflects local problem situations.

Legislative amendments and new enactments dealing with agriculture and the food and fiber industries regularly constitute a significant part of the session laws of states where farming and related businesses are a prominent component of their economy. Unfortunately, no research of library service exists that assembles such state legislative developments for comparative analysis.

This article surveys recent statutes and amendments, bills in process, and judgements by state officials regarding new or impending state law that addresses agricultural and food topics. This investigation was undertaken in an effort to determine what commonality of concerns exists among the

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several states and to identify emerging legislative issues relating to farming, food, and fiber.

INTRODUCTION

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

Defintion and Scope

Regardless of these positions, anyone who has undertaken the task of defining the words "agriculture," "farm," or "farmers" appreciates the definitional difficulties involved in distinguishing between a "bona fide farm" and "hobby farm" for tax purposes, or charterizing an "association of farmers" for antitrust reasons. [3/]

While these words suffer from the oft-met difficulty encountered by lawyers that "everybody knows what agriculture is until you are forced to define it,' "agricultural law" will be broadly construed to address the several current and important legal and economic issues that impinge upon that broad sector of the U.S. economy which is involved in the production of basic food and fiber products and how they are stored, transported, processed, and distributed. [4/]

This survey of agricultural law will embrace both "micro-legal" and "macro-legal" considerations. Micro-legal analysis refers to the study and resolution of the individual decision-making problems of farmers and agribusinessmen; macro-legal analysis deals with the broader policies enacted

at federal and state levels for the benefit of farmers, food and fiber consumers, and marketing intermediaries. 5/

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

There are few useful guidelines available for this taxonomic effort. In the publication entitled Bibliography of Agricultural and Food Law: 1960-1978, an attempt was made to organize a broad range of law review articles, government publications, treatises, and commentaries relating to the defined subject matter into what were hoped to be useful groupings. 6/

The categories employed in that bibliography will be used in this survey article. They are (1) agricultural resource use and planning, (2) agricultural business and estate planning, (3) antitrust and market regulation, (4) food protection programs, (5) traditional agricultural policy, and (6) agricultural taxation and planning.

Sources and Procedure

For purposes of this survey, those states were selected which ranked in the top three 1977 gross sales classifications for each of the major agricultural products produced in the United States. Individual state session laws or codes were used to determine what types of statutory developments had occurred in their last legislative sessions that related to agricultural law. 7/

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

A substantial number of state officials responded to this request with letters, slip laws, and commentaries on impending developments. [8] This information was summarized and combined with that gained from session law and code search.

AGRICULTURAL RESOURCE USE AND PLANNING [9]

Two major resource issues are common to several states. Both have counterpart concern at the federal level. They are (1) restriction on the use of agricultural chemicals and (2) measures to protect prime farmland from nonagricultural use and foreign ownership.

Agricultural Chemical Usage

Since the issuance of Silent Spring, the public has become increasingly aware of potential dangers in the use of pesticides and other chemicals employed in agricultural production. [10] Congress recognized these dangers earlier, [11] but the problems have become more imminent due to a recent upsurge in chemical usage [12] and because of conflict in state and federal environmental repsonsibilities [13] and difficulties in interpretation of newly enacted federal legislation. [14]

Several states recently have developed legislation relating to the use of pesticides. Arkansas has newly regulated the labelling, distribution, storage, transportation, and disposal of pesticides and thus brought its law into general conformance with many other state pesticide regulations. [15] Nevada recently passed a law allowing inspectors from the state department of agriculture to take pesticide samples. [16] They may enter upon any public or private premises at reasonable times. In Montana, its pesticide law was recently amended to no longer allow retail outlets to obtain an

annual license from the Department of Agriculture but to still allow the department to retain the power to decide which pesticides may be sold at the retail level. 17/ California has exempted the issuance of pesticide-use permits from the California Environmental Quality Act. 18/ The regulatory programs of the department and county agricultural commissioners are to be certified as functionally equivalent to the California Environmental Quality Act requirements in terms of protecting the environment.

Three states have enacted pest-control laws. Idaho has a new law that authorizes the implementation of a predator-control program and indicates that any toxic material used for predator control must be approved by the director of the department of agriculture. 19/ Mississippi has enacted legislation to control fire ants, and it establishes a state authority to manufacture insecticides to deal with the problem. 20/ Nebraska legislation allows its department of agriculture to enter into cooperative agreements with any state or federal agency for the purpose of controlling insects and plant disease outbreaks. 21/

In Texas, persons who use insecticides and other chemicals for pest control on their own property are now exempt from state pest-control licensing requirements. 22/ This 1977 amendment also allows an employee to use these chemicals on his employer's property with a license if he was hired primarily for another purpose. However, it does not authorize the use of chemicals which have restricted uses under EPA rules.

The proliferation of legislation and regulation at federal and state levels have already led to confusion in the pesticide industry and farming. Various studies have been made to analyze the impact of what is now a maze of conflicting and ambiguous terms and rules. 23/

Farmland Protection

Another major resource issue common to several states and now being addressed at the federal level is the protection of prime farmland from "unnecessary" nonfarm uses and from foreign ownership.

The conversion of cropland into housing subdivisions, water reservoirs, highways, and other land uses the preempt agriculture has become a subject of increased debate at all levels of government. Estimates by the Soil Conservation Service of the U.S. Department of Agriculture for the period 1967-1975 indicate that about 3 million acres of rural land were annually acquired for nonagricultural use. Legislation addressing this issue was proposed in the 95th Congress. 24/ The legislation would establish a commission to study agricultural land conversion and to make recommendations to the Congress for the possible modification of federal policy. Legislation would also set up a demonstration program to finance innovative state and local efforts to protect farmland. This legislative proposal did not pass the 95th Congress and likely will be under consideration when Congress reconvenes.

States have continued to develop laws that are directed to the preservation of agricultural land for farm uses. Maryland, in 1977, established a program for the purchase of agricultural land perservation easements by the Maryland Agricultural Land Preservation Foundation. 25/ This law was designed to prevent conversion of farmland into more intensive uses. Such an easement restricts the land to agricultural purposes. In 1978, a new bill was passed to fund this agricultural preservation program. 26/ In New Hampshire, a similar proposal may be considered in that state next year. 27/ Instead of buying easements, however, the state would probably be buying

development rights. The purpose, however, is basically the same as the Maryland statute. In West Virginia, an agricultural preservation statute is likely to develop there as well. 28/

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

In Oklahoma, new law allows mining on prime farmland only when certain conditiona are met. 30/ The conditons generally include the restoration of the land and the proper disposal of waste materials coming from the mining process.

Farmland ownership is an issue of significance at both federal and state levels. Much of the concern arose after a significant study in 1975 by Morrison and Krause on alien and corporate land ownership. 31/

At the federal level, one of the more recent developments was the Agricultural Foreign Investment Disclosure Act. 32/ This law requires foreign persons who acquire, transfer, or hold interest in land used for agricultural or forest production to report such transactions and holdings to the Secretary of Agriculture. It also directs the Secretary to analyze information contained in these reports to determine the effects of such transactions and holdings on family farms and rural communities. This bill was the result of a 1975 Commerce Department study which was authorized by

the Foreign Investment Study Act of 1974. [33/] As part of this concern, there was a GAO report [34/] issued in 1978 on foreign ownership of U.S. farmland.

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

Foreign ownership of agricultural land has been the subject of interest in three more states this last year. Missouri passed a law which allows aliens to acquire real estate there except for "agricultural land," which is defined as any tract of land consisting of more than five acres which is capable of supporting an agricultural enterprise. [35/] A Montana official has indicated that there will be a good deal of interest in foreign ownership of farmland in the next session of its legislature. [36/] Maryland set forth a resolution urging the governor to direct state agencies to study and report to the General Assembly on the extent of foreign ownership of farmland within the state. [37/] At present, there are no laws in Maryland which restrict the right of foreign ownership. Recent legislation in Iowa requires that conveyances or leases of agricultural land, with certain exceptions, must be recorded by the grantee or lessee not later than 180 days after the date of the conveyance or lease. [38/] If the grantee or lessee is a nonresident alien, an affadavit must be filed at the time of the recording showing the name, address, and citizenship of the nonresident alien. [39/] If the nonresident alien happens to be a partnership, limited

partnership, corporation, or trust, the affadavit must disclose the names, addresses, and citizenship of the nonresident alien individuals who are the beneficiaries or owners of the entity. 40/

Other State Resource Developments

An environmental problem that has been receiving increased attention in the past few years is the construction of high-voltage power lines across agricultural land. Some farmers who are concerned about possible health and work hazards have started to become involved in judical and administrative challenges to further construction. In Woida v. United States, 41/ individual farmers and groups opposed to the construction of a high-voltage transmission line (HVTL) in Minnesota unsuccessfully sought a preliminary injunction in federal court to halt further right-of-way acquisitions. The plaintiffs alleged, among other things, that the Environmental Impact Statement for the HVTL failed to discuss the potential effects on agricultural aviation. The court ruled that the relevant regulations 42/ of the Rural Electrification Administration (REA) required only an examination of the power line's effects on airports and their approaches and not the effects on crop-dusting operations. The regulations did not attempt to reach the concerns of the aeiral applicator who may be confronted with another obstacle to avoid. The court granted considerable deference to the expertise of the REA in matters of power-line safety.

Last year the State of New York passed a law requiring that a copy of an application for a certificate of environmental compatibility be sent to the Commissioner of Agriculture and Markets prior to the construction of any major utility transmission facility. 43/ It further requires that the

Department of Agriculture and Markets be a party to certification proceedings. 44/

A New York law gives the Department of Environmental Conservation the power to delegate certain of its functions to the state's soil and water conservation districts. 45/ These include the authority to review and approve plans as well as the authority to issue permits.

In 1977, Texas gave agricultural use a priority in receiving natural gas supplies, expect to the extent that those supplies are required to maintain residences or hospitals, or are required for other uses vital to public health and safety. 46/ In November of 1978 a bill was filed in the Texas House of Representatives which would make increased supplies of natural gas available for water pumps used to irrigate agricultural land. 47/

New has recently amended its Soil and Water Conservation Districts Law. 48/ The amendment makes the president of the College of Environmental Science and Forestry at the State University of New York an ex-officio member of the Agricultural Resources Commission and the state's Soil and Water Conservation Committee.

Several states enacted legislation relating to farm animal protection and production. South Carolina has a new act designed to control swamp fever. 49/ Nevada newly regulates retail sales of veterinary drugs. 50/ Nebraska's new law allows animal technicians to perform veterinary services formerly performed only by veterinarians. 51/ The purpose of this law is to make more effective utilization of its limited supply of veterinarians by allowing them to delegate veterinary tasks to animal technicians.

The State of New York has enacted more stringent provisions regulating the feeding of cattle, swine, and poultry, 52/ The law previously had

prohibited the feeding of garbage to these animals. The 1978 amendment added offal and carcasses to the list of items that may not be fed to cattle, swine, or poultry.

In California, a law was enacted to provide that a person whose animal is destroyed in eradicating or controlling a disease not be indemnified for his loss if he is in violation of any provision or regulation relating to quarantine measures. 53/ California also allows a board of veterinary examiners to make random, unannounced inspections of veterinary premises and also had developed stricter sanitation requirements for those premises. 54/

Recent legislation in Michigan created a state Toxic Substance Loan Commission to receive and consider loan applications from residents who have suffered a financial loss as a result of contamination of livestock by a toxic substance. 55/ The Commission is autonomous entity within the Department of Public Health.

Farm labor laws have seen some development in Pennsylvania and Minnesota. In Pennsylvania, a seasonal farm labor policy has been enacted. 56/ This act establishes minimum wages and hours for labor of seasonal farm workers and provides for the inspection of seasonal farm workers' farm labor camps and requires certain records to be kept. The act allows the state's Environmental Quality Board to adopt regulations to assure safe and healthful farm labor employment and also establishes a seasonal farm labor committee within the Department of Environmental Resources. There were certain changes in Minnesota's farm labor laws. 57/ They were amended so that Workers' Compenstation will provide for coverage of certain farm owners and employees if they elect the coverage. Minnesota further has a new law which requires employers of corn detasslers to provide transportation for

the workers they terminate or who become injured or sick to the location where the employer picked them up that day. 58/ Virginia has created a migrant and seasonal farm workers' commission to bring about greater coordination between federal and state agencies in the inspection of migrant camp facilities. 59/

AGRICULTURAL BUSINESS AND ESTATE PLANNING

Two major developments in business and estate planning have occurred and are being addressed in state legislatures. The first deals with amendments to existing laws that restrict the use of the corporate form of business organization for farmers. The second involves modification of state inheritance and estate tax laws in an effort to achieve greater conformity with the recently passed 1976 Tax Reform Act and the Revenue Act of 1978 at the federal level. Other developments at the state level appear to be more unique and local in orientation.

Corporate Farming

Laws restricting corporations from engaging in farming activities have been enacted in a number of states. Some of these statutes can be traced back to the 1930's or earlier 60/ while others are of more recent origin. 61/ Most were enacted out of a concern that the family farm would be replaced by the corporation as the basic unit of agriculture. 62/ The South Dakota corporate farming statute expressly articulates this concern:

> The Legislature of the State of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming. 63/

Each of the statutes is unique, but there are some common features. The typical corporate farming statute prohibits corporations from engaging in agriculture or from owning farmland. Exemptions from this prohibition are usually allowed for certain classes of corporations, based on the nature of the corporation and on the nature of the activity being carried out on the land in question. 64/ The South Dakota statute 65/ is illustrative since it has exemptions based on both the nature of the corporation itself and on the nature of its activities. "Family farm corporations" 66/ and "authorized farm corporations" 67/ are specifically exempted from the act. 68/ Similarly, corporations engaged solely in the feeding of livestock are not bound by the prohibition of corporate farming. 69/ Similar provisions can be found in most of the other state corporate farming statutes. 70/

Many states have found it necessary to amend their corporate farming statutes in recent years. A 1978 amendement 71/ to Iowa's corporate farming act added new definitions for the terms "actively engaged in farming" and "beneficial ownership." The amendment also clarified one point in the existing law. Corporations are generally prohibited from acquiring or leasing agricultural land in Iowa for a period of five years from August 15, 1975. 72/ One of the exceptions to this rule covers agricultural land acquired for research or experimental purposes if the commercial sales from the land are incidental to the research and experimental objectives of the corporation. 73/ The amendment provides that sales will be considered incidental if they constitute less than 25 percent of the gross sales of the primary product of the research. 74/

The 1978 Iowa amendment requires additional information to be supplied by a corporation in its annual report of agricultural activity. 75/ There

are new civil penalties established for failing to file the report in a timely manner. 76/ New penalties are also provided by the amendment for corporations violating the prohibition of acquiring agricultural land. 77/ A corporation can be fined up to $50,000 and can be ordered to divest itself of any land obtained in violation of the act. 78/

The Wisconsin corporate farming statute was amended last year to bring trusts within the scope of the act. 79/ A trust in Wisconsin is now subject to restrictions similar to those governing corporations in regard to the ownership of farmland. A trust engaged in farming is limited to a maximum of 15 beneficiaries.

An amendment to the Minnesota farm corporation law provides that beef and hog producing corporations may be limited to those with five or fewer shareholders. 80/ A majority of the shareholders must live on the farm. Corporations currently engaged in hog or cattle production are allowed to continue in operation.

New legislation was enacted in Oklahoma limiting the entities which may own or lease land for farming or ranching. 81/ Trusts are limited to ten beneficiaries unless the beneficiaries in excess of ten are related as lineal descendents or by marriage or adoption to lineal descendants. 82/ In addition, at least 65 percent of the trust's annual gross income must be derived from farming or ranching or from allowing others to extract minerals underlying the land. 83/ Partnerships are similarly restricted in terms of size and source of income. 84/ The existing law governing farming and ranching business corporations was amended by eliminating a provision which required annual reports and financial statements to be filed with the State Board of Agriculture. 85/ However, the articles of incorporation must

be approved by the State Board of Agriculture prior to being filed with the Secretary of State. 86/

Estate Planning

In a recent Minnesota case, 87/ a farm wife successfully argued that only one half of the value of the joint tenancy property received by right of survivorship on her husband's death, should be taken into account in calculating the state inheritance tax. Under Minnesota law, jointly held property that passes under right of survivorship is subject to the inheritance tax, except for that portion which can be shown to have originally belonged to the survivor and not to have been received from the decedent for less than adequate and full consideration. 88/ The wife, because of the work she performed on the farm and later as a part-time nurse's aide, was deemed to have contributed equally to the production of the income used to acquire the property held in joint tenancy. Although there was no explicit oral or written partnership agreement in this case, the court held that there was an implied agreement between husband and wife to share profits equally. The court concluded that half of the property held in joint tenancy was not received or acquired by the wife from the decedent for less than full consideration. The wife was therefore entitled to deduct one half of the value of property held in joint tenancy.

A provision of the Maryland inheritance tax law was recently amended to provide for the election of a special valuation for farmland. 89/ Such land may be valued according to its current use rather than its full market value. 90/ The election must be made by the estate representative, and the land must qualify as farmland for five years before and after the decedent's

death. Additional inheritance taxes may be imposed if the agricultural use of the land is discontinued within five years after the date the election was filed. 91/

Other Business-Related Legislation

North Dakota recently amended its version of Section 2-702 of the Uniform Commercial Code. 92/ This section covers the seller's remedies upon the discovery of the buyer's insolvency. The North Dakota amendment added a new subsection which governs the situation where the seller is a producer of agricultural products. In that situation the seller is allowed, upon discovery of the buyer's insolvency, to reclaim the products within ten days after they have been received. 93/ This ten-day limitation does not apply if a misrepresentation of the buyer's insolvency has been made in writing to the seller any time during the three months before the delivery. 94/ Furthermore, the sller's right to reclaim is not subject to the rights of a buyer in the ordinary course of business or any other good-faith purchaser. 95/

The State of South Carolina has enacted a law giving the agriculture department the authority to issue bonds for the construction of, or improvements to, existing farmer markets. 96/ California has recently aided farmers by raising the maximum credit life insurance available to any agricultural borrower from $40,000 to $100,000. 97/

ANTITRUST AND MARKET REGULATION

Some of the most important developments affecting state antitrust enforcement activities have taken place as a result of federal legislative and administrative actions. The Hart-Scott-Rodino Antitrust Improvements Act of 1976 gave the states new power in enforcing federal antitrust law. A federal

grant program has been established to distribute funds to the states to support more vigorous enforcement of state antitrust laws. At the same time, the Federal Trade Commission has been assuming a greater role in investigating state food marketing laws which may be anticompetitive. There has been, however, a great deal of legislative activity at the state level affecting the various marketing and promotion laws for agricultural commodities.

Antitrust Developments

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 98/ gave the attorneys general of the various states the power to bring antitrust suits under the parens patriae doctrine. Antitrust actions can be brought on behalf of natural citizens (not proprietorships and partnerships) to enforce the Sherman Act. 99/ Treble damages may be awarded for injuries suffered by consumers in their states.

Congress has appropriated $10 million in each of the last two years to be used by the states to step up their enforcement of state antitrust laws. 100/ Some of the states, in applying for the federal grants, indicated an intention to investigate trade practices in the food and fiber industry. Montana, for example, stated that special attention would be given to the practices of large interstate retail food chains that buy, process, or market beef. 101/ The State of Florida indicated that it wanted to investigate a possible illegal group boycott by veterinarians in the Tallahassee area. 102/ It seems likely that the activities of firms dealing with agricultural products will be subject to closer scrutiny at the state level in the future.

During the past two years the Federal Trade Commission has studied the effects of state milk price regulation. 103/ The justifications for this sort of regulation, including quality control and the need to keep small processors in business, have been examined. The Commission is contemplating using the results of the study to convince state legislatures to modify milk price regulation. The FTC has also expressed interest in possible private agreements which might complement state legislation. 104/

Food Marketing and Promotion Laws

The Dairy Industry Marketing Act in South Dakota was recently repealed. 105/ The act had prohibited processors, distributors, or retailers from selling, advertising, or offering for sale any dairy product for less than the wholesale price established by a dairy products marketing commission. 106/ Another provision of the act had required that dairy products marketed under different brand names, but of equal grade or quality, be sold at the same price at the retail level. 107/ There was also a provision prohibiting the sale of dairy products below cost for the purpose of decreasing or destroying competition. 108/

A recent New York court decision 109/ upheld the constitutionality of a provision of the state's Agriculture and Markets Law which allows the Commissioner of Agriculture to regulate the licensing of milk dealers. A dealer's license may be denied if its issuance "would tend to a destructive competition in a market already adequately served." 110/ A New Jersey wholesaler had sought to have its license extended to include an additional county in New York. After a hearing, the extension of the license was denied. The wholesaler then brought an action charging that the New York law violated the Commerce Clause.

The lower court affirmed the conclusions of the Commissioner. 111/ It noted in particular the evidence that the wholesaler's plan to distribute only to supermarkets would result in destructive competition with other distributors who served small retail outlets and engaged in retail saels. On appeal, the court determined that the objective of the law was not to protect local milk dealers from outside competition, but rather to maintain a balanced distribution structure which provides milk to small retailers as well as large wholesale customers. Since the purpose was deemed to be consumer protection rather than economic protectionism, no violation of the Commerce Clause was found.

In California, the Unfair Practices Law for the dairy industry has undergone some changes. That portion of the law that made it an unfair practice for a distributor to make or renew a loan to a wholesale customer has been repealed. 112/ Also repealed was the limitation on the furnishing of secret rebates, unearned discounts, advertising materials, and refrigeration equipment. 113/ A new provision gives the Director of Food and Agriculture the authority to set limits on the extension of credit by distributors to wholesale customers. 114/

California has amended a number of its statutes relating to the marketing of agricultural products. One such law requires milk distributors to be licensed by the state as part of the milk market stabilization program. A 1978 amendment 115/ redefines the term "distributor" by including persons operating, owning, or servicing automatic vending machines dispensing milk or cream.. Also included under the new definition are persons selling market milk from a mobile vehicle or to foreign registry vessels. Each distributor is required to obtain a license and must pay a prescribed fee

to the Department of Food and Agriculture.

Another California law requires that manufacturing milk produced within the state comply with the rules, regulations, and standards of the U.S. Department of Agriculture governing quality standards for raw milk. 116/ New standards for the required percentages of milkfat and nonmilk solids were established for certain types of milk.

The California Milk Pooling Act provides for the establishment of pooling plans for fluid milk within the state and for the allocation of milk pool quotas on a production basis. Producers who do not market the amount of fluid milk taht is requried by their pool quota for the months of September, October, and November lose a prescribed amount of their production basis. A 1978 amendment 117/ authorizes the Director of Food and Agriculture to waive these provisions of the Milk Pooling Act if it is determined that there will be sufficient market milk during those months to satisfy market milk needs.

A present California law requires producers of agricultural commodities to pay fees to the Department of Food and Agriculture. A new amendment allows the Department to collect the fees owed by a producer from a handler, who in turn can deduct the amount of the fee from any money owed by the handler to the producer. 118/

California law requires licensed processors and commission merchants or dealers in farm products (except for cash buyers) to pay an annual fee to a farm products trust fund. 119/ The fund is used to idemnify producers when purchasers default in payment for farm products. A law passed last session exempts from the requirement to contribute to the fund any licensee who purchases livestock for slaughter and is bonded under the federal Packers and Stockyards Act. 120/

The Mississippi Grain Dealers' Law of 1978 [121/] provides for the licensing and regulation of grain dealers by the Department of Agriculture and Commerce. Dealers are required to furnish a surety bond, the amount of which depends on their sales and net worth. [122/] Licensed dealers are subject to an annual inspection by the Commissioner of Agriculture and Commerce. [123/] A related law provides for the testing and inspection of devices used in measuring the moisture content of agricultural products. [124/] The Mississippi grain warehousing statute was also amended to provide that a producer can now get a warehouse receipt covering this own grain stored in his own warehouse. [125/] A producer who does not desire receipts for grain stored in his own warehouse is not required to obtain a license. [126/]

In Nevada, the law governing the issuance of livestock receipts by operators of livestock auctions was amended by removing the requirement that the receipts be delivered to the Department of Agriculture. [127/] Receipts are still required to be issued to the purchases of livestock.

Other new state market regulation laws include a Georgia act [128/] that mandates surety bonding for each location of a grain-dealing entity operating at multiple locations, and a Mississippi statute [129/] that amends the farm milk tank law to allow measurement in metric terms.

Agricultural Product Promotion

A good deal of legislation relating to the promotion of agricultural products has been passed at the state level in recent years. Nebraska, for example, has passed a new law allowing a check-off by corn growers for the promotion of the sale and consumption of corn. [130/] This promotional program is patterned after a number of other Nebraska commodity programs previously enacted, including those for wheat, soybeans, potatoes, poultry, and eggs.

A beef industry council has been created in Louisiana to develop and expand both domestic and foreign markets for cattle and beef raised in that state. 131/ The council is given the responsibility for developing a beef promotion and research program. It has the power to levy an assessment on cattle marketed within the state as a means of raising revenue for these programs.

Louisiana has also established a special committee to study the livestock marketing practices and procedures utilized in that state. 132/ Among the areas to be studied are the operation of livestock auction barns and facilities, the chartering of those structures, bonding requirements, escrow accounts, and financial transactions in connection with the marketing and sale of livestock.

Recent legislation in New York allows the Commissioner of Agriculture and Markets to call a special hearing to establish a new rate of assessment for purposes of carrying out dairy promotion orders. 133/ The hearing can be called upon the written petition of at least 25 percent of the milk producers within an affected area. Proposed changes in the rate of assessment can be submitted to a producer referendum without otherwise affecting the other provisions of the promotion order.

New York has also established a milk marketing advisory council to advise the Commissioner of Agriculture and Markets on planning programs and policy relating to the marketing of milk. 134/ Members of the council are appointed by the Commissioner. 135/ Other significant New York legislation includes a program to promote producer-to-consumer direct marketing that has been patterned somewhat after federal law. 136/

An agricultural marketing commission was created in South Dakota in 1978 to conslut with and aid the state's Secretary of Agriculture. 137/ Its purpose is to promote the sale, distribution, and merchandising of farm products, to furnish information about farm products to the public, and to study and recommend efficient and economic methods of marketing. 138/

FOOD PROTECTION

Considerable research and discussion about food product quality and safety has led to recent statutes, bills, and task force proposals at the federal level. 139/ This concern is related to increased legislative attention being paid to the subject of food nutrition. 140/

Labelling and Inspection

Several state laws have been enacted that are aimed at protecting food destined for the consumer. Recent Oklahoma law exempts certain slaughterhouses from inspection, but not retail stores and restaurants. 141/ In Nevada, an act was passed which requires the state's Department of Agriculture to establish a program and system of inspection fees for grading and certifying meats, prepared meats, and meat products. 142/

Mississippi has a new truth-in-lending law for honey. 143/ The product may not be labelled "pure honey" unless it is, in fact, 100-percent pure honey by weight, and any honey product that is less than 100-percent pure honey must be labelled as "artificial honey." The Georgia Commissioner of Agriculture is now permitted to place inspectors on a 24-hour basis at milk facilities if he/she has reason to believe that their milk or milk products are dangerous for human consumption. 144/ Inspectors will remain for as long as the Commissioner deems necessary, and the cost of this inspection

must be paid by the firm or corporation under inspection. In California, the Director of Food and Agriculture is to establish standards for evaluating the efficiency and performance of both state and local inspection services. 145/ This law also provides an advisory committee to assit the director in the administration of inspection services and lowers the maximum fees that the department can charge for dairy farm inspections. The director also has the authority to assign all inspection services in a particular milk product plant to a single agency.

Another new California law requires restaurants that serve butter substitutes to inform their customers that they serve oleomargarine, margarine, or butter substitutes. 146/ This information can be conveyed via individual menus of by wall means.

A California resolution requests that the state's Senate Committee on Agriculture and Water Resources and the Assembly Committee on Agriculture jointly convene interim hearings on wine labelling standards. 147/ The findings are to be reported to the legislature and the governor this next year.

The Alcoholic Beverage Control Law in New York was recently amended to prohibit a licensed farm winery from manufacturing or selling wine not produced exclusively from grapes or other fruits grown within the state. 148/ The amendment also permits a farm winery to manufacture or sell wine from grapes grown by other persons not having a finanacial interest in the license.

Nutrition

The California legislature requested the governor to call a statewide conference on nutrition in the winter of 1978/79 to establish state nutrition policies, including a policy on nutrition education. 149/ Another

California act requires that 50 percent of all food sold in school snack bars and vending machines be nutritious food comprised of milk and dairy products, fruit and vegetable juices and drinks, and the like. 150/

TRADITIONAL AGRICULTURAL POLICY

States have entered the agricultural policy arena, particularly as it relates to beef imports. Some state have passed resolutions urging particular federal action in regard to beef imports. A North Dakota resoulation urges the President of the United States to exercise his authority to limit the import of fresh, chilled, and frozen beef into the United States. 151/ Copies of this resolution was forwarded to the President, Secretary of Agriculture, Secretary of State, and to the North Dakota congressional delegation. In South Dakota, an act was passed that sets forth the state's policy on beef imports. 152/ The act requires state agencies and representatives to adhere to certain principles when representing the State of South Dakota before the United States Congress, the President, the U.S. Department of Agriculture, or any other federal gency in any matter concerning the cattle industry. One such principle is that fed-beef import quotas be broadened to cover all classifications of cattle, beef, and beef products. Fed-beef import quotas should be correlated with domestic beef production so that beef imports will increase when domestic production is low and decrease when domestic production is high. There are various other principles that are enunciated by this South Dakota law.

In Montana, a resolution was passed urging the U.S. Congress to enact legislation which would require the labelling of all beef as either "domestic beef" or "imported beef" and which would ensure that imported beef is subject to the same inspection requirements as domestic beef and meat products. 153/

AGRICULTURAL TAXATION PLANNING

One of the most significant taxation problems for many farmers is the increasingly heavy burden of property taxes due to the sharp rises in the value of farmland. Some states have addressed this problem by enacting preferential assessment laws which afford tax breaks to qualifying agricultural land. 154/ Some of these state laws have been changed or slightly modified since their original enactment. Another area of state taxation that has been subject to change in recent years is the sales tax. Sales of agricultural equipment and machinery are taxed at a lower rate than other itmes in some states. Others have more recently created complete exemptions for farm equipment or supplies.

Property Tax Developments

The electorate in Texas passed an amendment to the state constitution in 1978 that allows property tax relief for various types of property owners and various classes of property, including agricultural land. 155/ The amendment authorizes the legislature to enact legislation giving agricultural land preferential assessment for property tax purposes. The assessment is to be based on the land's productive capacity rather than on its highest and best use. 156/ This will result, in many cases, in a lower assessment and lower property taxes for agricultural land. Although one of the stated purposes of the amendment is to promote the preservation of open-space land, only land which is devoted to farming, ranching, or timber production qualifies for the preferential assessment. 157/

California recently amended its statute that gives preferential tax treatment to land which has been restricted to open-space use through a

contractual arrangement. 158/ Previously, the assessor was required to assess the property by using a specified method which capitalized the income-producing capabilities of the land and could not take into consideration sales data from comparable properties. The law now allows the parties to an agreement enforeably restricting the land to provide in the agreement itself that the valuation from the capitalization of income method shall not exceed the valuation that would have resulted from using the comparable sales method. 159/

Last year, South Dakota amended a provision of the statute that classifies property as agricultural or nonagricultural for tax purposes. 160/ Dwellings on agricultural land that are used for that purpose by the occupants are now classified as nonagricultural property. Previously, such dwellings were classified as agricultural if the owner had other agricultural property with an assessed valuation of at least twice the assessed valuation of the dwellings.

The State of New York has amended its real property tax law to give a special tax break to certain farm buildings and structures. 161/ Any building or structure built during a specified time period and devoted to agricultural or horticultural use is exempted from taxation for ten years. 162/ When a qualifying building is remodeled, the increase in value is similarly exempted. 163/ Recent legislation in Maryland created a permanent property tax exemption for silos used for processing or storing animal feed. 164/ The value of the silos is excluded from consideration in both state and county taxation. 165/

Portions of the South Dakota personal property taxation law were repealed in 1978 166/ applied to agricultural products. One repealed provision, for

example, had established a levy on grain and seed in lieu of other taxes. 167/ A similar provision for honey and sugar beets was also repealed. 168/

Sales Tax Developments

North Dakota has lowered the sales tax on farm machinery and irrigation equipment used exclusively for agricultural purposes. 169/ This lower tax rate also applies to the leasing or renting of farm machinery and irrigation equipment used exclusively within the state. Maryland has added grain bins and grain handling equipment to the list of farm machinery subject to a two-percent sales tax rather than the general sales tax of five percent. 170/ South Dakota has increased the sales tax rate on farm machinery and irrigation equipment from two to three percent, beginning in 1980. 171/ When the sales transaction involves a trade-in or exchange of used farm machinery, the tax is imposed only on the cash difference. 172/

The State of Georgia has created a complete sales tax exemption for machinery and equipment used exclusively for irrigation of farm crops. 173/ The new legislation eliminates the former requirement that a piece of farm machinery must increase both the employment and production capacity of the farm.

Michigan recently revised its sales tax law to exclude the proceeds of the sales of many food items through vending machines or mobile vendors. 174/ Recent New York legislation provides for the refund of the sales tax paid on drugs or medicine used by a veterinarian to treat livestock or poultry produced for sale. 175/

The State of Virginia has amended its statute imposing an excise tax on the sale of applies. 176/ In the past, the tax was levied only on producers selling applies to processors. In recent years, many growers began

processing their own applies. At the same time, many processors had moved into the production area. The reslut of this was that some producers were technically not subject to the excise tax. The new legislation was enacted to correct this inequity.

CONCLUSION

Amid the rather substantial array of legislative enactments and proposals at the state level, certain economic and social food and fiber issues emerge as common to several agricultural states.

1. Continued efforts are being made to protect agriculture from perceived encrouchment by outside sources. Prime farmland is being identified and efforts are underway to restrict its uses to the production of traditional farm commodities. The ownership and operation of farms are increasingly being kept from corporate and foreign control.
2. Farm income and wealth-holdings are being isolated by exemptions or reductions in property and income taxation and revision of estate and inheritance taxes. States have sought to influence federal price and income policies for farmers by the passage of resolutions regarding imports.
3. The farmer's place in the marketplace is being strengthened by new regulations that require marketing firms to meet new standards of financial and commercial responsibility. Farmers are permitted to engage in product promotion to compete with other producers, both in the United States and abroad. And states are looking afresh at their antitrust and price control legislation to not

only reflect the needs of farmers, but to also address the impact of these laws on the consumer and agribusinessmen.

4. The food and fiber consumer has received increased legislative attention at the state level. New laws dealing with inspection and labelling have been passed to permit more informal purchasing decisions by the population. And new efforts are underway to guide consumers toward more nutritious food usage in the years ahead.

5. More attention has been paid to the environment than in earlier years, especially the possible adverse impact of pesticide usage on human and animal health and a preservation of natural resources.

Critics may argue that state legislation tends to be highly provincial, reflecting the concerns of localized problem situations. This analysis of state agricultural law does not support that view. Rather, many of the common statutory concerns of agricultural states are also being addressed in the U.S. Congress.

FOOTNOTES

1/ See, H. Hannah, Beuscher's Law of the Farmer 31 (4th Ed. 1975): "The name Farm Law used in this book does not describe a recognized division of the law. It is only a way of focusing attention on some legal rules that have special importance to farmers.... There is not, of course one law for farmers and another for everyone else." See also, Government and Agriculture: Is Agriculture a Special Case? 1 J. L. Econ. 122 (1958).

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

3/ See, J. O'Byrne, Farm Income Tax Manual § 100 (5th Ed. 1977), and 3 Farmer Cooperative Service, U.S. Department of Agriculture, Legal Phases of Farmer Cooperatives: Antitrust Laws, Bull. No. 100 (1976).

4/ Various authors have presented definitions of this broader view of "agriculture" using changing relationships and events in economic history as the criterial basis for their conceptual treatment: "The concept of agriculture as an industry in and of itself or as a distinct phase of our economy was appropriate 150 years ago" (but because of a dispersion of functions once performed by farmers to businesses around it) "... it has evolved from an agricultural to an agribusiness status ... agribusiness means the sum total of all operations involved in the manufacture of farm supplies; production operations on the farm; and the storage, processing,

and distribution of farm commodities and items from them." J. Davis and R. Goldberg, A Concept of Agriculture 1, 6 (1957). Another commentator has stated "... [M]odern agriculture as broadly defined to embrace the distributive destiny of its products is a composite, or sequence, of three separate and distinct economies ... the production of primary products from the soil, the conversion of feedstuffs into livestock products, and the marketing of products from farm to retail." Breimyer, The Three Economies of Agriculture, 44 J. Farm Econ. 679 (1962).

5/ "Macro" agricultural law is not restricted to the traditional meaning of the term "agricultural policy": the price and income strategies employed by the federal government to resolve the welfare problems of the American farmer. Rather, macro agricultural law refers to that broad range of associated policies directed to protect, facilitate, organize, and insure the production, processing, and distribution of agriculturally derived products of reasonable quality and quantity for the population of this country and the world with equity and efficiency considerations being given to the participants within this economic subsystem. See also, Dahl, Public Policy Changes Needed to Cope with Changing Structure, Am. J. Agric. Econ. 213 (May 1975): "It is increasingly evident that it is impossible to carry out any agricultural policy without having a substantial influence on a wide range of other economic policies throughout our food and fiber system and vice versa."

6/ W. Grant and D. Dahl, Bibliography of Agricultural and Food Law: 1960-1978 (Minnesota Economic Regulation Monograph No. 1, NC-117 Special Report No. 1, 1978).

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

8/ These states included Arkansas, California, Florida, Georgia, Hawaii, Idaho, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, Oklahoma, South Carolina, Utah, Virginia, and West Virginia. Appreciation is extended to the following individuals for their cooperation and comments: J. B. Grant, National Association of the State Departments of Agriculture, and the following state officials: Robert W. Anderson, Arkansas; Richard Rominger, California; Doyle Conner, Florida; Thomas T. Irvin, Georgia; John Forias, Hawaii; Wilson Kellogg, Idaho; Young D. Hance, Maryland; B. Dale Ball, Michigan; Jim Buck Ross, Mississippi; W. Gordon McOmber, Montana; Roger Sandman, Nebraska; Thomas W. Ballow, Nevada; David Stratton, Oklahoma; G. Brain Patrick, Jr., South Carolina; Dr. Kenneth Creer, Utah; S. Mason Carbaugh, Virginia; and Gus R. Douglas, West Virginia.

9/ In economic usage, "resources" include land, labor, and capital; "land" being interpreted to mean all such natural physical resources as soil, mineral deposits, water, and air; "capital" embraces manufactured property and credit as well as other wealth-holdings. In legal terms, this category includes real and personal property law and its extensions (e.g., land-use planning and environmental law), labor law, and portions of commercial law.

10/ R. Carson, Silent Spring (1962).

11/ The Insecticide Act, Act of April 26, 1910, ch. 191, 36 Stat. 331; the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (1947), 7 U.S.C. §§ 135(k) (1970) and as amended.

12/ U.S. Department of Agriculture, Agriculture Handbook No. 551, 1978 Handbook of Agricultural Charts 10 (1978): Total usage of farm inputs from 1967 to 1978 increased two percent; agricultural chemical usage increased by 50 percent, the largest of any farm input category.

13/ Megysey, Government Authority the Use and Application of Pesticides: State vs. Federal, 21 S. D. L. Rev. 652 (1976). See also, Comment, Agricultural Pesticides: The Need for Improved Control Legislation, 52 Minn. L. Rev. 1242 (1968).

14/ The Environmental Protection Agency has had difficulty implementing the amended FIFRA. The Federal Environmental Pesticide Control Act of 1972 (FEPCA) mandated that its provisions be fully implemented by EPA by October 21, 1976. This included registration of over 40,000 pesticides, classification into general- and restricted-use groupings, and certification of application for the restricted-use group. The job was too great for the time permitted and Congress has extended the date three times while holding hearings on proposed regulations, many of which are yet to be issued. See, House Committee on Agriculture, Amendements to Federal Insecticide, Fungicide, and Rodenticide Act, H. R. Rep. No. 663, 95th Cong., 1st Sess. (1977).

15/ Ark. Stat. Ann. § 77-227 to -247 (Supp. 1977).

16/ Nev. Rev. Stat. §555.420 (1977).

17/ Mont. S.B. 124 (1978) (amending Mont. Rev. Codes Ann. §§ 80-207, 80-8-212 (1978)).

18/ Act of June 30, 1978, Ch. 308, 1978 Cal. Legis. Serv. 810 (West).

19/ Idaho Code § 20-103 (Supp. 1978).

20/ Miss. Code Ann. § 69-1-81 to -95 (Supp. 1978).

21/ Neb. Rev. Stat. § 2-1, 067 (Supp. 1978).

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

23/ See, e.g., A. Little, Evaluation of the Possible Impact of Pesticide Legislation on Research and Development Activities of Pesticide Manufacturers (EPA-54019-75-018) (1975); U.S. General Accounting Office, Office of the Comptroller General of the U.S., Federal Pesticide Registration Program: Is It Protecting the Public and The Environment Adequately from Pesticide Hazards? (1975).

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

25/ Md. Agric. Code Ann. §§2-508 to -514 (Supp. 1978).

26/ Md. S. B. 679 (1978).

27/ Letter from Howard C. Townsend, Commissioner of the Department of Agriculture of New Hampshire (Nov. 15, 1978).

28/ Letter from William Gillespie, Department of Agriculture of West Virginia (Nov. 13, 1978).

29/ Va. H. B. 997 (1978).

30/ Act of February 2, 1978, Ch. 10, 1978 Oklahoma Sess. Laws 11.

31/ U.S. Department of Agriculture, Economic Research Service Pub. No. 284, State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation (1975). See also, Morrison, Limitations on Alien Investment in American Real Estate, 60 Minn. L. Rev. 621 (1976).

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

33/ Pub. L. No. 93-479, 88 Stat. 1661 (1974).

34/ U.S. General Accounting Office, Office of the Comptroller General of the U.S., Foreign Ownership of U.S. Farmland--Much Concern, Little Data (CED-78-132 1978).

35/ Act of April 28, 1978, S.B. 685, 1978 Mo. Legis. Serv. 48 (Vernon).

36/ Letter from W. Ralph Peck, Montana Department of Agriculture, November 16, 1978.

37/ Md. H. J. Res. 72 (1978).

38/ Act of June 27, 1978, Ch. 1079, § 9, 1978 Iowa Acts 373 (amending Iowa Code Ch. 558 (1977)).

39/ Id.

40/ Id.

41/ 46 F.Supp. 377 (D. Minn. 1978). A state court case involving the same power line and opposition from farmer-citizen organizations is No Power Line v. Minnesota Environmental Quality Council, ___ Minn. ___, 262 N.W. 2d 312 (1977).

42/ 39 Fed. Reg. 23245 (1974).

43/ N.Y. Pub. Serv. Law § 122(2)(a)(ii) and § 124(1)(3) (McKinney Supp. 1978-79).

44/ Id. § 124(1)(e).

45/ N.Y. Envir. Conserv. Law § 3-0301(2)(p) (McKinney Supp. 1978-79).

46/ Tex. Rev. Civ. Stat. Ann. art. 6066(f) (Vernon 1978 Supp.).

47/ Tex. H.B. 1, filed November 13, 1978.

48/ N.Y. Soil & Water Conserv. Dist. Law § 64(1) (McKinney 1978-79 Supp.).

49/ S.C. Code §§47-13-1310 to 47-13-1400 (supp. 1978).

50/ Nev.Rev.Stat. §639.2345 (1977).

51/ Neb. Rev. Stat. §§71-1,168 to -1,185 (Cum. Supp. 1978).

52/ N.Y. Agric & Mkts. Law §72-a(1),(2)&(3) (McKinney Supp. 1978-79).

53/ Cal. Food & Agric. Code §9595 (West Supp. 1979).

54/ Cal. Bus. & Prof. Code §4809.7 (West Supp. 1979).

55/ Act of June 29, 1978, P.A. 273, 1978 Mich. Legis. Serv. 873 (enacting Mich. Comp. Laws §§325.831 to 325.845).

56/ Act of June 23, 2978, Act No. 93, 1978 Pa. Legis. Serv. 466 (enacting Pa. Stat. Ann. tit. 43, §§1301.101 to 1301.606).

57/ Minn. Stat. Ann. §§ 176.011, 176.012 (West Supp. 1979).

58/ Minn. Stat. Ann. § 181.83 (West Supp. 1979).

59/ Va. Code §§ 9-149 to -152 (1978).

60/ See, e.g., the North Dakota corporate farming statute, N.D. Cent. Code Ann. §§ 10-06-01 to -06 (1976), which was originally enacted in 1932.

61/ For a compilation of some of the statutes enacted since 1970, see Morrison, State Corporate Farming Legislation, 7 U. Tol. L. Rev. 961, 963 n. 7 (1976) [hereinafter cited as Morrison]. South Dakota's corporate farming statute, S.D. Comp. Laws Ann. § 47-9A-1 to -23 (Supp. 1979), was enacted in 1974. The statute is examined in Comment, The South Dakota Family Farm Act of 1974: Salvation or Frustration for the Family Farmer?, 20 S.D.L. Rev. 575 (1975).

62/ Morrison, at 961.

63/ S.D. Comp. Laws Ann. § 47-9A-1 (Supp. 1979).

64/ Morrison, at 964, 965.

65/ S.D. Comp. Laws Ann. §§ 47-9A-1 to -23 (Supp. 1979).

66/ Id. § 47-9A-14.

67/ Id. § 47-9A-15.

68/ Id. § 47-9A-13.

69/ Id. § 47-9A-11. There are other exemptions in the South Dakota statute. Id. §§ 47-9A-4 to -10 and -12.

70/ See, Morrison at 967-72 for an indepth look at the exemptions found in the corporate farming statutes of eight upper Midwest states.

71/ Act of June 27, 1978, Ch. 1079, 1978 Iowa Acts 371 (amending Iowa Code Ch. 172C (1977)).

72/ Iowa Code Ann. § 172C.4 (Supp. 1978-79).

73/ Id. § 172C.4(2).

74/ Act of June 27, 1978, Ch. 1079, § 2, 1978 Iowa Acts 371 (amending Iowa Code § 172C.4(2) (1977)).

75/ Act of June 27, 1978, Ch. 1079, §§ 5, 6, 1978 Iowa Acts 373 (amending Iowa Code § 172C.5 (1977)).

76/ Act of June 27, 1978, Ch. 1079, § 7, 1978 Iowa Acts 373 (amending Iowa Code § 172C.6 (1977)).

77/ Act of June 27, 1978, Ch. 1079, § 4, 1978 Iowa Acts (amending Iowa Code § 172C.4 (1977)).

78/ Id.

79/ Act ot May 27, 1978, Ch. 411, 1978 Wis. Legis. Serv. 1870 (West) (amending Wis. Stat. § 182.001 (1977)).

80/ Act of April 4, 1978, Ch. 722, 1978 Minn. Legis. Serv. 1870 (West) (amending Minn. Stat. § 500. 24 (1976)).

81/ Okla. Stat. Ann. tit. 18, § 955 (West Supp. 1978-79).

82/ Id. § 955.A(2)(b).

83/ Id. § 955.A(2)(c). If a trust is unable to comply with the annual gross receipts test, it can average its gross receipts over the previous five years, and the average annual figure may be used for purposes of meeting the test. Id.

84/ Id. § 955.A(4)(b) and (c).

85/ Act of April 4, 1978, Ch. 132, 1978 Okla. Sess. Laws 235 (amending Okla. Stat. tit. 18, §951 (Supp. 1977)).

86/ Okla. Stat. Ann. tit. 18, § 951.A(4) (West Supp. 1978-79).

87/ Nordby v. Commissioner, Minn. T.C. Docket No. 2385 (Feb. 17, 1978), reported in 1 Inheritance & Transfer Taxes (P-H) ¶ 1002.

88/ Minn. Stat. Ann. § 291.01 (1976).

89/ Md. Ann. Code art. 81, § 154(a) (Supp. 1978).

90/ Id. This standard is similar to an election available under the federal estate tax code. I.R.C. § 2032A. This section allows a valuation of qualifying farmland at its value for farming purposes. I.R.C. § 2032A(1). However, under the federal act, the aggregate decrease in value of the farm property is limited to a maximum of $500,000. I.R.C. § 2032A(2).

91/ Md. Ann. Code art. 81, § 154(a) (Supp. 1978).

92/ N.D. Cent. Code §41-02-81(4) (Supp. 1977).

93/ Id.

94/ Id.

95/ Id.

96/ S.C. Code § 46-15-20 (Supp. 1978).

97/ Cal. Ins. Code § 10203.5 (West Supp. 1979).

98/ 15 U.S.C. § 15(c) (1976).

99/ 15 U.S.C. §§ 1-7 (1976).

100/ Department of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1978, Pub. L. No. 95-86, 91 Stat. 425. Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations Act, 1979, Pub. L. No. 95-431, 92 Stat. 1026.

101/ [1977] Antitrust & Trade Reg. Rep. (BNA) No. 830, D-3.

102/ Id.

103/ Id. No. 824, A-16.

104/ Id.

105/ Ch. 278, 1978 S.D. Sess. Laws 470, was an initiated measure which submitted the repeal of the Dairy Industry Marketing Act (S.D. Comp. Laws Ann. §§ 37-3-9 to 37-3-72 (1977)) to a vote of the electorate.

106/ S.D. Comp. Laws Ann. § 37-3-10 (1977).

107/ Id. § 37-3-10.1.

108/ Id. § 37-3-11.

109/ Tucson Dairy Farms v. Barber, No. 31, N.Y. Ct. App. (July 11, 1978).

110/ N.Y. Agric. & Mkts. Law § 258-c (McKinney Supp. 1978-79).

111/ 58 App. Div. 2d 491, 397 N.Y.S. 2d 466 (1977).

112/ Act of Sept. 19, 1978, Ch. 908, § 4, 1978 Cal. Legis. Serv. 3187 (West)

113/ Id. § 1.

114/ Cal. Food & Agric. Code § 61386 (West Supp. 1979).

115/ Id. §§ 61306, 61317, and 61839.

116/ Id. §§ 35784.1 and 36331.

117/ Id. § 56703.

118/ Id. § 59943.5.

119/ Id. § 56703.

120/ Cal Food & Agric. Code §56703 (West Supp. 1979).

121/ Miss. Code Ann. §§ 75-43-301 to -315 (Supp. 1978).

122/ Id. § 75-43-305.

123/ Id. § 75-43-309.

124/ Id. § 69-31-5. The State of Nebraska has also enacted a law which governs the inspection and testing of devices that measure grain moisture. Neb. Rev. Stat. §§ 89-1,104 to 89-1,108 (Supp. 1978).

125/ Miss. Code Ann. § 75-43-1 (Supp. 1978).

126/ Id.

127/ Nev. Rev. Stat. § 573.125.

128/ Ga. Code Ann. § 5-654 (Supp. 1978).

129/ Miss. Code Ann. §§ 75-31-215, 75-31-221 (Supp. 1978).

130/ Neb. Rev. Stat. §§ 2-3601 to -3635 (Supp. 1978).

131/ Act of July 10, 1978, Act. No. 320, 1978 La. Sess. Law Serv. 647 (West) (adding La. Rev. Stat. Ann. tit. 3, §§ 555.1 to 555.12 (West)).

132/ La. H. Con. Res. 203 (1978).

133/ N.Y. Agric. & Mkts. Law § 258-aa(d)(1) (McKinney Supp. 1978-79).

134/ Id. § 254-a.

135/ Id.

136/ Id. § 16 (5-a).

137/ S.D. Comp. Laws Ann. §§ 38-1-19.1 to -19.5, § 38-1-38 (Supp. 1978).

138/ Id.

139/ The use of saccharin in food received considered attention. Two bills were passed relating to this issue: (1) to limit the use of funds that would put a ban on the use of saccharin until a study of its use could

be made (Pub. L. No. 95-97, 91 Stat. 810 (1977)) and (2) a "study bill" that authorized the investigation of the use of toxic and carcinogenic substances in foods, including saccharin (Pub. L. NO. 95-203, 91 Stat. 1451 (1977). The National Academy of Science will be issuing a report in February 1979 analyzing congressional and FDA regulatory options. Food and Drug Administration, Department of Health, Education and Welfare, NAS Saccharin Report, (Nov. 6, 1978). The use of drugs in animals has come under study by the U.S. Department of Agriculture and may receive some attention by the 96th Congress as a result. Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, Agricultural Economic Report No. 414, Economic Effects of a Prohibition on the Use of Selected Animal Drugs (1978). The Food Safety and Quality Service will be revamping the USDA meat and poultry inspection program next year. The thrust of this alteration will not be to make the inspection service more inclusion but rather to allow some inspection activities to be assued. C. Timmer & M. Nesheim, National Farm Summit Task Force Report on Nutrition, Product Quality and Safety (Nov. 1978) (unpublished).

140/ Nutrition has been the subject of the National School Lunch Act and Child Nutrition Amendments (Pub. L. No. 95-166, 91 Stat. 1325 (1977)) as well as of recent case developments that attempt to limit FTC authority regarding advertising that relates to child nutrition. A case of some possible significance may be on the Supreme Court docket in 1979 relating to egg nutrition (National Commission on Egg Nutrition v. FTC, 570 F2d 157, 7th Cir. 1977), appeal docketed, No. 77-1551 (S. Ct., April 28, 1978)). The FTC challenged a trade association formed by members of the egg industry to counteract negative publicity linking the consumption of eggs with higher serum cholesterol and an increased incidence of heart disease.

141/ Okla. Stat. Ann. tit. 2, § 6-195 (West Supp. 1978-79).

142/ Nev. Rev. Stat. § 583.055.

143/ Miss. Code Ann. §§ 75-29-601 to -603 (Supp. 1978).

144/ Ga. Code Ann. § 42-611(c) (Supp. 1978).

145/ Cal. Food & Agric. Code §§ 33082, 33085, 33086, 33087, 33294, 33321-24, and 33351 (West Supp. 1979).

146/ Id. §§ 33262, 33263, and 39461.

147/ Cal. S. Con. Res. 80, Res. Ch. 102 (1978).

148/ N.Y. Alco. Bev. Cont. Law § 76-a(2) and (b) (McKinney Supp. 1978-79).

149/ Cal. Sen. Con. Res. 61, Res. Ch. 75 (1978).

150/ Cal. Educ. Code §§ 39876, 39877 (West Supp. 1979).

151/ H. Con. Res. 3049, 1977 N.D. Sess. Laws 1452.

152/ Act of Feb. 13, 1978, Ch. 283, 1978 S.D. Sess. Laws 475. The provisions of this act terminated on March 1, 1979. Id. § 5.

153/ H.J. Res. 96, 1977 Mont. Laws 2130.

154/ For an analysis of preferential assessment of agricultural land see: Ellingson, Differential Assessment and Local Government Controls to Preserve Agricultural Lands, 20 S.D.L. Rev. 548 (1975); Henke, Preferential Property Tax Treatment for Farmland, 53 Ore. L. Rev. 117 (1974).

155/ Tex. Const. art. 8, §§ 1, 1-6(b),(c), and (d), 1-d-1, 21 to 23.

156/ Id. § 1-1-1.

157/ Id.

158/ Cal. Rev. & Tax Code § 423 (West Supp. 1979). See, Mix, Restricted Use Assessment in California: Can it Fulfill Its Objectives?, 11 Santa Clara L. Rev. 259 (1971).

159/ Cal. Rev. & Tax Code § 423(e) (West Supp. 1979).

160/ S.D. Comp. Laws Ann. § 10-6-31 (Supp. 1978).

161/ N.Y. Real Prop. Tax Law § 483(1) and (7) (McKinney Supp. 1978-79).

162/ Id. § 483(1).

163/ Id.

164/ Md. Ann. Code art. 81, § 19(a)(9) (Supp. 1978).

165/ Id.

166/ Ch. 72, 1978 S.D. Sess. Laws 126. This was an initiated measure submitted to a popular vote in the general election in November 1978.

167/ S.D. Comp. Laws Ann. § 10-14-3 (repealed 1978).

168/ Id. § 10-15-5 (repealed 1978).

169/ N.D. Cent. Code § 57-39.2-02.1(2) (Supp. 1977).

170/ Md. Ann. Code tit. 81 § 325(c) (Supp. 1978).

171/ S.D. Comp. Laws § 10-45-3 (Supp. 1978).

172/ Id.

173/ Ga. Code Ann. § 93-3403a.C(2)(aa) (Supp. 1978).

174/ Act of July 3, 1978, Pub. Act No. 275, 1978 Mich. Legis. Serv. 880 (amending Mich. Comp. Laws § 205.54g (1970)).

175/ N.Y. Tax Law § 1119(a) (McKinney Supp. 1978-79).

176/ Va. Code § 3.1-621 (Supp. 1978).