

Food, Farming, and Sustainability

**Food, Farming, and
Sustainability**
Readings in Agricultural Law

THIRD EDITION

Susan A. Schneider

WILLIAM H. ENFIELD PROFESSOR OF LAW
DIRECTOR OF THE LL.M. PROGRAM IN AGRICULTURAL AND FOOD LAW
UNIVERSITY OF ARKANSAS SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2025
Susan A. Schneider
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Schneider, Susan A., author.
Title: Food, farming, and sustainability : readings in agricultural law /
by Susan A. Schneider.
Description: Third edition. | Durham, North Carolina : Carolina Academic
Press, 2025. | Includes bibliographical references and index.
Identifiers: LCCN 2024059181 | ISBN 9781531031992 (paperback) | ISBN
9781531032005 (ebook)
Subjects: LCSH: Agricultural laws and legislation—United States.
Classification: LCC KF1682 .S36 2025 | DDC 343.7307/6—dc23
LC record available at <https://lcn.loc.gov/2024059181>

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com
Printed in the United States of America

Dedicated to my grandparents and my parents, for affording me the opportunity to be raised on a family farm; to my sister and her family for the care that they provide in preserving that farm; to my husband and colleague, Christopher Kelley, for his advice, inspiration and dedication to excellence; and to our students in the LL.M. Program in Agricultural & Food Law, past, present, and future.

Contents

Preface	xvii
I. Agriculture and Agricultural Law	3
A. The Agrarian Ideal or the Agrarian Myth: The Foundations of Agricultural Law	3
Richard S. Kirkendall, <i>Up to Now: A History of American Agriculture from Jefferson to Revolution to Crisis</i>	3
Anne B. W. Efland, <i>U.S. Farm Policy: The First 200 Years</i>	5
William P. Browne, Jerry R. Skees, Louis E. Swanson, Paul B. Thompson, and Laurian J. Unnevehr, <i>Sacred Cows and Hot Potatoes: Agrarian Myths in Agricultural Policy</i>	14
B. Definitions: Exploring the Meaning of Key Concepts in Agricultural Policy	22
1. What Is a “Family Farm”?	22
2. Industrial Agriculture	25
a. The Large-Scale Production of a Specialized Product	26
b. Improved Agricultural Production Through Technology	27
c. Vertical Integration	29
d. Unanticipated Costs	30
3. Sustainable Agriculture	33
4. Regenerative Agriculture	37
5. Organic Agriculture	43
C. A Survey of U.S. Agriculture	48
1. Farms and Farmland	49
2. Farmers and Ranchers: Producers	50
3. Agricultural Production	50
a. Major Commodity Crops Produced in the U.S.	51
b. Livestock Production	54

c. Specialty Crops: Fruits, Nuts, and Vegetables	61
d. Organic Production	61
D. Consumer Awareness and Impact	63
II. Economic Support to Agriculture Through the Federal Farm Programs, Federal Crop Insurance, and Disaster Assistance	67
A. The Federal Farm Programs	69
1. The Legislative Framework: The Farm Bill	72
2. The Commodity Support Programs	75
a. The Price Loss Coverage (PLC) Program and the Agricultural Risk Coverage (ARC) Program	77
b. The Marketing Assistance Loan Program (MAL) and the Loan Deficiency Program (LDP)	78
Stephanie Rosch, <i>Farm Bill Primer: MAL and LDP Farm Support Programs</i>	78
3. Who Should Receive Farm Program Payments—and How Much Should They Receive?	80
Megan Stubbs and Stephanie Rosch, <i>U.S. Farm Programs: Eligibility and Payment Limits</i>	81
Megan Stubbs and Stephanie Rosch, <i>U.S. Farm Programs: Eligibility and Payment Limits</i>	83
Megan Stubbs and Stephanie Rosch, <i>U.S. Farm Programs: Eligibility and Payment Limits</i>	86
4. USDA Implementation of the Federal Farm Programs	88
a. The Farm Service Agency	89
b. The Commodity Credit Corporation	89
c. The National Appeals Division	92
5. Support for Specialty Crops	95
6. Support for Organic Crops	97
B. Federal Crop Insurance	99
1. Justification for a Federal Role	100
2. Overview of the History and Structure of Federal Crop Insurance	102
<i>A History of the Crop Insurance Program</i>	102
3. Types of Federal Crop Insurance Available to Farmers	106
Dennis Shields, <i>Federal Crop Insurance: Background</i>	106
4. Loss Claims and the Payment of Indemnities	109

5. Program Expansion	112
6. Reducing the Cost of the Federal Crop Insurance Program	116
a. Administrative and Operating Cost (A&O) Reimbursements	116
b. Reduction of Premium Subsidies	117
C. Disaster Assistance	119
Megan Stubbs, <i>Agricultural Disaster Assistance</i>	120
D. Farm Programs and the Food System	131
1. Impact on Structure and Practices	132
2. Conflicts Between Nutrition Policy and Farm Policy	132
3. Farm Policy, Not Food Policy	134
III. Agriculture and Environmental Law	135
A. Agriculture's Environmental Effects	135
1. An Introduction to the Environmental Harms from Agriculture	137
J.B. Ruhl, <i>Farms, Their Environmental Harms, and Environmental Law</i>	137
2. Updated Evidence of Environmental Harms	152
3. Climate Change	157
B. Unique Application of Environmental Law to Agricultural Operations	160
1. The Clean Water Act	160
a. Wastewater Permits	161
b. Stormwater Discharges	164
c. The Discharge of Dredged or Fill Material	164
d. Concentrated Animal Feeding Operations	166
e. Non-Point Source Pollution	176
2. The Regulation of Air Pollution from Farms	177
3. Nuisance and Right to Farm Laws	180
4. USDA Conservation Efforts: Alternatives to Regulation	184
a. Introduction: Conservation Concerns and the USDA	184
b. Conservation Compliance: Conditioned Participation	188
Megan Stubbs, <i>Conservation Compliance and U.S. Farm Policy</i>	189
c. Conservation Through Land Retirement	193
d. Working Land Conservation Programs	196
e. Mitigation and Adaptation Efforts to Address Climate Change	199

Jonathan L. Ramseur, <i>Inflation Reduction Act of 2022 (IRA): Provisions Related to Climate Change</i>	200
IV. Financing the Farming Operation	205
A. Distinct Attributes of Farm Finance	205
1. The Nature of Farm Production Inputs	206
2. The Special Risks Associated with Agricultural Production	210
3. The Typical Merger of Personal and Business Assets Associated with Family Farming	211
B. Overview of Current Farm Finances	212
1. The Farm Economy	212
Christine Whitt, Katherine Lacy, Katherine Lim, <i>America's Farms and Ranches at a Glance 2023 Edition</i>	213
2. Farm Debt: Meeting the Capital Needs of the Farm	219
C. Federal Credit Assistance Provided to the Agricultural Sector	222
1. The Farm Service Agency	223
a. The History of the USDA's Lending Programs	223
<i>Curry v. Block</i>	225
b. Farm Service Agency Direct Loans	233
c. Farm Service Agency Guaranteed Loans	244
<i>Fleet Bank of Maine v. Harriman</i>	251
2. The Farm Credit System	257
a. An Introduction to the Farm Credit System	257
Jim Monke, <i>Farm Credit System</i>	259
b. Borrowers' Rights	266
<i>Harper v. Federal Land Bank of Spokane</i>	267
D. Agricultural Commercial Law: Secured Transactions Involving Farm Assets	272
1. Exploring Article 9	273
2. Security Interests in Farm Program Payments: Crop Proceeds?	274
<i>Kingsley v. First American Bank of Casselton</i>	275
<i>Bank of North Arkansas v. Owens</i>	279
3. Crop Proceeds and Hauling Fees	285
<i>Western Farm Service, Inc. v. Lynn J. Olsen, II</i>	285
4. Livestock Sales and Purchase Money Security Interests	294

<i>First National Bank in Munday v. Lubbock Feeders</i>	295
5. Purchase Money Security Interests in Crops	302
<i>Agrifund, LLC v. First State Bank of Shallowater</i>	302
6. Agricultural Statutory Liens	304
7. Buyers of Farm Products	305
V. Discrimination in Agricultural Lending	307
A. History of African American Farmers in the United States	309
Christopher R. Kelley, <i>Notes on African American Farmers</i>	309
B. USDA Discrimination Against African American Farmers and the <i>Pigford</i> Case	317
<i>Pigford v. Glickman</i>	319
Tadlock Cowan & Jody Feder, <i>The Pigford Case: USDA Settlement of a Discrimination Suit by Black Farmers</i>	347
<i>In re Black Farmers Discrimination Litigation</i>	348
C. USDA Discrimination: Native American, Hispanic, and Women Farmers	351
1. Native American Farmers	351
2. Women and Hispanic Farmers	353
Jody Feder and Tadlock Cowan, <i>Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case</i>	353
D. Current USDA Policy and Issues	358
VI. Agricultural Labor Law	367
A. Who Are America's Farm Workers?	368
<i>Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers</i>	369
B. The Unique Application of Federal Labor and Employment Law to Agricultural Workers	377
1. The National Labor Relations Act	377
<i>Holly Farms Corporation v. National Labor Relations Board</i>	379
2. The Fair Labor Standards Act	393
<i>Castillo v. Givens</i>	400
3. The Occupational Health and Safety Act	412
Scott D. Szymendera, <i>Occupational Safety and Health Administration (OSHA) Regulation of Employee Exposure to Heat</i>	415

C. Laws Directed Specifically to Farmworkers	416
1. The Migrant and Seasonal Agricultural Worker Protection Act	417
Susan A. Schneider, <i>Notes on the Migrant and Seasonal Agricultural Worker Protection Act</i>	417
<i>Charles v. Burton</i>	423
<i>Flores v. Rios</i>	436
2. The H-2A Visa Program for Temporary Agricultural Workers	447
<i>Improving Protections for Workers in Temporary Agricultural Employment in the United States</i>	449
<i>DOL H-2A Final Rule Takes Important Steps to Protect Workers Rights to Safe Working Conditions, Transparent Recruitment Practices, and Self-Advocacy</i>	453
D. The “Fair Food” Movement	455
VII. Livestock Production & Marketing	457
A. The Structure of the Livestock Industry	458
James M. MacDonald, Xiao Dong, and Keith O. Fuglie, <i>Concentration and Competition in U.S. Agribusiness</i>	458
B. Introduction to Concentration and Competition	462
C. The Packers and Stockyards Act	465
1. An Overview of the Packers and Stockyards Act	465
Christopher R. Kelley, <i>An Overview of the Packers and Stockyards Act</i>	465
2. Packers and Stockyards Act Statutory Update: The 2008 Farm Bill Amendments	490
3. Packers and Stockyards Act Statutory Update: The Consolidated Appropriations Act, 2021	493
D. Unfair, Unjustly Discriminatory, or Deceptive Practices Under the Packers and Stockyards Act	493
1. Judicial Decisions	495
<i>Picket v. Tyson Fresh Meats, Inc.</i>	495
<i>Benn v. OK Industries, Inc.</i>	511
2. The History of Administrative Action at USDA: The GIPSA Rules	520
Joel Greene, <i>USDA’s “GIPSA Rule” on Livestock and Poultry Marketing Practices</i>	520
3. The Biden Administration “Fair and Competitive Markets” Regulatory Initiatives	524

E. Antitrust and Competition Law as Applied to the Meatpacking Industry	529
James M. MacDonald, Xiao Dong, and Keith O. Fuglie, <i>Concentration and Competition in U.S. Agribusiness</i>	530
VIII. Animal Welfare and Farm Animals Raised for Food	543
A. Introduction to Animal Welfare and Farmed Animal Welfare	543
B. Efforts to Impose Welfare Standards on Livestock Production	548
1. Citizen Initiatives and State Legislation	550
Danielle J. Ufer, <i>Farm Animal Welfare Policies Cover Breeding Sows, Veal Calves, or Laying Hens in 14 U.S. States</i>	550
Kate R. Bowers, <i>Supreme Court Narrows Dormant Commerce Clause and Upholds State Animal Welfare Law</i>	554
2. The Organic Standards and Animal Welfare	558
<i>National Organic Program (NOP); Organic Livestock and Poultry Practices</i>	559
C. Private Governance and Humane Standards	565
1. The Five Freedoms and the Five Domains	565
2. Industry Standards	567
3. Corporate Pledges	567
4. Private Certifications	570
5. Recognized Producers	571
D. Humane Slaughter Standards	571
1. Federal Statutory Authority	572
2. Issues for Consideration	575
E. Transportation: The 28-Hour Law	577
IX. Biotechnology and Agricultural Law	581
A. An Introduction to Agricultural Biotechnology	581
1. Defining Terms	581
Eleni G. Bickell, <i>Agricultural Biotechnology: Overview, Regulation, and Selected Policy Issues</i>	582
2. Adoption of Agricultural Biotechnology in Agriculture	585
Eleni G. Bickell, <i>Agricultural Biotechnology: Overview, Regulation, and Selected Policy Issues</i>	586
B. The Regulatory Structure for the Approval	591

1. Overview of the Coordinated Framework	593
Eleni G. Bickell, <i>Agricultural Biotechnology: Overview, Regulation, and Selected Policy Issues</i>	593
2. Litigation Highlights and Current Areas of Concern	599
C. The Patenting of Genetically-Engineered Seeds	604
1. Patenting Live, Human-Made Organisms	605
<i>Diamond v. Chakrabarty</i>	605
2. Utility Patent Rights, the Plant Variety Protection Act, and the Plant Patent Act	614
<i>J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred International, Inc.</i>	614
3. Enforcing Patent Rights in Seed	630
<i>Monsanto v. David</i>	631
<i>Bowman v. Monsanto Co.</i>	640
D. The Labeling of Genetically Engineered Products	647
E. Concentration and Consolidation in the Seed Industry: Antitrust and Competition Issues	650
James M. MacDonald, Xiao Dong, and Keith O. Fuglie, <i>Concentration and Competition in U.S. Agribusiness</i>	650
X. Food Safety	663
A. The Statutory Framework: Consistent Concerns with Misbranding and Adulteration	664
B. Foodborne Illness	667
1. Tracking and Analyzing Foodborne Illness in the United States	668
2. Assessing the Economic Costs of Foodborne Illness	670
Sandra Hoffmann and Jae-Wan Ahn, <i>Economic Cost of Major Foodborne Illnesses Increased \$2 Billion from 2013 to 2018</i>	670
C. The Structure of Government Regulation for Food Safety	673
Renée Johnson, <i>The Federal Food Safety System: A Primer</i>	673
D. Special Issues Related to Meat and Poultry Safety Regulation	689
1. Overview of Meat and Poultry Regulation	690
Geoffrey S. Becker, <i>Meat and Poultry Inspection: Background and Selected Issues</i>	690
2. Limitations to Legal Authority: An Ambivalent View of Pathogens	693
<i>Supreme Beef Processors, Inc. v. U.S. Dept. of Agriculture</i>	695

3. Antibiotic Use in Livestock Production and Attempts to Regulate	708
E. Fresh Produce and Food Safety	712
<i>Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption</i>	714
XI. Food and Agriculture: A Changing Climate	721
A. Setting the Table: Americans and Food	722
1. What Is Food?	722
2. Nutrition and Health	729
3. Food Insecurity	732
4. The Obesity Epidemic	735
B. Climate Change: Food and Agriculture	737
Susan A. Schneider, <i>Climate Change, Food Security, and the Myth of Unlimited Abundance</i>	737
1. Potential Impact of Climate Change on U.S. Food Security	737
a. Elevated Temperatures Impair Crop and Livestock Production	738
b. Extreme Weather Events Have Increased Because of Climate Change	741
c. Damage from Agricultural Insect Pests Is Increasing Because of Climate Change	744
d. The Vulnerability of Vital Pollinators Is Exacerbated by Climate Change	744
e. Coastal Lands Are Being Lost to Sea Level Rise and Salinization	745
2. The Vulnerability of Geography: California and the Southwest States	746
3. Considering a Radical Realignment of Farm and Food	749
C. Concluding Thoughts on a Changing Social and Physical Climate	755
Index	759

Preface

Agricultural law and policy, once of concern only to agricultural economists, farm commodity group lobbyists, and a handful of congressional aids, is now a topic of everyday discussion. And to be certain, it is a controversial topic.

After years of claiming responsibility for “feeding the world,” farmers are caught between advice that their operations must be bigger, more efficient, and produce a more uniform product and criticism that they are too big and their practices unsustainable.

Some farm groups vigorously oppose any type of regulation; others clamor for additional regulatory protection.

Everyday news stories contrast the iconic image of the family farm with pictures of sheds that house tens of thousands of animals, manure lagoons, and nitrate runoff from corn fields. Food safety recalls seem common.

Our food system—with perhaps the cheapest and most abundant supply of food products in the world—is now linked to obesity and related diseases. That food system is both a cause of climate change and a victim of its wrath.

How can U.S. farm policy assure an adequate and healthy food supply in a manner that can be sustained for generations to come?

Food, Farming, and Sustainability: Readings in Agricultural Law attempts to make sense of these controversies by providing an issues-based study of some of the complex topics that make up the body of agricultural law. The readings raise difficult questions and provide contrasting information, leaving readers with the task of developing solutions for the future.

Because of the extent and variety of the legal issues involved in agricultural law today, some important issues are not included. These readings provide only a first step in an analysis that affects us all. Because we live in rapidly changing times, a companion website at FoodFarmingSustainability.com will provide updates.

From its initial discussion of “agricultural exceptionalism” to its concluding remarks on food and agriculture, the book is written to spark thoughtful dialogue in and out of the classroom.

