PLEASE STOP HELPING: WHAT IS THE FAMILY FARM, AND SHOULD THE USDA TRY AND FIGURE IT OUT FOR US?

The United States Department of Agriculture, through its Farm Services Agency, is attempting to do what it has avoided doing in the past: it intends to define the family farm.[1] The Farm Services Agency (FSA), makes loans available for purchase of land, livestock, equipment, and operating expenses to family-size farmers when they cannot get credit from commercial lending institutions.[2] The definition being proposed by the USDA would streamline several parts of the FSA's loan paperwork for both the applicant and the government. It would list all abbreviations used in the program documents in one section to make it easier for applicants to look them up.[3] Applicants, farmers, would be given more flexibility and responsibility for planning and completing construction projects, while also decreasing or eliminating the Agency's responsibility to visit sites, participate in scheduling the development, and verify architectural and engineering proficiency.[4] Central to the discussion here, however, is the proposed definition of a "family farm." Current regulations for the program give broad language, allowing for a farming operation's "family" status to be reviewed on its own merits.[5] The USDA has cited inconsistent applications as the reason for proposing a regulatory definition with specific limitations.[6] This proposal, while specific, is a misconstruction of the term "family farm," and such efforts at corralling the family farmer should be abandoned. This is the matter addressed here.

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[1] Devlin Barrett, *Dollar earnings would define what's a family farm*, ASSOCIATED PRESS, April 18, 2004.

[2] USDA, Farm Services Agency, *Farm Loan Programs, available at* http://www.fsa.usda.gov/dafl/default.htm.

[3] Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Program, 69 Fed. Reg. 6056, 6059 (proposed February 9, 2004) (to be codified at 7 CFR Parts 761 through 769).

[4] *See id.* at 6059 - 6060.

[5] *See id.* at 6059.

[6] *See id.*

The family farm and whether it thrives or languishes today is the subject of much debate and prompts action, or calls to action, from many different sources ranging from our nation's capital to the entertainment media. Even popular music celebrities call on Americans to help the family farmer fight indifferent politicians and corporations for survival.[7] The issue, however, appears to be lack of meaningful discourse, in large measure, as will be discussed here, due to positions framed about two different visions of what the family farmer has been and what he should be today and tomorrow.[8]

These varying visions of an undefined subject can leave one wondering what the debate is about, because the opposing arguments can be so incongruous as to make little sense. One may imagine two music reviewers being told to attend a musical performance of "Joy to the World" performed at Hope's. The next day, both write effusive praise for the performance, and lament the increasing rarity of such excellence in music. One speaks of angelic voices and well-executed orchestral arrangements. The other writes of guitar solos that are perfectly recreated, and voices that sound very much like the originals. Only upon careful reading does the reader discover that one went to Hope Lutheran Church, the other to Hope's Bar and Grille,[9] the former hearing a Christmas pageant,[10] the latter a rock and roll song[11] by a band that plays popular songs from the past. Such can it be with the debate over family farms, as two sides hear different things from the same words.

The purpose of this article is not the creation of a comprehensive proposal to save the family farm. It is, rather, to look at the family farm for what it is; to create a mold into which the elemental subject matter of the debates about the family farm and its farmers can be poured. The question will be analyzed through the visions of the family farm and its farmers, the classifications of modern farms, what is expected of them, what they expect of themselves, and their success in meeting those expectations. From this, it is hoped that a definitional foundation will be laid

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[7] Dave Moore, *Willie Nelson Advocates for Family Farms*, COLUMBIA DAILY TRIBUNE, May 13, 2003.

[8] The term "he" is used out of tradition. The number of female principal operators of farms has risen remarkably in just the last few years; 27% of all principals, up 12.62% in 2002. Well over half of second and third farm operators are women. PRELIMINARY 2002 CENSUS OF AGRICULTURE (2004) *available at* http://www.nass.usda.gov/gov/census/census02/preliminary/cenpre02.pdf.

[9] As is stated, this is a fictitious story. Any similarities between these place names and names of actual places of worship or entertainment is co-incidental.

[10] Isaac Watts, *Joy To The World*, THE PSALMS OF DAVID (1719).

[11] Three Dog Night, *Joy To The World, on* NATURALLY (MCA 1970).

upon which the debate can be held, thus avoiding limitations like that proposed by the USDA for the FSA loan program.

1. Colloquies and Bollix: the Discussion and its Break-Down

Confusion over what does and does not make a family farm is well illustrated by a series of letters to the editor recently published in a York, Pennsylvania newspaper. Mr. Ray Wallace of the Eastern York County Smart Growth Coalition complained of a corporate owned hog farm operation that would put up to forty hog farms in the York County area.[12] The large farms, known as Concentrated Animal Feeding Operations, or CAFOs, are recast by Mr. Wallace as "corporate animal factories."[13] Mr. Wallace complained that 10,000 hogs would stink up the area, pollute the soil to an unusable mess, and unfairly compete with area farms.[14] This, he contended, is done for reasons of pure greed, at the expense of "true family farms."[15]

An answer to Mr. Wallace came the next week from Mr. Edwin Calvert, who admitted to not having been able to make it as a farmer, and moving on to other work.[16] Mr. Calvert contended incorporation is an important tool that can be used to protect the farmer.[17] He said production agriculture needs to become increasingly efficient, it has succeeded to a point that agribusiness from around the world looks to the U.S. to see how we manage it, food prices remain low due to that efficiency, and farmers give more in taxes than they receive in services.[18] It is the affluence of Americans, Mr. Calvert contended, that leads to opposition against operations that achieve what production agriculture does regularly.[19] Mr. Calvert then likened Mr. Wallace's position to a redistribution effort, akin to what was called socialism or communism just a few years ago.[20]

A week later, Mr. John Hess, a corporate farmer running a 500 cow dairy, contended his blood was boiling over the family farm versus cor-

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[12] Ray Wallace, *Animal factories are not family farms*, YORK SUNDAY NEWS, February 15, 2004, at LETTERS.

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] Edwin Calvert, *The factory farm is the family farm*, YORK SUNDAY NEWS, February 22, 2004, at LETTERS.

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.*

porate factory farm label.[21] "It seems to me that all of the people complaining about farmers of any shape or size are doing so with their bellies way too full."[22] Saying he would likely be considered a factory farm due to the size of his operation, he also said he is very much a family farmer and knows of larger operations he would consider family farms as well.[23] Organic produce is fine with Mr. Hess, but it is a "niche market" being filled by a few, while conventional farmers are left with the job of feeding a growing world population as the number of farmers gets smaller.[24] The labels are not the only thing he found unfair; he found the idea of a "true family farmer" a limitation on his success, one that would compel him, and all American farmers, to stay small as other industries, like retail and high tech, grow.[25] Those other industries include agriculture outside the U.S, competing for U.S. food dollars.[26] If organic food is to be the norm in American stores, Mr. Hess tells organic supporters to buy it.[27] When the market is willing to pay extra for organic produce, the farmers will produce more.[28] These farmers, he writes, should be thankful for just being able to make a living as a farmer.[29]

This debate illustrates a major problem with the invocation of the term "family farm," and the resulting reaction. Mr. Wallace complains of legitimate issues: pollution, potentially unfair competition, and nuisance.[30] Yet, in the same letter, he admits there are responsible corporate farming operations, and fails to even attempt an explanation of what a "true family farm" is.[31] The closest he comes to an explanation is to say "[a]ny child with a nose can tell the difference between a family farm and a 10,000-hog factory."[32] This is akin to an argument that he may not know a lot about art, but he knows what he likes. Mr. Calvert discusses the legitimate reasons for a family farmer to protect himself by turning the operation into a corporation, and the need for efficiency, but ends the

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[21] John R. Hess, *Dairy owner resents factory farm label*, YORK SUNDAY NEWS, February 29, 2004, at LETTERS.
[22] *See id.*
[23] *See id.*
[24] *See id.*
[25] *See id.*
[26] John R. Hess, *Dairy owner resents factory farm label*, YORK SUNDAY NEWS, February 29, 2004, at LETTERS.
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] Wallace, *supra* note 12.
[31] *See id.*
[32] *See id.*

letter by saying such arguments sound like communism or socialism.[33] Nowhere in his letter does Mr. Wallace advocate for communization of farms; indeed the "family farm" label would indicate ownership by the family.[34] Mr. Hess speaks of competition with foreign markets and a basic expectation that those who work can continue to succeed, but he brings up organic advocacy as though it is the subject at hand.[35] Mr. Wallace does not mention organic farming.

This discussion, or perhaps argument, seems to be occurring in two different arenas. They are incongruous with one another because of the presumptions made by both sides. Mr. Wallace is championing the "true family farmer," but one is left to wonder what, or who, he is championing. That farmer is not even described, except to say he does not own 10,000 hogs. Mr. Calvert's accusations of a red menace come from nowhere, and the advocacy for organic farming imputed to Mr. Wallace carries no relationship to his letter. This is not the stuff of good discourse.

2. The Proposal

The USDA proposal for defining "family farm" is income-based. Two limitations are proposed. First, gross income for the operation on a typical year could not exceed $750,000 if that farm is to remain eligible for the program.[36] Second, even if the operation's gross sales are lower than that income ceiling, the operation would no longer be considered a "family farm" if the gross sales are in the 95th percentile for the state in which it is operated.[37] Daily operation and management decisions will have to be made by the applicant or by a "person related to the applicant by blood or marriage."[38] Limited liability companies would be able to divide gross income between partners, allowing a way around the rule so long as no partner's gross income exceeds the $750,000 cap.[39]

The proposal serves a desire, within the department, to institute "the most straightforward and objective way to make sure everyone... gets consistent treatment."[40] Yet, despite the inarguable objectivity of numbers, farm groups are arguing that the numbers would force farmers to make a Solomonic choice, without the advantage of the true mother's

[33] Calvert, *supra* note 16.
[34] Wallace, *supra* note 12.
[35] Hess, *supra* note 21.
[36] 69 Fed. Reg., *supra* note 3, at 6059.
[37] *See id.*
[38] *See id.*
[39] Barrett, *supra* note 1.
[40] *See id.*

impulse. If a dairy farmer has approximately 230 cows, he is at the income cap.[41] If one dares to exploit the success for which one has worked, one sacrifices eligibility for the program.[42] The National Milk Producers Federation is a principal player in the attempt to stop the proposed rule, citing dairy as one of several high-value crops and livestock products that would be hit hardest by the rule.[43] They say an arbitrary figure, $750,000, will lead to 25,000 farmers left without assistance from the program, and will discourage what that group and others have been encouraging for decades: production of high value and value added crops.[44]

3. Statutory Definitions

The United States Department of Agriculture defines a farm as a place that generates $1,000 in farm product sales, or that has the potential to do so.[45] This broad definition includes over two million "places," ranging from farms with two cows to multimillion-dollar operations.[46]

The Bankruptcy Code defines a Family Farmer as:

> [an] individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate... debts... arise out of a farming operation owned or operated by such individual... and such individual... receives from such farming operation more than 50 percent of such individual's... gross income....[47]

Interestingly, the code recognizes corporations as potential family farms as well: "[f]amily farmer means... [a] corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family...."[48] The relatives may also hold equity or stock in the corporate family farm.[49] The family and relatives must operate the farm, more than 80% of the assets must be farm-related,[50] and stock cannot be publicly traded.[51] These family farmers must have a regular annual income

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[41] *See id.*

[42] *See id.*

[43] National Milk Producers Union ET AL., *Re: Proposed Rule; Regulatory Streamlining of the Farm Services Agency's Direct Farm Loan Programs* (April 6, 2004), *at* http://www.nmpf.org.

[44] *See id.*

[45] UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND AGRICULTURAL POLICY 22 (2001) [hereinafter *Food and Agricultural Policy*].

[46] *See id.*

[47] 11 U.S.C. §101(18)(A) (2004).

[48] *Id.* §101(18)(B).

[49] *Id.* §101(18)(B).

[50] *Id.* §101(18)(B)(i).

[51] *Id.* §101(18)(B)(iii).

to benefit from the family farmer provision,[52] which means the family farmer's "income must be sufficiently stable and regular to enable such family farmer to make payments under a [bankruptcy] plan...."[53] In order to declare bankruptcy as a farmer, as opposed to a family farmer, 80% of the farmer's income from the previous tax year must have come from operating the farm.[54]

4. Visions of the Family Farm

The family farm invokes images as varied in number as the number of those who choose to reflect on it. Farming, however, is a more complex business than what it was just decades ago, and change has come with the introduction of new technologies.[55] Farmers are also adopting roles as conservationists.[56] The degree of technology integrated into or avoided on a family farm, however, will depend largely on the family farmer's desire to make his operation commercially viable.

SELF-SUFFICIENT FARMING

While the USDA sees a farm as a place that generates $1,000 in agriculture product sales,[57] there are many who see family farming as a noncommercial venture; who see it more as a lifestyle than a business where a family produces all the food they eat. One may look to book titles on the subject: *The Homesteader's Handbook,*[58] *The Owner-Built Homestead,*[59] *How To Buy and Enjoy a Small Farm: Your Comprehensive Guide to the Good Country Life.*[60] The titles reflect a lack of knowledge of farming among those for whom farm-life holds appeal, likely people from cities. They also illustrate the desired life: a homestead or a small farm rather than a 6400 acre operation. The "Good Country Life"[61] mentioned by Mr. Laycock is even more illustrative; life on the small farm is not just better than the life one might lead today, it is good.

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[52] *Id.* §109(f).

[53] *Id.* §101(19).

[54] *Id.* §101(20).

[55] UNITED STATES DEPARTMENT OF AGRICULTURE, 1990 YEARBOOK OF AGRICULTURE 2 (1990).

[56] Christine Souza, *Ranchers are Dedicated to Improving The Environment*, CALIFORNIA COUNTRY, March/April, 2004, at 21.

[57] *Food and Agricultural Policy, supra* note 45, at 4.

[58] JAMES E. CHURCHILL, THE HOMESTEADER'S HANDBOOK (1974).

[59] BARBARA & KEN KERN, THE OWNER-BUILT HOMESTEAD (1977).

[60] GEORGE LAYCOCK, HOW TO BUY AND ENJOY A SMALL FARM: YOUR COMPREHENSIVE GUIDE TO THE GOOD COUNTRY LIFE (1978).

[61] *See id.*

It is rare, if it ever happens, that such publications tout this good life as an easy one, but it is still perceived as just that by some.[62] John Seymour, along with his wife Sally, wrote blistering criticisms of those who say they seek work on the land, but really wish for an easy life.[63] Seymour's book gives directions on many aspects of keeping up a small farm to the degree that little if anything will be required from the grocery store. Among many things, fruits, nuts, vegetables, grains, livestock for work and slaughter, and even beer are all discussed.[64] Seymour does point to a good life, but a life of six and one-half hours of work a day will be required for production of all the food necessary for three square meals a day.[65] If a regular job is to be had along with a self-sufficient farm, that food production and job would be juggled into fifteen hours per day of work: "[t]hey would be very *healthy* doing this, but they would not be *bored*... but they might sometimes wish they could sit down."[66]

What Seymour calls a "self-sufficient," or "very *nearly* self-supporting,"[67] farm is called by the United States Department of Agriculture a "mini-farm."[68] The USDA distinguishes the mini-farm from a simple, or even large-scale, garden by the addition of livestock and dairy production which urban and suburban gardening would likely not be able to include, due to zoning restrictions.[69] The next step up in scale of operations would be the part-time farmer, who farms a small plot of land while working another job.[70] The USDA says those who work a regular job while running a farm like that discussed by Mr. Seymour would be included in this grouping.[71] Mr. Seymour warned of the volume of work required to maintain a regular job and provide a wide variety of produce, but the mini-farm also includes those who may farm one crop, or a few, as a supplement to income.[72]

There can be little question that the mini-farmer would be considered a family farmer, since the mini-farmer is producing food for the family,

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[62] JOHN & SALLY SEYMOUR, FARMING FOR SELF SUFFICIENCY 242 (Schocken Books 1974) (1973).

[63] *See id.*

[64] *See id.* at Table of Contents.

[65] *See id.* at 242.

[66] *See id.* at 11. (Emphasis in original.)

[67] *See id.* at 12. (Emphasis in original.)

[68] UNITED STATES DEPARTMENT OF AGRICULTURE, 1978 YEARBOOK OF AGRICULTURE 41 (1978).

[69] *See id.*

[70] *See id.* at 42.

[71] *See id.*

[72] *See id.*

but these farms are few in number. Even Mr. Seymour concedes that few would be willing to do all one must do to provide all or nearly-all the food his or her family needs to eat well thrice daily.[73] The larger part-time farmer producing just a few crops for a supplemental income, as opposed to all the crops anticipated for the family diet, farms small plots of land. He or she may or may not include the family in the operation, but by the nature of the farm's small size, will likely engender little controversy if called a family farm.

LARGER FARMS

Classification of farm size is generally done with two measurements: number of acres and sales in dollars.[74] The sales classifications are generally divided into three groups: small family farms with sales below $250,000, other family farms with sales above $250,000, and non-family farms operated by a non-family corporation or by a hired manager.[75] These are broken down through a typology based on the occupation of the operator and the sales class.[76] Among small family farmers, those who have household incomes below $20,000, sales below $100,000, and farm assets below $150,000 are known as limited resource farmers.[77] Limited resource farmers may have any occupation.[78] Retirement farms are operated by people who report themselves as retired, regardless of their sales volume.[79] Residential/lifestyle farms are those farms whose operators have a major occupation other than farming.[80] Small farmers reporting farming as their occupation are split into low sales, below $100,000, and high sales, between that mark and $249,999.[81] Other family farms are broken down into large family farms, with sales from a quarter million dollars to $499,999, and very large family farms, with sales of a half million dollars and more.[82] There are also point farmers, whose farms earn under $1,000 in sales in a given year, but would ordinarily be expected to earn more than that.[83]

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[73] SEYMOUR, *supra* note 62, at 243.

[74] UNITED STATES DEPARTMENT OF AGRICULTURE, AGRICULTURE FACT BOOK 24 (2003) [hereinafter AG FACT BOOK].

[75] *See id.* at 29.

[76] *See id.*

[77] *See id.*

[78] *See id.*

[79] *See id.* at 29.

[80] *See id.*

[81] *See id.*

[82] *See id.*

[83] *See id.* at 27.

These groupings help us to understand the family farmer who operates a commercial farm in the context of his contribution to agriculture as an industry, and his reliance on other factors. In 2000, most farms were considered small, making up 67% of all farmland.[84] Yet their productivity measured against other family farms and nonfamily farms mirrored that, producing 68% of farm output.[85] Among small farm types, only high-sales small farms reported more farms with a gain in income.[86] Limited resource farms, retirement farms, residential farms, and low sales farms, as types, all had more farms which reported a loss in farm income, although most of those reported a positive household income due to off-farm employment.[87] As a result, small farmers rely heavily on the over-all economy as well as the state of the agriculture economy for their livelihoods.[88]

There is little surprise that residential/lifestyle farmers make more off the farm; nor is it a great surprise to see many losing money on their residential operations. The farm is not their livelihood, it is, as is indicated by the title itself, a part of their lifestyle. The same can be said of retirement farmers. The statistics showing limited-resource farmers and low-sales small family farmers in this position tell a melancholy tale, but, once again, not a surprising one. One must remember, both these types of small farmers sell less than $100,000 dollars from their farm. Even if they sell near that figure, their actual income will be substantially less after paying the bills to stay in business, and that may result in a loss.

When looking at average total income for small farms by type in 2000, a more disappointing figure is shown. Only residential/lifestyle farmers made more than the average income for the U.S. as a whole.[89] While this is good for that type of farmer, it says little for their operations, since they are making their living off the farm. Large and very large family farms made more than the average, but even high-sales small family farms made less than $57,045 that year.[90]

Farm size, by acreage, has increased over the last 70 years, and that average was less than 200 acres per farm in 1935.[91] Between 1997 and

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[84] *See id.* at 30.
[85] *See id.*
[86] *See id.* at 34.
[87] *See id.*
[88] *See id.* at 35.
[89] *See id.* at 35.
[90] *See id.*
[91] *See id.* at 24.

2002, the average size of a U.S. farm grew from 431 acres, to 441 acres.[92] The total number of farms fell 3.91% in that same time, while the total acreage fell 1.6%. The only farms, when measured by acreage, that grew in number were very small farms between 10 and 49 acres, and large farms with more than 2,000 acres.[93]

Although this data is collected by the USDA, the department admits measurement of farms by acreage has little value. This is because each farm product will produce varying amounts of sales per acre.[94] In 1997, most farms with greater than 500 acres had sales below $250,000.[95] The same can be said even of farms with greater than 2,000 acres.[96]

5. Production

"We have done so much for so long with so little that we're now qualified to do anything for nothing."[97]

How do these farms that are classified as "family farms" by the USDA fit into the idea of the family farm? Looking back to the letters by Masseurs Wallace, Calvert, and Hess, we see a wide variety of farms fitting what can be classified as a "family farm," ranging from those with sales of more than one-half million dollars per year, to those that are losing money. Non-family farms, corporate farms and those farms owned by one person but operated by a hired manager, see impressive production levels. Non-family farms make up about 2% of all farms in the U.S., yet they produce almost 15% of farm output.[98] Less impressive, however, is that production compared to acres owned. They are about the same, 15%.[99] Far more impressive figures, when looking at all three criteria, come from the large and very large family farm types. Very large family farms make up about three percent of all farms, produce more than thirty-five percent of farm output, and do that on about ten percent of all U.S. farm acreage.[100] Large family farms make up about 5% of all farms, produce 15% of farm output, and do it from less than ten percent of all

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[92] NASS PRELIMINARY 2002 CENSUS OF AGRICULTURE DATA HIGHLIGHTS (2002), *available at* www.nass.usda.gov/census/.

[93] *See id.*

[94] AG FACT BOOK, *supra* note 74, at 24.

[95] *See id.* at 24 - 26.

[96] *See id.* at 26.

[97] JOHN C. BAKER, FARM BROADCASTING 77 (1981) (quoting an excerpt from "The Farmer's Creed").

[98] AG FACT BOOK, *supra*, at 30.

[99] *See id.* at 30.

[100] *See id.*

U.S. farm land.[101] Large family farms also produce more value per acre than corporate farms, and more value per farm than corporate farms. Corporate farms operate with some efficiency, but not as efficiently as the larger family farms. It has been said that the number of farms held by a non-family corporation, about 2% of all farms, is so low because corporate boards have figured out there is no money in it.[102]

The figures for small family farms are less impressive: only high-sales small family farms exceed their number of farms with value of production.[103] The reason may be that these farmers, like the larger family farmers, work more on the farm itself. The other types of small family farms see a large number of farmers specializing in beef cattle production, particularly cow-calf operations.[104] About two-fifths of all limited resource, retirement, residential, and low-sales small family farmers specialize in beef-cattle, likely due to the fact that such operations have flexible labor requirements and take less time to operate, leaving time for off-farm work.[105] This may account for some of the low values of production among these types of farmers. Cattle can bring in low sales volumes.[106]

6. Is It Worth the Effort: Or, Are They Making Any Money?

"For most of my early adult life I was called a failure for farming; now I am dubbed a success for having failed at farming."[107]

My father, John Statler, grew up on a farm outside of Arvin, California, in the southern part of the San Joaquin Valley.[108] The family grew a variety of crops, including onions and cotton.[109] When Mr. Statler married in 1965, his father, Carl, asked if the younger Mr. Statler would like to join the operation.[110] The offer was declined.[111] After a few years, the elder Mr. Statler went on to retire, sell the farm, and began a furniture refinishing business in Ventura, California, refinishing works for celebri-

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101 *See id.*
102 Telephone Interview with Dave Kranz, Communications/News Division Asst. Manager, California Farm Bureau Federation (March 24, 2004).
103 AG FACT BOOK, *supra* note 74, at 30.
104 *See id.* at 31.
105 *See id.*
106 *See id.* at 24.
107 VICTOR DAVIS HANSON, THE LAND WAS EVERYTHING 13 (The Free Press 2000).
108 Telephone Interview with John Statler (April 4, 2004).
109 *See id.*
110 *See id.*
111 *See id.*

ties like Steve McQueen and Jonathan Winters.[112] He once remarked that had he known there was so much money in furniture refinishing, he never would have farmed.[113] Some years later, the elder Mr. Statler thanked the younger for declining the offer to farm, for had he accepted, "we would have both stayed there until we ran out of money."[114]

My father gave two reasons for declining his father's invitation to stay on the farm.[115] First, absent growth in the operation, he saw the small farmer's future as unprofitable because the costs of operation would outpace income. Second, it was too much work.[116] At the time, the young Mr. Statler, just 19 years of age, may not have known how those two reasons would turn out to play into one another.

The profitability of farms operates, in many ways, under an economy of scale. For purposes of measuring profitability, farms have been divided into three groups by the United States Department of Agriculture: 1) commercial farms, 2) intermediate farms, and, 3) rural-residence farms.[117]

Commercial farms are farms with sales above $250,000 and those farms not organized as sole proprietorships.[118] This would include large family farms, very large family farms, and non-family farms. As is discussed previously, these make up 8% of all farms, 175,000 of them, yet produce just over two-thirds of all farm output, 68%.[119] These operations focus on the farm as a commercial venture, containing costs and increasing sales to make the operation profitable.[120] They tend to be so.[121]

Intermediate farms also tend to be profitable, but substantially less so.[122] Farming is the primary occupation of this group, but these farmers supplement their income with off-farm work.[123] They may be farmers who are just getting started, or farmers nearing retirement.[124] Common to all, off-farm income is necessary to keep the farm going.[125] Some supplement their income by using their equipment to do work for other

[112] *See id.*
[113] *See id.*
[114] *See id.*
[115] *See id.*
[116] *See id.*
[117] *Food and Agriculture Policy*, *supra* note 45, at 22.
[118] *See id.* at 23.
[119] *See id.*
[120] *See id.*
[121] *See id.*
[122] *See id.* at 24.
[123] *Food and Agriculture Policy*, *supra* note 45, at 54.
[124] *See id.*
[125] *See id.*

farmers, and some even generate income by allowing their land to be used for recreational activities.[126] Some profit in these operations, but there is a substantial labor commitment to an income generator that requires other work to support the farm household.[127]

Rural-residence farms are often run by retirees and people with primary careers off the farm.[128] These farms tend to be a losing investment, but a rural lifestyle combined with a tax write-off may equal a winning choice for those who enjoy the work, whatever their personal reason.[129]

The incomes of all three groups are supplemented with non-farm money.[130] Farmers, as a whole, made $55.7 billion dollars from farming in 1999, but made more than twice that, $124 billion, off the farm.[131] Rural-residence farms, as a group, lose money from their farming operations but have incomes above the national average due to off-farm income.[132] Intermediate farmers draw a strong majority of their income from non-farming sources.[133] Commercial farmers make most of their money on the farm, but also draw income from non-farming sources.[134] One explanation for the dramatic difference between non-farm income and farming income is the number of rural-residence farmers. While losing money on their farms, they draw above average income from elsewhere,[135] and there are 650,000 of them.[136]

The cost of doing business can also affect the income of the farmer. Both rural-residence farms and intermediate farms tend to be high cost or mid-level cost operations,[137] while commercial farms can capitalize on an economy of scale to become low cost operations.[138] The reasons are not hard to surmise. A small farmer and a commercial farmer may need to buy the same model tractor, but that tractor may be able to handle the needs of either operation. The actual cost may be identical, but the share of farm costs will be greater for the small farmer.

The two challenges young Mr. Statler did not wish to face therefore end up going hand in hand, perhaps not in a way he had imagined. The

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126 *See id.* at 23.
127 *See id.*
128 *See id.* at 55.
129 *Food and Agriculture Policy*, *supra* note 45, at 55.
130 *See id.* at 24.
131 *See id.*
132 *See id.*
133 *See id.*
134 *See id.*
135 *Food and Agriculture Policy*, *supra* note 45, at 24.
136 *See id.* at 23.
137 *See id.*
138 *See id.* at 24.

hard work a small farmer does on the farm is now compounded by the work done off the farm. Meanwhile, the costs of farming have proven to be great, and the off-farm work among rural-residence farmers, and intermediate farmers who may lose money in a particular year, will have to supplement the costs of the profitless farm.

7. The Future of Family Farmers

To read some of what is said about family farmers, one would anticipate their complete demise, and in short order. Country music singer Willie Nelson has held Farm Aid concerts for seventeen years, hoping to help family farms by raising money for interests that serve them.[139] Mr. Nelson believes the federal government has turned its back on family farms while meatpacking companies find ways around workplace safety rules and buy only from large-scale hog operations.[140] Mr. Nelson vows he will not stop until there are more family farmers.[141]

Some might say Mr. Nelson's struggle has already failed. "Family farming is gone," laments Victor Davis Hanson.[142] Professor Hanson contends the multi-generation small farming operation has disappeared,[143] that America's croplands will be farmed by tenant "broke serfs and thriving corporations alike."[144] The farmers to be, whom he describes as brave and well-meaning souls, will not be a family farmer who homesteads and grows organic produce, but a contrived nuance of such a farmer who will rely on income from off-the-farm to sustain his family.[145] The accouterments of farming may surround and clothe this farmer, and the dialect of farming may be heard from him, but Professor Hanson contends the ability to avoid the dangers of farming with a safety net of off-farm capital turns the suburban romantic's image of this man as a family farmer into a lie.[146]

Yet, farming still attracts many. Young farmers and ranchers are optimistic about their futures.[147] In a 2004 survey done by the American Farm Bureau Federation, 81% of ranchers aged 18-35 say they were

[139] Moore, *supra* note 7.
[140] *See id.*
[141] *See id.*
[142] Hanson, *supra* note 107, at 20.
[143] *See id.* at 16.
[144] *See id.* at 15.
[145] *See id.* at 16-17.
[146] *See id.* at 17.
[147] *Young Farmer/Rancher Optimism Hits Survey High*, American Farm Bureau Federation (March 18, 2004), *available at* http://www.fb.org/news/nr/nr2004/nr0318.html [hereinafter *Young Farmer*].

more optimistic about agriculture than they were five years before, up 20% from the year before, and the highest the survey had seen in the eleven years the survey has been done.[148] They maintain concerns: profitability, availability of land, government regulations.[149] The number who believe the public views farmers and ranchers positively more than doubles the number who think they are perceived negatively, 43.4% to 20.4%, respectively.[150] More than a third figure the public doesn't think about them at all.[151]

This survey shows more than guarded optimism and varying levels of self-esteem, however. It illustrates some of what Professor Hanson dismisses as a "counterfeit agrarian ideal,"[152] but what is felt is a real need among these farmers: 70% of them, their spouses, or both, work off the farm.[153] Six-tenths of them supplement their income with farm-related jobs like custom work for other farmers, truck-driving, and agriculture supplies sales.[154] A strong minority, 42%, say health care was the primary reason for doing so.[155] Despite that affirmation of Professor Hanson's dire warnings, a family theme pervades the survey. Only about a third of these young ranchers started farming on their own, the rest joined a family partnership, married into a family farm, or inherited one.[156] In the eleven years the survey has been held, the vast majority of young farmers and ranchers, 84.5% to 95.5%, have hoped to see their children carry on the farm.[157] In that same eleven years, every year, more than 90% have planned to farm for life.[158]

Working off the farm is not new. My maternal grandfather, Harlow Johnson, grew up on a small farm in Oklahoma.[159] His father ran an auto dealership in town while working the farm with his sons.[160]

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148 *See id.*
149 *See id.*
150 *See id.*
151 *See id.*
152 HANSON, *supra* note 107, at 17.
153 *See Young Farmer*, *supra* note 147.
154 *See id.*
155 *See id.*
156 *See id.*
157 *See id.*
158 *See id.*
159 Telephone Interview with Judy Johnson Statler (April 26, 2004).
160 *See id.*

8. Conclusion

Many say the family farmer is in peril, even gone. Their numbers drop as their farms get larger; they work off the farm, as their farm income can no longer support them. The smaller farms produce little compared to larger operations. They are concerned about profitability, and for good reason. Those starting off in or joining small family farms will have to work both the on-farm and off-farm jobs until their operation grows, even as the problems inherent in the business prompt the creation of an exclusive family farmer chapter in the Bankruptcy Code.[161]

Yet young farmers and ranchers still practice the trade, and do so with increasing optimism. They hope to do it for life and hope to see their children continue in what others describe as a dismal future. Perhaps the future is not as dismal as it seems. Professor Hanson may be right when he foresees that family farms will no longer be what they once were, but must they?

The modern family farmer works. He works his farm, and then he drives to work some more somewhere else. If the intermediate farmer makes most of his income somewhere else, but chooses to return to the farm to work for less, who should tell him that his farm is less important or meaningful than the farm of 100 years ago? Who indeed, when one considers that off-farm income is nothing new? If the residence/lifestyle farmer should choose to lose some money earned in-town simply for the pleasure of seeing something grow, he is no different than men known as "gentlemen farmers" of the nineteenth-century, losing money on the farm for their recreation.[162] Some of these farmers will see success and manage to grow into large family farms, reducing costs and maximizing profit; so much the better.

Many a modern family farmer, then, is a hard-working sophisticate, plying trades in-town and out. His costs may be high due to a disadvantageous economy of scale, but he works to increase his advantage. Professor Hanson grieves for the impending doom of agriculture in his native San Joaquin Valley in some fifty years, as family farms give way to an ever-growing suburbia.[163] Mr. Seymour contends this expansion of the cities will ultimately force people back onto the self-sufficient homestead as the industrial age grinds to a standstill.[164] The views are not mutually exclusive, as Mr. Seymour's prophecy of self-sufficiency may be the ultimate result of suburban failure.

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[161] 11 U.S.C. § 1201, *et seq.*
[162] WILLIAM CROZIER & PETER HENDERSON, HOW THE FARM PAYS 12-13 (1884).
[163] HANSON. *supra* note 107, at 30.
[164] SEYMOUR, *supra* note 62, at 9.

The family farmer may be different today than what he was however many years one chooses to look back, but it appears that the difference is only in what we remember the family farmer to be. Family farmers face economic troubles and find ways to protect themselves from those troubles. They have efficiency problems that drive up costs, so they work elsewhere to reduce their farm income reliance.

Professor Hanson says the family farmers of old paid, with their own labor, "the consequences for the ideas of distant others."[165] These were the family farmers of the San Joaquin Valley of California, where he lives, farms, and was born.[166] The fall of the agrarian life is the result of what he calls Pax Sumptuosa; a modern peace achieved by the satiation of fleeting material desires.[167] The title is ominous; for it indicates peace that lasts only as long as those fleeting desires are anticipated and met. I do not believe the agrarian life has fallen, however. It has merely changed. Perhaps lamentation for the family farmer is another result of Pax Sumptuosa, indulging a suburban self-loathing by grieving the loss of a family farm we only imagine, for while others grieve for it, there are family farmers who keep farming. While others try to remember what family farming was and should be, the family farmers of today, too busy to hear the dirge, are defining themselves.

This is what the USDA should allow them to do. Under the current Direct Farm Loan Program, broad definitions allow for determinations as to the family status of a farm.[168] No mention is made of fraud, waste, or abuse within the program, only a desire for "consistent treatment" of applicants.[169] If, however, "[a]ny child with a nose" can discern a family farm from an "animal factory,"[170] certainly the USDA should be able to do so. Early in this discussion, Mr. Hess was angered by those who would limit his ability to grow as a farmer.[171] If the proposed rule is adopted, dairies having less than half the number of cattle as his will surpass the very success limiting threshold he fears.[172] Mr. Hess runs his dairy with four family members,[173] but would no longer be a family farmer under the proposed rules. He admits some, already, would accuse

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[165] HANSON, *supra* note 107, at 24.
[166] *See id.*
[167] *See id.* at 13.
[168] 69 Fed. Reg. 6056, *supra* note 3, at 6059.
[169] Barrett, *supra* note 1.
[170] Wallace, *supra* note 12.
[171] Hess, *supra* note 21.
[172] Barrett, *supra* note 1.
[173] Hess, *supra* note 21.

him of being a "factory farmer" rather than a family farmer.[174] He may not have expected it to come from the USDA.

RON STATLER

[174] *See id.*