



Agricultural Law Update

October 2013

GOVERNOR SNYDER SIGNS FORESTLAND MANAGEMENT LEGISLATION

- Liza C. Moore

On June 6, a new Michigan law went into effect that has implications for individuals enrolled in the Qualified Forest Program (QFP). Public Acts 42-50 were designed to encourage private forestland owners to enter the Qualified Forest Program (QFP) and actively manage their land. Benefits of the program include an exemption from local school operating taxes and/or exemptions from the uncapping of the taxable value of the property in the event of a change in ownership.

The Public Acts require people with land currently enrolled in the Qualified Forest Program to submit a new Qualified Forest School Tax Affidavit (QFSTA) before Nov. 30, 2013, if they wish to remain in the program. There is no fee for filing this affidavit.

If an owner does not submit a new affidavit before Nov. 30, 2013, they will be withdrawn from the program without penalty. The owner will not be subject to a recapture tax. The property will be placed on the tax roll at the current taxable value, as though the exemption had never been granted.

KEY CHANGES TO THE QUALIFIED FOREST PROGRAM TO CONSIDER

- The new program is managed by the Michigan Department of Agriculture and Rural Development (MDARD) instead of the Michigan Department of Natural Resources.
- The maximum acreage per property owner eligible for exemption increased from 320 acres to 640 acres.
- For property with 40 or more acres of land enrolled in QFP, only 50 percent of that acreage must be stocked in productive forest. The old program required all enrolled lands to be 80 percent stocked in productive forests.
- The new program permits structures on QFP land, while

the old program did not. The structures and the land beneath those structures will not benefit from the QFP tax exemption, and will be taxed at the regular rate.

- The new QFP requires a fee to participate. The fee is equal to two mills times the taxable value of the parcel, due annually to the local taxing authority. The fee will be placed in the Private Forestland Enhancement Fund and used to operate the QFP and provide educational and technical assistance to interested and enrolled program members.
- Two affidavits must now be submitted: a School Tax Affidavit and a Taxable Value Affidavit.
- If land participating in the new QFP is later withdrawn from the program, the repayment upon release (recapture tax) will be significantly less than the previous recapture tax. Owners will be subject to a repayment upon release of up to 16 mills, depending on the mills exempted under the program, times seven years.
- Forest management has been added as a consideration under the Michigan Environmental Assurance Program (MEAP).
- Lands with more than half of the acreage devoted to a combination of agricultural use and use as qualified forest land are now eligible for the 18-mill qualified agricultural property exemption.

For more information on enrolling or transitioning into the new Qualified Forest Program, please visit:

- http://www.michigan.gov/mdard/0,4610,7-125-1599_28740-306518--,00.html
- http://www.michigan.gov/documents/mdard/Instructions_for_New_QFP_Applicants_426797_7.pdf

WHAT ARE THE RULES OF THE ROAD FOR FARM VEHICLES?

- Dirk H. Beckwith

VEHICLE IDENTIFICATION:

Tractors, trucks and other vehicles used by the farmers working their fields must, like all vehicles traveling on public roads, be registered and have some form of identification. For certain farm vehicles that means, in addition to a license plate, the company name and United States Department of Transportation (USDOT) number must be displayed on the power unit of the truck.

Implements of husbandry, such as tractors, wagons, trailers, trailers adapted for lifting and carrying another implement of husbandry or similar equipment used to transport farm products, are exempt from USDOT number requirements. Some vehicles can be both motor vehicles and implements of husbandry—a dump truck, for example, can be fitted with a spreader making it an implement of husbandry. Essentially how the vehicle is categorized depends on how it is being used.

Implements of husbandry must display a Slow Moving Vehicle (SMV) sign, retro-reflective tape and at least one white light on the front and one red light at the rear.

WHEN IS IDENTIFICATION MARKING NEEDED?

Interstate commerce:

Trucks that meet the federal definition of a commercial vehicle and are driven outside of Michigan in interstate commerce must display the company's name and a USDOT number on both sides of the truck cab in a color that contrasts with the truck and in letters big enough to be seen at a distance of 50 feet.

Intrastate or in-state commerce:

The following motor vehicles when traveling within the state must display USDOT identifying information:

- Those with a Gross Vehicle Weight Rating (GVWR) over 26,001 pounds, inclusive a towed unit with a GVWR over 10,000 pounds
- Any vehicle with a GVWR 26,001 pounds or more
- Any vehicle being used to transport hazardous materials, or
- a vehicle designed to transport 16 or more passengers including the driver,

The following motor vehicles can display the company name, city and state or the USDOT information in letters at least 3" high and in a contrasting color:

- A vehicle with an actual or GVWR of more than 5,000 pounds but less than 10,000 pounds without a farm license, or
- A vehicle with a GVWR between 10,000-26,001 pounds

REGISTRATION AND LICENSING REQUIREMENTS:

Farm plates can be used only in connection with the farm or for transportation of the farmer and the family members. This includes transportation for personal use. The farmer can loan the farm-plated vehicle to others and receive payment in kind or in services but not money. The fees for farm plates are determined by the weight of the vehicle and can be purchased for 6 or 12 months.

Special farm plates are used for transporting farm crops or livestock bedding between the field and the barn or silo or from the barn to the field for feeding or transport crops from the field and the grain elevator. The fee for the plate is 20 dollars and proof of insurance is needed.

Log plates used in logging operations and **milk plates** used exclusively to haul milk from the farm to the first point of delivery are available.

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If you are not using a farm plate, you must have an **Elected Gross Vehicle Weight (EGVW) plate** for trucks with an empty weight of more than 8,000 pounds, a truck under 8,000 pounds towing a non-recreational trailer of any size; trucks of any size pulling a trailer of any size, and road or truck tractors.

For applications and fee charts, please contact the Secretary of State: http://www.michigan.gov/sos/0,1607,7-127-49534_50300_50310-30109--,00.html

DYED DIESEL FUEL

It is illegal to drive a motor vehicle on a public highway with dyed diesel fuel. Implements of husbandry are exempt from this prohibition, however, if the implement of husbandry is also a licensed vehicle, it, too, is restricted from using dyed diesel fuel on the highways.

TARPING OR HAY AND STRAW BALE SECUREMENT

When moving crops around the farm on public roads farmers have to consider special traffic regulations regarding tarping, spilling, or hay and straw bale securement.

In general, the farmer driving a vehicle to transport agricultural goods including sand, gravel and dirt in the normal operation of the farm is not required to cover the load. However, there is a spillage law that includes fines

for losing a load on the highway. The law recognizes that some spillage can happen and if the amount spilled does not interfere with other traffic on the highway, it is not considered a violation of the law.

It is important to remember that farm vehicles that fall under the definition of a commercial motor vehicle must comply with the securement regulations of the Federal Motor Carrier Safety Regulations. (FMCSR) The regulations are commodity-specific and there are working load limits for tie-downs. These can be found in the FMCSR at Part 393, sections 100-136. (http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.aspx?section_type=A)

The FMCSR has rules for securing square bales of hay or straw. The bales must be loaded in a pattern that interlocks adjacent square bales together and they must be tied down. The number of tie-downs depends on the size of the trailer, for example, trucks or trailers longer than 32 feet need two lateral tie-downs and there are load limit requirements.

For help answering your questions on licensing, registering and identifying your truck, or the traffic regulations that apply to you as you move about your farm, please contact Dirk H. Beckwith at dbeckwith@fosterswift.com or 248.539.9918.

UPCOMING AG EVENTS

- Oct. 16-29, 2013** MSU Extension Affordable Care Act & Fruit Crop Insurance Update Workshops - <http://bit.ly/1avPm80>
- Oct. 17, 2013** MSU Extension Webinar, Improved Information Transfer to Assist in Making Decisions about On-Farm Scale Anaerobic Digesters <http://bit.ly/1fvdSwz>
- Oct. 17, 2013** MSU Extension Sustainability: Understanding People, Profit and Planet for Business - <http://bit.ly/16PIHCF>
- Oct. 17, 2013** 2013 Healthcare Forum-<http://www.lansingchamber.org/event/healthcare-forum-2013>
- Nov. 6, 2013** Lansing Ag Club - <http://www.miagbiz.org/>

FIRST ANNUAL MEETING OF STATE BAR AG SECTION FOCUSES ON FUTURE OF INDUSTRY

- Liza C. Moore

The first meeting of the State Bar of Michigan Agricultural Law section was yet another indicator of the good health and growing nature of this industry in Michigan.

In keeping with the section's stated purpose "to provide a forum for the exchange of ideas among members engaged in the practice of law servicing agricultural clients, with a view to: (i) improve the practice of agricultural law, (ii) study the principles, regulations, statutes, and legal developments that affect the agricultural community, and to (iii) improve the quality of legal services provided..." the meeting's agenda had something for everyone.

After the business portion of the meeting, which included the election of officers, the educational portion of the meeting kicked-off with a video welcome from Senator Debbie Stabenow, chair of the Senate Committee on Agriculture, Nutrition and Forestry. In her video message, Stabenow emphasized you don't have an economy without agriculture. She applauded the State Bar of Michigan and the organizers of the Ag Law section, including Foster Swift Attorney Liza Moore, for their impassioned efforts in getting the section established.

Covering a substantial amount of ground in a short amount of time, Senator Stabenow provided a synopsis of her priorities for the Farm Bill which included:

- A strong crop insurance program including fruits and vegetables;
- Supporting regional food systems;
- Continuing fresh fruit and vegetables in school;
- Increasing the focus on conservation with programs; and
- Ongoing development of bio-fuels and bio-based manufacturing.

While acknowledging the difficulties in passing the Farm Bill, she emphasized the goal is to make sure the bill

provides a safety net for both farmers and families. She closed by saying "this policy needs to work for farmers, consumers, and country."

Jim Bryum, president of the Michigan Agri-Business Association, spoke next and gave an eye-opening short course on agricultural economics in Michigan. He focused on these concepts:

- Agricultural demand is going to increase. "Everyone wants to eat what we eat and do what we do and live like we live..." He explained the growth of the world population and stated much of the growth of the middle class is going to come from developing companies.
- More acres will be farmed with significant expansion in northern Michigan. This can occur because of a longer growing season, better shorter season varieties and the fact that "technology in ag is amazing!"
- Many pressing issues face Michigan agriculture. Bryum discussed:

1. **Reliable broadband access throughout the state.** If we don't have broadband, farmers can't use the latest technological advances in agriculture.
2. **Transportation infrastructure,** including more roads, rails and water transportation. Bryum noted Michigan's need for more and better maintained roads. He also said Michigan has insufficient rail including some abandoned rail, which will likely be rebuilt. Bryum noted deep water ports may play an important role, saying barges are an opportunity for the west side of the state to meet agricultural needs at a lower cost.
3. **Utilities.** Michigan has the highest electricity rates in the Midwest and has huge access issues.

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The grid can't support the demand.

4. **Talent Needs.** Folks aren't leaving the farm. Agri-businesses have to hire "non-aggies" and train them.
5. **Immigration Reform.** Immigration reform is needed to have workers for specialty crops.

Bryum referred attendees to Project 2025 (http://aghost.net/images/e0186601/Project_2025_91112_FINAL.pdf) a publication he authored projecting growth of Michigan agriculture as well as the infrastructure and policy necessary to effectively manage this growth. In his conclusion, Bryum said individuals in ag need to tell people their stories on what this Michigan industry does well. Agriculture in Michigan is going to continue to grow and it's up to agriculture professionals to make the opportunities outweigh the challenges, Bryum said.

IN DEPTH LOOK: GOVERNMENT'S ROLE AND RESPONSIBILITIES – PANEL PRESENTATION

The next two panel sessions focused on available resources to agriculture professionals. The first panel covered the "Government's Role and Responsibilities." Brad Deacon, the Emergency Management/Administrative Law Coordinator from Michigan Department of Agriculture and Rural Development (MDARD), led off the first panel with an overview of MDARD explaining it is both a regulatory and promotional agency with the primary goal "to assure food safety." MDARD is responsible for everything having to do with animal and plant health including inspections and regulation enforcement, as well as oversight of weights and measures. Many in the audience were surprised to learn the department is focused on regulatory reform and ridding the public of out-of-date laws.

Jim Johnson, Director of MDARD's Environmental Stewardship Division, gave the attorneys a primer on matters he oversees, which includes the Right to Farm Act. He noted they receive about 150 Right to Farm-related complaints annually. His group also oversees the Michigan Agriculture Environmental Assurance Program (MAEAP), Groundwater Stewardship Program, 1,100 inter-

county drains, 900-plus migrant labor housing operations, and the Clean Sweep project, which provides farmers and individuals a way to safely dispose of pesticides. Johnson was proud of this project's record of safely removing 1.4 million pounds of unwanted/unusable pesticides from Michigan farmers and residents. He was quick to point out several emerging issues for attorneys to watch relating to wetlands, tile lines, alternative energy, water withdrawal, and urban agricultures.

Next on the panel to speak was Jeff Haarer, the Producer Security and Ag Products Manager of MDARD's Pesticide and Plant Pest Management Division. Jeff's division has a broad range of responsibilities. This division provides oversight to the Grain Dealers Act and oversees the state's 228 grain dealers with the goal of providing farmers confidence that what they put into the elevator is what they get out. They also administer 6.2 million dollars of crop insurance funds, work with the Ag Marketing Board, and manage numerous other programs. Looking toward the future, Haarer noted they see the pressing need for a new feed law and hope to have a bill introduced in the Michigan legislature soon.

Wrapping up the panel was Christine White, State Executive Director of the United States Department of Agriculture, Michigan Farm Service Agency (FSA). Noting that FSA was established through the 1933 Farm Bill, she explained the role of the FSA changes and is dependent upon congress. White provided the attorneys some very useful facts:

- Farmers with adjusted gross income excess of 500,000 dollars are not eligible for any FSA payment;
- Farmers participating in any FSA program cannot convert a wetland;
- FSA is often considered to be the lender of last resort – approximately 80 percent of loans are with young and disadvantaged producers.

IN DEPTH LOOK: HOW EXPERTS CAN HELP YOUR CLIENTS – PANEL PRESENTATION

The final educational session of the day was titled "what an expert can do for you and your clients." This session

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provided the attorneys a well-rounded perspective of the roles and resources available from other professionals serving the agricultural industry.

Dennis Stein, Saginaw Valley District Farm Management Educator shared he “specializes in systems.” He helps farmers put business processes in place, assists with vetting HR consultants, accountants, lawyers and other professionals, and helps clients with organizing and formatting information so they can optimize the value they receive from other professionals. Stein helps his ag producers with everything from business plans to entity formation, operating agreements, and identifying governmental programs. He coaches them throughout the implementation process.

Barb Dartt, DVM, MS of GROW: The Family Business Advisors shared that their responsibilities are to talk about the people issues that go with the organizational development of the farm. As family farm businesses grow and become more sophisticated, they often discover in addition to assistance with the financial component, they need assistance with the organizational structure as well as the succession plan, which often results in both management and ownership transition.

“Farmers have old fashioned values” says E. Lynn Pohl, CPA with Boge, Wybenga & Bradley, P.C. She shared that it’s important for any professional advisor to recognize the courtesy rules farmers expect. When it comes to accounting and taxes, it’s important the CPA serving the agri-business or producer understand farming as well as the family business so they can help plan and manage finances and minimize tax exposure.

Rounding out the panel of non-legal professionals was William Knudson, the Product Marketing Economist from Michigan State University’s Product Center for Agriculture and Natural Resources. The Product Center helps Michigan entrepreneurs develop products and services in the agriculture and natural resources industries. Knudson explained the center offers broad venture development services where clients work with innovation counselors

on everything from business planning, feasibility studies, market research, regulatory requirements to packaging, label requirements and product launch.

All members of the second panel communicated a common message: It’s through teamwork that the CPAs, business succession planners, organization developers and other professionals help farm businesses face unique opportunities and challenges of the industry and help each client make decisions for the organization’s long term growth and successful transition.

The first meeting of the State Bar of Michigan Agricultural Law section was a balance of both business and education. Attorneys were able to better understand both the state resources available and the availability of outside experts specializing in the agricultural industry. Attendees found the program very useful and took advantage of the opportunity to speak with the panelists informally after the presentation. Please see the side bar below to reference the online resources discussed.

RESOURCES MENTIONED THROUGHOUT THE AG PROGRAM:

Project 2025: http://aghost.net/images/e0186601/Project_2025_91112_FINAL.pdf

MSU Product Center: <http://productcenter.msu.edu/>

MDARD Environmental Programs: <http://www.michigan.gov/mdard/0,4610,7-125-1599---,00.html>

MDARD Animal Health: <http://www.michigan.gov/mdard/0,4610,7-125-48096---,00.html>

MDARD Plant, Pest and Pesticides: <http://www.michigan.gov/mdard/0,4610,7-125-2390---,00.html>

State Bar of Michigan Agricultural Law Section: <http://www.michbar.org/aglaw/>

USDA Farm Service Agency: <http://www.fsa.usda.gov/FSA/stateoffapp?mystate=mi&area=home&subject=landing&topic=landing> (This link is currently unavailable due to the government shutdown.)

EXECUTIVE WOMEN IN AGRICULTURE CONFERENCE

The annual Executive Women in Agriculture Conference will be held Dec. 5-6 in Chicago. This two day national conference is hosted by Top Producer and held for business-minded women in agriculture.

Interested in attending the conference, but don't want to drive? A group of ladies interested in attending are putting together a bus trip to the conference. If enough interest is expressed the travel plan will go as follows:

- Leave the afternoon of Dec. 4 from Grand Rapids around 3 p.m.
- Arrive in Chicago around 5 p.m.
- For those interested, check into hotels and then

leave for supper and have an evening of fun starting at 6:30 p.m.

- Leave the conference Dec. 6 at about 3:30 p.m. and arrive back to Grand Rapids around 7 p.m.

The potential travel costs will range depending on the number of ladies interested. With 20 women the cost will be 110 dollars each and with more than 30 ladies the cost will be 80 dollars each or less.

Please express your interest in this program by Oct. 4. Contact Stephanie Edsall at Stephanie.edsall@growthefamily.biz

FOOD SAFETY MODERNIZATION ACT UPDATE

The public comment period for Produce Safety and Preventative Control has been extended until Nov. 15, 2013. This is the second and final extension of the comment period for these two rules. The extension of the comment period also applies to the information collection provisions associated with the proposed rules.

Michigan has hosted one of the national listening sessions earlier this year.

These rules do not include the provisions on food defense, internationally introduced hazards or sanitary transportation of food.

For more information visit the FDA website: <http://www.fda.gov/food/guidanceregulation/fsma/default.htm>

Please contact Attorney Liza C. Moore with any of your Food Safety Modernization Act Update questions at lmoore@fosterswift.com.

GLOBAL BUSINESS CLUB OF MID-MICHIGAN UPDATE

Foster Swift is sponsoring the Global Business Club of Mid-Michigan "Global Trade Day Cocktail Reception & Hors d'oeuvres," Oct. 16 from 4 p.m. to 6 p.m. The reception will be located in our Lansing office. Directors and representatives of Michigan's overseas trade offices will give brief presentations about opportunities in their countries and services offered by their offices.

The Global Business Club of Mid-Michigan focuses on global issues of interest to the mid-Michigan business community.

For more information: <http://global.broad.msu.edu/gbclub/>



Agricultural Law Update

October 2013

2013 HEALTHCARE FORUM

The Lansing Chamber of Commerce is presenting the annual Healthcare Forum Thursday, Oct. 17 from 8 a.m. to 11:30 a.m. at the Kellogg Hotel and Conference Center in East Lansing. This year the forum will focus on "Practical Solutions for Managing Healthcare," and will be presented in three parts including:

- State of the State of Healthcare
- Affordable Care Act Bootcamp
- "Strengthening Engagement: Building a Culture of Health"

Foster Swift Attorney Lauren Dunn will be on the panel of experts for the ACA Bootcamp. The Bootcamp will look at how to calculate full-time equivalents for three different businesses in varying economic and employment factors.

Immediately following the Healthcare Forum, the October Economic Club luncheon will feature speakers Shirley Weis of the Mayo Clinic and Dennis Swan of Sparrow Health System.

The cost to attend both the morning program and the luncheon is 99 dollars. To attend the morning program alone the cost is 50 dollars. For more information, go to: <http://www.lansingchamber.org/event/healthcare-forum-2013>

AT THE PODIUM:

Attorney **Julie Fershtman** will be speaking at the Emmett J. Vaughan Agribusiness Conference Midwest Region in Des Moines, Iowa on Oct. 21. The conference provides opportunities to learn about the farm and agricultural industry; network with agribusiness insurance professionals and earn the Agribusiness and Farm Insurance Specialist Designation. For more information: <http://bit.ly/16PSKYk>

HAVE YOU CHECKED OUT OUR BLOGS?

- Equine Law Blog: www.equinelawblog.com
- Health Care Law Blog: www.healthlawyersblog.com
- Technology Law Blog: www.michiganitlaw.com
- Tax Law Blog: www.michigantaxblog.com
- Michigan Bankruptcy Blog: www.michbankruptcyblog.com

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