

KEYNOTE ADDRESS

Deputy Secretary Kathleen Merrigan**†

Thank you, Marc, for that introduction, and congratulations on your new role as President and Dean of Vermont Law School. I'm honored to participate in the launch of the Center for Agriculture and Food Systems, even from afar.

What a tremendous group you have here with you today. We have farmers and food producers, leading federal and state officials, and scholars from around the country.

This is the kind of diversity in expertise and perspective that you'll need as you dig into the questions that are shaping our food system.

I'd particularly like to recognize the students in the audience. Back when I started my career, I would tell people that I was in "ag policy" and get nothing but blank stares. Today, people everywhere are talking about it. My mantra is, "Ag is Back!" You have picked one of the most exciting fields out there today, and we need you. No matter what your specialty, there is a place for you working on food and agriculture.

You are launching this Center at an auspicious moment—a moment when we are seeing a groundswell of interest about where food comes from and how it is produced, about the impacts and opportunities of new technologies, and about how challenges like climate change or obesity may shape our future. And I may be biased, but I think that there's also a growing recognition that public policy matters in all of these arenas. Yet as the level of engagement and interest grows, we're coming up against limitations in our legal and political institutions.

In food and agriculture, we have a long tradition of seeing things play out in the marketplace. Farmers are savvy businesspeople; they know how to innovate to meet new demands. But it is institutions like this one, right here in Vermont, that will help to develop the legal and political frameworks we need to support this innovation and address future challenges. So as I said, you launch this Center at a critical moment, and you have a mighty charge.

This is also a unique moment to be Deputy Secretary at the United States Department of Agriculture (USDA). As you know, much of the

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† Please note that questions and answers were transcribed from recordings of the Conference and added by the *Vermont Law Review*. This manuscript has been edited for readability.

nation experienced a terrible drought this summer.¹ Last summer, Vermont farms were devastated by Tropical Storm Irene. I traveled to Vermont last October to see recovery efforts, and I've traveled this summer to see drought recovery as well. In both cases, it was both saddening and inspiring.

I recognize that these kinds of events will continue to challenge all of us who work in the fields of food and agriculture and challenge our institutions to *innovate* and *improvise*. During my time at USDA, there's been unprecedented attention to the challenge of obesity in America. The Secretary and I have put an emphasis on improving access to healthy foods and helping families make healthier food choices.²

We unveiled *MyPlate*, our new food icon illustrating the 2010 Dietary Guidelines for Americans.³ It recommends that we all fill half our plates with fruits and vegetables.⁴ Yet right now, if everyone did that, we wouldn't be able to meet demand with produce grown here in the U.S. My question is, how do we continue to encourage healthy eating, turn the tide on obesity, *and* help American agriculture tap into the opportunity to supply those products? We've got big challenges ahead of us. But you are engaging and asking the right questions, and I thank you for that.

Another major area of interest for me, and I know for you as well, is the development of local and regional food systems. The market is speaking clearly: local foods is a multi-billion-dollar industry and was the top trend in restaurants last year.⁵ In a recent poll, 85% of consumers said that they choose a grocery store based in part on whether it sells local products.⁶ We know that demand is high. And these opportunities are helping create jobs and drive economic growth up and down the supply chain.⁷ But we also know that to continue this progress, we need to innovate on the law and policy side.

The ideas you're discussing today and the tools that will emerge from the new Center will have big impacts on the ground—things like land use decisions, such as whether you can grow food in an urban area, or where

1. United States Dep't of Agric. Economic Research Service, *U.S. Drought 2012: Farm and Food Impacts*, UNITED STATES DEP'T OF AGRIC., (Feb. 21, 2013), <http://www.ers.usda.gov/topics/in-the-news/us-drought-2012-farm-and-food-impacts.aspx>.

2. United States Dep't of Agric., KNOW YOUR FARMER, KNOW YOUR FOOD COMPASS 56, available at <http://www.usda.gov/documents/KYFCompass.pdf> [hereinafter KYF Compass].

3. United States Dep't of Agric., *Choose my Plate*, CHOOSEMYPLATE.COM, http://www.choosemyplate.gov/images/MyPlateImages/JPG/myplate_green.jpg (last visited Feb. 20, 2013).

4. *Id.*

5. KYF Compass, *supra* note 2, at 10, 77.

6. *Id.* at 5.

7. *Id.* at 78.

you can site a local meat processor; the kind of label you can put on your products, and whether that label is meaningful; how to help all farms meet important food safety requirements and preserve the diversity that makes American agriculture great; how to develop a *regional* food system when it crosses multiple political jurisdictions; and of course, how the decisions we make on the law and policy front affect the economic viability of everyone participating in the system.

At USDA, we've been digging into many of these questions through the Know Your Farmer, Know Your Food initiative.⁸ We've brought together representatives from across the USDA's many agencies to coordinate our work.⁹ Through this coordination, we've found ways to make our programs work better, and we have launched new efforts.

We have expanded the number of farmers markets that accept electronic benefits like SNAP and increased SNAP redemption at farmers markets by 400% since 2008.¹⁰ To help address seasonality challenges for local food producers, we've helped farmers construct over 7,400 high tunnels nationwide in the last three years. We've clarified the rules governing mobile meat processors and made sure mobile units are eligible for USDA infrastructure funding.¹¹ We're implementing a new farm-to-school grant program.¹² And we launched the Know Your Farmer Compass, an electronic guide and map of USDA resources for local and regional food systems.¹³ A lot can happen when you bring people together to talk across agency silos.

We've also learned a lot in the process. One thing we've learned is that smart entrepreneurs are figuring out how to distribute and market local food, but that doesn't mean much if they don't have enough local food to sell. That means we need to recruit and retain more new farmers and ranchers.

8. See generally KYF Compass, *supra* note 2.

9. *Id.* at 79.

10. United States Dep't of Agric. Food and Nutrition Serv., *USDA Grants to Increase Farmers Market Participation in SNAP*, UNITED STATES DEP'T OF AGRIC., (May 9, 2012), <http://www.fns.usda.gov/press-releases/usda-grants-increase-farmers-market-participation-snap>.

Supplemental Nutrition Assistance Program (SNAP) "offers nutrition assistance to millions of eligible, low income individuals and families and provides economic benefits to communities." United States Dep't of Agric. Food and Nutrition Service, *Supplemental Nutrition Assistance Program (SNAP)*, UNITED STATES DEP'T OF AGRIC., <http://www.fns.usda.gov/snap> (last visited March 4, 2013).

11. *Id.* at 43.

12. *Id.* at 46.

13. United States Dep't of Agric., *Know you Farmer Know your Compass*, KNOW YOUR FARMER COMPASS, http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_COMPASS (last visited Feb. 20, 2013).

There are many challenges that beginning producers face: access to land at a price they can afford, access to credit and capital, being able to take full advantage of our farm programs. Good policy and implementation can help address these challenges. At USDA, we have created a small and beginning farmer and rancher working group and have worked within our authorities to target this population.¹⁴ Over the last two years, 40% of our farm loans have gone to beginning producers.¹⁵ We have a new micro-loan program in rulemaking that will provide loans of \$35,000 or less—very useful for small and beginning producers.¹⁶ With USDA support, groups around the country trained *over 40,000 new farmers and ranchers* in 2010 and 2011.¹⁷ But there's more to do, and there's a lot that must happen at the state or local level to make it stick.

There are many other complex questions that your Center might respond to. How—and whether—we put a value on the services that healthy ecosystems provide, interactions between law and technology, and intellectual and material property rights as they relate to food and ag.

These are new frontiers of thought. They are questions that are being asked all over the place. How we engage and move forward together will shape our food system, our environment, and our economy. I believe that with your help, with the Center's leadership, and the great minds at Vermont Law School and beyond, we can foster a new era of civic engagement around food and agriculture. We can start building the law, policy, and institutional frameworks to meet these challenges. I know we can do it because I've seen it happen.

When I was a young staffer for the Senate Agriculture Committee in the late 1980s, the word “organic” was pretty much taboo in agricultural policy circles. Organic farming had zero recognition and no small amount of negativity within the federal government and the universities. But we have come a long, long way, beginning with the passage—against some mighty headwinds and defying all expectations—of the Organic Foods Production Act as part of the 1990 Farm Bill.¹⁸ My boss at the time was

14. KYF Compass, *supra* note 2, at 64.

15. Mary Ahearn & Doris Newton, *Beginning Farmers and Ranchers*, ECONOMIC INFORMATION BULL. 53 (UNITED STATES DEP'T OF AGRIC. ECONOMIC RESEARCH SERV.), May 2009, at 14.

16. United States Dep't of Agric. Farm Serv. Agency, *USDA Finalizes New Microloan Program*, UNITED STATES DEP'T OF AGRIC., (Jan. 15, 2013), http://www.fsa.usda.gov/FSA/printapp?fileName=nr_20130115_rel_0010.html&newsType=newsreel.

17. Agriculture Secretary Tom Vilsack, *Secretary's Column: A Thank You to America's Veterans*, UNITED STATES DEP'T OF AGRIC. BLOG (Nov. 9, 2012, 2:14 PM), <http://blogs.usda.gov/2012/11/09/secretarys-column-a-thank-you-to-america-s-veterans/>.

18. *See generally* Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501–6522 (2008).

your esteemed Senator, Pat Leahy. Vermont was a leader then, and it is a leader now.

It took twelve years just to begin implementing the organic standards after the law passed. There was an unprecedented amount of dialogue and engagement between ordinary citizens and USDA during implementation. I think that is an indication of how ground-breaking the law was. It has not been easy, but we can look back and realize that it is a profound accomplishment for everyone who has been a part of it.

Now we are coming up on the tenth anniversary of the National Organic Standards.¹⁹ The standards and the certification system, for all that they are—still imperfect or incomplete—have served the organic sector and the public very well. They have helped establish organic agriculture not only in the marketplace (to the tune of about \$32 billion in U.S. sales this year), but they have helped to embed the ideas and principles of organic agriculture in culture, in science, and in law.²⁰

The development of the organic standards was a process of figuring out how to embody a holistic principle in public policy. In that sense, it's not unlike the challenges we now face in the realm of local and regional food systems.

You have some very exciting and very important work ahead of you. Congratulations on the launch of the new Center and thank you for all that you do. I look forward to our continued partnership as we work together to explore these new frontiers.

Question & Answer

Question:

Could you update us on the Administration's effort to get a farm bill passed in the lame-duck session?

Answer:

Oh my. I've actually said to members of Congress and the press that I find it difficult to believe that Congress can't get a farm bill done. I mean you all are students, a lot of you, and we always like to do our work in a very organized, methodical way, and then there are those moments where you have to pull an all-nighter. Congress needs to pull a few all-nighters now, because I am the Chief Operating Officer of the Department, and I

19. United States Dep't of Agric. Agricultural Marketing Service, *Celebrating 10 Years of USDA Organic*, THE ORGANIC INTEGRITY QUARTERLY, in NATIONAL ORGANIC PROGRAM NEWSLETTER, at 1 (Oct. 2012).

20. *Id.*

have no farm bill—which covers about 70% of what we do. We know we are going to be cut back seriously, but we don't know what will be cut because Congress has just kicked the can down the road. We've got the fiscal cliff, and if we don't come up with a deal we'll go into budget sequestration. If you don't know what that is, we are basically going to sustain close to a 9% cut across all of the government—every program.²¹ I have some programs that are better able to sustain cuts than others, but if we go into sequestration, it gives us no discretion at all.

On top of that, I know there is a little election in November, and I don't know what the outcome will be. So, we are managing a huge amount of uncertainty right now, and there are about thirty farm bill programs that expire over the course of the weekend.²² Some of the biggest impacts are dairy farms up in our part of the world where the MILC program ends on September 30th, 2013. The support for dairy farms has been gradually going down, and it will go down to zero on September 30th.²³ The Secretary and I have been very vocal that it is time for Congress to pass a farm bill. The Senate certainly did.²⁴ And I think that there is an appetite to have a farm bill by members of the House Agriculture Committee; they certainly got together a committee bill. But it has been impossible to get a bill to the floor in the House. We are hoping that they do so because it is important for so many of our programs, and it will be very hard to continue to operate in a logical way without statutory authority.

Question:

How is the USDA supporting the efforts of small-scaled diversified farms?

Answer:

In a lot of different ways. I think that one thing to look at is the Know Your Farmer Compass, the KYF Compass,²⁵ which really shows the support that has gone to local and regional agriculture. So it could be how

21. Wendy Simmons, *Taking Stock of the Sequester: Have no Fear—Defense Won't Take the Headline Hit*, INVESTOR POLITICS (Feb. 21, 2013, 1:32 pm), <http://investorplace.com/investorpolitics/taking-stock-of-the-sequester/>.

22. Ryan Holeywell, *The Farm Bill Expires This Week. Does it Matter?*, GOVERNING (Sept. 26, 2012), <http://www.governing.com/blogs/fedwatch/gov-the-farm-bill-expires-next-week-does-it-matter.html>.

23. UNITED STATES DEP'T OF AGRIC., FACT SHEET: MILK INCOME LOSS CONTRACT (MILC) PROGRAM 1 (Jan. 2013).

24. Ron Nixon, *Senate Passes Farm Bill with Bipartisan Support*, N.Y. TIMES, June 21, 2012, http://www.nytimes.com/2012/06/22/us/politics/senate-passes-farm-bill-but-tougher-road-seen-in-house.html?_r=0.

25. See generally KYF Compass, *supra* note 2.

my rural business-services agency uses value-added producer grants to help someone turn a pumpkin-patch business into a year-round canned pumpkin-puree business; it could be about the business industry loan guarantee program that helped construct the Brattleboro Food Co-op at the base of Main Street in Brattleboro, Vermont.²⁶ It could be about how the food nutrition service is funding Electronic Benefit Transfers and EBT capacity at farmers' markets so that staff recipients can redeem those benefits there.²⁷ It could be the farmers' market promotion program administered by the agricultural marketing service. I have dozens of programs, and when you go to the geospatial mapping tool you can put in your zip code and say, "I want to see everything within a fifty mile radius or a 400 mile radius or anything in between." You can sort by various themes. For example, you could say, "I want to see everything on the map that has to do with organic," or you could sort it by recipient type. You could also show everything on the map where the money is going to producers or everything that is actually going to non-profits. It even shows what programs fund a particular effort. So there is a lot of very important information there. When we look at the Census of Agriculture, what we see is that people who are doing direct marketing, the really small-scale guys, they are doing really well and they are increasing in number. There are a lot of interesting statistics around women farmers as physical operators—big increase.²⁸ Lorraine Merrill, who is the Commissioner of Agriculture in New Hampshire, and I just met a couple weeks ago about the number of women farmers because New Hampshire and Arizona are neck and neck for having the highest number of women physical operators.²⁹

You also get from that census data that the larger scale farms, which we classify as those with sales of over \$500,000, they are doing really well.³⁰ But it is that disappearing middle, from Iowa for instance—that traditional family farm—that is having a hard time making ends meet. They probably are not going to satisfy their needs through direct marketing, so some of the stuff we are doing for local and regional farmers is talking about

26. *SDA Highlights 2012 Investments to Build Stronger Rural Communities*, UNITED STATES DEP'T OF AGRIC., (Jan. 9, 2013), <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2013/01/0003.xml&printable=true&contentidonly=true>.

27. KYF Compass, *supra* note 2, at 58.

28. UNITED STATES DEP'T OF AGRIC. NATIONAL AGRICULTURAL STATISTICS SERVICE, 2007 CENSUS OF AGRICULTURE: WOMEN FARMERS (2007), *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Demographics/women.pdf

29. *Id.*

30. *See* UNITED STATES DEP'T OF AGRIC. NATIONAL AGRICULTURAL STATISTICS SERVICE, 2007 CENSUS OF AGRICULTURE: FARM NUMBERS (2007), *available at* http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Fact_Sheets/Farm_Numbers/farm_numbers.pdf (discussing that although large family farms made up only 9% of all farms, they produced more than 63% of the value of all agricultural products sold).

intermediated sales, institutional buys, and how to invest in food hubs, for example. Or centralized warehouse facilities that might specialize in flash freezing, storage, or to supply farm-to-school efforts.

So, there is a lot of stuff that we are doing. I think the Compass will be very instructional for people who are looking to write papers, looking for studies, looking for help on their own work that they are doing in the field.

Question:

Is the USDA considering any substantial changes to labeling laws, such as country-of-origin or labeling of meats, stricter organic standards as well as antibiotic labels?

Answer:

That is a good question. We do a lot of different things with meat and poultry, although labeling issues are at the Food and Drug Administration. There is a huge petition that has been underway over the past year concerning labeling of food. But we have had some applicants who wanted genetically-engineered-free meat labels. We haven't issued any of those labels. We certainly have country-of-origin labeling issues that are still percolating and issues that have been around for a long time.³¹ When I was working at the tail end of the Clinton Administration, we were just in the process of beginning that country-of-origin labeling effort. When I was looking to come back in the Obama Administration, I looked at the website and found so many issues that I worked on ten years ago that were still festering. So we do have some labeling issues. I don't think we necessarily have crystal clear, consistent rational policy on our labeling front. It is a work in progress for this Administration and for the government in general. I think it is a really interesting issue for the people of the Senate to dive into.

Question:

We have had a lot of discussion today about the tensions between water quality and farm viability and how they play out, particularly in connection with Lake Champlain. Would it be possible for the USDA to partner with the EPA or any other agency to limit or change farm subsidies for those operations deemed to be of excessively poor quality or causing water quality violations?

31. See generally REMY JURENAS & JOEL L. GREENE, CONGRESSIONAL RESEARCH SERVICE, COUNTRY-OF-ORIGIN LABELING FOR FOODS AND THE WTO TRADE DISPUTE ON MEAT LABELING (2012) (outlining issues and pros and cons of Country-Of-Origin Labeling).

Answer:

I think that when Congress does finally cross the finish line and produce a farm bill, direct payments are going by the wayside. I think the budget imperatives are such that even people who are on the fence about direct subsidies for farms are probably going to pull the plug on them. Indeed, the President in his budget that he sent to Congress at the beginning of the calendar year eliminated farm payments.³²

There may not be that direct tie, but the Environmental Protection Agency has a pretty big hammer through the Clean Water Act. This is one of the things we have been working on over the last two and half years. It really started with a conversation with the deputy at the EPA and myself in California after a long day of farm visits; we were trying to figure out how our programs fit together. I have the Natural Resources Conservation Service (NRCS), which is a lot of scientists, engineers, and technicians. They are out doing technical assistance with farmers, and they have a lot of programs that cost-share great environmental efforts on farms.³³

Wouldn't it be great if when localities are implementing the Clean Water Act and trying to get to total daily maximum load requirements, that if a farmer was doing the most up-to-date innovative conservation practices on their farm, doing the best that we know how to do, working with the NRCS, wouldn't it be great if they had some certainty that they wouldn't be regulated out of business by the EPA. So we have been trying to knit our efforts together. We have talked to officials in Vermont. We have certainly been very engaged around the Chesapeake Bay. There is some interest among officials in Iowa. It requires state leaders and federal leaders coming together. And, again, the idea that the best stewards of our land, farmers and ranchers, are going to be better than urban development in terms of water quality. When you go to rural Pennsylvania and look at what well-managed farms contribute to the Chesapeake Bay in terms of pollutants or water quality problems compared to urban storm-drain runoff, there is no comparison. You want to keep farmers in farming. So how do we protect our farms with conservation efforts and work in conjunction with the EPA to have those efforts recognized? That's the game that we are playing right now.

32. P.J. Huffstutter, *Obama's Budget Would Deeply Cut Farm Subsidies*, LOS ANGELES TIMES (Feb. 14, 2011), <http://articles.latimes.com/2011/feb/14/business/la-fi-farm-subsidy-cut-20110214>.

33. *See generally*, United States Dep't of Agric. Natural Res. Conservation Serv., *NRCS Programs*, UNITED STATES DEP'T OF AGRIC., <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs>, (last visited Feb. 24, 2013) (listing NRCS programs).

Question:

Thank you, sort of a follow-on question that you partially addressed, but to put a point on it, how do we address water quality going through the federal government within the current budget parameters?

Answer:

Well I do think that certainly this process is pretty important, and it doesn't require new monies. It's about coordination and knitting up our various authorities. It is not a time for new monies. We are trying to look at ecosystems service markets, for example. You have looked at the whole evolution of acid rain and that trading situation at the law school through the Clean Air Act. Another example is wetland mitigation banking. When you look at these mechanisms, the question is, how do we use these to ensure that we have the kind of water quality that we need?

All of that said, we certainly don't have all the science that we need when we look at growing world population, food demands, and climate change. We have to continue to invest money in a research enterprise. That is sometimes a hard sell when you're cutting budgets, but there is not a time when we have had more big challenges facing us. Water is a huge part of it, and agriculture consumes 70–80% of the fresh water here in this country, so we have to be practical.³⁴

Question:

The UN Committee on Climate Change has identified agriculture as a major source of greenhouse gases, and inside of that, meat production itself is one of the large ones. Has the USDA begun to think about a policy on meat and whether it is possible to encourage consumers and developed countries to consume less meat, either by changing farm policy or subsidies?

Answer:

We have the 2010 dietary guidelines, which would suggest half a plate of fruit and vegetables. We are not expanding the plate, so that means that you are also reducing some other components of the plate.³⁵ We are getting a lot of interesting push back right now. I don't know if you guys have followed this. On the new school meal requirements where we are having

34. See MARK W. ROSEGRANT ET AL., INT'L FOOD POLICY RESEARCH INST., WORLD WATER AND FOOD TO 2025: DEALING WITH SCARCITY 1 (2002) (discussing that irrigated agriculture is the dominant use of water, accounting for approximately 80% of global water consumption).

35. United States Dep't of Agric. & United States Dep't of Health & Human Serv., DIETARY GUIDELINES FOR AMERICANS 2010 35–36 (2010), available at <http://www.health.gov/dietaryguidelines/dga2010/DietaryGuidelines2010.pdf>.

more fruits and vegetables, smaller amounts of protein, whole grains, low-fat milk, and significantly lower sodium, it's been fodder for late night television. A video some kids put together about all these kids being hungry in school has gone viral on the internet. It is frustrating because we know that is where diets need to be. We know we have an obesity problem, and we know that the diets we are putting forward for kids in school are adequate and good and healthy. But it is really hard to get people to change and to think about the plate differently. But I think the 2010 guidelines really captured a lot of that, and those guidelines are put together by top-notch scientists, and they are done with the USDA working hand in hand with Health and Human Services. The My Plate icon has been exceedingly popular and it sort of pushed the food guide pyramid in the background. A lot of people found the pyramid too complex and confusing. So the half-a-plate message is very simple, people are grasping it, and we are trying, particularly through the school meal programs, to really implement that in a way that becomes reality.