

**THE REALITIES OF ORGANIC:
AN EXAMINATION OF ITS PAST, PRESENT, AND FUTURE**

BY: CHRISTINE ARENA

APRIL 2010

PREPARED AS AN ACADEMIC REQUIREMENT FOR THE AGRICULTURAL LAW
COURSE AT THE PENNSYLVANIA STATE UNIVERSITY'S DICKINSON SCHOOL OF
LAW

SPRING SEMESTER 2010

The work product contained in this paper is entirely that of the student author.

It is nearly impossible for any consumer to ignore the endless parade of food labels presented to them. Fat free, organic, natural, high fiber... the list is never-ending. Some consumers rely on these labels when filling their shopping carts while others disregard them. Either way, it is impossible not to take notice.

Many of these labels are of a special variety known as production claims. Production claims are “voluntary labeling and advertising claims that are used to identify the methods by which a product was produced.”¹ Most people are familiar with at least a few production claims, such as natural, humanely raised, and locally grown, even if they do not really understand what the label entails. One of the most well-known and controversial production claims is organic.² The term organic has become increasingly recognized in the last 20 years, but, nonetheless, it remains laden and misunderstood.

This paper consists of three sections. Part (I) will explore and describe the evolution of organic from its beginnings in the early 1900s through today. Part (II) will describe the current social and legal status of organic, including reference to the Organic Foods Production Act and National Organic Program. It will highlight the various connotations the term has garnered, in addition to public sentiments about it. Part (III) offers an analysis of the present state of organic and offers critiques of alternatives and supplements to organic, as well as suggestions for the future.

¹ Susan A. Schneider, *Reconnecting Consumers and Producers: On the Path Toward a Sustainable Food and Agriculture Policy*, 14 DRAKE J. AGRIC. L. 75, 85 (2009).

² Although the two are similar, production claims are not to be confused with ecolabels. Ecolabels are certifications of commodity products (not food products) that ensure certain environmental and social standards have been met. Global Ecolabeling Network, *What is ecolabeling?* (2004), available at <http://www.gen.gr.jp/eco.html> (last visited Apr. 29, 2010).

(I) Organic prior to the Organic Foods Production Act.

(a) Organic and the government.

People have always been concerned with the safety of their food. However, the government did not always take an active role in the pursuit of safe food. The Federal Pure Food and Drugs Act of 1906 was the first act of its kind.³ It prohibited adulterated or mislabeled food items from being distributed through interstate commerce. It also prompted the creation of the Food and Drug Administration (FDA).⁴ Food law, as we know it today is more accurately reflected in the 1938 Federal Food, Drug, and Cosmetic Act (FFDCA), which replaced the 1906 act.⁵ Although it did not mention the term organic, it was the first to set out standards for food quality beyond adulteration and mislabeling. The law provides for three kinds of food standards: 1) standards (definitions) of identity, 2) standards of quality, and 3) standards regulating the fill of container.⁶ In addition, authority was granted to FDA to issue additional regulations whenever necessary to “promote honesty and fair dealing in the interests of consumers.”⁷ The Act has completely altered the way food is produced and labeled while also signaling the beginning of a new era of consumer knowledge and expectation.

³ Federal Food and Drugs Act of 1906 (The “Wiley Act”), Pub. L. 59-384, 21 U.S.C. § 1-15 (repealed in 1938 by 21 U.S.C. § 329(a)).

⁴ U.S. Department of Health & Human Services, U.S. Food and Drug Administration, History, *available at* <http://www.fda.gov/AboutFDA/WhatWeDo/History/default.htm> (last visited Apr. 29, 2010).

⁵ Federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. §§ 301, *et seq.* (West 2010).

⁶ *Id.*

⁷ *Id.* at § 341.

Increased government concern with food safety most likely prompted the public to also consider the origins and safety of what they were consuming. In that respect, it is possible that the Act and ensuing regulations (failed or otherwise) were a precursor to the organic explosion. Although the public began to take notice of organic and its implications, possibly due to government action, organic was not addressed by the government until 1978. That year, the United States Department of Agriculture (“USDA”) began conducting research in order to eventually promulgate a rule.⁸ This action led to the development of the National Organic Program (“NOP”) in 1990. The NOP was a result of the Organic Foods Production Act (“OFPA”), both of which will be discussed in turn in Part II of this paper.

(b) Organic and the people.

Organic, like food safety concerns, existed before being recognized by the federal government. Organic farming was recognized and prized in Europe before it came to the United States.⁹ However, it is unclear exactly when the term organic entered the American lexicon. There are differing perspectives on what exactly it meant and who was responsible for its popularity.

⁸ RENEE JOHNSON, ORGANIC AGRICULTURE IN THE UNITED STATES: PROGRAM AND POLICY ISSUES, Order Code RL31595, at 1 (Congressional Research Service Nov. 25, 2008), *available at* www.fas.org/sgp/crs/misc/RL31595.pdf.

⁹ *Id.*

Some sources believe that Lord Northbourne, also known as Walter Ernest Christopher James, first coined the term “organic farming.”¹⁰ Lord Northbourne was an acclaimed agriculturist from Oxford University, an Olympic medalist, and author.¹¹ Lord Northbourne published a book about his ideas entitled *Look to the Land*.¹² It is there that the term “organic farming” reportedly first appeared in print. In his book, Lord Northbourne starts with a discussion of soil and goes on to explore the implications of economics, science, and sociology on farming. His use of the term organic seems directly correlated with his idea that we are all connected, to each other and to our food, as living organisms. The opening sentence of his book states, “Every detail of the life of every man is in some way related to the lives of innumerable other people, and is dependent on them.”¹³ He goes on to write “every man’s life is bound up with the lives of innumerable non-human creatures which constitute his food.”¹⁴ His idea of organic farming incorporates what we would think of as natural and is heavily influenced by the idea of being one with the land.

Michael Pollan, a contemporary food writer, offers his own account of how organic came to be. He writes that prior to 1940, organic was a word that referred to the opposite of industrial.¹⁵ The first time it was reportedly used to refer to food production

¹⁰ Posting of Rajen Jani to MOO: My Official Online Organic Blog, <http://myonlineorganic.com/blog/?p=534> (Mar. 18, 2009).

¹¹ *Id.*

¹² LORD NORTHBOURNE, *LOOK TO THE LAND* (Mann Library at Cornell University 1992) (1940).

¹³ *Id.* at 1.

¹⁴ *Id.*

¹⁵ MICHAEL POLLAN, *THE OMNIVORE’S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* 142 (Penguin Group 2007) (2006).

was in 1940. *Organic Gardening and Farming* was a magazine all about the method of growing food without synthetic chemicals, which later came to be known as organic.¹⁶ The magazine grew in popularity in 1971, which led to widespread use of the term organic. However, the definition began to revert back to its original meaning in the 1960s when hippies began using it to reflect support of a cooperative society in opposition to industry and what they perceived as society's divorce from the land.¹⁷

Other accounts credit the industrialization of farming with increasing the interest in organic farming. Industrialization during the early twentieth century brought better farm technology, new pesticides and chemicals, and the birth of factory farming.¹⁸ Many of these "improvements" created huge concerns with consumers and therefore, producers.

Farming has always been an important aspect of life. It has existed in some capacity since the beginning of time but the concept is fluid and the definition is always changing. Farming in the early 1900s encompassed different characteristics compared to what it does today because of the many changes that occurred during that time.¹⁹ Between 1920-1940 production levels improved as the use of mechanized power increased.²⁰ In the 1930s, two important changes were the use of hybrid-seeds and

¹⁶ *Id.*

¹⁷ *Id.* at 143.

¹⁸ THE JOHN HOPKINS UNIVERSITY AND SHAWN MCKENZIE, THE RISE OF INDUSTRIAL AGRICULTURE, 5 (2007) (on file with author).

¹⁹ Growing a Nation: The Story of American Agriculture, *A History of American Agriculture: Farm Machinery & Technology*, ERS-POST-12 (Economic Research Service 2000), available at http://www.agclassroom.org/gan/timeline/farm_tech.htm (last visited Apr. 29, 2010).

²⁰ *Id.*

artificial insemination of livestock.²¹ The popularization of frozen foods in the 1940s also had a great impact.²² One of the most important modifications of the early twentieth century, though, was the significant increase in the use of tractors, rather than the use of animals for farm work.²³

The use of pesticides skyrocketed after World War II. New chemicals were introduced for use as pesticides that were both inexpensive and effective.²⁴ Only the short-term benefits of these products were considered as they were applied liberally and without much concern. These practices were largely unquestioned until Rachel Carson wrote the book *Silent Spring*.²⁵ A scientist, her research focused on the inherent risks of pesticide use. She concentrated specifically on the significant negative environmental consequences that she believed were eminent.²⁶ *Silent Spring* alerted the public to the risks of pesticides and many consumers cried out for more organic farming practices.

Reportedly, in the 1950s, “factory-farming” methods increased, which caused Americans to begin questioning the impact these practices were having on the environment and on health.²⁷ British author, John Humphrys believes that the organic

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ KEITH S. DELAPLANE, PESTICIDE USAGE IN THE UNITED STATES: HISTORY, BENEFITS, RISKS, AND TRENDS 2 (Cooperative Extension Program 1996), available at pubs.caes.uga.edu/caespubs/pubs/PDF/B1121.pdf (last visited Apr. 29, 2010).

²⁵ *Id.*

²⁶ *Id.*

²⁷ BRUCE GARDNER, U.S. AGRICULTURE IN THE TWENTIETH CENTURY, (E.H. Net Encyclopedia, Robert Naples, ed., Economic History Services 2003), available at <http://eh.net/encyclopedia/article/gardner.agriculture.us> (last visited Apr. 29, 2010).

revolution was a completely foreseeable reaction to the introduction of factory farming. Prior to such dangerous agricultural practices there was no need for organic products because everything was essentially already organic.²⁸ Factory farming became popular when vitamins A and D were discovered in the 1920s. Farmers realized that utilizing vitamins would replace the need to exercise livestock and expose them to natural sunlight. The 1940s brought the development of antibiotics, which also enabled farmers to keep more animals indoors and living in close proximity to each other.²⁹ Prior to these advancements, animals were raised in ways we now consider to be organic.

As demonstrated, there are several different potential causes for the rise in organic. Organic may have arisen in opposition to industrialization, because the government began to regulate food production, in response to the use of pesticides, or due to the development of factory farms. It is most likely that one single factor is not responsible but that a combination of reasons can be credited. However, no matter the exact circumstances surrounding the rise of organic, the fact remains that it is a highly charged issue today. Even though the federal government now regulates organic it remains a huge political and social issue. These ideas will be explored in the next section.

²⁸ John Humphreys, *Why the organic revolution had to happen (part two)*, THE OBSERVER, Apr. 21, 2001, available at <http://www.guardian.co.uk/lifeandstyle/2001/apr/21/foodanddrink.features14> (last visited Apr. 29, 2010).

²⁹ IN DEFENSE OF ANIMALS, FACTS: FACTORY FARMING, available at <http://www.idausa.org/facts/factoryfarmfacts.html> (last visited Apr. 29, 2010).

(II) Organic post Organic Foods Production Act.

(a) Organic and the government.

According to the Organic Foods Production Act of 1990, organic is “a labeling term that refers to an agricultural product produced in accordance with the Act and the regulations in this part.”³⁰ Clearly, to have any understanding of what the government acknowledges as organic, the specifics of the Act must be explored. The government defines organic through the regulations promulgated as a result of the Act.

The OFPA was created as a result of the organic industry applying pressure to Congress.³¹ Prior to the Act, there was a myriad of private and state organizations attempting to certify products as organic.³² Needless to say, there was no consistency among certifications. In addition, fraud was a huge issue. Some farmers producing non-organic products took to labeling their products as organic in order to receive the premium paid for organic products.³³ Members of the industry urged Congress to nationalize the requirements for organic certification in order to protect the value of the

³⁰ Organic Foods Production Act of 1990, 7 U.S.C.A. § 205.2 (West 2010).

³¹ Brian Baker, David Chaney, David Granatstein, Steve Guldan & Sean L. Swezey, ORGANIC FARMING COMPLIANCE HANDBOOK: A RESOURCE GUIDE FOR WESTERN REGION AGRICULTURAL PROFESSIONALS, BRIEF HISTORY OF ORGANIC FARMING AND THE NATIONAL ORGANIC PROGRAM, 1 (2005), available at <http://www.sarep.ucdavis.edu/Organic/complianceguide/> (last visited Apr. 29, 2010).

³² See Kenneth C. Amaditz, *The Organic Foods Production Act of 1990 and Its Impending Regulations: A Big Zero for Organic Food?* 52 FOOD & DRUG L.J. 537 (1997) (discussing all of the inconsistencies in certification prior to the Organic Foods Production Act); Oregon was the first state to attempt to regulate organic certification in 1973. OR. REV. STAT. § 632.925 (1973) (now at § 616.406 (1996)).

³³ Michelle T. Friedland, *You Call That Organic? - The USDA's Misleading Food Regulations*, 13 N.Y.U. ENVTL. L.J. 379, 381-382 (2005).

label.³⁴ Congress recognized that organic products only compromised 2% of the market but also saw the need for regulation in anticipation of future growth.³⁵

OFPA was enacted under Title 21 of the 1990 Farm Bill.³⁶ The proposed rules for the Act were not issued until 1997.³⁷ The purpose of the bill is “to establish national standards governing the marketing of certain agricultural products as organically produced to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically grown.”³⁸ It is a framework for the underlying organic program that grants responsibility for developing national standards for organic to the United States Department of Agriculture.³⁹

The biggest component of the Act was the formation of the National Organic Program.⁴⁰ NOP is a marketing program that “develops, implements, and administers national production, handling, and labeling standards.”⁴¹ It is part of the USDA Agricultural Marketing Service (“AMS”).⁴² NOP is based on the National Standards on

³⁴ U.S. Environmental Protection Agency, Organic Farming, <http://www.epa.gov/agriculture/torg.html#Background> (last updated July 29, 2009) (last visited Apr. 29, 2010).

³⁵ See S. REP. NO. 357, *reprinted in* 1990 U.S.C.C.A.N. at 4944.

³⁶ Gardner, *supra* note 27.

³⁷ Friedland, *supra* note 33, at 383.

³⁸ 7 U.S.C.A. § 6501 (West 2010).

³⁹ Gardner, *supra* note 27.

⁴⁰ 7 U.S.C.A. § 6503 (West 2010).

⁴¹ United States Department of Agriculture Agricultural Marketing Services, National Organic Program, <http://www.ams.usda.gov/AMSV1.0/nop> (last updated Apr. 28, 2010) (last visited Apr. 29, 2010).

⁴² *Id.*

Organic Agricultural Production and Handling (“NOP Rule”), which was promulgated on December 21, 2000.⁴³ It provides the standards that must be met in order to label a product as organic.⁴⁴

As part of complying with the standards set forth in the NOP Rule, each handler or producer must develop an organic plan or handling system.⁴⁵ The plan must include things such as the procedures implemented, all substances being used, recordkeeping requirements, and management practices including physical barriers to avoid contamination with non-organic products.⁴⁶ The plan is required to meet the standards for land, soil fertility and crop nutrient management, seeds and planting, crop rotation, pest, weed, and disease protection, and wild-crop harvesting.⁴⁷ Ionizing radiation and sewage sludge are prohibited in organic production and handling.⁴⁸ There are additional requirements pertaining to livestock and what they may eat, where they can come from, and how they are maintained.⁴⁹ A product meeting all of the applicable standards is then eligible to be labeled as “100 percent organic,” “organic” or “made with organic (specified ingredients or food group(s))” depending on the specifics of the product. The

⁴³ National Organic Program, Organic Production and Handling Requirements, General, 7 C.F.R. § 205.200 (2001).

⁴⁴ *Id.*

⁴⁵ National Organic Program, Organic Production and Handling Requirements, Organic production and handling system plan, 7 C.F.R. § 205.201 (2001).

⁴⁶ National Organic Program, Organic Production and Handling Requirements, 7 C.F.R. § 205.202-205.207 (2001).

⁴⁷ *Supra*, note 45.

⁴⁸ National Organic Program, Applicability, Allowed and prohibited substances, methods, and ingredients in organic production and handling, 7 C.F.R. § 205.105 (2001).

⁴⁹ National Organic Program, Organic Production and Handling Requirements, Origin of Livestock, 7 C.F.R. § 205.236-205.239 (2001).

same applies for use of the USDA organic seal.⁵⁰ USDA has established a list of accredited certifying agents who are tasked with ensuring that an organic producer or processor has an adequate organic plan that they are implementing. In order to become a certifying agent domestically, the USDA must accredit the applicant. If the applicant is foreign, they can be accredited by a foreign equivalent to USDA.⁵¹ A civil penalty of up to \$11,000 can be imposed on those found to offer products incorrectly labeled as organic.⁵²

An additional responsibility of NOP is to maintain a list of prohibited and permitted substances for use in organic production and handling operations. The list pertains to synthetic and non-synthetic materials.⁵³ Synthetic materials are evaluated based on several different factors that focus mostly on whether an alternative exists and the importance of the ingredient to the final product.⁵⁴ Synthetic substances that are permitted for use in organic farming are listed, as well as those allowed for use in organic livestock production.⁵⁵ Non-synthetic materials that are prohibited are also listed.⁵⁶ The

⁵⁰ National Organic Program, Labels, Labeling and Market Information, 7 C.F.R. § 205.300- 205.311 (2001).

⁵¹ Friedland, *supra* note 33, at 390.

⁵² National Organic Program, Applicability, 7 C.F.R. § 205.100 (2001).

⁵³ National Organic Program, Administrative, The National List of Allowed and Prohibited Substances, Evaluation criteria for allowed and prohibited substances, methods and ingredients, 7 C.F.R. § 205.600 (2001); Synthetic is defined as “a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from a naturally occurring plant, animal or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.” National Organic Program, Definitions, Terms defined, 7 C.F.R. § 205.2 (2001).

⁵⁴ 7 C.F.R. § 205.600 (2001).

⁵⁵ National Organic Program, Administrative, The National List of Allowed and Prohibited Substances, Synthetic substances allowed for use in organic crop production, 7 C.F.R. § 205.601-603 (2001).

⁵⁶ *Id.*

National Organic Standards Board is tasked with maintaining the list. Any person who wishes to amend the National List can petition the Board.⁵⁷

The National Organic Standards Board (“NOSB”) is an important part of the NOP. It consists of 15 members from various positions including farmers, handlers, environmentalists, scientists and consumers.⁵⁸ The Board meets several times a year to discuss petitions for amendments to the list of prohibited and permitted substances list and to make recommendations about amending the list. USDA must approve each of the Board’s recommendations before they become official policy.⁵⁹

It is important to note that the USDA does provide guidance on some other production labels. The use of the terms “natural”, “no hormones”, and “no antibiotics added” are examples of such.⁶⁰ The USDA’s Food Safety and Inspection Service (“FSIS”) regulates the use of each label when applied to meat, poultry, and eggs.⁶¹ Why is it that the government regulates these terms? Instinctively one might believe that these terms must pertain more to food safety and that is why they warrant special attention but that is not a correct assumption. The answer merely lies in the fact that USDA has the authority from Congress to impose and maintain standards for meat, poultry, and egg

⁵⁷ National Organic Program, Administrative, The National List of Allowed and Prohibited Substances, Amending the National List, 7 C.F.R. § 205.607 (2001).

⁵⁸ United States Department of Agriculture Agricultural Marketing Services, National Organic Program, <http://www.ams.usda.gov/AMSv1.0/nosb> (last updated Feb. 3, 2010) (last visited Apr. 29, 2010).

⁵⁹ *Id.*

⁶⁰ United States Department of Agriculture Food Safety and Inspection Service, Meat and Poultry Labeling Terms, http://www.fsis.usda.gov/fact_Sheets/Meat_&_Poultry_Labeling_Terms/index.asp (last updated Aug. 24, 2006) (last visited Apr. 29, 2010).

⁶¹ United States Department of Agriculture Food Safety and Inspection Service, About FSIS, http://www.fsis.usda.gov/About_FSIS/index.asp (last updated Feb. 1, 2010) (last visited Apr. 29, 2010).

products.⁶² If the public wants USDA to regulate other production claims they must convince Congress to grant authority to the agency.

(b) Organic and the people.

As demonstrated, the concept of organic existed before the government decided to try to regulate it. One major issue with that series of events is that organic developed several different meanings before the government attempted to standardize it. Not only was organic not defined consistently across the United States, it had a connotation that no longer exists under the OFPA. The current incorrect connotation of organic is largely based on current consumer expectations (perhaps with origins in the word's early roots) and the lack of initiative by the industry or government to clarify the confusion.⁶³

Due to their irregularity and inconsistency, consumer expectations are a huge impediment to the success of the OFPA. There have been several studies and observations as to what the term means to the average consumer versus what it is defined as within the Act. A common misconception that many consumers have is that organic products are completely free of synthetic pesticide residues.⁶⁴ It is even reported that some sources assumed and falsely stated that the NOP standards contained such

⁶² Federal Meat Inspection Act, 21 U.S.C. §§ 601- 695 (1907); Poultry Products Inspection Act, 21 U.S.C. §§ 451-472 (1957); Egg Products Inspection Act, 21 U.S.C. § 1031-1056 (1970).

⁶³ There is little to no incentive for either party to want to set the record straight. Consumers believe that organic is covering all of their concerns, which is clearly a benefit for the government and the farmers who can produce under less stringent requirements. *See* Friedland, *supra* note 33, at 403-405.

⁶⁴ Friedland, *supra* note 33, at 403.

provisions in publications offered soon after the regulations were formulated.⁶⁵ As previously explained, the national list of prohibited and permitted substances for use in organic production and handling operations lists some synthetic materials as permissible.⁶⁶

Another common misconception is the belief that products labeled organic are completely free of genetically engineered materials.⁶⁷ The OFPA prohibits genetically engineered materials from being used in products labeled as organic.⁶⁸ The problem, however, is that it does not address the issue of accidental contamination of genetically engineered materials in organically produced products.⁶⁹ This is due to the fact that the regulations of OFPA are process-based, as opposed to product-based.⁷⁰ Process-based is exactly as the name implies: the focus of the regulations is on the process used to produce the food i.e. the growing, harvesting, raising, and preparing of the product.⁷¹ Product-based regulations concentrate on the end result or product that is produced. A product-based system would rely on testing and observation of the final product.⁷² Many consumers wrongly assume that foods labeled as organic are tested before being placed

⁶⁵ *Id.*

⁶⁶ *See supra*, notes 53, 54.

⁶⁷ Friedland, *supra* note 33, at 403-404.

⁶⁸ *Supra*, note 45.

⁶⁹ PAMELA RONALD & BENNY FOUCHE, GENETIC ENGINEERING AND ORGANIC PRODUCTION SYSTEMS, Publication 8188, Agricultural Biotechnology in California Series 2 (ANR Publication 2006), available at anrcatalog.ucdavis.edu/pdf/8188.pdf.

⁷⁰ Friedland, *supra* note 33, at 385.

⁷¹ *See* Steve Charnovitz, Green Roots, Bad Pruning: GATT Rules and Their Application to Environmental Trade Measures, 7 TUL. ENVTL. L.J. 299, 303-313 (1994) (providing general definitions of product and process standards.)

⁷² *Id.* at 311.

on the shelves, but as explained that is not so. The fact of the matter is that a product can be labeled as organic as long as the production process followed all applicable regulations set forth in OFPA, but still the end result may not be completely organic.⁷³ OFPA does in fact have a provision requiring spot testing of final products but as will be discussed later USDA has ignored this mandate.

Another major problem is that consumers believe that organic encompasses other, separate labels. This was proven in a study conducted by the Hartman Group.⁷⁴ The study sought to determine what consumers think organic means, then compare its definition to natural, and finally evaluate organic consumption throughout the United States. At the conclusion of this study, the Hartman Group said:

Organic is understood as pertaining to what happens to food as its origin (e.g., the farm, the plant, the animal). Conceptually, consumers think of organic as making a product “more natural.” As organic becomes more mainstream it loses some meaning for consumers making additional attributes increasingly necessary. Price is the key barrier to purchasing organic; other barriers are declining.⁷⁵

This definition identifies the issue of separating organic from natural. It also demonstrates that the definition of organic is evolving. It does clarify that consumers

⁷³ Another interesting flaw in a process-based system is that organic farmers have no incentive to advocate against the use of pesticides in other products because they receive the same benefit either way. See Friedland, *supra* note 33, at 386. Unintentional contamination is a serious concern, as it occurs frequently. It can occur due to pesticide drift and/or drift of genetically engineered materials. *Id.* at 398-403.

⁷⁴ The findings of this study were released in March 2010. Information was collected through a combination of in home ethnographic interviews, social network parties, shop-and-talks or dine and talks. In addition, an online survey of nationally representative sample of 1,679 adult U.S. consumers was conducted. HARTMAN GROUP, BEYOND NATURAL AND ORGANIC (Mar. 22, 2010) available at <http://www.hartman-group.com/publications/reports/beyond-organic-and-natural> (last visited Apr. 29, 2010).

⁷⁵ *Id.* at 8.

believe organic has to do with the origins of the product but it is still unclear what that includes. If an animal product, does it have to be humanely treated, fed organic feed, or slaughtered cleanly? There are still lingering uncertainties. In addition, it demonstrates that consumers think of organic as more localized, as opposed to being produced at “industrial” farms, which is a reality that no longer exists.⁷⁶ The definition of natural that the study developed is even more troubling than that of organic:

Natural as a consumer ideal is understood as what happens to the food *after it is grown* (e.g. reducing processing steps). However, skepticism around natural as a marketing term is prevalent throughout the World of Organic... Consumers see “Natural” as a marketing term, meaningless alone, which may encourage them to investigate the product more, but is not enough by itself.⁷⁷

What is the point of natural if it is essentially meaningless to consumer? What is the point of it if consumer can’t separate it from organic? Skeptics believe the benefit is to the producer. They can charge slightly less for natural and consumers will buy thinking they are getting the same quality as organic.⁷⁸ This is a worrisome thought as “natural” is reported to have been the second most used production claim in 2008.⁷⁹ If producers are using the term natural when the product does not fully encompass the standards for use of

⁷⁶ Friedland, *supra* note 33, at 409.

⁷⁷ *Id.*

⁷⁸ Monica Eng, *Organic v. natural a source of confusion in food labeling*, CHICAGO TRIBUNE, July 10, 2009, available at <http://www.chicagotribune.com/health/chi-natural-foods-10-jul10.0.834771.story>.

⁷⁹ *Id.*

the label we are back at square one. This is exactly the kind of problem that OFPA was intended to address.⁸⁰

Not only are consumers uncertain as to what organic means, they seem unclear about why they are even interested in it. Michael Pollan has described organic as “an imperfect substitute for direct observation of how a food is produced.”⁸¹ There are many perceived and actual pros of eating organic and so it is easy to get overwhelmed when deciding which bandwagon to join. This inquiry also leads one to wonder whether consumers are interested in production claims for the same reasons as they were in the earlier half of the twentieth century. It seems highly unlikely, given the political and social change that has occurred, that consumers hold the same ideals. Therefore, if organic as we know it today is reflective of what it meant then, perhaps it’s time for an update. Part III of this paper will explore that concept.

An article in the Drake Law Review posited two possible explanations for the current interest in organic, including the modern relationship between farmers and non-farmers and urbanization. The first theory attributes the interest in food labeling to the “relatively rapid disassociation between farmers and non-farmers and this between consumers and their food.”⁸² The disassociation is attributed to drastic changes in the way we live our lives. Since the 1940s there have been major shifts in societal gender expectations, the amount of time the average person commits to his or her profession, and

⁸⁰ Friedland, *supra* note 33, at 381-382.

⁸¹ Pollan, *supra* note 15 at 137.

⁸² Schneider, *supra* note 1, at 76.

the shape of the modern family.⁸³ All of these adjustments have contributed to distancing farmers and non-farmers. Additionally, there are just less farmers. This is due in large part to urbanization.

Urbanization is the other contributing factor of disassociation. Whereas less than 40% of the population resided in the city in 1900, now almost 80% do. Clearly, this indicates a reduction in the number of people residing in rural areas and thus, engaging in serious agricultural pursuits.⁸⁴ Fewer farms and farmers result in more large-scale farms producing most of the food. In 1935, there were over 7 million farms in the United States. USDA Economic Research Service reported that number to have decreased by approximately 5 million to 2.1 million farms in 2005.⁸⁵ Fewer farms and more people to feed means the size of the farm must be expanding.

There are many other potential reasons why consumers favor organic. There is the desire to connect more personally with farmers and the land, the pursuit of political and social values, environmental concerns, religious reasons, health concerns, nostalgic rationales, and even an argument based on superior taste. Each reason is not independent of one another and most likely it is a combination of several.

Many consumers are interested in production claims such as organic because of the opportunity they offer to personally connect with one's food. This is reminiscent of

⁸³ *Id.* at 76-77.

⁸⁴ *Id.* at 77. It should be noted, however, that urban agriculture is on the rise. Urban beekeeping, rooftop gardening, and urban chickens are just a few of the agricultural activities that have become popular in cities all over the country, including New York and San Francisco. *See e.g.*, Urban Agriculture News- The New York Times, http://topics.nytimes.com/top/reference/timestopics/subjects/a/agriculture/urban_agriculture/index.html (last visited Apr. 29, 2010).

⁸⁵ Schneider, *supra* note 1, at 77.

the thoughts of the “father” of organic, Lord Northbourne.⁸⁶ If one believes that they are connected to the land and want the least adulterated, modified, unnatural product available in order to maintain their bond with the Earth then they may be interested in organic. Many early supporters of organic were described as “earthy-crunchy tofu people” who were interested in bonding with Mother Earth.⁸⁷ Although the organic audience is more varied today, some still credit those ideals with inspiring them to pursue organic products.

Much of the interest in organic centers around the importance placed on political and social values. Many fear that anything “unnatural” is harmful to the environment, human health, and Earth’s future, and so they wish to make a statement through their purchases. Purchasing organic is saying that you care about where your food comes from, how it is produced, and by whom. It is sending the message that you care. This notion is reflected in a statement of Wendell Berry. Berry said, “If human values are removed from production, how can they be preserved in consumption?”⁸⁸

Environmental concerns are driving many consumers to turn to organic. They are opposed to the hundreds of millions of pounds of pesticides running into our surface and ground water.⁸⁹ At the same time, some consumer concerns are based on the unknown harms to the environment.⁹⁰ The consequences of our actions could be affecting the

⁸⁶ Northbourne, *supra* note 12.

⁸⁷ Kim Lyons, *Organic revolution – it’s not just for hippies anymore*, PITTSBURGH TRIBUNE-REVIEW, Jan. 26, 2009, available at http://www.pittsburghlive.com/x/pittsburghtrib/s_417491.html.

⁸⁸ Schneider, *supra* note 1, at 78.

⁸⁹ Friedland, *supra* note 33, at 407.

⁹⁰ *Id.* at 408.

environment and future of food in ways we cannot begin to comprehend now.

Additionally, organic farming techniques prevent soil erosion and improve soil quality.⁹¹

Religious reasons play a relatively small, but still important role, in drawing consumers to organic.⁹² Food choices and limitations are integral in several religions. Catholics refuse meat on Fridays during Lent, Muslims prefer Halal, and those of the Jewish faith keep Kosher. Each religion bases these decisions on mandates from religious texts, as well as social justice concerns. The social justice aspect is demonstrated by those religious people who say their preference for organic is not just about the connection they have with the Earth and food they eat but about showing support to the community and small farmers. For that reason, some believe that there is a correlation between the growth in the kosher food industry and organic and natural industry.⁹³ Even non-Jews are buying kosher because they feel its standards and characteristics are aligned with organic.⁹⁴ As one food blogger from Seattle said, “I prefer to buy local and organic, but when I get to the market late and they have sold out of the chicken, I end up buying kosher because I feel it is the second-best thing.”⁹⁵

⁹¹ National Organic Program, Organic production and handling requirements, Soil fertility and crop nutrient management practice standard, 7 C.F.R. § 205.203 (2001).

⁹² Andrea Useem, *Some American Muslims Turning to Organic Food for Religious Reasons*, WASH. EXAMINER, Aug. 24, 2005, available at <http://www.organicconsumers.org/organic/muslims082505.cfm>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Kim Severson, *For Some, 'Kosher' Equals Pure*, NEW YORK TIMES, Jan. 12, 2010, available at <http://www.nytimes.com/2010/01/13/dining/13kosh.html>.

Many consumers turn to organic because of health concerns. In fact, some believe that this is the number one reason why most people purchase organic products.⁹⁶ Research has shown that consumers have consistently feared consuming foods with pesticides residues.⁹⁷ Additionally, research shows that the aftermath of almost every major food safety incident results in increased sales of organic products.⁹⁸ Consumers are more likely to not mind paying the premium for organic when their reason is health-based.⁹⁹ This is particularly true of families with children or specific health conditions.¹⁰⁰ Purchasing organic based on health concerns sounds a lot like assuming organic food is safer, which is ironic as according to the Environmental Protection Agency's web site, "Neither the Organic Foods Production Act nor the NOP rule address food safety or nutrition."¹⁰¹

Nostalgia is also credited with inspiring consumers to buy organic.¹⁰² Consumers want to feel that they are helping the small family farms, just like the "old days." This may be in part due to labeling, which is discussed later in this paper. However, as previously stated, small family farms are no longer the current state of organic. Many of the largest international food conglomerates have purchased organic brands or companies

⁹⁶ MICHAEL HOWIE, INDUSTRY STUDY ON WHY MILLIONS OF AMERICANS ARE BUYING ORGANIC FOODS (Organic Consumers Association, Mar. 29, 2004) *available at* <http://www.organicconsumers.org/organic/millions033004.cfm>

⁹⁷ Friedland, *supra* note 33, at 409-410.

⁹⁸ *Id.* at 410-411.

⁹⁹ *Id.* at 411.

¹⁰⁰ *Id.*

¹⁰¹ U.S. Environmental Protection Agency, Organic Farming, <http://www.epa.gov/agriculture/torg.html> (last updated July 27, 2009) (last visited Apr. 29, 2010).

¹⁰² Friedland, *supra* note 33, at 409.

and thus, now control the market.¹⁰³ Although it is true that some small farms still exist, it is important to remember (1) local and organic are not one in the same, and (2) it is a lot less common than many consumers believe.

Taste is also one reason many consumers claim they have turned to organic. Organic products, particularly produce, are credited with having more intense flavor. It is believed that this is due to the “somewhat higher average levels of antioxidants and somewhat lower crop yields.”¹⁰⁴ Apples are most commonly considered superior in organic form. They have been found to be firmer, crisper, and to hold more flavor over time.¹⁰⁵ Studies have shown that organic produce boasts longer shelf life, which makes it taste better over time than conventional (non-organic) products.¹⁰⁶

In summary, consumers hold many different expectations of what organic means. It is hard to say that any one belief is the most common consumer misconception. The take-away point is that there is little to no consistency about what organic means or why it is beneficial. Besides those already mentioned, there are even more factors contributing to the uncertainty surrounding organic, although they are slightly different in nature from those previously discussed. The packaging of organic products can cause confusion with consumers. In addition, the mainstreaming of organic has left many uncertain about organic.

¹⁰³ MICHAEL SLIGH & CAROLYN CHRISTMAN, WHO OWNS ORGANIC? GLOBAL STATUS, PROSPECTS, AND CHALLENGES OF A CHANGING ORGANIC MARKET 13 (Rural Advancement Foundation International-USA 2003), available at www.rafiusa.org/pubs/OrganicReport.pdf.

¹⁰⁴ RICHARD C. THEUER, DO ORGANIC FRUITS AND VEGETABLES TASTE BETTER THAN CONVENTIONAL PRODUCE? 14 (The Organic Center 2006), available at http://www.organic-center.org/science_nutri.php?action=view&report_id=78.

¹⁰⁵ *Id.* at 9.

¹⁰⁶ *Id.* at 11.

Packaging is also a very important aspect of food labeling, particularly with organic products.¹⁰⁷ Packaging of food products is intended to elicit an emotional response. It is not just about an image of something tasty. Michael Pollan describes packaging of organic products as creating “supermarket pastoral.”¹⁰⁸ The pictures and descriptions of farming conditions on the packaging conjure mental images of wide-open fields and American farmers as heroes. Pollan describes this technique as “a most seductive literary form.”¹⁰⁹ He describes shopping for organic products as an experience intended to make consumers feel that they are interacting with the producers of the product and coming together with other like-minded consumers.¹¹⁰

The mainstreaming of organic has also contributed to changes in its evolution and people’s perception of it. Organic products were once something that a consumer had to put considerable effort into locating, but that has all since changed.¹¹¹ Organic products are no longer limited to specialty stores. In fact, there are major chain food stores, such as Whole Foods, promoting organic and other non-conventional products. Such stores are not even limited to food products. Whole Foods carries natural and organic beauty supplies and body care products, as well.¹¹² Organic has become so mainstream that it is now estimated to be an \$11 billion per year industry.¹¹³ In order to be so successful,

¹⁰⁷ Hartman Group, *supra* note 74, at 12.

¹⁰⁸ Pollan, *supra* note 15, at 137.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 138.

¹¹¹ Amaditz, *supra* note 32, at 537.

¹¹² Whole Foods Market, Premium Body Care Products, <http://www.wholefoodsmarket.com/products/premium-body-care-products.php> (last visited Apr. 29, 2010).

¹¹³ Pollan, *supra* note 15, at 136.

organic products must be reaching a much wider audience than ever before. This increased exposure must attract additional consumers who want to understand what all the hype is about. Many may feel that they, too, should partake in organic if so many other consumers are doing so. Many consumers may be grabbing organic products off the shelves without even realizing they are non-conventional. Furthermore, some consumers may just feel that they want to participate in what some may consider a food phenomenon.

As if the variety of reasons why people prefer organic and the inconsistencies concerning what they think it means are not baffling enough, there is even confusion regarding what groups of people are actually purchasing organic. Many members of the public incorrectly rely on the factors of race, ethnicity, and income levels of consumers when guessing who is interested in organic. However, these three factors have been found to have an impact the results are unexpected.¹¹⁴ Studies have found that Asian Americans and Hispanic Americans are the most likely to buy organic.¹¹⁵ This is in direct contention with widely held beliefs that wealthier Caucasians are the consumers most interested in organic.¹¹⁶

¹¹⁴ Johnson, *supra* note 8, at 3.

¹¹⁵ Julia Watson, *Who Really Buys Organic*, TERRA DAILY, May 15, 2006, available at http://www.terradaily.com/reports/Who_Really_Buys_Organic.html.

¹¹⁶ Posting of Clander to Stuff White People Like, <http://stuffwhitepeoplelike.com/2008/01/19/6-organic-food/> (Jan. 19, 2008).

(III) Analysis

a) Does organic meet consumer expectations?

After an examination of the many expectations of consumers it seems clear that it is impossible that each is being met by the term organic, as it exists today. Consumer expectations, beliefs, ideals, and hopes are far too varied to be subsumed by this one expression. In addition, it has been demonstrated that organic actually means very little when compared to all the potential additional implications it could incur.

Perhaps the clearest indication that USDA certified organic does not meet consumer expectations is their expressed dissatisfaction with it. Some dedicated organic consumers find it inadequate because they wish it encompassed more.¹¹⁷ They believe that organic is a complete lifestyle and that the label does not fully meet all aspects of that lifestyle.¹¹⁸ Others believe it is unnecessary.¹¹⁹ Besides having qualms with the actual requirements that compose USDA certified organic, many consumers are skeptical of the label due to a lack of faith and trust in USDA officials. As demonstrated in the movie *Food, Inc.*, many government food personnel have loyalties that trace back to the industry.¹²⁰ This “industry capture” can lead to consumer distrust.¹²¹ Some consumers are skeptical based on pure numbers. There are reportedly 15 employees at USDA

¹¹⁷ Mark Bittman, *Eating Food That’s Better for You, Organic or Not*, NEW YORK TIMES, Mar. 21, 2009, available at <http://www.nytimes.com/2009/03/22/weekinreview/22bittman.html>.

¹¹⁸ *Id.*

¹¹⁹ Hartman Group, *supra* note 74, at 12.

¹²⁰ FOOD INC. (Magnolia Pictures June 12, 2009).

¹²¹ *Id.*

responsible for monitoring the entire organic industry.¹²² Understaffing and underfunding are serious impediments to the success of the NOP.¹²³ Consequently, USDA has struggled to keep up with the rapid growth of the organic industry.¹²⁴

Organic is no longer sufficient for many consumers. The concept and movement behind it has been diluted. Consumers are required to look beyond organic for alternative and additional labels in order to satisfy their political, social, and personal requirements for food. A recent article in the *New York Times* properly summed up many of the disappointments of USDA certified organic that consumers have:

...they [still] fall short of the lofty dreams of early organic farmers and consumers who gave the word “organic” its allure — of returning natural nutrients and substance to the soil in the same proportion used by the growing process (there is no requirement that this be done); of raising animals humanely in accordance with nature (animals must be given access to the outdoors, but for how long and under what conditions is not spelled out); and of producing the most nutritious food possible (the evidence is mixed on whether organic food is more nutritious) in the most ecologically conscious way.¹²⁵

¹²² Craig Schneider, *Do foods live upto the organic label?* ATLANTA-JOURNAL CONST., May 27, 2009, available at <http://www.ajc.com/news/do-foods-live-up-100312.html>.

¹²³ *Id.*

¹²⁴ William Neuman, *U.S. to Ensure Spot Tests of Organic Foods*, NEW YORK TIMES, Mar. 19, 2010, available at <http://www.nytimes.com/2010/03/20/business/20organic.html>.

¹²⁵ Bittman, *supra* note 113.

Fortunately, one of those complaints has been addressed. On February 12, 2010, USDA amended NOP to include a rule on access to pasture for livestock.¹²⁶ However, it will take many more amendments to the regulations of OFPA before all of those inadequacies are remedied. Currently, the only way to obtain a product encompassing all of those characteristics is to purchase one with multiple labels (if it is even possible).

Thus, it is evident that organic does not meet consumer expectations. Does that mean organic is a lost cause? Are there improvements that can be made to save organic?

b) Suggestions for the future.

There are three possibilities for the future of organic labeling. The first is to change what organic means officially. The second is to maintain the status quo: allow consumers to retain their endless array of misconceptions and continue to permit the shelves to be flooded with products that contain countless labels. The third is to educate consumers so that they truly understand what organic means.

(1) Overhaul of USDA certified organic.

The first possibility would require the government to reevaluate what organic means to consumers and then change what it officially means. This would require extensive polling and studies. USDA would be inundated with reports, studies, theories, and other writings from public interest groups, consumers, and members of industry. In

¹²⁶ 75 Fed Reg. 7154 (to be codified at 7 C.F.R. part 205). The new rule will take effect on June 17, 2010. It requires producers to allow livestock access to pasture year-round, subject to the climate and grazing season for the particular region.

order to promulgate official rules, notice and comment would be appropriate. It could take years for the agency to read all materials submitted, formulate rules, and handle all opposition, including potential litigation. Action of that nature would constitute a complete overhaul of the National Organic Program. Such measures would be extremely costly. Is it worth it to the government to spend that type of money? After all, organic is not concerned with food safety or quality. Even though the organic market has exploded most consumers still enjoy conventional products. The likelihood is that most consumers would prefer their tax money be spent on ensuring the safety of food that all Americans consume rather than properly label foods that only appeal to a minority.

It is worth noting that there have been attempts at market solutions to improving organic but the government thwarts these efforts. OFPA clearly states: “no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.”¹²⁷ Therefore, there is no incentive for any producer to perform above and beyond what organic certification requires because then they could not even use the organic label.

Not only would redefining organic be implausible, but it would most likely also be insufficient. There are two major components of modern day organic that are contrary to consumer expectations and notable because they are nearly impossible to remedy. (1) Organic is big business-oriented and (2) it is non-local.¹²⁸ In fact many local farmers

¹²⁷ 7 U.S.C.A. § 6505(a)(1)(B).

¹²⁸ Bittman, *supra* note 113.

who operate on a small scale cannot afford to be certified organic by the USDA.¹²⁹ Companies such as Coca-Cola, ConAgra, Dole, Kraft, and Sara Lee, to name a few, have now acquired organic brands or companies.¹³⁰ This concentration in several major companies has many negative side effects for organic. The companies have unprecedented buying power and control of access to the market. In addition, allowing power to be held by just a few companies permits them to reduce innovation, disregard consumer concerns and desires, and limit diversity in products.¹³¹ There is very little that can be done about these issues, however, because the companies are so big and powerful. The presence of such large companies in organic is correlated with the lack of local, as well. Major corporations are much more likely to order on a larger scale and disperse their products across the country. There exists what is known as “bottlenecking” in terms of distribution in the United States.¹³² It is estimated that two-thirds of organic products go through a distribution warehouse.¹³³ Direct distribution of organic products from the farmer to the consumer is a lot less common than many may assume.¹³⁴

I would not recommend option one for the future of organic. Completely revamping the NOP would be costly, time consuming, and perhaps ineffective. Organic has unarguably grown in popularity, but there are still many consumers who are sticking with conventionally produced foods. Thus, it is much more prudent that USDA

¹²⁹ *Id.*

¹³⁰ Sligh & Christman, *supra* note 103 at 19.

¹³¹ *Id.* at 16.

¹³² *Id.* at 23.

¹³³ *Id.*

¹³⁴ *Id.*

concentrate its resources and efforts on regulations that will benefit the greater public. For instance, food safety is an issue that has recently been making headlines. There have been an alarming number of food safety scares and actual contaminations, especially for a society that considers itself so technologically advanced.¹³⁵ It is estimated that 76 million Americans become sick from eating unsafe food each year.¹³⁶ These incidents have taken a serious toll on consumer confidence in the government to keep foods safe.¹³⁷ The government's energy would focus on alleviating these concerns in a lasting and worthwhile way.

(2) Retain the status quo.

Option number two, retaining the status quo, is really not an option at all.

Whether the program is significantly altered or remains untouched, some changes must occur. One improvement that has already begun being recognized as necessary is spot tests of organic foods.¹³⁸ Although, as previously mentioned, OFPA is a process-based Act, it requires that spot-checking (periodic residue tests) of final products occur.¹³⁹ In March 2010, the Office of the Inspector General issued an official report that found that

¹³⁵ Lydia Saad, *Seven in Ten Americans Reacted to a Food Scare in the Past Year*, GALLUP NEWS SERVICE, Aug 1, 2007, available at <http://www.gallup.com/poll/28264/seven-ten-americans-reacted-food-scare-past-year.aspx>.

¹³⁶ Posting of Bob Vosburgh, *Food Safety Report Scares Up New Data*, to Refresh Blog, <http://whrefresh.com/2010/03/03/food-safety-report-scares-up-new-data/> (Mar. 3, 2010).

¹³⁷ Saad, *supra* note 135.

¹³⁸ Neuman, *supra* note 124.

¹³⁹ 7 U.S.C.A. § 6506(a)(6).

the Bush Administration had failed at adequately instituting the policies of the NOP.¹⁴⁰ One of the provisions that were being ignored was spot-checking. Miles McEvoy, head of the National Organic Program, has realized that in order to preserve the integrity of the program, all requirements must be enforced.¹⁴¹ Spot testing for pesticide residues is scheduled to begin in September 2010.¹⁴² While it is fortunate that this oversight is being acknowledged and addressed it is troubling that this went unnoticed for 20 years. Incidents like this one demonstrate that even if the actual statute is not changed there are still many adjustments to be made.

(3) Educating the public on what organic really means.

Educating the public may be the most practical option for the future. One of the main reasons consumers do not demand stricter, clearer standards for organic is because they are so confused about what it currently means. They cannot advocate for changes they are not aware need to be made.¹⁴³ Consumers are still puzzled by what exactly is

¹⁴⁰ USDA INSPECTOR GENERAL FINDS BUSH ADMINISTRATION IGNORED ORGANIC LAWS, CORNUCOPIA INSTITUTE (Mar. 18, 2010), <http://www.cornucopia.org/2010/03/usda-inspector-general-finds-bush-administration-ignored-organic-laws/> (last visited Apr. 29, 2010); Posting of Becky Striepe, *Audit Reveals Problems with USDA's National Organic Program*, (Mar. 25, 2010), <http://ecopolitology.org/2010/03/25/audit-reveals-problems-with-usdas-national-organic-program/> (last visited Apr. 29, 2010).

¹⁴¹ Neuman, *supra* note 124.

¹⁴² *Id.*

¹⁴³ Friedland, *supra* note 33, at 417.

going on during the production of their food. OFPA and NOP hardly “demystify” organic labeling.¹⁴⁴

Although not as drastic as “making-over” organic, educating the public in a truly worthwhile way is still a considerable burden. USDA already offers information about NOP on its Web site. In fact, it clearly warns consumers, “Natural and organic are not interchangeable. Other truthful claims, such as free-range, hormone-free, and natural, can still appear on food labels. However, don't confuse these terms with ‘organic.’”¹⁴⁵ FSIS also offers guidance about organic and other production claims.¹⁴⁶ It is hard to imagine a more efficient way to disseminate information than via the Internet, which is already being done. Additionally, the information on the web is thorough and easy to comprehend.

A better suggestion is to begin teaching children sooner about healthy eating and the implications of their dietary choices. Educated youth will be empowered to utilize such knowledge throughout the course of their lives. It would be a great jumpstart to educating the public about organic and other production labels. When consumers really understand the production claims and care about the origins of their food then organic labeling can finally maintain some stature. Many schools through-out the country have

¹⁴⁴ Amaditz, *supra* note 32, at 549.

¹⁴⁵ United States Department of Agriculture Agricultural Marketing Services, National Organic Program, <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateA&leftNav=NationalOrganicProgram&page=NOPUnderstandingOrganic&description=Understanding%20Organic&acct=nopgeninfo> (last updated Feb. 5, 2010) (last visited Apr. 29, 2010).

¹⁴⁶ United States Department of Agriculture Food Safety and Inspection Service, Regulations & Policies, http://www.fsis.usda.gov/regulations_&_policies/claims_guidance/index.asp (last updated Feb. 1, 2010) (last visited Apr. 29, 2010).

began introducing children to farming and have urged them to think about the origins of their food.¹⁴⁷

Even with education, labeling is still a troubling issue. Although it would be best to have as few labels as possible to cover the gamut of production claims, the reality may not be an attainable. At least if multiple labels are required, consumers must be able to distinguish among their variations and discrepancies. A possible solution would be for grocery stores to provide definitions for each label that they carry. Ideally, USDA would regulate these labels but until they do so it may suffice to have manufacturers provide their definition of what the label means and supermarkets could post it near the product. There is a risk of inconsistency or misleading labels but educated consumers would be ready to confront them.

c) Conclusion.

Organic has been successful in achieving some of the goals that it set forth to pursue. However, the National Organic Program is in need of several improvements. In addition, there exist many important aspects of food production that are left untouched by organic. There are too many other attributes that consumers look for in their food. This list includes, but is not limited to: natural, cage free, humanely raised, genetically modified, local, cloned, and sustainable. Labeling has been described as a “colorful mosaic” where labels and claims meet and overlap.¹⁴⁸ It is important to understand the

¹⁴⁷ See, e.g., Posting of Jesse Kurtz-Nicoll, *Farming Our Schools*, to WashingtonGardener, <http://washingtongardener.blogspot.com/2010/02/farming-our-schools.html> (Feb. 24, 2010).

¹⁴⁸ Hartman Group, *supra* note 74.

overlap and the gaps formed by combinations of these labels. It is also important to embrace the reality of multiple labels because no matter what changes are made to organic it can never subsume all production claims.

There is no doubt that a nationally uniform labeling system is necessary. If each state or region had its own standards for labeling it would be nearly useless for the consumer. I don't think the answer is one label that encompasses all of the production claims previously discussed. The best solution is improving the knowledge of consumers so that they can voice their concerns and desires and make educated decisions about their food. Each consumer must be able to understand what every label means and more importantly even, what it does not mean. It is important for the government to have some input and to regulate. If industries were left to determine the standards that would govern them there would be never ending discord and inconsistencies. It is the government's job to protect consumers. Writing legislation that confuses rather than clarifies, while also sometimes going ignored, is a betrayal of the trust of consumers. USDA organic certification has the potential to be one of many important production claims if it is well defined and understood.