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COMMENTS

Organic *Plus*: Regulating Beyond the Current Organic Standards

KATE L. HARRISON*

I. INTRODUCTION

“Organic” is one of the most powerful words in the national food marketplace.¹ From 1990 to 2000, the market for organic foods grew steadily at rate of 20% a year.² In 2005 organic food sales reached \$14.6 billion,³ and more than 70% of grocery stores now carry organic products.⁴ Today, organic foods command a 20–30% price premium over their conventionally produced counterparts.⁵ There are a number of reasons why the organic industry has been so successful. Consumers’ fears about pesticide exposure,⁶ doubts about the efficacy of food safety regulations,⁷ and

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1. MICHAEL POLLAN, THE OMNIVORE’S DILEMMA: A NATURAL HISTORY OF FOUR MEALS 136 (2006) [hereinafter POLLAN, OMNIVORE’S DILEMMA].

2. Lauren Zeichner, *Product vs. Process: Two Labeling Regimes for Genetically Engineered Foods and How They Relate to Consumer Preference*, 27 ENVIRONS ENVTL. L. & POL’Y J. 467, 471 (2004).

3. ORGANIC TRADE ASSOCIATION, U.S. ORGANIC INDUSTRY OVERVIEW, OTA’s 2006 MANUFACTURING SURVEY (2006), available at <http://www.ota.com/pics/documents/shortpercent20overviewpercent20MMS.pdf>.

4. CAROLYN DIMITRI & CATHERINE GREENE, U.S. DEP’T OF AGRIC., RECENT GROWTH PATTERNS IN THE US ORGANIC FOODS MARKET 1 (2002), available at <http://www.ers.usda.gov/publications/aib777/aib777b.pdf>.

5. Tom Philpott, *Up Against the Wal-Mart: Big Buyers Make Organic Farmers Feel Smaller Than Ever*, Grist: Env’tl. News & Commentary, Aug 23, 2006, <http://grist.org/comments/food/2006/08/23/buyers/> (last visited Mar. 3, 2008).

6. See Michael Pollan, *Naturally: How Organic Became a Marketing Niche and a Multibillion-Dollar Industry*, N.Y. TIMES, May 13, 2001, § 6 (Magazine), at 30 [hereinafter Pollan, *Naturally*].

growing concerns about the dangers of genetically modified organisms (GMOs) have fueled the demand for organic foods.⁸ The production of organic food is an \$11 billion industry and the fastest growing sector of the food economy.⁹

Because of the economic benefits associated with organic production, from the moment the organic standards were finalized in 2000, large-scale farming operations have been searching for ways to adapt industrialized farming techniques to meet organic production requirements. Because of the way the standards were written, they have been extremely successful.¹⁰ Organic farmers operating on a small-scale now compete with large factory farms run by companies like Archer Daniel Midland (ADM) and Cargill, who are able to produce food consistent with the national standards on thousands of mono-cropped acres.¹¹ Even a number of small independent companies have grown to fit the market. For example, EarthBound, which began in 1984 as a two-and-a-half acre backyard garden in Carmel Valley, California, now grows on 24,000 acres and sells produce to 74% of U.S. supermarkets, including Wal-Mart, Costco, Safeway, and Whole Foods.¹²

The modern organic production and distribution system is now dominated by these "industrial organic" or "big organic" producers.¹³ The benefit of the "super-sized" organic industry is that organic foods are more available and more affordable for American consumers than ever before. Wal-Mart executives, for example, have estimated the company's entrance into the organic market will drive price premiums for organic products down from 20% to just 10%.¹⁴ This is the upside.

The downside of large-scale organic production and distribution is that many small-scale growers are being pushed out of the

7. See, e.g., Gordon G. Bones, *State and Federal Organic Food Certification Laws: Coming of Age?*, 68 N.D. L. REV. 405, 405 & n.2 (1992) (discussing how the Alar scare effected the demand for organic foods).

8. See Pollan, *Naturally*, *supra* note 6, at 30.

9. POLLAN, *OMNIVORE'S DILEMMA*, *supra* note 1, at 136.

10. Chad M. Kruse, *The Not-So-Organic Dairy Regulations of the Organic Food Production Act of 1990*, 30 S. ILL. U.L.J. 501, 501 (2006).

11. *Id.*

12. James Temple, *The 'O' Word: Some Organic Farmers Opt Out of Federal System*, CONTRA COSTA TIMES, Oct. 29, 2006, at 6B; HighJump Software, *Earthbound Farm Gains Efficiencies with Supply Chain Execution Solutions from HighJump Software*, June 14, 2005, <http://www.highjumpsoftware.com/about/news/press/PR20050614-Earthbound.asp>.

13. *Id.*

14. See Christine MacDonald, *As the Popularity of Organics Grows, Wal-Mart Jumps In*, BOSTON GLOBE, May 10, 2006, at C5.

market.¹⁵ Corresponding to this shift in the supply chain, the meaning of “organic” has morphed from the use of small-scale natural methods to a standardized large-scale industrial farming reality. Today, the same small-scale producers who started the organic movement in the 1970s are turning away from the organic label or are exceeding the government regulations, farming in accordance with their personal values of conservation and stewardship.¹⁶ These farmers believe the current organic standards do not do enough to protect the environment nor to support a truly sustainable distribution system. They are differentiating themselves by moving beyond organic—to “Organic *Plus*.” However, this catchall phrase embodies many different sustainable growing techniques, none of which are represented by the current certification and labeling system.¹⁷ The time has come for the national organic standards to reflect the true nuance of organic farming.

After a brief discussion of the history of the organic movement and the current national organic standards, this article details a number of ways in which the federal organic production regulations have fallen short. Next, it examines how third party certifiers have moved in to fill a regulatory void, by either certifying specific traits (the sustainable coffee model), or by insisting that producers meet a suite of requirements (the biodynamic model). While these certifiers have been very effective, a number of non-certified and meaningless claims like “natural” have also sprung up recently. Thus, the time has come for the government to allow for more nuanced organic certification by codifying a number of “Organic *Plus*” standards. The article concludes with an example of how the current organic regulations could be easily modified to include an Organic *Plus* program.

II. THE ORIGIN OF ORGANIC

Although the term “organic farming” can be traced back to a chapter heading in the 1940 book *Look to the Land* by Lord Walter Northbourne,¹⁸ the organic movement usually attributes its foundation to J. I. Rodale, a health-fanatic from New York who started *Organic Gardening and Farming* magazine in 1940.¹⁹ Rodale used the magazine as a platform to promote the ideas of Sir Albert

15. Temple, *supra* note 12, at 6B.

16. *Id.*

17. *Id.*

18. Zeichner, *supra* note 2, at 469.

19. POLLAN, OMNIVORE'S DILEMMA, *supra* note 1, at 142.

Howard (1873-1947), a knighted English agronomist, who believed that using compost to enhance soil fertility instead of chemical fertilizers resulted in a healthier soil structure, more nutritious food, and subsequently, healthier human beings.²⁰ Sir Albert Howard is known for his work in India and for his creation of philanthropic foundations for organic agriculture.²¹ His work, *An Agricultural Testament*, became the bible of the organic movement.²²

While Rodale's magazine steadily gained in popularity during the 1940s and 1950s, it did not really take off until the early 1960s with the birth of the national environmental movement, marked by the publication of Rachel Carson's seminal book about the dangers of pesticides, *Silent Spring*.²³ When a *Whole Earth Catalog* correspondent wrote in 1969, "If I were a dictator determined to control the national press, *Organic Gardening* would be the first publication I'd squash, because it's the most subversive,"²⁴ the subscription rate soared to 700,000.²⁵

With its roots deeply set in Sixties radicalism, "organic" was seen as an alternative, not just to industrial farming, but to a culture of "white bread" or "plastic" food.²⁶ Growing and eating organic food was also seen as a way to reject the Vietnam "war machine," because the same chemical companies which manufactured napalm and Agent Orange (Dow and Monsanto), also produced agricultural pesticides for domestic use.²⁷ From its origin, choosing organic food was a political act.

III. A DIFFUSE REGULATORY SYSTEM

As a miniscule segment of the food economy, organic food was largely ignored by the government for many years. This was a problem because, as an unregulated industry amoral producers could use organic claims unscrupulously to bolster the sales of

20. *Id.* at 53-59, 73-76, 100.

21. *Id.* at 145.

22. See SIR ALBERT HOWARD, *AN AGRICULTURAL TESTAMENT* (1943).

23. See RACHEL CARSON, *SILENT SPRING* (25th ann. ed. Houghton Mifflin 1987) (1962). Carson's book shifted awareness of environmental harms from the abstract to the intimate. Her work demonstrated the connection between consumer decisions and their environmental ramifications.

24. POLLAN, *OMNIVORE'S DILEMMA*, *supra* note 1, at 142.

25. *Id.*

26. *Id.* at 141-43.

27. *Id.* at 143.

their products.²⁸ In response, a number of states attempted to fill the regulatory void. Oregon was the first state to take action with an organic certification law in 1973.²⁹ By 1990, twenty-two states had passed organic regulations of some kind, but these varied so significantly that the result was an irregular, diffuse, and confusing system of oversight.³⁰

States applied vastly differing certification and labeling processes. Some states, like Washington and Colorado had implemented state run certification programs, while others allowed for private certification or did not require certification at all.³¹ States also had different policies on the use of synthetics. Texas, for example, allowed some synthetically produced materials to be used in organic production,³² while California strictly prohibited the use of any synthetics and only allowed farmers to apply pesticides and fertilizers of “natural” origin.³³ Confusing the matter further was the fact that twenty-eight states had no organic regulations at all, which enabled producers and marketers in those states to make virtually meaningless claims.³⁴ With interstate trade in organic agricultural products growing rapidly, the lack of uniform standards left consumers inundated by imitation and quasi-organic products,³⁵ and frustrated organic growers trying to provide a more wholesome food product in a marketplace rife with imposters.

At one time, foods labeled “organic” in the supermarket could contain anywhere from 20 –100% organic ingredients,³⁶ and even these foods were competing with a number of other labels, including “ecologically grown,” “natural,” “wild,” and “residue free.”³⁷ Faced with the hodge-podge of state seals and third-party certifications, even savvy consumers were struggling to decipher the

28. 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, 539 (1997).

29. Or. Rev. Stat. § 632.925 (1973) (now at § 616.406 (1996)) (repealed 2002). See Kyle Lathrop, *Pre-empting Apples with Oranges: Federal Regulation of Organic Food Labeling*, 16 J. CORP. L. 885, 891 (1991).

30. Amaditz, *supra* note 28, at 539; Lathrop, *supra* note 29, at 891.

31. See Bones, *supra* note 7, at 408.

32. *Id.* at 412.

33. *Id.* at 413–14.

34. Amaditz, *supra* note 28, at 539.

35. John Bell Clark, *Impact and Analysis of the U.S. Organic Food Production Act of 1990 with Particular Reference to the Great Lakes*, 26 U. TOL. L. REV. 323, 325 (1995).

36. Amaditz, *supra* note 28, at 539.

37. *Id.* at 537.

meaning of different labels.³⁸ The time was ripe for federal intervention.

IV. THE FORMATION OF THE NATIONAL ORGANIC STANDARDS

The history of the Organic Food Production Act ("OFPA" or the "Act") is long and convoluted. More than a decade elapsed between its first iteration and the release of the final regulation.³⁹ For this reason, the first section will focus briefly on the original goals and features of the Act as they were described in 1990. The next section will outline key elements of the Act as they pertain to certification and labeling of organic foods today.

The Organic Food Production Act (OFPA)

Unsurprisingly, companies operating on a national level, the large-scale agribusinesses, first pushed for federal regulation of organic food production, labeling, and distribution (although organic organizations quickly got involved in the process).⁴⁰ Congress began working on the regulations with the initial goal of creating consistent federal standards that would eliminate consumer confusion by providing "a clear picture of just what organically grown really means."⁴¹ The task of defining "organic" proved extremely difficult because of the wide range of practices encompassed by the term.⁴² To help the process along, on November 28, 1990, Congress passed a framework piece of legislation called the Organic Food Production Act (OFPA).⁴³ The stated goals of the OFPA were: (1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate inter-

38. *Id.* at 539.

39. See Organic Foods Production Act of 1990, 7 U.S.C. § 6501 (2006).

40. Felicia Busch, *Organic Foods: What You See Is Not Necessarily What You Get*, ENVTL. NUTRITION, July 1990, at 1 (noting that the United Fresh Fruit and Vegetable Association (UFFVA) led the demand for national legislation). The American Farm Bureau Federation also called for a national standard. See Benjamin N. Gutman, *Ethical Eating: Applying the Kosher Food Regulatory Scheme to Organic Food*, 108 YALE L.J. 2351, 2372 (1999) (citing S. REP. NO. 101-357, at 290 (1990), as reprinted in 1990 U.S.C.C.A.N. 4656, 4949); see also Bones, *supra* note 7, at 408 & n.14.

41. See Gutman, *supra* note 40 (citing 136 Cong. Rec. 569 (1990) (statement of Rep. DeFazio)).

42. *All Things Considered: Organic Food Standards Announced* (NPR radio broadcast Dec. 15, 1997).

43. See Organic Foods Production Act of 1990, 7 U.S.C. § 6501 (2006).

state commerce in fresh and processed food that is organically produced.⁴⁴

The OFPA gave the USDA the power to establish an organic certification program.⁴⁵ It specified that: (1) organic products had to be produced without the use of synthetic chemicals; (2) the land on which organic products could be grown could not have had any prohibited substances applied to it for at least three years preceding harvest; and (3) organic products had to be produced in compliance with an organic plan to which both the producer and certifying agent agreed.⁴⁶ The OFPA also directed the USDA to establish a “National List” of substances approved for use in organic farming that producers had to adhere to if they wanted to grow “certified organic” produce and animals.⁴⁷ To aid the USDA in this process, the OFPA created an advisory panel known as the National Organic Standards Board (NOSB). The NOSB was meant to act as “an essential advisor to the Secretary on all issues concerning this bill,”⁴⁸ and to “assist in the development of standards for substances to be used in organic production.”⁴⁹ The board members included farmers, handlers, retailers, consumers, environmentalists, scientists, and certifying agents.⁵⁰ However, the interests represented by the NOSB were often at odds. The divide between “big organic” and “little organic,” between the organic industry and the organic movement, began to take shape as the process of trying to regulate this new industry evolved.⁵¹

This is not to say there were no unifying practices used within organic circles. For example, many organic farmers relied on crop rotations as a means of maintaining natural soil fertility and only used naturally occurring pesticides and fertilizers, such as *Bacillus thuringiensis* (*Bt*) and guano.⁵² However, large-scale agribusinesses pushed the USDA to define organic as loosely as possible,

44. *Id.* § 6501(1)–(3).

45. *See id.* § 6503(a).

46. *Id.* § 6504.

47. *Id.* § 6517(a), (c)(1)–(2).

48. S. REP. NO. 101-357, at 650–51 (1990), as reprinted in 1990 U.S.C.C.A.N. 4656, 4950).

49. 7 C.F.R. § 205.2 (2007); *see also* 7 U.S.C. § 6518(a) (2006).

50. 7 U.S.C. § 6518(b)(6)–(7). Since the creation of the NOSB, two additional members have been added: an expert in toxicology, ecology, or biochemistry, and a certifying agent. *See id.*

51. POLLAN, OMNIVORE’S DILEMMA, *supra* note 1, at 155.

52. Although, others firmly believe only natural process (such as crop rotation) should be allowed. Clark, *supra* note 35, at 336 (denying that natural pesticides may be used by “true” organic farmers).

partly to make entering the market easier, but also because they feared that there would be a stigma on foods that were not organic, such as those that were genetically modified.⁵³ Consequently, it took four years for the NOSB to issue its first set of recommendations,⁵⁴ and another three years for the USDA to publish its first proposed rule, which was watered down at best and extremely favorable to large-scale growers at worst.⁵⁵

To the shock of many, the first version of the standards, published in 1997, was extremely lax—allowing for the use of genetic engineering, nuclear irradiation and toxic sewage sludge in fertilizer.⁵⁶ However, due to a strong public relations campaign by a wide variety of organic interests, the public outcry was intense and the USDA received more than 275,000 comments, almost all of which opposed the very broad definitions in the regulations.⁵⁷ In response, the USDA went back to the drawing board and the final version of the rules, which went into effect October 21, 2002, eliminated many of the controversial elements.⁵⁸ Even though the 2002 standards were more stringent in some regards, the final version of the Act still watered down the standards in subtle ways.

For example, the 1990 legislation prohibited the addition of synthetic food additives and manufacturing agents.⁵⁹ The final standards ignored the 1990 provision and provided a list of permissible additives for certified organic foods, ranging from ascorbic acid to xanthium gum.⁶⁰ In 1993, when Arthur Harvey, an organic blueberry farmer from Maine, won a lawsuit against the USDA for ignoring the 1990 law,⁶¹ lobbyists for the Organic Trade Association slipped language into a 2005 agricultural appropriations bill which restored the industry's right to use synthetic materials in organic production.⁶²

53. POLLAN, OMNIVORE'S DILEMMA, *supra* note 1, at 154.

54. Amaditz, *supra* note 28, at 545.

55. See National Organic Program, 62 Fed. Reg. 65850 (proposed Dec. 16, 1997) (codified at 7 C.F.R. pt. 205).

56. Ben Lilliston & Ronnie Cummins, *Organic Versus "Organic": The Corruption of a Label*, ECOLOGIST (July/Aug. 1998), available at <http://www.purefood.org/Organic/orgvsorg.htm>.

57. Zeichner, *supra* note 2, at 475.

58. See Press Release, U.S. Dep't of Agric., Veneman Marks Implementation of USDA National Organic Standards (Oct. 21, 2002), available at <http://permanent.access.gpo.gov/websites/www.fas.usda.gov/agx/organics/press.htm>.

59. POLLAN, OMNIVORE'S DILEMMA, *supra* note 1, at 155.

60. *Id.* at 156.

61. Harvey v. Veneman, 396 F.3d 28 (1st Cir. 2005).

62. POLLAN, OMNIVORE'S DILEMMA, *supra* note 1, at 156.

Despite some setbacks, at the end of the day, the OFPA established guidelines for growing, certifying, handling, and marketing organic foods, and the 2002 rules were a long awaited and much needed first step on the road to a cohesive organic production and distribution system.

V. WHAT IT MEANS TO BE “ORGANIC”

To understand what it means for something to be “organic” today, it is important to understand the basic process of certification. The government monitors the production and distribution of organic foods in three primary ways: certification, authentication, and labeling.

Certification

The first step for any organic food, whether a raw agricultural product, complex breakfast cereal, or microwavable dinner, is certification. The job of implementing the organic certification system falls to the Secretary of Agriculture and is carried out through certifying agents.⁶³ For farmers, there is an initial distinction based on annual gross farm income. Farmers who gross over \$5,000 annually in sales must be certified in order to sell or label their products as “organic.”⁶⁴ Farmers who gross less than \$5,000 annually and only sell directly to consumers (e.g., via farmers markets and family farm stands) can avoid the certification process by simply signing a declaration of compliance.⁶⁵ However, if these farmers sell any of their products through conventional distribution channels, they may not use the term “certified organic” on their products without also obtaining official certification.⁶⁶

Official certification can be an expensive and time-consuming process. Farmers or handlers of organic food must submit an “organic plan” to a USDA-accredited certifier.⁶⁷ The plan must include a three-year management history of the land to certify that no prohibited substances have been applied to it in violation of the organic standards.⁶⁸ It also must include detailed descriptions of

63. Organic Foods Production Act of 1990, 7 U.S.C. § 6503(d) (2006).

64. *Id.* § 6505(d).

65. Andrew J. Nicholas, *As the Organic Industry Gets Its House in Order, the Time Has Come for National Standards on Genetically Modified Foods*, 15 LOY. CONSUMER L. REV. 277, 285 (2003).

66. *Id.*

67. See 7 U.S.C. § 6513(a).

68. *Id.* § 6513(f)(2).

all growing or handling methods and any materials that will be used in production.⁶⁹ Plans for future improvements to any part of the land or the production process must also be included.⁷⁰ Because the process is so expensive and time consuming, small farms that can circumvent the process with direct marketing often opt to do so. However, this decision severely restricts their marketing and distribution opportunities.

Authentication

Once a farm or handling operation receives organic certification, they are subject to periodic on-site inspections from certifying agents.⁷¹ In order to comply with these periodic audits, farmers must keep and retain their records going back at least five years.⁷² Those records must include a detailed history of substances applied to fields or agricultural products, the names and addresses of persons who applied such substances, as well as the dates, the rate, and method of application of such substances.⁷³ Certified organic farms must also maintain storage records, water test records, inspection reports, and sales records.⁷⁴

Labeling

As of October 21, 2002, all products that meet the national organic standard are required to follow the new USDA organic labeling guidelines.⁷⁵ Today's organic labeling system is based on the percentage of organic ingredients a product contains. There are four levels currently recognized by the USDA: (1) "100% organic" (contains 100% organic ingredients), (2) "organic" (95–99% organic ingredients), (3) "organic ingredients" (70–94% organic ingredients), and (4) "some organic ingredients" (less than 70% organic ingredients).⁷⁶ Some products, like salt and baking powder, cannot be obtained organically, which is why "organic" allows for five percent leeway.⁷⁷ It is important to note that products containing less than 95% organic ingredients cannot carry the "or-

69. *Id.* § 6513(a).

70. *Id.*

71. *Id.* § 6506(a)(5).

72. *Id.* § 6511(d).

73. *Id.* § 6511d(1)–(2).

74. Nicholas, *supra* note 65, at 286.

75. *Id.* at 287.

76. *Id.* at 288.

77. National Organic Program, 7 C.F.R. § 205.301 (2007).

ganic” label.⁷⁸ Instead, products that fall into category 3 above may use the phrase “made with organic ingredients,” and products that fall into category 4 cannot use the word “organic” on the front of the packaging at all, but may list the organic ingredients as such on the back.⁷⁹

Despite the rigor of the certification process, there are a number of significant ways in which the national organic program has failed to meet its original objective. Additionally, as the organic consumers become more sophisticated, the production techniques required for organic certification only represent a small fraction of the qualities *they* are looking for.

VI. ORGANIC STANDARDS FALL SHORT

The current organic standards have largely standardized the methods and products of the organic sector of the food industry and have eliminated consumer confusion. Despite the complexity of the certification and labeling system, consumers of organic products are still not receiving the kind of information they need to make truly informed decisions. This is because the term “organic” represents a continuum of attitudes and practices, only some of which are represented in the organic standards.⁸⁰ This section presents a few ways in which the current organic standards are lacking, incomplete, or misleading.

Testing for GMOs and pesticide residues

As mentioned above, the use of synthetic pesticides and genetically modified organisms are not permitted under the current organic standards. However, wind⁸¹ or insect pollinators⁸² can bring pollen from genetically modified crops onto an organic *farm*. Similarly, pesticides sprayed on neighboring farms can blow over or wash over and contaminate a portion of an organic grower’s

78. *Id.*

79. *Id.* § 205.305.

80. POLLAN, OMNIVORE’S DILEMMA, *supra* note 1, at 155.

81. See, e.g., Tom Knudson et al., *Globe-Trotting Genes Welcome or Not, Modified Strains Pop Up in Crops Near and Far*, SACRAMENTO BEE, June 7, 2004, at A1 (reporting widespread contamination of organic canola in Saskatchewan, Canada, by wind-blown GM canola pollen, and the presence of GM corn in Oaxaca, Mexico, where it was not intentionally planted).

82. ALAN MCHUGHEN, PANDORA’S PICNIC BASKET: THE POTENTIAL HAZARDS OF GENETICALLY MODIFIED FOODS 164–65 (2000).

field.⁸³ A study by Baker, et al., which relied on testing data from the USDA, the California Department of Pesticide Regulation, and from the Consumer Union, found that pesticide residues were present in up to 27% of organic produce despite a ban on the use of pesticides in their production.⁸⁴ Because organic consumers believe organic products are residue and GMO free, this data is very unsettling. With such a substantial problem on its hands, one would expect the USDA to test an organic crop for its purity before allowing it to enter the marketplace. However, testing is much less frequent than one would expect.

This is because the USDA has primarily focused on preventative measures instead of post-harvest testing. To minimize “the unintended application of a prohibited substance,” the USDA requires organic crops to have “distinct, defined boundaries and buffer zones.”⁸⁵ Congress did specify in the OFPA that an organic certification program *should* “require periodic residue testing by certifying agents” to determine “whether such [certified organic] products contain any pesticides or other non-organic residue or natural toxicants.”⁸⁶ However, despite this recommendation, nothing in the current regulations requires that testing actually be performed on a regular basis.⁸⁷

In fact, the current system actually impedes the testing process when it comes to organic production. Technically, certifying agents are responsible for residue testing, and anyone who mislabels a product as organic can be fined up to \$10,000.⁸⁸ Although farmers are required to report any “application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product,” they are often unaware a contamination event has occurred.⁸⁹ Furthermore, certifying agents may only test when they have “reason to believe” that a product has been

83. Michelle T. Friedland, *You Call That Organic?—The USDA’s Misleading Food Regulations*, 13 N.Y.U. ENVTL. L.J. 379, 399 (2005) (citing Mariana Gonzalez et al., *Occurrence and Distribution of Organochlorine Pesticides (OCPs) in Tomato (Lycopersicon esculentum) Crops from Organic Production*, 51 J. AGRIC. FOOD CHEMISTRY 1353, 1358 (2003) (reporting that organic tomatoes grown in Argentina contained detectable levels of nine different pesticides from environmental contamination)).

84. B.P. Baker et al., *Pesticide Residues in Conventional, Integrated Pest Management (IPM)-Grown and Organic Foods: Insights from Three U.S. Data Sets*, 19 FOOD ADDITIVES & CONTAMINANTS 427, 432–34 (2002).

85. 7 C.F.R. § 205.202(c) (2007).

86. 7 U.S.C. § 6506(a)(6) (2006).

87. Friedland, *supra* note 83, at 398.

88. See Organic Foods Production Act of 1990, 7 U.S.C. § 6519 (2006).

89. 7 U.S.C. § 205.400(f)(1) (2006).

contaminated with a prohibited substance,⁹⁰ so unless there has been an obvious breach they are unlikely to initiate testing. Even if a certifying agent has reason to believe there has been contamination, the test must be conducted at the official's or certifying agent's *personal* expense.⁹¹ Along with the fact that certifying agents are hired by producers,⁹² as opposed to *being paid* USDA employees, there is very little incentive for them to perform testing, which explains the high rates of contamination found in the Baker study. In sum, under the current organic certification system and irrationally punitive testing model, consumers are not guaranteed that the "organic" produce they are purchasing is free from GMOs or pesticide residues. This is particularly insidious because organic consumers may be less inclined to wash produce before consuming it.

Mined additives

From the beginning, the organic community has been divided over the use of mined additives. The regulations require that organic farmers "select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion."⁹³ However, some inputs that are currently allowed under the regulations to accomplish these goals, such as Chilean Nitrate, are extremely controversial.

Chilean Nitrate is a highly soluble form of nitrate mined in the Atacama Desert and imported thousands of miles to the United States.⁹⁴ It is a non-renewable resource, and is generally not approved for organic agricultural in other countries.⁹⁵ Chilean Nitrate is currently available to organic farmers, although the NOP restricts its application to 20% of the nitrogen budget per cropping cycle.⁹⁶ More than one petition has been submitted to the NOSB to remove Chilean Nitrate from the "national list" of ap-

90. 7 C.F.R. § 205.670(b) (2007).

91. *Id.*

92. 7 C.F.R. §§ 205.400(e), 205.501(a)(16) (2007); *see also* Certified Organic Inc., Services (listing the fees of a certifying agency), <http://www.certifiedorginc.org/> (last visited Nov. 23, 2006).

93. 7 C.F.R. §205.203(a) (2007).

94. UNIV. CAL. SUSTAINABLE AGRIC. RESEARCH & EDUC. PROGRAM, NATIONAL ORGANIC STANDARDS BOARD TECHNICAL ADVISORY PANEL REVIEW, CHILEAN NITRATE 2 (2002), *available at* <http://www.ams.usda.gov/NOP/NationalList/TAPReviews/Chileannitratereview.pdf>.

95. *Id.* at 6.

96. *Id.* at 1.

proved substances.⁹⁷ Reviewers on the advisory panel noted that the product “poses a substantial risk of environmental degradation in terms of extraction and use,” and that use of Chilean Nitrate is “counter to the spirit of organic agriculture.”⁹⁸ Because there are so many alternatives available, such as bloodmeal, feather meal and fish powder, removing Chilean Nitrate from the national list would not substantially impact organic farming. Currently, there is no way for consumers to distinguish between products farmed with Chilean Nitrates or other mined fertilizers and those farmed using more sustainable and environmentally friendly alternatives.

Supporting small family farms

Some consumers are motivated to purchase organic food because they want to support small family farms. Research shows that small farms in the United States provide a number of economic and social benefits to their surrounding communities, including diversity (biodiversity and landscape), responsible resource management (in the form of environmental stewardship), community involvement (in the form of farmers markets and farm programs), rural vitality and economic development.⁹⁹

Small farms out-perform large farms in a number of important ways. Small farms provide more wildlife habitat (as a percentage of their land) than large farms.¹⁰⁰ Small farms also have almost twice as much land in soil improving uses (e.g., cover crops and green manures), than their large-scale counterparts.¹⁰¹ Finally, small farms in the United States keep 17% of their acreage in carbon absorbing woodlands as opposed to large farms, which average only 5%.¹⁰²

For these reasons, organic consumers are invested in preserving small family farms. One study found that almost half of consumers identified supporting small farmers as an essential

97. *Id.*

98. *Id.*

99. See generally, UNITED STATES DEPARTMENT OF AGRICULTURE, A TIME TO ACT: A REPORT OF THE USDA NATIONAL COMMISSION OF SMALL FARMS, (1998), available at http://www.csrees.usda.gov/nea/ag_systems/pdfs/time_to_act_1998.pdf

100. PETER M. ROSSET, PH.D., FOOD FIRST/THE INST. FOR FOOD & DEV. POL'Y, POLICY BRIEF NO. 4: THE MULTIPLE FUNCTIONS AND BENEFITS OF SMALL FARM AGRICULTURE 4 (1999).

101. Gerard D'Souza & John Ikerd, *Small Farms and Sustainable Development: Is Small More Sustainable?* 28 J. AGRIC. & APPLIED ECON. 73, 73-83, 78 (1996).

102. Rosset, *supra* note 100, at 14.

attribute of organic food.¹⁰³ However, the current organic marketplace is, in reality, dominated by large-scale agribusinesses. For example, Archer Daniels Midland (ADM), Coca-Cola, Dole, General Mills, Heinz, Kellogg, Kraft, and Tyson Foods, have all either acquired or partnered with organic companies or have started their own organic lines.¹⁰⁴ This means many of the “organic” products the average consumer encounters and purchases do not come from small producers.

Currently, there is no way to easily ascertain where an organic product originated. Labels depicting small red barns and carrying quaint family names like “Judy’s Family Farm” (a subsidiary of Petaluma Farms, a large organic conglomerate) mislead consumers.¹⁰⁵

Local production

Because there is no “local organic” label on supermarket shelves, consumers who want to support small organic farms have to turn to alternative sources, such as farmers markets, family farm stands, and Community Supported Agriculture projects (CSAs), where larger farms cannot or choose not to compete.¹⁰⁶

There are a number of reasons a consumer might want to buy from a local organic farm instead of *any* organic farm. “Local-organic” food is often fresher, and thus has a superior taste and quality.¹⁰⁷ There are economic and environmental advantages to buying locally as well—there are usually fewer middlemen, meaning more money goes to the actual farmer, and less fossil fuel is wasted in shipping food products long distances.¹⁰⁸ Consumers who focus on local food are looking beyond the production techniques used in growing organic food to the entire distribution system. Because the average meal in the United States travels over 1,500 miles from farm to plate, people concerned about global warming, the use of non-renewable resources and the creation of a

103. A. Elizabeth Sloan, *The Natural & Organic Foods Marketplace*, 56 FOOD TECH. 27, 33 fig.5 (2002).

104. Michael Sligh & Carolyn Christman, *Rural Advancement Foundation International-USA, Who Owns Organic? Global Status, Prospects, and Challenges of a Changing Organic Market*, 19 (2003), available at <http://www.rafiusa.org/pubs/OrganicReport.pdf>.

105. See POLLAN, OMNIVORE’S DILEMMA, *supra* note 1, at 170–71.

106. Temple, *supra* note 12, at 6B.

107. Neil D. Hamilton, *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407, 412 (2002).

108. Temple, *supra* note 12, at 6B.

sustainable food system do not want to eat organic food produced outside the region they live in.¹⁰⁹

The local food movement is now a nationwide phenomenon.¹¹⁰ In fact, "Locavore"—someone who prefers to eat locally grown food—was the New Oxford-American Dictionary word of the year for 2007.¹¹¹ However, the local food movement mostly thrives outside the traditional supermarket setting, partly because there is no product differentiation for local foods in the current organic certification system.

Access to pasture for livestock

Another area where critics say that organic standards have failed is in regard to pasture requirements for livestock. Livestock are defined in § 6502 of the OFPA as, "any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life."¹¹² Under § 6509, livestock must be fed "organically produced feed" that contains no "plastic pellets for roughage; manure refeeding; or . . . urea."¹¹³ They must also have "access" to organic pasture and forage.¹¹⁴ However, the term "access" has proven to be so vague as to be almost meaningless.¹¹⁵

This development is surprising because the OFPA stated that animals raised organically should have their natural behavior accommodated, which many people believed meant that organic livestock and poultry would be raised on pasture.¹¹⁶ However, under the current definition, organic milk can be produced in a factory farm setting, where "thousands of Holsteins that never encounter a blade of grass spend their days confined to a fenced 'dry lot,' eating certified organic grain and tethered to milking machines."¹¹⁷ Similarly, so-called "free-range" chickens can now live in closed sheds for most of their lives, as long as they have access

109. *Id.*

110. Hamilton, *supra* note 107, at 412.

111. Andrew Adam Newman, *How Dictionaries Define Publicity: The Word of The Year*, N.Y. TIMES, Dec 10, 2007 (Business).

112. 7 U.S.C. § 6502(11) (2006).

113. *Id.* § 6509(c)(1), (2).

114. 7 C.F.R. § 205.237(a); 7 U.S.C. § 6509(c)(1), (2).

115. POLLAN, OMNIVORE'S DILEMMA, *supra* note 1, at 157.

116. *Id.*

117. *Id.* at 139.

to a small strip of grass outside the shed for the two weeks leading up to their slaughter.¹¹⁸

Not surprisingly, a number of legal battles over this issue have ensued. In January 2005, the Cornucopia Institute filed a formal complaint with the USDA challenging the legality of confining “cows in an industrial setting, without [adequate] access to pasture, and still label[ing] their milk and dairy products organic.”¹¹⁹ In particular, they were challenging one organic dairy farm’s practice of giving 5,600 cows access to less than 250 acres of dry lot as a means of fulfilling the USDA’s “access” requirement.¹²⁰ In response to the Cornucopia complaint, the National Organic Program (NOP) immediately issued an internal memorandum requesting that the NOSB develop a clearly articulated policy on the pasture requirement.¹²¹ After protracted discussions, the NOSB issued its recommendation that the USDA modify the § 205.239 “access to pasture” requirement to “grazing pasture during the growing season.”¹²² However, the USDA has still not approved the proposal, so the recommendations currently have no binding legal effect.¹²³ Additionally, the term “growing season” may prove to be equally vague. As in the examples above, consumers wishing to buy “pasture raised” meat are not able to discern which product to purchase under the current certification and labeling system.

VII. MOVING BEYOND ORGANIC

American consumers continue to indicate their desire to buy foods with specific traits or which are produced commensurate with their values.¹²⁴ Eco-labeling is an effective way for companies to reach consumers concerned with specific attributes of a product that are not readily apparent.¹²⁵ “Organic” is a form of eco-labeling, but it is not specific enough to meet the market’s

118. *Id.* at 140.

119. Press Release, Organic Consumers Assoc., The Cornucopia Institute Alleges Factory Farms Violating Federal Organic Law (Jan. 10, 2005), *available at* <http://www.organicconsumers.org/organic/cornucopia011205.cfm>.

120. *Id.*

121. Press Release, Organic Consumers Assoc., USDA Feels the Heat on Allowing Factory Style Dairies to be Certified as “Organic,” (Jan. 12, 2005), *available at* <http://www.organicconsumers.org/SOS/usdaheat011405.cfm>.

122. National Organic Program (NOP) – Access to Pasture (Livestock), 71 FED. REG. 19,131, 19,132 (Apr. 13, 2006).

123. Kruse, *supra* note 10, at 521–25.

124. Hamilton, *supra* note 107, at 434.

125. *Id.*

needs as it stands now. Because “organic” is really an umbrella term, the current labeling system does not give consumers the opportunity to make distinctions between different kinds of organic products. Residue testing, the absence of mined additives, food produced locally, and pasture-raised meat are just a few examples of additional information consumers of organic products are interested in and do not have easy access to under the current system. If “organic” is used as a baseline, there is no reason that these terms and others could not be layered on top of the existing certification system, either by the government or by independent certifying agents.

VIII. CURRENT MODELS FOR “ORGANIC PLUS” CERTIFICATION

Unlike other markets where eco-labels have been successful, there are a number of barriers preventing third party certifiers from completely filling the regulatory gaps. Most notably, the regulations have monopolized the use of the term “organic,” requiring all products labeled as such to be certified through the government and to comply with the government’s regulations.¹²⁶ Accredited organic certifiers are barred from requiring the producers they certify to comply with standards that are stricter than the NOP regulations.¹²⁷ Furthermore, certifying agents may establish “a seal, logo, or other identifying mark” only if it does not require “compliance with any production or handling practices other than those provided for in [the federal organic rules] as a condition of use of that mark.”¹²⁸ In short, the existing organic regulations actually work against any increase in the rigor of the standards. This can be seen in retrospect as primarily accommodating the needs of the very largest agribusinesses in organic production to the detriment of those organic farmers whose commitment is to increasing the purity and healthfulness of both the products and the process.

These limitations often require a producer who wants to show that his or her product is organic *and* has another value-added attribute to apply for separate certification. This comment refers to this separate certification model as the “sustainable coffee” model, as the international sale of sustainably grown and har-

126. 7 U.S.C. § 6505(a)(1)(A) (2006); 7 C.F.R. § 205.200 (2007).

127. 7 C.F.R. § 205.501(b)(2) (2007).

128. *Id.* § 205.501(b), (b)(2).

vested coffee has been extremely successful based upon this principle.

The Sustainable Coffee Model

Like “organic” products, “sustainable coffees” are marketed based on their non-physical attributes. Also like “organic,” “sustainable coffee” is an umbrella term that actually encompasses three distinct kinds of growing—organic, shade-grown, and fair trade—each with its own certification system.¹²⁹ The differences among these three terms are as follows:

Organic certification: As in the United States, organic coffee is grown without chemical pesticides, herbicides, or fungicides.¹³⁰ Organic coffee is certified by the world’s largest independent organic certification organization, the Organic Crop Improvement Association (OCIA). The OCIA certifies 30,000 organic coffee growers worldwide.¹³¹

Shade grown: Coffee in Latin America was traditionally grown in the shade of native trees.¹³² Shade-grown coffee not only has a richer flavor but, because it requires very little pesticide and fertilizer to grow, the plants provide habitats for migratory songbirds and many native species.¹³³ Full-sun coffee plantations were introduced in the 1970s as a way to produce more coffee in a shorter amount of time, and were extremely detrimental to the vulnerable ecosystems of the regional environment.¹³⁴ In recent years, consumers have become aware of the differences in these two methods of production, and a new eco-label for certified “shade-grown” coffee has emerged.¹³⁵

Fair-trade: The fair-trade movement is organized around the International Coffee Register, which is owned by a number of fair trade groups, and represents half a million growers worldwide.¹³⁶ Fair-trade focuses on promoting small-farm cooperatives in devel-

129. Denis A. O’Connell, *Shade-grown Coffee Plantations in Northern Latin America: A Refuge for More Than Just Birds & Biodiversity*, 22 UCLA J. ENVTL. L. & POL’Y 131, 144 (2004).

130. *Id.*

131. *Id.*

132. *Id.* at 131.

133. *Id.*

134. *Id.* at 131–32.

135. *Id.* at 132.

136. ROBERT A. RICE & JUSTIN R. WARD, COFFEE, CONSERVATION, AND COMMERCE IN THE WESTERN HEMISPHERE, § V(B) (June 1996), available at <http://nationalzoo.si.edu/ConservationAndScience/MigratoryBirds/Coffee/whitepaper.pdf>

oping countries and setting minimum wages for growers, currently guaranteed at \$1.26 per pound.¹³⁷

None of these certification labels address all aspects of sustainable coffee production. Thus, coffee growers around the world are actively encouraged to seek more than one certification.¹³⁸ Because of this, consumers looking to promote organic production and support fair trade can easily locate a product that fills both of these desires. Already, more than one product on the market touts organic, shade grown *and* fair-trade certification.¹³⁹

The layered certifications also allow consumers to send direct signals back to producers about what aspects of production are most important to them by buying multi-certified products. Even national chain coffee companies such as Starbucks have become active promoters of sustainable coffee, which allows them to offer more choices to their customers while enhancing the progressive humanity of their corporate image.¹⁴⁰

Although this model is fairly effective for coffee, it is not as viable for organic foods in general. Perhaps this is because there are only a few attributes being accounted for in coffee, whereas there are many additional traits organic producers would like to advertise. To solve this problem, in addition to one-issue certifiers who follow the “coffee model” above, a number of third party “whole farm” certification schemes have arisen. The biodynamic model provides a good example of one such option.

The Biodynamic Model

The biodynamic movement takes a holistic approach to farming just like the organic movement.¹⁴¹ Biodynamic farming is sometimes referred to as “Super Organic” because it uses all-natural methods to create composts and to control pests.¹⁴² However, unlike organic farming, biodynamic farming places special emphasis on spiritual elements.¹⁴³ Biodynamic farmers use extremely

137. O'Connell, *supra* note 128, at 144, 146.

138. *Id.* at 146.

139. Fair Trade Coffee, Organic Coffee: Grounds for Change, <http://www.groundsforchange.com/> (last visited Mar. 4, 2008).

140. See, e.g., Starbucks, Starbucks Highlights New Café Estima Blend Fair Trade Certified Coffee in Celebration of Fair Trade Month, (2005), <http://www.starbucks.com/csnewsletter/fall05/csrfcoffee.asp> (last visited March 4, 2008).

141. Gutman, *supra* note 40, at, 2361.

142. Temple, *supra* note 12, at 6B.

143. Miles Corwin, *One Step Beyond Organic*, L.A. TIMES, Dec. 4, 1989, at A1.

unconventional techniques to manage pests—such as using boiled snails to keep other off of their crops.¹⁴⁴

Demeter is the leading biodynamic certifier, with offices in 50 countries.¹⁴⁵ The biodynamic certification requirements are extensive, and include soil fertility management, water conservation, and mandatory crop rotation among many other things.¹⁴⁶ As a way to entice farmers into biodynamic certification, Demeter also offers organic certification through Steller Certification Services free to its biodynamic clients. Biodynamic is just one of a number of multifaceted “whole farm” certification options that move beyond the organic certification requirements set by the USDA.

Certified “Naturally Grown” is another example, where the USDA organic standards are set as the baseline for production but additional emphasis is placed on crop rotation and soil fertility maintenance.¹⁴⁷ Unlike Demeter, the certifiers for Naturally Grown products are in no way affiliated with the USDA program, although they cite the standards in their growing requirements.¹⁴⁸ A number of other third party certifications are currently available including: “beneficial farming,” “certified humane,” and “dolphin safe.” Although these certification schemes are effective, they are extremely laborious and require farmers to comply with a suite of additional growing practices instead of being able to pick and choose the ones that best suit their needs.

IX. GOVERNMENT INTERVENTION

Unfortunately, there are so many attributes not represented by the current organic standards that the market is again flooded with third party certifiers and alternative—often meaningless—claims. “Free-range” is one such popular term. Although the phrase conjures up images of chickens roaming freely over grass pasture, free-range chickens, in reality, can “still spend all or most of their time indoors, crammed onto a large, feces-covered floor.”¹⁴⁹ “Grass-fed” is another example that, without standardi-

144. Gutman, *supra* note 40, at 2361 n.76.

145. Demeter USA, <http://www.demeter-usa.org/> (last visited Mar. 4, 2008).

146. DEMETER, DEMETER PRODUCTION STANDARDS: GUIDELINES AND STANDARDS FOR THE FARMER FOR DEMETER BIODYNAMIC 3, 4 (2005) (on file with author).

147. Certified Naturally Grown, Certification Standards, <http://www.naturallygrown.org/standards.html> (last visited Mar. 4, 2008).

148. Certified Naturally Grown, Certification Standards for Produce, <http://www.naturallygrown.org/producestandards.html> (last visited Mar. 4, 2008).

149. Donna Mo, *Unhappy Cows and Unfair Competition: Using Unfair Competition Laws to Fight Farm Animals Abuse*, 50 UCLA L. REV. 1313, 1355 (2005).

zation, is virtually meaningless. The USDA is currently developing standards for both of these terms.¹⁵⁰ However, there are countless other phrases that the government is making no effort to clarify. A few examples are “free roaming,” “green,” “hormone free,” “natural” (except when referring to meat or poultry), and “no chemicals added.”¹⁵¹ The organic standards have done much to standardize organic practices and to bolster consumer confidence, but the time has come for the government to step in once again and regulate a number of the Organic *Plus* characteristics. This section explains how the language of the current organic standards could be modified to incorporate an Organic *Plus* program.

Model Regulations

The first step in integrating Organic *Plus* standards into the existing organic regulatory framework is to clearly delineate all of the traits the program will encompass. This article has provided a few example of areas where further product differentiation is needed, but there are many more. Figuring out exactly which traits should be part of the Organic *Plus* program is a task best left to organic farmers and Congress. Once this list is created, the agreed-upon Organic *Plus* categories could be incorporated into the National Standards for Organic Production section of the federal regulations.¹⁵² Currently, 7 U.S.C. § 6504 reads:

§ 6504. National standards for organic production

To be sold or labeled as an organically produced agricultural product under this chapter, an agricultural product shall—

(1) have been produced and handled without the use of synthetic chemicals, except as otherwise provided in this chapter;

150. United States Standard for Livestock and Meat Marketing Claim, Grass (Forage) Fed Claim, 71 FED. REG. 27,662, 27,664 (May 12, 2006), available at <http://www.ams.usda.gov/lsg/stand/ls0509.pdf>.

151. Eco-Labels, Label Index, <http://www.eco-labels.org/labelIndex.cfm?mode=view> (last visited Feb 14, 2007).

152. 7 U.S.C. § 6504 (2006). After enacted by Congress, the more specific requirements for the *plus* criteria should be incorporated in an addendum to National List, which is maintained by the United States Department of Agriculture, the agency Congress has delegated the authority to implement the organic standards to. See USDA, The National Organic Program Subpart G, <http://www.ams.usda.gov/nop/NOP/standards/ListReg.html> (last visited Mar. 3, 2008). While the federal regulations could outline some of the specifics requirements of this program, the USDA has a lot of autonomy. In this paper, I address the federal regulations that would be required to provide a framework for an organic *plus* program, but the real work of codifying and implementing such a program would be the responsibility of the USDA.

(2) except as otherwise provided in this chapter and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products; and

(3) be produced and handled in compliance with an organic plan agreed to by the producer and handler of such product and the certifying agent.

To include an Organic *Plus* program, the following language could be added to the end of this section:

To be sold or labeled as an Organic *Plus* agricultural product under this chapter, an agricultural product shall additionally conform to one or more of the following criteria—

- (1) tested GMO and pesticide residue free
- (2) produced without the use of mined additives
- (3) produced on a small family farm
- (4) locally produced
- (5) pasture raised

This Organic *Plus* criteria section could include already established terms, such as “free-range,” but could also include more innovative concepts, such as the number of miles a product has traveled to reach the supermarket shelf. This way, consumers could select products that are not just organic, but that represent and reflect their beliefs and values more fully, and could easily signal producers as to which elements are most important to them. To help clarify some of the more ambiguous concepts, definitions of key terms should be added to the Organic Certification Definition section.¹⁵³ For example, 7 U.S.C. § 6502(14) could be amended to include the following:

Small family farm—The term “small family farm” means any farm earning less than \$250,000 per year where an immediate member of the owning or leasing family provides day-to-day labor and/or management or the farming operations.

Mined additive—The term “mined additive” means any soil-enhancing substance excavated from the earth explicitly banned on the National List for use in “no mined additives” Organic *Plus* production, including imported nitrates.

153. 7 U.S.C. § 6502 (2006).

Locally produced—The term “locally produced” means any agricultural product grown or raised within 100 miles of the final point of sale.

Although the above reflects relatively minor changes, amending § 6504 and § 6502 as outlined above would provide the necessary statutory authority for the USDA to create a comprehensive Organic *Plus* certification program. The USDA organic label could then be modified to include Organic *Plus* traits—which could even just appear in checklist form below the seal.

X. CONCLUSION

The current organic standards, designed to codify and standardize organic production, are no longer meeting the needs of organic producers or consumers. As organic products become increasingly popular and industrialized, farmers are struggling to further differentiate their products. The result has been a surge of nearly meaningless terms like “natural” and “free roaming,” which have created widespread consumer confusion and deception. The time has come for the government to take the next regulatory steps by implementing an Organic *Plus* program that would allow organic farmers to advertise the additional beneficial qualities of their products without having to expend the time and resources necessary to obtain third party certification.