A NEW STANDARD: FINDING A WAY TO GO BEYOND ORGANIC

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INTRODUCTION

Deep fissures have developed within the organic food community. Coalitions of organic consumers have coalesced around the concern that organic food, designated by a label issued by the United States Department of Agriculture (USDA), is losing its meaning, shrinking the distinction between organic and non-organic food.[1] The increasing size of organic farms has left smaller family farms disadvantaged and unable to compete with larger farms which, through cheaper but less sustainable farming practices, have been able to keep their prices low. Organic producers, once a group of mostly small farmers that advocated for stricter regulations in order to distinguish their product from non-organic foods, have become dominated by industrial producers. Producers now behave like other regulated parties, advocating for watering down USDA regulations. These changes have led many consumer groups to call for a new label that goes "beyond organic."[2]

In this paper, I suggest an alternative, independent labeling scheme modeled after the LEED standard for green buildings to complement the current government-issued label. In Part I, I outline the primary motivations behind buying organic. The

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[1] *See, e.g.*, Michelle T. Friedland, *You Call That Organic?—The USDA's Misleading Food Regulations*, 13 N.Y.U. ENVTL. L.J. 379, 414 (2005).

[2] *See, e.g.*, SAMUAL FROMARTZ, ORGANIC, INC. 192 (2006); MICHAEL POLLAN, THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS 169 (2006); David Roberts, *Beyond Organic: A New Label*, GRIST, May 15, 2006, *available at* http://gristmill.grist.org/story/2006/5/15/134450/240.

motivations behind organic food consumption are diverse, and as a result of this diversity, one binary label may be insufficient to represent these interests. In Part II, I explain the structure of the Organic Foods Production Act (OFPA or the Act), as well as the requirements under the National Organic Program (NOP), and in Part III, I describe the growing concerns and tensions regarding the USDA organic label. As the organic food industry develops a larger part of the market share of all food purchases, niches within the movement have developed, and certain organic consumers and producers have expressed concern that the USDA label does not address their interests. Finally, in Part IV, I offer a solution—an alternative label modeled after the LEED standards for green building, complemented by more comprehensive government labeling standards. While government-regulated labeling standards play an important role, an independently operated label may serve to overcome government shortcomings.

I. WHY CONSUMERS BUY ORGANIC

The organic label serves two functions: (1) as a consumer information service, it provides consumers with information they have a right to know, and (2) as a regulatory tool, it discourages bad behavior. Even for those only concerned about the regulatory component of the labeling scheme, consumer desires can serve as a leverage to obtain these ends. Without a label that responds to consumer preferences, the labeling regime loses its influence. Consumer motivations for purchasing organic products can be divided into two categories: a desire for regulation of process (e.g., organic food is grown using environmentally sustainable techniques) and a desire for regulation of product (e.g., organic food is pesticide-free).

The majority of organic consumers purchase organic for the product regulation. Of those who purchased organic food in 2007, health and safety was the strongest motivating factor.[3] The avoidance of additives, pesticides, toxins, genetically modified ingredients, hormones, or antibiotics was the number-one driver

[3] The avoidance of additives, pesticides, toxins, genetically modified ingredients, hormones, or antibiotics was the number-one driver for usage. Maryellen Molyneaux, *The Changing Face of Organic Consumers*, FOOD TECHNOLOGY, Nov. 2007, at 25. Forty-three percent of consumers believe that organic food is safer to eat. *Id.* at 24, even though the government maintains that both mainstream and organic food are equally safe for consumption. *Id.*

for usage.[4] "Better for me and my family" was second, and promotion of overall health was third.[5]

Process regulation is also a motivating factor, although it is less pervasive. Some consumers purchase organic food as a symbolic alternative to industrial agriculture, malls, and big-box retail chains.[6] Consumers also purchase organic food for environmental reasons. Industrial agriculture results in a wide range of environmental harms, including soil erosion,[7] irrigation, and chemical releases.[8] More significant than these harms is the effect of pesticides and commercial fertilizers.[9] Even worse than the effect of pesticides from farms is the environmental impact of confined animal feeding operations, which pack tens of thousands of animals into close quarters, often in confined structures.[10] The emerging local food movement, which prioritizes the proximity of the food's source, has also become a significant force behind the organic movement.[11]

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[4] *Id.*

[5] *Id.*

[6] *Id.* at 24.

[7] J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 ECOLOGY L.Q. 263, 277–79 (2000). Agriculture causes the erosion of about five tons of soil per acre or 1.9 billion tons per year. *Id.* at 279 n.70.

[8] *Id.* at 279–82 (noting that irrigation depletes water supplies and leads to leaching of salts and minerals from the soil), 282–85 (noting that chemical releases adversely affect the diversity and abundance of non-target species, and may affect human health); *see also* J.B. Ruhl, *Farmland Stewardship: Can Ecosystems Stand Any More of It?*, 9 WASH. U. J.L. & POL'Y 1, 11 (2002) [hereinafter *Farmland Stewardship*].

[9] *Id.* at 13. While over 750 million pounds of pesticides are applied to crops each year, pesticides are extremely inefficient. Only a small percentage of pesticides actually reach their intended pest, while the rest washes or blows away, or infiltrates the soils and leaches away later.

[10] *Id.* at 12. Two hundred times more animal waste than human waste is produced each year in the United States, the equivalent of about 1.8 billion metric tons.

[11] Roberts, *supra* note 2. Consumers of local food often overlap with those who purchase organic food. While motivations for purchasing locally vary, one out of four organic consumers purchased locally grown good in the past year, and 35 percent of organic produce users first started purchasing organic food to support local farmers. Molyneaux, *supra* note 3, at 22.

II. THE ORGANIC FOODS PRODUCTION ACT AND USDA LABEL REQUIREMENTS

A. *Background*

The Organic Foods Processing Act was implemented at a time where organic food had already established itself as a significant niche market. By 1990, twenty-two states had organic food statutes,[12] and the regulation of organic food through state and private certification schemes was considered "fairly robust."[13] Gerber's, Heinz, Dole, ConAgra, and ADM had all created or acquired organic brands.[14] While organic food may have begun as a rejection of the "superindustrial state," in favor of a closer relationship with the earth,[15] it evolved into an industry itself, where consumer relationships with organic food closely resembled those with non-organic food. The organic movement had succeeded in passing some values, particularly distrust of chemicals, onto mainstream consumers, but may have failed in passing on other, broader principles, such as the use of sustainable farming techniques. As a result, by the time of the passage of the Organic Foods Production Act, it was unclear what consumers of organic goods valued most about organic foods: the product (chemical-free) or the production (farming techniques).

While the implementation of a USDA organic label was perceived as a victory for consumers, producers were also lobbying for national standards.[16] In response to the inadequacies of the locally-based organic food regulation schemes felt by both organic producers and consumers, primarily due to the lack of uniformity amongst independent organic labels,[17] OFPA was

[12] 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).

[13] National Organic Program, Final Rule, App. A, 65 Fed. Reg. 80,548, 80,663–64 (Dec. 21, 2000) (codified at 7 C.F.R. § 205 (2008)).

[14] POLLAN, *supra* note 2, at 154.

[15] *Id.* at 143 ("[T]he early organic movement sought to establish not just an alternative mode of production (the chemical-free farms), but an alternative system of distribution (the anticapitalist food coops), and even an alternative mode of consumption (the 'countercuisine')").

[16] 136 CONG. REC. S1, 109 (1990) (statement of Sen. Leahy) (noting that the United Fresh Fruit and Vegetable Association helped lead the way to develop a national organic certification program).

[17] While the organic requirements of several states and private certification

enacted in 1990.

B. *Organic Foods Production Act of 1990*

OFPA was the first attempt at federal regulation of organic food,[18] and is largely a procedural statute that establishes the process for how the NOP would be implemented. The NOP, in turn, is a set of substantive regulations that determines permissible ingredients and methods of production for organic food. At the heart of the NOP is the organic system plan, a plan devised by each organic producer that must comply by certain product and production requirements in order to be certified organic.

In the food-labeling context, the government issues food standards, which regulate the use of words on food labels. There are three kinds of food standards: standards of identity, standards of quality, and fill-of-container standards.[19] Standards of identity define what a food product is—what it is called, what ingredients must be used, and what ingredients may be used in the manufacturing of food.[20] A standard of identity for jam, for example, would require that if a food is to be labeled as jam, it

organizations agreed on many key practices, such as the restriction of the use of certain chemicals and hormones, National Organic Program, Final Rule, 65 Fed. Reg. at 80,665; Amaditz, *supra* note 12, at 539 n.20, other practices varied, particularly the standards for organic livestock production. National Organic Program, Final Rule, 65 Fed. Reg. at 80,665. Furthermore, there was a general distrust among consumers of the numerous organic labels, which all claimed to embody the same food production methods. Amaditz, *supra* note 12, at 539 n.20. Particularly in states without certification schemes, the opportunity for mislabeling or inconsistent labeling was pervasive. S. REP. NO. 101-357, at 289–90 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4656, 4943–44 ("For example, currently processed food may be labeled 'organic' regardless of whether it contains 100 or 20 percent organically grown ingredients. There is also growing evidence that some conventionally grown food is deliberately mislabeled as 'organic' by dishonest traders looking to cash in on the premium prices organic food commands."); *see also* Amaditz, *supra* note 12, at 539 n.22, 539 n.28. Interstate commerce was also problematic, where, in order to be designated "organic" in different states or by different certifiers, foods had to meet conflicting standards. *Id.* at 539 n.23.

[18] *See infra* Part III for a more thorough explanation of the problems encountered with independent labels.

[19] Suzanne White Junod, Historian, U.S. Food & Drug Admin., Presentation at the Society for the Social History Of Medicine Spring Conference 1999: The Rise and Fall of Federal Food Standards in the United States: The Case of the Peanut Butter and Jelly Sandwich (April 9, 1999), *available at* http://www.fda.gov/oc/history/slideshow/default.htm.

[20] Food Standards, 21 C.F.R. § 130.10 (2007).

must be made of about half fruit or fruit juice and half sugar. Standards of quality are minimum standards used to establish the quality of ingredients. Standards of quality for canned fruit, for example, would require a natural coloration, a specific percentage of whole pieces, and lack of defects. If the food does not meet the standard of quality it may still be sold, but a label indicating that it does not meet the quality standards must be included on the product package.[21] Fill-of-container standards require that a certain portion of the container be filled with designated ingredients, so as not to mislead consumers into believing there is more of the product than the container would lead them to believe. The Organic Foods Processing Act incorporates all three standards, but primarily takes the form of a standard of identity, setting the criteria for what foods may be described as "organic," with a fill-of-container requirement for multi-ingredient foods. The Act also regulates process, requiring food described as "organic" to be grown and manufactured using certain processes.[22]

The Act, similar to almost all methods of farm regulation, was a voluntary, incentive-based program,[23] which created a standard of identity for the term "organic." The label would indicate that the food was grown without using harmful substances, such as synthetic pesticides, hormones, or antibiotics, and that the food was produced in an environmentally sustainable manner.[24]

The text of the Act required few substantive standards on the production of organic food, which was left up to the USDA for filling in. Rather, the Act focused on how organic standards were to be promulgated.

C. *The National Organic Program*

Generally, any product labeled "organic" must comply with the standards set out in the NOP Regulations, drafted by the National Organic Standards Board (NOSB), a 15-member board of stakeholders appointed by the Secretary of Agriculture, and implemented by the USDA.[25] To be certified to produce or handle

[21] EDWARD G. HINKELMAN, IMPORTERS MANUAL USA: THE SINGLE SOURCE REFERENCE ENCYCLOPEDIA FOR IMPORTING TO THE UNITED STATES, 527 (2003).

[22] *See infra* Part II.C.2.

[23] *Farmland Stewardship*, *supra* note 8, at 14.

[24] 136 CONG. REC. S1,109 (1990) (statement of Sen. Leahy).

[25] National Organic Program, 7 C.F.R. § 205.100 (2008). Farms and handling operations that sell less than $5,000 a year in organic agricultural

organic food under the NOP, the organic producer or handler must develop an organic system plan, a detailed blueprint of how food will be produced and handled according to the regulations.[26] Independent or state-run certifying agents evaluate the plan, and if the plan is in accordance with the NOP, certifiers conduct on-site inspections to ensure the plan is being carried out.[27] These certifying agents, who must be accredited by the Administrator for the Agricultural Marketing Service or the USDA,[28] evaluate and monitor each organic producer and handler to ensure they are adhering to the mandates of the NOP. While the organic system plan includes both product and production regulation, the only enforceable parts of the regulation address product.

1. *Product Regulation*

A list of each substance used in manufacturing the food must be included in the organic system plan.[29] As a general rule, synthetic substances are prohibited,[30] and non-synthetic substances are permitted under the NOP.[31] Any exceptions to these general rules for both produce and livestock are listed under the National List,[32] a list of the only synthetic ingredients that could be used in organic food.[33]

2. *Production Regulation*

The organic system plan must also include a description of

products are exempt from certification. They may label their products organic if they abide by the standards, but they cannot display the USDA Organic Seal. *Id.* § 205.100(a). Retail operations, such as grocery stores and restaurants, do not have to be certified. *Id.* § 205.101(a)(2).

[26] *Id.* § 205.201.

[27] *Id.* § 205.403.

[28] *Id.* § 205.500.

[29] *Id.* § 205.201(a)(2).

[30] *Id.* § 205.105.

[31] *Id.* In processed products, nonagricultural substances and non-organic substances are also prohibited. The use of sewage sludge is also expressly prohibited under the regulations. Organic livestock producers have an additional list of substances they may not include in feed of organic livestock, which includes a prohibition of the use of animal drugs to promote growth, supplements and additives beyond what is necessary to maintain an animal's nutrition, plastic pellets for roughage, urea, manure, and slaughter by-products. *Id.* § 205.237.

[32] *Id.* §§ 205.601–606.

[33] National Organic Program, Final Rule, 65 Fed. Reg. at 80,666.

how the food will be produced or handled,[34] although specific prescriptions for what these processes require are absent from the regulations. The plan must include a description of tillage and cultivation practices that "maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion."[35] Such a practice must include crop rotations,[36] a pest,[37] weed, and disease management program,[38] the use of cover crops,[39] and the application of plant and animal materials.[40]

If a producer wishes to raise organic livestock, the livestock feed must abide by standards for livestock living conditions, which include access to outdoors, shade, shelter, exercise areas, fresh air, direct sunlight, and pasture for ruminants.[41] Producers must also provide clean, dry bedding, and shelter must be the appropriate temperature, ventilation, and air circulation must be appropriate to the species.[42] Producers must also design shelter to reduce the potential for livestock injury.[43]

3. *Labeling Standards*

Single ingredient foods, such as produce and milk, are treated in a binary manner, as either organic or not organic. In order to qualify as organic, food producers have to adhere to the production regulation requirements, outlined in the previous parts. Thus, foods that do not meet any part of the NOP are considered the same as foods that meet all but one requirement of the program. Similarly, farmers who go beyond the requirements are given the same label as those farmers who meet the bare minimum of requirements.

For multi-ingredient foods, the USDA implemented a four-

[34] 7 C.F.R. § 205.201.

[35] *Id.* § 205.203(a).

[36] *Id.* § 205.205.

[37] *Id.* § 205.271.

[38] *Id.* § 205.206.

[39] *Id.* § 205.205.

[40] *Id.* § 205.203. Ionizing radiation is expressly prohibited as a practice under NOP. The regulation also provides for wild-crop harvesting standards if the producer harvests wild crops. *Id.* § 205.207.

[41] *Id.* § 205.237.

[42] *Id.* § 205.238.

[43] *Id.* Producers of both crops and livestock must also ensure that whatever plant nutrients, pathogenic organisms, or heavy metals they use do not contaminate the crops, soil, or water. *Id.* § 205.203.

tiered labeling hierarchy. The general principle behind the label regulations is that the degree of labeling increases as the organic content of the product increase. Thus, the higher the organic content of the product, the more prominently the organic content may be displayed.[44] The fourth tier, designating products with organic ingredients that make up less than seventy percent of the total, may only identify each organically produced ingredient in the ingredient statement with the word, "organic."[45] The third tier, products with at least seventy percent organic ingredients,[46] may indicate on the primary display panel that they are "made with organic (specified ingredients or food group(s))."[47] The product may also indicate the percentage of organic ingredients in the product, and display the seal of the certifier of the product.[48] The second tier, products at least ninety-five percent organic ingredients, with the remaining product ingredients organically produced (unless they are not commercially available in organic form or are included on the National List), may use the USDA Organic Seal.[49] The first tier, reserved for products that are entirely organic, is the only tier where products may bear the label "100% Organic" on the primary display panel.[50]

In permitting labeling of food that was less than wholly organic, the intent was to encourage food producers to buy organic ingredients even when it was not feasible for them to buy all organic ingredients. Thus, while producers are permitted to label their products as organic, they may do so on a level that is less than those foods in the tiers with higher organic content.

4. *Independent and State Labeling*

States may implement organic programs that are more restrictive than the requirements set forth by the NOP due to environmental conditions, the necessity of specific production, or

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[44] National Organic Program, Final Rule, 65 Fed. Reg. 80,548, 80,576 (Dec. 21, 2000) (to be codified at 7 C.F.R. pt. 205).

[45] 7 C.F.R. § 205.305.

[46] Except for wine grape products, the third tier products may not contain sulfites and nitrates. *Id.* § 205.301(f)(5).

[47] *Id.*

[48] *Id.* § 205.304.

[49] *Id.* § 205.301(b).

[50] *Id*. § 205.301(a) (2008).

handling practices unique to the state or region.[51] To date, California and Utah are the only states with approved state organic programs (SOPs), and they have not adopted any substantive standards that differ from the NOP.

For independent labels, the USDA reserves the right to restrict labels that have been shown to be confused with the government label.[52] Under the regulations, there is technically room in the scheme for both independent certifications and individual labeling. Barriers to independent labeling are explored in Part IV.C, below.

5. *Violations*

If organic producers or handlers fail to comply with the provisions of the regulation, they may be faced with suspension, revocation, and a civil penalty of up to $10,000 per violation.[53]

III. CHALLENGES TO THE ORGANIC REGULATIONS

The USDA organic label has been credited for the tremendous growth in the organic industry.[54] Despite this success, challenges remain, and the USDA, an agency known to sympathize with industrial agriculture, may not be the best body through which to repair these defects. These concerns have led some advocates to urge for the creation of an independent, non-governmental label.

A. *Symptoms of Dysfunction*

1. *Determining the Content of the National Organic Program*

At the heart of the Act was the creation of the National List and the NOSB,[55] which was responsible for both the contents of

[51] *Id.* § 205.620.

[52] National Organic Program, Final Rule, 65 Fed. Reg. at 80,585.

[53] 7 C.F.R. § 205.662(g)(1).

[54] Molyneaux, *supra* note 3, at 25. Since 2004, the influence of the organic seal on consumer decision-making has increased by 22 percent. Consumers were surveyed as to whether their usage of organic foods and beverages was influenced by the USDA organic seal "not at all," "a little," or "a lot." Reflecting this change in preferences, organic food sales in the United States climbed 285 percent from 1997 to 2005, to $13.8 billion, according to the Organic Trade Association. Jennifer Youssef, *Supermarkets See Green In Going Green: Chain Grocers Boost Organic Offerings To Meet Customer Demand*, DETROIT NEWS, Apr. 9, 2007, at 1C.

[55] The NOSB was designed to represent all stakeholders and includes farmers, retailers, processors, consumer and environmental interests, a scientist,

the National List[56] and the production standards of organic food.[57] The Board was responsible for issuing recommendations about these provisions to the NOP, which would write the regulations implementing the recommendations.[58]

The USDA was reluctant to grant the NOSB rulemaking responsibility, however, and initially announced it would lead the NOSB in issuing draft regulations.[59] Due to objections by other members of the NOSB, USDA leadership of the NOSB floundered, but it was not the end of the struggle.[60] The preliminary regulations set out by the USDA in 1997 to implement OFPA ignored substantive recommendations set out by the NOSB.[61]

The draft regulations permitted the use of genetically modified crops (GMOs), nuclear irradiation, and sewage sludge in organic food production.[62] Factory farms were also permitted to participate in organic production,[63] provisions regulating animals' access to pasture were left vague,[64] and preservatives were permitted for inclusion on the National List.[65] Fair labor practices were also absent.[66] Organic producers and consumers sent in comments opposing the draft regulations. The proposed rules prompted a number of responses twenty times greater than any previous USDA regulation.[67] In 2002, the USDA returned with a more stringent set of regulations prohibiting the use of GMOs,

and a certifier. *See* FROMARTZ, *supra* note 2, at 197.

[56] *Id.* Once a substance was added to the list, it could be used in food labeled "organic" so long as the cumulative amount of listed ingredients did not exceed five percent of the total product. 7 C.F.R. § 205.301 (2008).

[57] *See* FROMARTZ, *supra* note 2, at 197. (describing the NOSB as "the high priests in the organic world.").

[58] *Id.*

[59] *Id.* at 198.

[60] *Id.*

[61] *Id.* In particular, the USDA ignored suggestions to ban the use of genetically-modified crops, sewage sludge, and irradiation in organic food.

[62] *See, e.g.*, POLLAN, *supra* note 2, at 154; Ben Lilliston & Ronnie Cummins, *Organic Vs. 'Organic': The Corruption of a Label*, 4 THE ECOLOGIST 28, 195 (1998).

[63] 65 Fed. Reg. at 80,572.

[64] *Id.* at 80,571, 80,573.

[65] *Id.* at 80,666.

[66] *Id.* at 80,556.

[67] *See* Lilliston & Cummins, *supra* note 62, at 195.

irradiation, and sewage sludge.[68] The USDA also forbade the use of antibiotics in animals,[69] and eliminated the prohibition on labels that implied organic production and handling practices. Not all suggestions were implemented, however. In choosing what to regulate and what to leave out, the regulations remained "scale neutral," that is, as amenable to large-scale producers as they were to small family farms.[70]

Conflict over the contents of the National List continued after the final regulations were issued. At the request of the Organic Trade Association, Altria Group—the owner of Kraft Foods and Philip Morris, and Dean Foods—a large organic producer, an amendment to the Act was added as a rider to the 2006 agriculture appropriations bill. The amendment was inserted into the farm bill in a back-door fashion, added without debate.[71] The rider changed organic production in three ways. First, the rider had the effect of nullifying a First Circuit holding that interpreted OFPA as prohibiting the use of synthetic ingredients in organic food,[72] which affected seventy percent of the organic food market.[73] Second, the rider gave the Secretary of Agriculture the power to add new synthetic substances to the National List without review

[68] FROMARTZ, *supra* note 2, at 198.

[69] National Organic Program, 7 C.F.R. § 205.238 (2008).

[70] Barbara Hey, *Debate Divides Organic Milk Producers*, BOULDER COUNTY BUS. REP., June 9, 2006, at 1A. The agency refused to make changes that would have prevented agribusiness from taking part in the production of organic food, rejecting proposals to explicitly prohibit factory farms, 65 Fed. Reg. at 80,572, failing to implement enforceable requirements regarding animals' access to pasture, *id.* at 80,556, and the inclusion of preservatives on the National List. *Id.* at 80,666. Requests to add fair labor practices as a requirement for certification were also denied. *Id.* at 80,556.

[71] Raul Vasquez, *Shades of Green; Congress Passes Rule That Could Water Down Organic Label*, MONTEREY COUNTY WKLY., Nov. 17, 2005, at 9.

[72] Arthur Harvey, an organic blueberry farmer from Maine, challenged, among other things, the standards regulating the National List, claiming it was invalid under OFPA because the Act prohibited the use of any synthetic ingredients in processed food labeled "organic." *See* Harvey v. Veneman, 396 F.3d 28 (1st Cir. 2005). The language in question stated, "For a handling operation to be certified under this title, each person on such handling operation shall not . . . add any synthetic ingredient during processing or any post-harvest handling of the product." Organic Food Production Act, 7 U.S.C. § 6517 (2000); FROMARTZ, *supra* note 2, at 209. The government argued that the statute's language allowed the listing of synthetics for use in the handling of products labeled organic. Harvey v. Veneman, 396 F.3d at 39. The Court ruled in favor of Harvey's interpretation of the statute. *Id.*

[73] FROMARTZ, *supra* note 2, at 207.

from the NOSB when no organic substitute is available.[74] Third, the bill created a loophole whereby a larger number of conventionally grown cows, those that may have been treated with hormones, and fed feed prohibited by the NOP, may produce organic milk by being transferred to an organic farm.[75]

While in 1997 both organic producers and consumers had advocated for stricter organic regulations, by 2006 producers and consumers found themselves on different sides of the issue. The Organic Consumers Association advocated heavily for the repeal of the rider.[76] The organic movement had evolved to resemble other industry sectors, with consumers and producers advocating for opposing interests.

The access to pasture requirement for animals also remained a point of contention. In 2007, the Cornucopia Institute sued the USDA for failing to enforce OFPA against Aurora, the leading private-label organic milk processor that supplied organic milk to Wal-Mart, Target, Costco, and Safeway.[77] Aurora was found to have violated numerous provisions of the NOP, notably the access to pasture requirement.[78] After the lawsuit was filed, the NOSB attempted to clarify the access to pasture requirement for dairy cows. While large producers like Aurora violated organic standards, smaller farmers petitioned to tighten access to pasture requirements.[79] While the NOSB drafted model regulations to

[74] Julie Deardorff, *The Organic Label Just Won't Stick If Feds Keep This Up*, CHI. TRIB., Nov. 27, 2005, at 9.

[75] Vasquez, *supra* note 71.

[76] *Id.* The Organic Consumers Organization pointed out that since the passage of the rider, producers have requested that 517 more synthetics be approved, including some called "food-contact substances" such as boiler additives and disinfectants. Furthermore, they argued allowing additions to the National List without proposals from the NOSB would have eliminated any checks on the power of an already industry-friendly agency.

[77] *See* Cornucopia Inst. v. USDA, 2007 U.S. Dist. LEXIS 30616 (D. Wis. 2007).

[78] *Id.* The Cornucopia Institute later entered into a consent agreement with the government, which permitted Aurora a grace period within which it had to comply with the regulations, though the access to pasture requirement still had not been clarified. Some critics, including a former NOSB chairman, argued that had the violator been a smaller producer, the agency would not have allowed such a lenient penalty. *See Watchdog: Organic Community Taking the Law Into Its Own Hands*, PR NEWSWIRE, Sept. 13, 2007, *available at* www.proquest.com (under the "Advanced" tab, enter "1335278031" as the Document ID; then follow available hyperlink).

[79] *See* FROMARTZ, *supra* note 2, at 232. Dozens of smaller farmers appeared

clarify the requirement and passed them onto the NOP,[80] the NOP refused to implement them.[81] Debate over how to clarify the access to pasture requirement revealed that divisions existed not only between organic producers and consumers, but also between industrial and small producers.

2. *Product, Not Process, Regulation*

There is a disjunction between what the NOP purports to regulate and what the Act actually regulates. Rather than regulating process, embodying traditional notions of farming, including concepts of smaller, family-run farms, the USDA organic label regulates product, encouraging the creation of a product that differs from non-organic foods primarily because it is free of certain inputs, such as pesticides.[82] The organic certification process, whose rules mostly pertain to ingredients, reflects a regulation that is extremely input-focused.[83] While production standards exist in the NOP, the regulations, such as those regulating livestock's access to pasture, are vague, and enforcement suits are rare.[84] Small organic operations and organic consumer groups, those most concerned about process regulation, assert that the regulations on organic food have moved far from the traditional definition of "organic."[85] The "input substitution model," as it is known, does not change the inherent process of mainstream farming to make it more environmentally sustainable.[86] Rather, the input substitution model merely changes

at the meeting to testify, and thousands of letters were submitted asking the NOP to tighten access to pasture requirements in the regulation.

[80] *Id.* at 233. The draft regulation required "grazing in pasture during the growing season." Cows that were birthing, calves up to six months of age, and beef cattle during their final four months were not subject to this requirement.

[81] *Id.* The NOP refused to implement the regulations on the basis that they were too ambiguous.

[82] Lilliston & Cummins, *supra* note 62.

[83] Julie Guthman, *Back to the Land: The Paradox of Organic Food Standards*, 36 ENV'T AND PLAN. 511, 514 (2004).

[84] *See, e.g.*, Barbara Hey, *supra* note 70, at 1A; Matt McKinney, *Got Organic Milk? Maybe It Is, Maybe Not*, KNIGHT RIDDER TRIB. BUS. NEWS, August 11, 2006, at 1 ("The national standards concerning organic dairies require access to pastures, but the rule is somewhat vague and enforcement actions are rare for violations, according to Jim Riddle, organic outreach coordinator for the University of Minnesota.").

[85] *See, e.g.*, FROMARTZ, *supra* note 2; POLLAN, *supra* note 2; Roberts, *supra* note 2 .

[86] *See* FROMARTZ, *supra* note 2, at 211.

non-organic inputs to organic inputs.[87] This is a less revolutionary way of farming, and misses the point of organic production if the purpose of organic farming is to encourage smaller, more environmental food producers. Despite the standards' emphasis on product regulation, Congress and the USDA emphasized in the final regulations that OFPA regulated process, not product.[88]

Some organic interest groups contend that the USDA has come to define organic food in such a way that it is not always more environmentally sustainable than non-organic food. A certain group of consumers known as "locavores," for example, argue that the carbon emitted from transporting organic food can be so great that its effect on climate change outweighs the food's environmental benefits.[89] Moreover, some have argued that even without calculation of food miles, the organic food production of some foods is more energy and land-intensive than had they been grown non-organically.[90]

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[87] *Id.*

[88] *See, e.g.*, 65 Fed. Reg. at 80,587 (explaining that clarification was issued because several commenters suggested that the final rule more clearly state that the NOP provides for certification of a process, not a product itself: "Certification Is to an Organic Process, Not Organic Product.").

[89] *See, e.g.*, Joanna Blythman, *The Trouble With Organics*, THE ECOLOGIST, July 1, 2005, 24–25; *Science and Technology: Not on the Label; The Environment*, THE ECONOMIST, May 19, 2007, 90. *But see* Corie Brown, *Hot Topic: Our Fragile Food System*, L.A. TIMES, May 23, 2007 (explaining that food miles do not always outweigh environmental benefits of organic food). Erika Engelhaupt, *Do Food Miles Matter?*, ENVTL. SCI. AND TECH., April 16, 2008, *available at* http://pubs.acs.org/subscribe/journals/esthag-w/2008/apr/science/ee_foodmiles.html.

[90] FOSTER, GREEN ET AL., MANCHESTER BUSINESS SCHOOL, ENVIRONMENTAL IMPACTS OF FOOD PRODUCTION AND CONSUMPTION: A REPORT TO THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS 141 (2006), (citing nutrient release and land use as "major environmental issue[s]" that result from the cultivation of organic food), *available at* http://www.defra.gov.uk/science/project_data/DocumentLibrary/EV02007/EV02007_4601_FRP.pdf. This report is controversial, and its methods have been questioned by advocates of organic food. *See, e.g.*, Press Release, Soil Association responds to the Manchester Business School report "Environmental Impacts of Food Production and Consumption" (Feb. 23, 2007), *available at* http://www.soilassociation.org/web/sa/saweb.nsf/d39dda83e1f3c019802570ad005b4516/80ca2af0ab639f5a8025728800608e08!OpenDocument.

B. *Underlying Causes Behind Organic's Dysfunction*

1. *Problems of Scale*

It was not only the organic movement that wanted process-based standards. Mainstream agribusiness also appeared to focus on certain processes in portrayals of its products. Based on how industrial organic producers market their products, with an emphasis on processes such as the use of small family farms, humane treatment of animals, and a general respect for nature, producers reflected the belief that process is an important quality to everyday consumers. Given that the primary stakeholders focused so heavily on processes, and that drafters of both the regulations and the bill emphasized production regulation over product regulation, why did the USDA end up focusing so heavily on inputs?

Because best farming practices may vary by region, nationally uniform production standards may have been impossible to set. For example, the optimal number of days at pasture for cattle varies based on the health of the pasture and the number of days it is neither too hot nor too cold to safely let the cows outside.[91] The problem may therefore be one of scale—national standards may be inappropriate for a process that relies so heavily on local conditions.

2. *Change in Industry Make-up*

Initially, producers already in the business of making organic food, favored strict organic standards to ensure a strong distinction between their practices and those of non-organic producers, and also to heighten barriers to entry. But as primarily non-organic parties began expressing interest in joining the market, incentives began to shift.[92]

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[91] *See* 65 Fed. Reg. at 80,573.

> [A]n organic dairy producer maintained that a uniform, prescriptive definition of pasture would not be appropriate in a final rule. This commenter stated that the diversity of growing seasons, environmental variables, and forage and grass species could not be captured in a single definition and that certifying agents should define pasture on a case by-case basis.

[92] The difference in interest lead to disagreements over whether factory farms could ever produce organic food, how much pasture-access was required for certified animals, and whether food additives and synthetic chemicals could be added to processed organic food. Ronnie Cummins, co-founder and director of

As mentioned earlier,[93] non-organic industrial producers already began producing organic products by the time OFPA was passed. The regulations further eased the entry of industrial farmers into the organic market. Some have observed the entry of large producers in the organic food market as a marker for its success.[94] In adding large corporations to the list of companies who have begun producing organic food, the movement has earned a degree of legitimacy, which has garnered the movement more supporters. Larger producers have also provided greater opportunities for consumers to purchase organic products in large supermarket chains. Increased demand and streamlined organic standards have in turn encouraged more farmers to convert to organic farming practices. This creates not only more individual organic farms, but also results in the expansion in the average size of organic farms, which lowers the prices of many organic foods, reducing another barrier to consumption. With the increasing acquisition of organic producers by larger companies, more resources are being devoted to researching organic methods.

Producers of organic produce that go beyond the minimal organic requirements, however, complain of not having an additional method of advertising this quality, and some stakeholders who had helped create the organic label are pushing to move away from it.[95]

C. *Beyond USDA Organic*

While producers are permitted to label their products with qualifiers that signify their more stringent production processes, they are prohibited from using the phrase "organic" in that qualifier[96] or in any way using labels that may mislead consumers

the Organic Consumers Association, described a shifting of alliances within the organic community: "Big players in corporate America are further entrenched, they're on the board of the [Organic Trade Association], and they're now a dominant voice." Vasquez, *supra* note 71.

[93] *See supra* Part II.A.

[94] *See, e.g.*, *The Expanding Organic Grocery Scene*, MOTHER EARTH NEWS, April/May 2004, at 75 ("Everybody wins . . . more wholesome, flavorful organic products are being produced and sold, more land is being farmed sustainably and more livestock animals are being raised humanly.").

[95] *See, e.g.*, FROMARTZ *supra* note 2, at 192; POLLAN, *supra* note 2, at 169; Roberts, *supra* note 2.

[96] National Organic Program, 7 C.F.R. § 205.300 (2008).

as to the contents of the package.[97] Moreover, USDA-accredited certifiers may not demand any more than what the NOP requires, and are thus prevented from distinguishing their certification as one that is more stringent, and perhaps superior to, other certifying agents.

While the NOP established tiered labeling for multi-ingredient foods, no scaled system exists for produce, the organic product with the highest usage rate that often serves as an entry point for consumers to discover other organic products.[98] Such a binary system exacerbates the bright-line division between what is considered organic and what is not, and encourages producers on both sides of the division to comply either not at all, or, if meeting the standards, in the most cost-effective way, which often includes no additional steps to ensure greater health or environmental sustainability.

IV. SOLUTIONS: IMPROVED GOVERNMENT LABELING AND A LEED-LIKE CERTIFICATION

There is a valuable role in preserving both large and small organic producers. While big organic helps to improve the quality of foods for many consumers, little organic allows producers and consumers to push for new levels of environmental sustainability. The goal, then, must be to allow big and little organic producers to co-exist, and provide consumers with enough information about the quality of their food to determine for themselves what kind of organic food they wish to buy. This means that consumers should know when organic food is not necessarily better for the environment, or when uncertified food follows all but one organic standard. An independent label which can be tailored to incorporate local variations may be the solution to many of the USDA organic label's problems.

I propose two reforms. First, the establishment of an independent label, in a format similar to the Food and Drug Administration (FDA) nutrition label, which allows for different levels of organic compliance, in addition to allowing for a variety of inputs and methods that may be used to achieve compliance. A good model is the LEED-certification for green buildings. LEED has become so credible that the standard has been incorporated

[97] 65 Fed. Reg. at 80,585.

[98] Molyneaux, *supra* note 3, at 25.

into local legislation[99]—this kind of authority hasn't been granted to any independent food-labeling scheme. Second, either the FDA or the USDA should issue food identity standards for words and phrases that have been used to imply ingredients and production methods similar to those used for organic food, such as the use of the words "natural," "cage-free," "free-range," "grass-fed," etc.

A. *LEED Certification*

LEED (Leadership in Energy and Environmental Design) certification, a green building certification process developed by the U.S. Green Building Council (USGBC), can serve as a template for how a new food label should operate. LEED is a voluntary, consensus-based national rating system for developing high-performance, sustainable buildings.[100]

LEED certification is organized into six categories: The six categories include (1) Sustainable Sites, (2) Water Efficiency, (3) Energy & Atmosphere, (4) Materials & Resources, (5) Indoor Environmental Quality, and (6) Innovation in Design.[101] Within each category, buildings must meet certain prerequisites that serve as minimum requirements for certification. Once developers satisfy these prerequisites, they can earn credits for additional steps taken (e.g., brownfield redevelopment under the Sustainable Sites criteria, or on-site renewable energy under the Energy & Atmosphere criteria) that are worth between one to three points. LEED certification is available in four progressive levels, which are based on points accumulated: Certified, Silver, Gold and Platinum.[102]

LEED Rating Systems are first developed by LEED committees, which are composed of practitioners and experts

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[99] *See* Local Law No. 86 (2005) of City of New York § 1; Edna Sussman, *Reshaping Municipal and County Laws to Foster Green Building, Energy Efficiency, and Renewable Energy*, 16 N.Y.U. ENVTL. L.J. 1, 11–12 (2005), *available at* http://www1.law.nyu.edu/journals/envtllaw/issues/vol16/Sussman_macro_final_version1.pdf.

[100] U.S. GREEN BUILDING COUNCIL, ABOUT USGBC, http://www.usgbc.org/DisplayPage.aspx?CMSPageID=124 (last visited Sept. 16, 2008).

[101] *See* U.S. GREEN BUILDING COUNCIL, FREQUENTLY ASKED QUESTIONS: LEED FOR NEW CONSTRUCTION, http://www.usgbc.org/ShowFile.aspx?DocumentID=3352 (last visited Sept. 16, 2008).

[102] *See* U.S. GREEN BUILDING COUNCIL, LEED FOR NEW CONSTRUCTION & MAJOR RENOVATIONS, VERSION 2.2 (2005), *available at* http://www.usgbc.org/ShowFile.aspx?DocumentID=1095.

representing the building and construction industry, analogous to the membership of the National Organic Science Board. According to USGBC, the key to the successful leadership of the committees is the transparent, consensus-based approach, which provides ample opportunity for stakeholder comment and review.[103] Once the committees draft a new set of rules, the rules are voted on by the members of USGBC, a wide array of stakeholders in green buildings, including building owners and end-users, real estate developers, facility managers, architects, designers, engineers, general contractors, subcontractors, product and building system manufacturers, government agencies, and nonprofits, who obtain voting power through a low annual membership fee. The rules are incorporated into the ratings system upon the approval of, through a ballot vote, members of USGBC.

Under the LEED certification system, developers can choose to emphasize different qualities (e.g., energy efficiency, material content, etc.) based on what is most cost efficient or preferred by consumers. Because the rules must be re-evaluated every few years, LEED certification is a constantly evolving certification scheme, allowing it to respond quickly to new information or changes in consumer preferences.

Since its inception in 1998, LEED has grown to encompass over 14,000 projects in 50 states and 30 countries covering 1.062 billion square feet (99 km²) of development area.[104] The certification system is considered the standout certification system for green buildings, and its ratings system has been incorporated into building codes across the country. New York City recently passed a statute requiring all capital projects with construction costs exceeding two million dollars to comply with green building standards not less stringent than those set forth by the LEED green building system.[105] While some industry analysts and legal scholars have offered some criticisms of the certification,[106]

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[103] ABOUT USGBC, *supra* note 100.

[104] U.S. GREEN BUILDING COUNCIL, JULY 2007 USGBC FIGURES, https://www.usgbc.org/ShowFile.aspx?DocumentID=2349 (last visited Sept. 16, 2008).

[105] Green Building Standards, New York City Charter § 224.1(b) (2008).

[106] *See* Carl J. Circo, *Using Mandates and Incentives to Promote Sustainable Construction and Green Building Projects in the Private Sector: A Call for More State Land Use Policy Initiatives*, 112 PENN ST. L. REV. 731, 735 n.26 (2008)

anecdotally, the demand for LEED-certified buildings is only growing.[107]

B. *A New, LEED-Like Label*

A LEED-like ratings system would provide solutions to many of the USDA organic label's problems. The inclusive membership of such an organization could provide the key to the new ratings system, as all stakeholders would be able to partake in the creation of "organic" standards. Through the ballot vote system, advanced under the LEED ratings system, stakeholders could ensure that the organization was not subject to capture by big industry, as each producer would have one vote, regardless of the size of the operation. Furthermore, the voting system could provide interested stakeholders, particularly consumers, a say in the decision-making process. Through its transparent decision-making process, committees would have to be open about the trade-offs they were making—any debate that occurred between conflicting interests would be made available to the public. Furthermore, to establish production-based standards responsive to farms in different climates, local groups could convene to establish specific, location-based plans.

Furthermore, the ratings system is easily adaptable to the needs of the organic movement. Categories could be arranged to encompass a variety of factors that respond to consumer preferences. Subject to the demands of the membership, the categories may address concerns including the use of chemical inputs, pollution resulting from farming, humane animal treatment, fair labor practices, provision of ecosystem services, food miles,

(citing industry experts who criticized LEED ratings for being based on political agenda, not sound science and describing the LEED system as "confusing, cumbersome, and in some cases oversimplified" (citations omitted)). Criticisms from legal scholars include critiques that LEED relies too much on existing standards and incremental changes rather than radical shifts in design and construction methods, Charles J. Kibert and Kevin Grosskopf, *Proceedings of the 13th Annual Public Interest Environmental Conference: Envisioning Next-Generation Green Buildings*, 23 J. LAND USE & ENVTL. LAW 145, 146 (2007), that the certification process is too time-consuming and costly, Jonathan Riker, *Feature: The Green Zone: Green Building Requirements Must Strike a Balance Between Market Economics and Social Needs*, 30 L.A. LAW. 27, 30 (2008), and that government enforcement of LEED certification is too lax. *Id.*

[107] Russell Unger, Executive Director, U.S. Green Building Council, N.Y. Chapter, Remarks at the N.Y.U. Public Interest Environmental Law Seminar (Nov. 5, 2007).

etc. Each category, like the LEED standard, could have baseline prerequisites, with opportunities to earn credits through additional production or handling practices. Also like the LEED rating system, organic producers and handlers could earn certification at progressive levels based on the total number of points acquired.

As for display, the label could resemble the current nutrition labels required on all food packages. Rather than provide a percentage daily allowance for each category, each category could be rated using a numeric and color-coded scale. Colors could conform to the "traffic light" labeling model, a method highly preferred by consumers, where qualities are coded by color, indicating low, medium and high assessments of the quality.[108] One must be careful, however, not to provide so much detail that consumers are overwhelmed by the breadth of information.[109] Consumers in need of quick information would also be able to reference the level of certification (and corresponding score) to determine its level of organic quality.

By allowing producers to choose not only their level of involvement overall but also within each category, producers may choose to adopt the practices that conform best with their consumer's beliefs, or the practices that are the most efficient. A new, LEED-like label would allow consumers to purchase cheaper, industrial organic food when the economy suffers, and to upgrade to more expensive organic food when they can afford to do so. This method of regulation is in stark contrast with the NOP, which more closely resembles a command-and-control-type regulatory scheme once a producer agrees to be certified.

Monitoring compliance with the certification system may prove more difficult than with LEED building certification because it is much easier to alter farming practices than it is to change the plumbing of a building. However, the certification system could solve this problem by requiring an annual unannounced inspection to ensure compliance.

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[108] *See* Andreas C. Drichoutis, et al., *Consumers' Use of Nutritional Labels: A Review of Research Studies and Issues*, ACAD. OF MARKETING SCI. REV., Jan. 1, 2006, at 2.

[109] *Id.* at 2 ("consumers will search for nutrition-related information as long as the costs (mainly viewed as time spent reading labels) do not outweigh the benefits (healthful food choices)"), 11 ("too much information may lead to 'information overload'") (citations omitted).

C. *Why the Label Should be Independent*

Barriers exist to establishing an independent label, primarily establishing brand credibility, and the inability to use "organic" as a descriptor of the food. Nevertheless, independent certification would avoid agency capture problems, and would provide a flexibility that notice-and-comment rulemaking lacks. For these reasons, I suggest the label should forgo government adoption in favor of independent certification.

While the prohibition on independent labels that "directly or indirectly imply organic production" were replaced by a prohibition of labels that had been shown to be confused with the government label,[110] barriers to the creation of independent labels remain. Understandably, use of the term organic is restricted to products that are USDA certified, and phrases on labels that may mislead consumers into believing that the food is organic are also prohibited.[111] Less understandably, accredited organic certifiers may not demand standards stricter than those required by the NOP regulations, meaning that a certifier cannot use his independent label as a designation of stricter standards beyond USDA organic certification.[112] While organic certifiers could establish a separate certification for that purpose, the prohibition against use of the phrase "organic" requires them to establish a reputation for a different certification, which is both difficult and costly.[113]

D. *Improved Government Labeling*

In addition to a new independent label, the government should work to create stricter food identity standards for regulating phrases that implicitly tap into the organic food ethos, such as "natural," "free range," etc. While not directly related to the labeling of organic food at first blush, by leaving the requirements for descriptors that imply organic ethos lenient, consumers may be misled into believing that they are purchasing a product similar in quality to an organic product when in fact they are not. Failure to regulate this practice both encourages deceptive labeling and dilutes the organic industry's marketing power.

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[110] Lilliston & Cummins, *supra* note 62.

[111] National Organic Program, 7 C.F.R. § 205.300 (2008); 65 Fed. Reg. at 80,585.

[112] 7 C.F.R. § 205.501.

[113] Friedland, *supra* note 1, at 414.

Under current USDA regulations, the word "natural" is regulated as "[a] product containing no artificial ingredient or added color and is only minimally processed."[114] Under this definition, any product, regardless of the level of processing, may be labeled as "natural," so long as it was initially derived from a plant, animal, or element. Monosodium Glutamate, for example, a flavor enhancer and neurotoxin commonly known as MSG, may be included in "all natural" products, since it can be extracted and concentrated from seaweed,[115] and animals labeled "natural" may still be injected with antibiotics and growth stimulants.[116] The "free range" identity standard, which vaguely requires producers to demonstrate to the USDA that the livestock has been allowed access to the outside, also needs clarification.

In failing to more strictly regulate food identity standards that may imply the use of some organic-like processes, the USDA is failing to achieve what it set out to do in its regulations by reserving the right to prohibit an independent certification if it may mislead consumers into thinking they are purchasing an organic product.

CONCLUSION

An alternative labeling scheme is feasible, and demand for a new label exists. For several years, the movement to create an alternative to the organic label has been growing.[117] Industry experts have warned of the need for organic producers to move beyond organic. As organic products become dominated by mainstream brands and retailers, and as mainstream companies saturate the market with cheaper organic alternatives, smaller organic producers must improve the quality of their product to "evolve with ever-expanding product concepts to maintain brand

[114] FOOD INSPECTION AND SAFETY SERVICE, USDA, MEAT AND POULTRY LABELING TERMS, http://www.fsis.usda.gov/Fact_Sheets/Meat_&_Poultry_Labeling_Terms/index.asp (last visited Sept. 12, 2008).

[115] *See, e.g.*, Mike Adams, *Beware of Foods Labeled "Natural" Containing MSG and other Harmful Ingredients*, NEWS TARGET, Mar. 21, 2005, *available at* http://www.newstarget.com/005778.html.

[116] Letter from Robert C. Post, Director, Labeling and Additives Policy Division, United States Department of Agriculture, to Producers (Mar. 8, 1999), *available at* http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/larc/Claims/Organic_Claims.htm.

[117] *See, e.g.*, FROMARTZ *supra* note 22, at 192; POLLAN, *supra* note 2, at 169; Roberts, *supra* note 2.

leadership and loyalty."[118] To be successful, organic producers must be aware of the impact they have on the environment and also adapt to the bigger picture of what consumers desire.[119] A LEED-like certification system, in conjunction with additional food identity standards promulgated by the FDA, would provide producers with the tools to respond to the growing need for product differentiation, and could work in tandem with the current organic labeling system.

It is important to remember labeling may not necessarily lead to wide scale, fundamental change. More research should be done to see if LEED holds up even after environmentally-conscious purchasing becomes less fashionable, particularly in a sluggish economy where consumers may not spend extra income on goods they consider to be luxuries.

[118] Molyneaux, *supra* note 3, at 24.

[119] Alicia Wallace, *Organic Veteran Talks About Future Of Industry*, KNIGHT RIDER TRIB. BUS. NEWS, June 22, 2007, at 1.