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## Serving Up the Truth on America's Failing Organic Food System

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# Serving Up the Truth on America's Failing Organic Food System

## INTRODUCTION

“Apicius, the 1st Century Roman gourmand . . . purportedly coined the phrase ‘We eat first with our eyes.’”<sup>1</sup> Now, it is time for Americans to open their eyes to the truth behind the nation’s failing organic food system. The organic food market has turned from a niche subset into an integral component of American food consumption.<sup>2</sup> However, with plentiful options comes more challenges.<sup>3</sup>

Prior to the 1930s, nitrogen fertilizer was widely used in the United States to keep soil in good, farmable condition.<sup>4</sup> However, when nitrogen fertilizer supplies were diverted to make munitions for World War II, the truly poor condition of the nation’s soil was revealed.<sup>5</sup> This led to the first conversations about organic farming in the United States.<sup>6</sup> J.I. Rodale, an early advocate of organic farming, began a movement through his 1945 book *Pay Dirt*,<sup>7</sup> which revealed links between chemicals used in “agriculture and declining public health.”<sup>8</sup> The Rodale Institute continues J.I. Rodale’s work today by focusing on organic research and education, fueled by its motto, “Healthy Soil=Healthy Food=Healthy People.”<sup>9</sup> Following Rodale’s lead, other advocates, such as American biologist and conservationist

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<sup>1</sup> Charles Spence et al., *Eating With Our Eyes: From Visual Hunger to Digital Satiation*, 110 *BRAIN & COGNITION* 53, 53 (2015).

<sup>2</sup> See *infra* notes 17–19 and accompanying text.

<sup>3</sup> Tolulope J. Ashaolu & Joseph O. Ashaolu, *Perspectives on the Trends, Challenges and Benefits of Green, Smart and Organic (GSO) Foods*, *INT’L J. 22 GASTRONOMY & FOOD SCI.* 1, 5–6 (2020).

<sup>4</sup> *Our Story*, RODALE INST. <https://rodaleinstitute.org/about/our-story/> [<https://perma.cc/3NRV-RWPX>]; see *Why Do Plants Need Fertilizers?*, YARA INT’L (Dec. 18, 2018), <https://www.yara.com/knowledge-grows/why-do-plants-need-fertilizers/> [<https://perma.cc/36L9-3FJZ>] (detailing the utility of fertilizer use in farming).

<sup>5</sup> *Our Story*, *supra* note 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; J. I. RODALE, *PAY DIRT: FARMING & GARDENING WITH COMPOSTS* (1945).

<sup>8</sup> *Our Story*, *supra* note 4.

<sup>9</sup> Monica Rogozinski, *Rodale Institute: The Birthplace of Organic Farming in the U.S.*, *WHYY* (Oct. 20, 2017), <https://whyy.org/segments/rodale-institute-birthplace-organic-farming-u-s/> [<https://perma.cc/8LDE-KMJN>].

Rachel Carson, continued to push for tighter control of pesticides and chemicals and the overall advancement of the environmental movement.<sup>10</sup> Carson's work attracted media attention and public support, which led to her testifying before the Senate Committee on Commerce during a debate regarding the use and control of pesticides. Carson's advocacy eventually gave rise to governmental action such as the creation of the Environmental Protection Agency in 1970.<sup>11</sup>

More than fifty years later, the push for more organic farming and increased availability of organic food continues through myriad actors, including consumers.<sup>12</sup> One reason consumers buy organic is because of the perceived health benefits, a preconception with roots stemming from Rodale's motto for healthy soil, food, and people.<sup>13</sup> Dietitians suggest that eating habits are connected to the human immune system.<sup>14</sup> For example, consuming too much alcohol, sugar, and salt can all negatively impact the body's ability to fight off infection, and weaken immune function over time.<sup>15</sup>

Beginning in 2020, and throughout the COVID-19 pandemic, emphasis on "maintaining a strong and healthy immune system" remained at the forefront of Americans' minds.<sup>16</sup> In addition to maintaining immunity through healthy habits such as eating a well-balanced diet, one of the many lifestyle changes Americans faced during the COVID-19 lockdown was the shift from eating at restaurants to cooking most, if not all, meals at home.<sup>17</sup> The organic market continues to grow every year,<sup>18</sup> but during 2020, organic food sales soared

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<sup>10</sup> RACHEL CARSON, *SILENT SPRING* (1962) (warning of the dangers to all natural systems from the misuse of chemical pesticides such as DDT).

<sup>11</sup> Eliza Griswold, *How 'Silent Spring' Ignited the Environmental Movement*, N.Y. TIMES MAG. (Sept. 21, 2012), <https://www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental-movement.html> [<https://perma.cc/4ZGH-PD57>].

<sup>12</sup> See Kathleen Merrigan, *Organic Food Has Room to Grow*, MODERN FARMER (Aug. 17, 2021), <https://modernfarmer.com/2021/08/organic-food-has-room-to-grow/> [<https://perma.cc/AW7T-U23R>].

<sup>13</sup> See Rogozinski, *supra* note 9.

<sup>14</sup> Samantha Boesch, *The Worst Eating Habits That Weaken Immunity, Say Dietitians*, GALVANIZED MEDIA: EAT THIS, NOT THAT! (Aug. 28, 2021, 7:47 AM), <https://www.eatthis.com/eating-habits-that-weaken-immunity/> [<https://perma.cc/B6A6-2KK6>].

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Press Release, Globe Newswire, Organic Sales Soar to New High of Nearly \$62 Billion in 2020 (May 25, 2021, 10:00 AM) [hereinafter U.S. Organic Sales Soar], <https://www.globenewswire.com/en/news-release/2021/05/25/2235699/0/en/U-S-organic-sales-soar-to-new-high-of-nearly-62-billion-in-2020.html> [<https://perma.cc/3Z9S-9S4Y>].

<sup>18</sup> Press Release, Organic Trade Ass'n, U.S. Organic Sales Break Through \$50 Billion Mark in 2018 (May 17, 2019), <https://ota.com/news/press-releases/20699> [<https://perma.cc/WN35-6KZY>] (explaining how organic has become mainstream and demand continues to increase organic sales).

to new records, jumping 12.4 percent from the previous year.<sup>19</sup> The main reason for this growth in 2020 was “[p]antry stocking,” where consumers bought traditional pantry and freezer items in bulk.<sup>20</sup> This trend continued into 2021 with annual organic sales exceeding \$63 billion.<sup>21</sup>

On a larger scale, organic farming practices, on the whole, benefit the environment.<sup>22</sup> Beyond its ability to yield healthy, fresh food, organic farming also fosters soil health, reduces pesticide and chemical levels in soil and water, and protects watersheds.<sup>23</sup> According to a study by American microbiologist and soil biology researcher Dr. Elaine Ingham, one teaspoon of organic soil “host[s] as many as 600 million to 1 billion helpful bacteria,” while chemically treated soil contains merely one hundred helpful bacteria.<sup>24</sup> Treating soil with chemicals repeatedly over time hinders the soil’s ability to “thrive on its own.”<sup>25</sup> The Organic Trade Association found that if every farmer in the United States switched to organic growing methods, it would stop about five hundred million pounds of harmful pesticides annually from entering the environment.<sup>26</sup>

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<sup>19</sup> See U.S. Organic Sales Soar, *supra* note 17 (This growth “marked the first time that total sales of organic food and non-food products have surpassed the \$60 billion mark, and reflected a growth rate more than twice the 2019 pace of 5 percent, according to the 2021 Organic Industry Survey released Tuesday by the Organic Trade Association.”); Dymond Green, *The Rise of the Organic Food Market*, CNBC (Sept. 22, 2021 8:00 AM), <https://www.cnbc.com/2021/09/22/organic-food-sales-surged-in-2020-higher-demand-and-cheaper-costs.html> [<https://perma.cc/WC6V-28L9>].

<sup>20</sup> U.S. Organic Sales Soar, *supra* note 17; since the pandemic, restaurants have also been catering to “clean” eating consumer trends by offering healthier options, although people tend to indulge when eating out even if they practice healthy eating habits at home. Patricia Cobe, *The Rise in Plant-Forward Eating Continues Post-Pandemic*, REST. BUS. (Aug. 4, 2022), <https://www.restaurantbusinessonline.com/consumer-trends/rise-plant-forward-eating-continues-post-pandemic>. [<https://perma.cc/6DHH-2E8F>].

<sup>21</sup> Organic Industry Survey 2022, ORGANIC TRADE ASS’N, <https://www.ota.com/market-analysis/organic-industry-survey/organic-industry-survey> [<https://perma.cc/S98H-M3AZ>].

<sup>22</sup> Timesofindia.com, *Organic Food and Beautiful Body*, ETIMES (Aug. 9, 2021, 10:00 PM), <https://timesofindia.indiatimes.com/life-style/beauty/organic-food-and-beautiful-body/articleshow/85135826.cms> [<https://perma.cc/S7EF-J872>].

<sup>23</sup> See Merrigan, *supra* note 12.

<sup>24</sup> Jennifer Chait, *Advantages of Organic Farming*, LIVEABOUT (Nov. 20, 2019), <https://www.liveabout.com/organic-farming-advantages-2538406> [<https://perma.cc/NMX8-6YN3>]; Our *Founder: Dr. Elaine Ingham*, DR. ELAINE’S™ SOIL FOOD WEB, <https://www.soilfoodweb.com/about/> [<https://perma.cc/ALM8-ZEXP>] (“Dr. Ingham has advanced our knowledge about the soil food web for over 4 decades. Widely recognized as the world’s foremost soil biologist, she’s passionate about empowering ordinary people to bring the soils in their community back to life. Dr. Elaine’s™ Soil Food Web Approach has been used to successfully restore the ecological functions of soils on six continents.”); Jennifer Chait, *How Organic Farming Benefits the Environment*, LIVEABOUT (Nov. 20, 2019), <https://www.thebalancesmb.com/environmental-benefits-of-organic-farming-2538317> [<https://perma.cc/QVX6-8FPY>].

<sup>25</sup> See Chait, *supra* note 24.

<sup>26</sup> *Id.*

Another related issue with soil health is erosion,<sup>27</sup> and organic fields tend to have higher levels of topsoil and therefore less erosion loss than nonorganic fields.<sup>28</sup> Lastly, organic farming practices conserve water supply because, as compared to nonorganic practices, organic practices tend to use less irrigation.<sup>29</sup> Because organic soil is clear of synthetic pesticides, there is less polluted runoff from organic farms, meaning the water supplies in and around these farms remain clean.<sup>30</sup>

Considering all the benefits organic products create, including financial opportunities for businesses and farmers, positive ethical considerations, and health and environmental contributions, America's organic food system should be more predominant. However, there is much consumer confusion, a lack of regulation, and numerous persistent misconceptions in the organic market.<sup>31</sup> Some consumer misconceptions include thinking the term "organic" is synonymous with sustainable and that organic food is healthier.<sup>32</sup> Some of these false notions, such as organic food being free of pesticides, are so entrenched in society that even news reporters have incorrectly described organic "regulations as requiring foods to be entirely free of pesticides."<sup>33</sup> The truth is that organic regulations are not aligned with the various perceptions of American consumers.<sup>34</sup> Regulatory reforms are absolutely essential and should be passed in order to align the organic labeling process with the average American consumer's knowledge and bandwidth to understand product labeling as they navigate the many options available to them in their grocery store. The US Department of Agriculture—the primary regulator of the US organic food market<sup>35</sup>—recently passed the Strengthening Organic

<sup>27</sup> See *Erosion*, U.S. DEPT OF AGRIC., <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/crops/erosion/> [https://perma.cc/33P8-UC3A] (geological process "involv[ing] the breakdown, detachment, transport, and redistribution of soil particles").

<sup>28</sup> See Chait, *supra* note 24.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Zoe Wolkowitz, *A Recipe for Chaos and Confusion: Consumers, Companies, and Courts Hungry for Improved U.S. Food and Beverage Regulations*, 54 UIC J. MARSHALL L. REV. 567, 568–69 (2021).

<sup>32</sup> *Are Organic Foods Really Healthier? Two Pediatricians Break It Down*, UC DAVIS HEALTH (Apr. 5, 2019), <https://health.ucdavis.edu/blog/good-food/are-organic-foods-really-healthier-two-pediatricians-break-it-down/2019/04> [https://perma.cc/SJ2K-659C].

<sup>33</sup> Michelle T. Friedland, *You Call That Organic?—the USDA's Misleading Food Regulations*, 13 N.Y.U. ENV'T L.J. 379, 403 (2005).

<sup>34</sup> See *id.* at 405.

<sup>35</sup> USDA, WHAT IS ORGANIC? 1 (2011), <https://www.ams.usda.gov/sites/default/files/media/What%20is%20Organic.pdf> [https://perma.cc/TK99-MQLG].

Enforcement (SOE) final rule which aims “to strengthen oversight of the production, handling, certification, marketing, and sale of organic agricultural products.”<sup>36</sup> While this is a step towards improving organic regulations to accommodate industry growth, the ensuing analysis will demonstrate that it does not fill all regulatory gaps and is not sufficiently consumer focused.

This note analyzes the laws regulating the US organic industry, highlights the shortcomings of the current system, and proposes a solution to benefit all stakeholders. Part I delves into the history of the US organic food market and the regulatory actors influencing the market and its regulation. This Part details the current legal landscape within the organic food industry. Part II discusses the evolution of the meaning of “organic.” This includes the definition of “organic,” the process by which organic growers and producers become certified, and what violations and penalties such growers and producers may face for noncompliance. Part III points out the problems with the US organic marketplace. Part IV provides summarizes and critiques the newly published SOE final rule, making this note one of the first to engage with this new administrative rule. Lastly, Part V proposes solutions from which all stakeholders may benefit. This Part also encourages areas of focus for regulators and legislators including stricter definitions for organic and related terms that better reflect consumer understandings.

Where the recent SOE focuses primarily on sellers attempting to fraudulently pass off nonorganic foods as organic, this note asserts that meaningful changes must go a step further. Organic food regulations are process-based, meaning the actual end product is generally unregulated. The new SOE stops short of making effective changes that target the end product—the one that consumers are placing on their dinner tables at the end of the day. To make consumer-conscious changes to the organic food industry, new regulations that work towards bettering consumer understandings through *product*-based reforms are necessary.

## I. HISTORY OF THE ORGANIC MARKET AND REGULATORY INFLUENCE

Congress and executive leaders realized the importance of regulating food and agriculture as early as the 1800s, and focused resources in this area by creating dedicated departments

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<sup>36</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. 3548, 3548 (2023) (codified at 7 C.F.R. § 205).

and agencies.<sup>37</sup> In the United States, both the Food and Drug Administration (FDA) and the US Department of Agriculture (USDA) share the role of regulating the US food supply.<sup>38</sup> The FDA is responsible for monitoring food, animal feed, drugs, dietary supplements, and other products.<sup>39</sup> “The [USDA’s] . . . primary mission [is] to support the country’s agricultural economy and ensure that the products coming [through the] agricultural pipeline are safe and nutritious.”<sup>40</sup>

Before there was any federal legislation in the organic space, it was up to the states whether or not to create organic regulatory systems.<sup>41</sup> In 1973, Oregon became the first state to enact organic food regulations,<sup>42</sup> and other states began to follow suit. By 1990, twenty-two states had organic certification systems; however, the systems varied greatly from state to state, creating confusion for consumers.<sup>43</sup> For example, in some states organic milk had to be from cows fed solely with organic feed, while in other states the laws required simply unmedicated feed.<sup>44</sup> More specifically, one state allowed products containing “twenty percent organic ingredients” to be deemed organic, “while another state[s] [laws] required one hundred percent organically grown ingredients.”<sup>45</sup> Other state-by-state variations included how to define what food is considered organic, how to standardize acceptable production standards, and how to establish recordkeeping requirements, labeling procedures, and enforcement methods.<sup>46</sup> “[I]n the twenty-eight states without

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<sup>37</sup> See *About the U.S. Department of Agriculture*, USDA, <https://www.usda.gov/our-agency/about-usda> [<https://perma.cc/FT3R-YCGP>].

<sup>38</sup> *Formal Agreement Between USDA and FDA Relative to Cooperation and Coordination*, FDA (Jan. 29, 2018), <https://www.fda.gov/food/domestic-interagency-agreements-food/formal-agreement-between-usda-and-fda-relative-cooperation-and-coordination> [<https://perma.cc/SND3-R6LZ>].

<sup>39</sup> *What Does FDA Regulate?*, FDA (June 24, 2021), <https://www.fda.gov/about-fda/fda-basics/what-does-fda-regulate> [<https://perma.cc/52BF-XRRW>].

<sup>40</sup> Erica Bakota, *FDA vs. USDA: What’s The Difference?*, GOVLOOP (Aug. 22, 2019), <https://www.govloop.com/community/blog/fda-vs-usda-whats-the-difference/> [<https://perma.cc/A3LH-8LJ2>].

<sup>41</sup> Valentina Lumaj, *Perpetual Twilight: How the USDA’s Change to The Sunset Process Violates the Organic Foods Production Act Of 1990*, 81 BROOK. L. REV. 1813, 1820 (2006).

<sup>42</sup> See OR. REV. STAT. § 616 (1999) (Organic Food Regulation).

<sup>43</sup> See Lumaj, *supra* note 41.

<sup>44</sup> Chenglin Liu, *Is “USDA Organic” A Seal of Deceit?: The Pitfalls of USDA Certified Organics Produced in the United States, China and Beyond*, 47 STAN. J. INT’L L. 333, 337 (2011); S. Rep. 101-357, at 292 (1990), as reprinted in 1990 U.S.C.C.A.N. 4656, 4943.

<sup>45</sup> See Wolkowitz, *supra* note 31, at 576.

<sup>46</sup> See Gordon G. Bones, *State and Federal Organic Food Certification Laws: Coming of Age?*, 68 N.D. L. REV. 405, 407 (1992).

[any] organic food statutes, producers and marketers” were free to make inconsistent or “capricious organic claims.”<sup>47</sup>

In the ‘90s, consumers began to question the authenticity of organic products because of the highly variable standards—a food eligible for labeling as organic in one state may not have been eligible in another.<sup>48</sup> Farmers and producers conducting interstate business had to alter labels on the same products to comply with each state’s laws or, in some circumstances, were forced to use different production methods to produce the same product.<sup>49</sup> These discrepancies were unworkable and problematic.<sup>50</sup>

Recognizing the need for national uniformity, in 1990, Congress passed the Organic Foods Production Act.<sup>51</sup> The purpose of the act was “(1) to establish national standards governing the marketing of . . . organically produced products[,] (2) to assure consumers that organically produced products meet a consistent standard[,] and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.”<sup>52</sup> It also established the National Organic Program (NOP),<sup>53</sup> which is overseen by the USDA and is responsible for the development and enforcement of standards for organically produced products.<sup>54</sup>

To further facilitate uniformity,<sup>55</sup> the National Organic Standards Board (NOSB), a federal advisory board comprised of fifteen dedicated public volunteers from across the organic food industry,<sup>56</sup> consults biannually on issues concerning the production, handling, and processing of organic products.<sup>57</sup> Recommendations formed by the NOSB are provided to the USDA and the NOP.<sup>58</sup> Members of the NOSB are “nominated by

<sup>47</sup> 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).

<sup>48</sup> See Bones, *supra* note 46, at 425.

<sup>49</sup> Allyson Bartolomeo, *A Proposal for FDA Label Regulations and Uniform Certifications for Organic Non-Food and “Natural” Products*, 23 BARRY L. REV. 65, 68 (2017).

<sup>50</sup> See Wolkowitz, *supra* note 31, at 576; see also Liu, *supra* note 44, at 337.

<sup>51</sup> 7 U.S.C. § 6501.

<sup>52</sup> *Id.*

<sup>53</sup> The NOP is the USDA regulatory program responsible for establishing and enforcing national organic standards. *National Organic Program*, USDA, <https://www.ams.usda.gov/about-ams/programs-offices/national-organic-program> [<https://perma.cc/H85V-ASME>].

<sup>54</sup> 7 U.S.C. § 6501.

<sup>55</sup> *Quesada v. Herb Thyme Farms, Inc.*, 361 P.3d 868, 871 (2015) (“[A] central purpose behind adopting a clear national definition of organic production was to permit consumers to rely on organic labels and curtail fraud.”).

<sup>56</sup> 7 U.S.C. § 6518 (a)–(f).

<sup>57</sup> *Id.* § 6518(e), (k)–(f); see *National Organic Standards Board (NOSB)*, USDA, <https://www.ams.usda.gov/rules-regulations/organic/nosb> [<https://perma.cc/3YX5-F3DN>].

<sup>58</sup> *National Organic Standards Board (NOSB)*, USDA, <https://www.ams.usda.gov/rules-regulations/organic/nosb> [<https://perma.cc/3YX5-F3DN>].



organic certifying organizations, state governments, and other interested organizations” to the Board.<sup>59</sup> The NOSB is responsible for drafting the National List of Allowed and Prohibited Substances,<sup>60</sup> detailing permitted synthetic substances and prohibited nonsynthetic substances in organic crop and livestock production.<sup>61</sup> The NOSB reviews petitions to add substances to the National List, makes recommendations to add or remove substances from the list, and reviews listed substances every five years during “sunset review” to ensure that the substance continues to meet required criteria.<sup>62</sup> Products with a USDA Organic Seal must comply with both USDA and FDA standards.<sup>63</sup> This means food products labeled as organic that fall within the FDA’s jurisdiction “must comply with both USDA NOP regulations for the organic claim and FDA regulations for food labeling and safety.”<sup>64</sup>

## II. EVOLUTION OF THE MEANING OF “ORGANIC”

As the regulatory focus on organic food expanded, so did the meaning of “organic.” “It took [time] for the [USDA] to promulgate final regulations implementing the Organic Foods Production Act.”<sup>65</sup> As organic food grew in popularity, there was increased incentive for producers “to label their products as ‘organic.’”<sup>66</sup> In addition to defining the word “organic,” the certification process and other aspects of organic regulation have become more formalized, with the new SOE serving as the largest update to organic regulation since the Organic Foods Production Act in 1990.<sup>67</sup>

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<sup>59</sup> See Bones, *supra* note 46, at 428.

<sup>60</sup> 7 U.S.C. § 6517.

<sup>61</sup> 7 C.F.R. §§ 205.601–04 (2022).

<sup>62</sup> Stephen Forbes & Ramkrishnan Balasubramanian, *The USDA National Organic Program and the Effort to Maintain Organic Food Integrity*, 15 SCITECH LAW. 10, 13 (2019).

<sup>63</sup> *Organic on Food Labels*, FDA, <https://www.fda.gov/food/food-labeling-nutrition/organic-food-labels> [<https://perma.cc/4NWX-3GXF>].

<sup>64</sup> *Id.*

<sup>65</sup> See Friedland, *supra* note 33, at 383.

<sup>66</sup> Josh Dhyani, *Science-Based Food Labels: Improving Regulations & Preventing Consumer Deception Through Limited Information Disclosure Requirements*, 26 ALB. L.J. SCI. & TECH. 1, 26–27 (2016).

<sup>67</sup> Julia Shapero, *USDA Tightens Organic Food Label Rules*, YAHOO! FIN. (Jan. 1, 2023), <https://finance.yahoo.com/news/usda-tightens-organic-food-label-195241649.html> [<https://perma.cc/KXP9-38S3>].

### A. *Organic Definition*

The Organic Foods Production Act (the Act), defines “organic” as a labeling term and provides a broad definition of “organically produced.”<sup>68</sup> The Act focuses on requiring adherence to standard organic production and handling processes.<sup>69</sup> “A person may sell or label an agricultural product as organically produced . . . if such product is produced and handled in accordance with” the Act.<sup>70</sup> If a product is to be sold or labeled as organic, then farmers and handlers may not use synthetic chemicals while growing it or for three years immediately prior to the harvest of such a product.<sup>71</sup> Also, products must be produced and handled in accordance with an organic plan<sup>72</sup> agreed upon by a certifying agent.<sup>73</sup>

“The USDA designed [its] regulations to be process-based, not product-based.”<sup>74</sup> Therefore, USDA regulations control production, growing, and harvesting rather than focusing on “characteristics of the final product itself.”<sup>75</sup> This process-based focus is controversial because, while it seems advantageous to environmentalist concerns, neglecting the final product can create negative consequences for concerned farmers and consumers.<sup>76</sup> Product-based regulations are sometimes viewed as a better way to convey information about regulations to consumers, because consumers can more accurately understand “direct information about [a] product,” as opposed to conceptualizing a process.<sup>77</sup> Therefore, with product-based regulations, consumers are less likely to attach false expectations to the product and are more likely to understand the true quality of the food they consume.

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<sup>68</sup> 7 U.S.C. § 6502(14); *See* Liu, *supra* note 44, at 338.

<sup>69</sup> Liu, *supra* note 44, at 338.

<sup>70</sup> 7 U.S.C. § 6505(a)(1)(A); *see also* 7 C.F.R. § 205.300(a) (2022).

<sup>71</sup> 7 U.S.C. § 6504(2).

<sup>72</sup> According to 7 C.F.R. § 205.201(a) (2022), organic plans must contain descriptions of farm practices, recordkeeping systems, management practices, and other compliance descriptions. The plan essentially outlines how producers and handlers intend to operate their farm or ranch to satisfy the requirements of the regulations.

<sup>73</sup> 7 U.S.C. § 6502(3) (“The term ‘certifying agent’ means the chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State.”).

<sup>74</sup> Friedland, *supra* note 33, at 384; Nat’l Organic Program, 65 Fed. Reg., 80547, 80549 (Dec. 21, 2000) (codified at 7 C.F.R. § 205) (“The emphasis and basis of these standards is on process, not product.”).

<sup>75</sup> *See* Friedland, *supra* note 33, at 384.

<sup>76</sup> *Id.* at 385–86.

<sup>77</sup> *See* Dhyani, *supra* note 66, at 22.

There are three levels of products that may be “sold, labeled, or represented” with organic designations.<sup>78</sup> First, there are “products sold, labeled, or represented as ‘100 percent organic’” which must contain entirely organic ingredients.<sup>79</sup> Secondly, “products sold, labeled, or represented as ‘organic’” must contain “not less than 95 percent organically produced raw or processed agricultural products.”<sup>80</sup> This allows for up to 5 percent of the ingredients to be nonorganic.<sup>81</sup> Products within these two categories “may display . . . the certifying agent’s logo and the USDA seal” on its packaging.<sup>82</sup> Third and lastly, “products sold, labeled, or represented as ‘made with organic’” must have “at least 70 percent organically produced ingredients.”<sup>83</sup> Such products may have the “certifying agent’s logo” on its packaging, “but not the USDA seal.”<sup>84</sup>

Nonorganic ingredients<sup>85</sup> used within organic products must also meet certain guidelines in order for products to be labeled as “organic” or “made with organic.”<sup>86</sup> Ingredients that meet these threshold criteria are broken into two categories: agricultural and nonagricultural ingredients.<sup>87</sup>

Agricultural ingredients include “any agricultural . . . product, whether raw or processed, including any . . . product derived from livestock, that is marketed in the United States for human or livestock consumption.”<sup>88</sup> To use these nonorganic agricultural ingredients, an organic version

<sup>78</sup> See National Organic Program, 7 C.F.R. § 205.301(a)–(c) (2022).

<sup>79</sup> *Id.* § 205.301(a).

<sup>80</sup> *Id.* § 205.301 (b).

<sup>81</sup> *Id.* § 205.301(b).

<sup>82</sup> See Liu, *supra* note 44, at 341.

<sup>83</sup> 7 C.F.R. § 205.301(c) (2022).

<sup>84</sup> Liu, *supra* note 44, at 342.

<sup>85</sup> Nonorganic ingredients permitted within products at the 5 percent capacity for “organic” products, or at the 30 percent capacity for “made with organic” products, “[m]ust not contain genetically modified ingredients (GMOs)[.] [m]ust not be irradiated[,] [meaning] exposed to ionizing radiation, [and,] [i]f they are agricultural, they must not have been fertilized with sewage sludge.” AMS USDA, WHAT INGREDIENTS CAN BE UTILIZED IN THE 5% OF NON-ORGANIC INGREDIENTS ALLOWED IN A PROCESSED PRODUCT LABELED AS “ORGANIC”? [hereinafter INGREDIENTS] 1, <https://www.ams.usda.gov/sites/default/files/media/3%20Nonorganic%20Ingredients%20-%205%25%20Rule%20FINAL%20RGK%20V2.pdf> [<https://perma.cc/45R2-EUDR>]. With regard to the second requirement, “[i]onizing radiation is a form of energy that acts by removing electrons from atoms and molecules of materials that include air, water, and living tissue. Ionizing radiation can travel unseen and pass through these materials.” *The Electromagnetic Spectrum: Ionizing Radiation*, CDC (June 29, 2021), [https://www.cdc.gov/nceh/radiation/ionizing\\_radiation.html](https://www.cdc.gov/nceh/radiation/ionizing_radiation.html) [<https://perma.cc/5VBD-M6QV>].

<sup>86</sup> INGREDIENTS, *supra* note 85, at 1. National Organic Program, 62 Fed. Reg. 65,850 (proposed Dec. 16, 1997). These three requirements were important when the rule was being proposed, and public comments were taken on the issues of whether GMOs and sewage sludge should be allowed. *Id.*

<sup>87</sup> INGREDIENTS, *supra* note 85, at 1.

<sup>88</sup> 7 C.F.R. § 205.2 (2022).

must not be commercially available.<sup>89</sup> Examples of such ingredients include gelatin and cornstarch.<sup>90</sup> The nonagricultural ingredients category includes any substance that is not a product of agriculture, such as enzymes, minerals, and bacterial cultures.<sup>91</sup> These products typically are not eligible for organic certification in the first place, so there is no rule concerning when such products may be used, unlike agricultural ingredients for which there must not be any organic commercially available alternative.<sup>92</sup> To amend the list of substances, the Secretary of the USDA must consult with both the Department of Health and Human Services (DHHS) and the Environmental Protection Agency (EPA).<sup>93</sup>

### *B. Organic Certification Process*

The Organic Foods Production Act maintains a two-tiered regulatory system for certifying certain products as organic: accreditation and certification.<sup>94</sup> First, the USDA accredits either state officials or private persons as certifying agents.<sup>95</sup> Next, those agents certify applicants, such as producers and handlers, to sell, label, or represent organic products.<sup>96</sup>

For a producer pursuing organic certification, the first step is to “submit an organic system plan to an accredited certifying agent.”<sup>97</sup> This plan is agreed upon by the producer or handler along with the certifying agent and details everything regarding “agricultural production or handling.”<sup>98</sup> If the proposed plan complies with the regulations under the Organic Foods Production Act, “the certifying agent [will] conduct[] an on-site inspection” and eventually certify the producer as organic.<sup>99</sup> If certification is granted, the certifying agent will conduct an inspection annually to ensure continued compliance.<sup>100</sup> As discussed further in Part IV, the new SOE implements additional certification requirements with amendments aimed at consistency and clarity of the NOP’s oversight role in certification.

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<sup>89</sup> 7 C.F.R. § 205.606 (2022).

<sup>90</sup> *Id.*

<sup>91</sup> *See* 7 C.F.R. § 206.605 (2022).

<sup>92</sup> *See id.*

<sup>93</sup> 7 U.S.C. § 6517.

<sup>94</sup> *See* Liu, *supra* note 44, at 340.

<sup>95</sup> *Id.*

<sup>96</sup> 7 U.S.C. § 6514.

<sup>97</sup> Friedland, *supra* note 33, at 390.

<sup>98</sup> National Organic Program, 7 C.F.R. § 205.2 (2022).

<sup>99</sup> *See* Friedland, *supra* note 33, at 390.

<sup>100</sup> 7 C.F.R. § 205.403(a) (2022).

Residue testing is important for organic certification and was a significant consideration in the Senate review of the Act in 1990.<sup>101</sup> Residue testing is performed to determine if products contain any impermissible pesticides.<sup>102</sup> This type of testing is focused on the final product, rather than the previously discussed process-based rules;<sup>103</sup> however, the residue testing is a way of confirming if organic process requirements, particularly prohibitions on the use of synthetic pesticides, were followed.<sup>104</sup> Residue findings are compared to the pesticide limits set by the EPA, otherwise known as EPA tolerances.<sup>105</sup> Alternatively, for products that do not have set EPA tolerances, other agencies, such as the FDA, may set similar levels that can be referenced and may require follow-up testing to determine why the residue was present.<sup>106</sup> If the testing yields a compromising level of prohibited substances, the certifying agent must investigate the potential violations by the producers.<sup>107</sup> Overall, residue testing aids in “[p]olicing against mislabeling” and enforces process standards.<sup>108</sup>

Most farms that grow, handle, or process organic products must be certified in order to place certain labels on their products. However, the USDA regulations exempt or exclude certain operations from the organic certification process.<sup>109</sup> Farms exempted or excluded from the organic certification process are considered uncertified operations,<sup>110</sup> though these operations are still obligated meet other regulatory requirements. Additionally, uncertified operations may still produce organic products and represent and sell them as such, however, they may not present any certifying agent’s seal, or falsely represent themselves as organic certified to potential buyers.<sup>111</sup> To be exempted, the farm or business must have annual organic sales of less than \$5,000,<sup>112</sup> the operation must be a retail establishment that only handles, but does not process, organic products,<sup>113</sup> or the product must contain less than 70

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<sup>101</sup> S. REP. NO. 101-357, at 300 (1990); see Friedland, *supra* note 33, at 392.

<sup>102</sup> 7 U.S.C. § 6506.

<sup>103</sup> See *infra* Section III.A.

<sup>104</sup> See Friedland, *supra* note 33, at 393.

<sup>105</sup> See Forbes & Balasubramanian, *supra* note 62, at 12. For EPA tolerance, see 40 C.F.R. pt. 180 (2022).

<sup>106</sup> See Forbes & Balasubramanian, *supra* note 62, at 12.

<sup>107</sup> See Liu, *supra* note 44, at 347–48.

<sup>108</sup> See Friedland, *supra* note 33, at 393 (quoting S. REP. NO. 101-357, at 300 (1990)).

<sup>109</sup> 7 C.F.R. § 205.101 (2022).

<sup>110</sup> 7 C.F.R. § 205.310 (2022).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* § 205.101(a).

<sup>113</sup> *Id.* § 205.101(b).

percent organic ingredients.<sup>114</sup> Certain handlers may be excluded from the certification process.<sup>115</sup>

The new SOE aims to collapse the distinction between exempt and excluded operations by only using “exemptions” and clarifying the categories of exempt operations.<sup>116</sup> This amendment is successful in that it clarifies certification requirements for persons looking to enter the industry and furthers the SOE’s goal of preventing organic fraud. However, these slight variations may not substantively change the overall exemption/exclusion regime, which will be something to watch as the organic industry works to comply with the SOE by March 2024.

### C. *Violations Under Organic Regulations*

To ensure compliance with organic standards such as organic production, handling, recordkeeping, and labeling requirements, the USDA can impose sanctions on producers and handlers including fines, suspensions, and revocations.<sup>117</sup> Examples of violations subject to sanctions include false organic claims such as the impermissible use of the USDA organic seal by exempt or excluded uncertified operations, the “[p]resence of prohibited pesticides or other substances in agricultural products sold, labeled or represented as organic,” and the “[u]se of fraudulent organic certificates to market or sell agricultural products.”<sup>118</sup> Further, the Organic Foods Production Act similarly prohibits knowingly selling or labeling a nonorganic product as organic and forbids making false statements to the government or certifying agents.<sup>119</sup> Organic operations in violation may face severe penalties and suspension or revocation of their organic certification.<sup>120</sup> If an organic certification is revoked, that operation cannot be recertified until after a five year period.<sup>121</sup>

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<sup>114</sup> *Id.* § 205.301(c).

<sup>115</sup> *Id.* § 205.101(b)(1).

<sup>116</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. 3548, 3555 (2023) (codified at 7 C.F.R. § 205) (“This final rule removes use of the term ‘exclusion’ from § 205.101 and throughout the organic regulation to reduce confusion and misrepresentation about who needs to be certified.”); *see id.* § 205.101.

<sup>117</sup> *How to File a Complaint About Violations of the Organic Standards*, USDA NAT’L ORGANIC PROGRAM (Oct. 2015) [hereinafter *File a Complaint*], <https://www.ams.usda.gov/sites/default/files/media/How%20to%20File%20Complaint%20about%20Organic.pdf> [<https://perma.cc/87XJ-ZXPJ>].

<sup>118</sup> *Id.*

<sup>119</sup> § 205.662.

<sup>120</sup> *See* *File a Complaint*, *supra* note 117.

<sup>121</sup> § 205.662(f)(2).

Enforcement efforts have increased over the past year due in part to increased funding,<sup>122</sup> which allowed the NOP to significantly increase its staff.<sup>123</sup> The enforcement staff uses its investigative resources efficiently to dismiss allegations that are ultimately not violations of the organic requirements and resolve other complaints through educational materials.<sup>124</sup> Otherwise, enforcement actions are resolved by levying civil penalties, reaching settlement agreements, and sometimes by “refer[ring] bad actors for criminal investigation.”<sup>125</sup> The goal is to support “organic integrity from farm to table, [so] consumers trust the organic label.”<sup>126</sup> With the recent SOE final rule, the USDA aims to add enforcement mechanisms to combat organic fraud.<sup>127</sup>

### III. PRACTICAL ISSUES WITH ORGANIC FOOD AND THE CURRENT SYSTEM

This Part explores the various problems with the current US organic food market. These include consumer confusion about what it means to be an organic product, misconceptions about other labeling terms that are closely associated with organic, environmental fallacies, financial concerns, and discrepancies between the US organic system and the system followed in Europe. Reflected in the organic market’s growth, a rising number of consumers prefer organic food, but their reasons vary.<sup>128</sup> Some claim it is safer and healthier, while some want to support local farming and the environment.<sup>129</sup> In reality, these conceptions are not strongly supported by science, as organic food is not scientifically better or healthier than

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<sup>122</sup> See *USDA to Invest Up to \$300 Million in New Organic Transition Initiative*, USDA (Aug. 22, 2022), <https://www.usda.gov/media/press-releases/2022/08/22/usda-invest-300-million-new-organic-transition-initiative> [<https://perma.cc/M9EL-2MGK>].

<sup>123</sup> USDA, USDA ORGANIC OVERSIGHT AND ENFORCEMENT UPDATE 1 (2021) [hereinafter USDA ENFORCEMENT UPDATE], <https://www.ams.usda.gov/sites/default/files/media/NOPenforcementUpdateFebruary2021.pdf> [<https://perma.cc/Q792-43D9>] (“As of January 2021, there are 63 people on staff, with more than half of the staff now in the Accreditation Division and the Compliance and Enforcement Division.”).

<sup>124</sup> *Id.* (recognizing that 40 percent of cases “can be resolved quickly with educational information” and cases where initial allegations raise concern are still an efficient use of time because they ensure compliance).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. 3548, 3548, 3550 (2023) (codified at 7 C.F.R. § 205); see 7 CFR § 205 (2023).

<sup>128</sup> Autumn Swiers, *New Data Shows Organic Crops Are on the Rise, but There’s a Catch*, TASTING TABLE (Sept. 23, 2022, 2:24 PM), <https://www.tastingtable.com/1022885/new-data-shows-organic-crops-are-on-the-rise-but-theres-a-catch/> [<https://perma.cc/PZB8-SURJ>].

<sup>129</sup> *Id.*

nonorganic food.<sup>130</sup> Consumers should be able to trust the accuracy of food labeling information and have confidence in the government to uphold the integrity of the food system.<sup>131</sup>

A. *Ambiguity Surrounding the Term “Organic”: Consumer Understanding and Implied Meanings of Organic Symbols*

When the Organic Foods Production Act was enacted, legislators were largely concerned with consumer confusion surrounding organic products and wanted to protect American consumers by regulating the organic label.<sup>132</sup> However, contrary to their intention, organic food shoppers still face confusion amidst the “jumble of organic seals, an ambiguous definition of organic food, competing labeling claims (such as ‘natural’ and ‘residue-free’), and misleading advertising claims.”<sup>133</sup> There are many factors contributing to the confusion surrounding the meaning of organic, but chief among them is the fact that labeling definitions were established by Congresspeople, rather than scientists; therefore, the definitions are not calculated, exact terms backed by science.<sup>134</sup> Rather, they represent ad hoc understandings of politicians as to what “organic” should mean.

The regulatory framework provided by the USDA has not evolved to meet consumer expectations and habits in the organic market.<sup>135</sup> Given the organic food market’s prevalence in the mainstream American food industry, it is important to consider what typical American consumers understand with respect to the organic seal. “[S]ome consumers associate ‘organic’ with terms such as ‘chemical free,’ ‘healthier[] . . .’ and ‘alternative lifestyle.’”<sup>136</sup> Other consumers think that “organic” means locally

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<sup>130</sup> *Is Organic Food Better For You Than Conventionally Grown Food?*, BAYER CANADA (last updated Apr. 12, 2022), <https://www.bayer.com/en/ca/canada-organic-or-conventionally-grown> [<https://perma.cc/XQU5-BNSA>] (“Researchers at Stanford analyzed almost 250 studies and concluded that “there isn’t much difference between organic and conventional foods.”).

<sup>131</sup> Erin Toomey, *How Organic Is Organic? Do the USDA’s Organic Food Production Act and National Organic Program Regulations Need an Overhaul?*, 19 DRAKE J. AGRIC. L. 127, 148 (2014).

<sup>132</sup> See S. Rep. 101-357, as reprinted in 1990 U.S.C.C.A.N. at 4653–44.

<sup>133</sup> 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, 550 (1997).

<sup>134</sup> See William J. Friedman, *The Framework for Global Organic Food Trade Circa 2005: Accomplishments and Challenges*, 60 FOOD & DRUG L.J. 361, 366 (2005).

<sup>135</sup> Becky L. Jacobs & Chelsea Jacobs, *A Quixotic Quest for Definition: Perceptions of “Organic” and Implications for the Environment and for Market Participants*, 12 KY. J. EQUINE, AGRIC., & NAT. RES. L. 141, 143–44 (2020); see Liu, *supra* note 44, at 338.

<sup>136</sup> See Jacobs, *supra* note 135, at 143.



sourced, substantiable, natural, and free from preservatives.<sup>137</sup> However, in actuality, “organic is a labeling term that indicates that the food or other agricultural product has been produced through approved methods.”<sup>138</sup> As previously noted,<sup>139</sup> when multi-ingredient “product[s] [are] sold, labeled, or represented as ‘organic,’” this simply means that the product is comprised of 95 percent organic ingredients.<sup>140</sup> William Friedman, former Vice President of the NOSB, stated, “[o]rganic labels are not statements regarding the healthiness, nutritional value, or overall safety of consuming such products.”<sup>141</sup> Yet, from the mere presence of an organic label, some consumers draw the exact conclusions Friedman cautions against.

Labels are presumed to be—and should be—informative,<sup>142</sup> which leads consumers to not only form “descriptive beliefs” about a product, but also to generate “inferential beliefs,” as well.<sup>143</sup> Descriptive beliefs are formed from information provided in the shopping environment, while inferential beliefs derive from mental assumptions people make beyond the explicit product information provided.<sup>144</sup> For example, when some food products bear a USDA organic seal, consumers assume unlabeled foods are not organic and presume quality differences among the two products, regardless of their true quality.<sup>145</sup> The USDA organic seal denotes a “positive marketing value,” so the assumption is that all qualifying products would seek the seal and unsealed products are unworthy of an organic

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<sup>137</sup> *Id.* at 143–44; Elizabeth Weise, *Here’s Proof That Organic Foods Aren’t Much More Nutritious Than Regular Foods*, INSIDER (Sept. 4, 2012), <http://www.businessinsider.com/youre-wasting-money-if-you-think-organic-foods-have-more-nutrients-2012-9> [<https://perma.cc/58D3-RHC7>] (describing studies showing that organic shoppers are motivated by beliefs that organic products are healthier or more nutritious, lowers their exposure to pesticides and toxins, and is better for the environment); Dymond Green, *The Rise of the Organic Food Market*, CNBC (Sept. 22, 2021, 8:00 AM), <https://www.cnbc.com/2021/09/22/organic-food-sales-surged-in-2020-higher-demand-and-cheaper-costs.html> [<https://perma.cc/QSD3-PAGP>] (“According to a study by Pew Research, 76% of adults surveyed bought organic foods for their health value, followed by environmental concerns at 33% and convenience at 22%.”).

<sup>138</sup> *See* Green, *supra* note 137.

<sup>139</sup> *See supra* Section III.A.

<sup>140</sup> National Organic Program, 7 C.F.R. § 205.301(b) (2023).

<sup>141</sup> *See* Friedman, *supra* note 134, at 366.

<sup>142</sup> *See Food Labels*, BETTER HEALTH CHANNEL (last revised Nov. 7, 2022), <https://www.betterhealth.vic.gov.au/health/healthyliving/food-labels#what-are-food-labels> [<https://perma.cc/Q3TU-FQ82>] (noting that food labels describe many things such as what is in the food product, how to handle and store it, nutritional information, dates for expiration).

<sup>143</sup> Fabrice Larceneux et al., *Why Might Organic Labels Fail to Influence Consumer Choices? Marginal Labelling and Brand Equity Effects*, J. CONSUMER POLY. 5 (2012).

<sup>144</sup> *Id.*

<sup>145</sup> *See id.* at 1.

designation.<sup>146</sup> Labels are the main way for producers to communicate to consumers, and consumers do rely on these labels.<sup>147</sup> While labels aid shoppers in making a selection among products, labels, particularly front of package labels, are largely a matter of strategy for producers and retailers in selling the product.<sup>148</sup> This is one problem that the new SOE focuses on, by attempting to eliminate fraudulent claims that products are organic through its increased enforcement mechanisms.

### B. *Confusion with Words Closely Associated with “Organic”*

Beyond the consumer confusion previously discussed<sup>149</sup> with respect to the term organic, other labeling terms such as “natural,” “local,” and “unprocessed” further fuel consumer confusion when buying products.<sup>150</sup> To look more closely at the term “natural,” some consumers view products labeled as “natural” to be akin to organic products.<sup>151</sup> The term “natural” is largely unregulated.<sup>152</sup> First, the USDA does not regulate use of the term “natural” for crops,<sup>153</sup> although it does regulate the term natural on labels for meat, poultry, and eggs, asserting that natural means the “product contain[s] no artificial ingredient or added color and is only minimally processed.”<sup>154</sup> Citizen petitions and federal courts grappling with litigation concerning the term “natural” have called upon the FDA to engage in rulemaking to clearly define and regulate use of the term.<sup>155</sup> However, the FDA

<sup>146</sup> Donna M. Bryne, *Cloned Meat, Voluntary Food Labeling, and Organic Oreos*, 8 PIERCE L. REV. 31, 48–49 (2009).

<sup>147</sup> See Greg Clare, *Measuring Consumer Responses to Food Labels*, 2 J. INTEGRATED FOOD SCI. & NUTRITION 7, 1–2 (2018); See also Bryne, *supra* note 146, at 35–36; Allyson Bartolomeo, *A Proposal for FDA Label Regulations and Uniform Certifications for Organic Non-Food and “Natural” Products*, 23 BARRY L. REV. 65, 65 (2017).

<sup>148</sup> See Clare, *supra* note 147, at 1.

<sup>149</sup> See *supra* notes 135–140.

<sup>150</sup> See *supra* notes 136–138 and accompanying text.

<sup>151</sup> Joanna K. Sax & Neal Doran, *Food Labeling and Consumer Associations with Health, Safety, and Environment*, 44 J.L. MED. & ETHICS 630, 635 (2016) (“Our results suggest that the label ‘natural’ means something to respondents—that is, the perceived meaning of ‘natural’ may be similar to ‘organic’ for a typical consumer.”).

<sup>152</sup> Kristen E. Polovoy, *‘Natural’ Challenges for Ascertaining the Loss in Food Label Class Actions Under the Njefa*, 2015 N.J. LAW. 53, 53 (2015).

<sup>153</sup> *Natural vs. Organic: Does the Label Matter?*, RODALE INST. [hereinafter *Natural vs. Organic*] (Oct. 1, 2019), <https://rodaleinstitute.org/blog/natural-vs-organic-does-the-label-matter/> [https://perma.cc/755A-A7TL].

<sup>154</sup> Joyanna Hansen, *Interpreting Food Labels: Natural Versus Organic*, AM. SOC’Y FOR NUTRITION, (Feb. 2, 2013), <https://nutrition.org/interpreting-food-labels-natural-versus-organic/> [https://perma.cc/M48K-LJ7F]; *Meat and Poultry Labeling Terms*, USDA (last modified Apr. 12, 2011), <https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/food-safety-basics/meat-and-poultry-labeling-terms>.

<sup>155</sup> *The FDA Requests Comments on Use of the Term “Natural” on Food Labeling*, FDA (last updated Oct. 22, 2018), <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling> [https://perma.cc/9568-T2T4].

has declined to engage in such formal rulemaking.<sup>156</sup> This means consumers must be cautious of the “natural” food label and cannot make assumptions regarding how processed or synthetic-free a product is when it bears such a label.<sup>157</sup>

At present, the best course of action for consumers when it comes to “natural” labeled food is to read ingredient lists.<sup>158</sup> For example, foods containing highly processed high fructose corn syrup can be labeled as “natural” because the synthetic materials used to make the syrup are not included in the final product.<sup>159</sup> The term “natural” on food labels does not guarantee quality ingredients, and says nothing about how the product was grown, raised, or made.<sup>160</sup> These products “could (or could not) contain artificial ingredients, GMOs, chemicals, hormones, and antibiotics.”<sup>161</sup> In fact, there has been a rise in litigation surrounding use of the term “natural,” given the lack of a legally enforceable definition.<sup>162</sup> Most Americans erroneously believe that use of the labeling term “natural” means the term must be governmentally regulated.<sup>163</sup> When it comes to food, without a clear definition of “natural,” “it is easy to assume that natural and organic food are more-or-less the same.”<sup>164</sup>

### C. *Environmental Ambiguities*

The public admires organic farming based on the belief that it promotes sustainability; however, there is much debate as to whether organic farming practices are actually better for the environment.<sup>165</sup> As previously discussed,<sup>166</sup> federal guidelines

<sup>156</sup> See *Natural vs. Organic*, *supra* note 153. *Use of the Term ‘Natural’ on Food Labeling*, FDA (last updated Oct. 22, 2018), <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling> [<https://perma.cc/P5TQ-Y6N7>].

<sup>157</sup> See Hansen, *supra* note 154.

<sup>158</sup> *Id.*

<sup>159</sup> See Laura Crowley, *HFCS Is Natural, Says FDA in a Letter*, FOOD NAVIGATOR—USA (Feb. 21, 2011, 4:58 AM), <https://www.foodnavigator-usa.com/Article/2008/07/08/HFCS-is-natural-says-FDA-in-a-letter> [<https://perma.cc/LW5T-7EFZ>].

<sup>160</sup> Carolyn Williams, *A “Natural” Label on Food Means Next to Nothing. Here’s Why*, COOKINGLIGHT (Apr. 28, 2016), <https://www.cookinglight.com/eating-smart/nutrition-101/what-does-a-natural-label-really-mean> [<https://perma.cc/SL34-78J5>].

<sup>161</sup> *Id.*

<sup>162</sup> See U.S. CHAMBER INST. FOR LEGAL REFORM, *THE FOOD COURT: TRENDS IN FOOD AND BEVERAGE CLASS ACTION LITIGATION* 1, 2 (2017), [https://instituteoflegalreform.com/wp-content/uploads/2020/10/TheFoodCourtPaper\\_Pages.pdf](https://instituteoflegalreform.com/wp-content/uploads/2020/10/TheFoodCourtPaper_Pages.pdf) [<https://perma.cc/WSA7-H9EJ>] (stating that the most common type of label challenge is products labeled “natural”).

<sup>163</sup> See Wolkowitz, *supra* note 31, at 582.

<sup>164</sup> See *Natural vs. Organic*, *supra* note 153.

<sup>165</sup> See Christie Wilcox, *The Ecological Case Against Organic Farming*, N.Y. TIMES (Sept. 10, 2012), <https://www.nytimes.com/roomfordebate/2012/09/10/is-organic-food-worth-the-expense/the-ecological-case-against-organic-farming> [<https://perma.cc/HMK6-VXBH>].

<sup>166</sup> See *supra* Part I.

address environmental concerns such as soil quality, animal raising practices, pest and weed control, and farming methods.<sup>167</sup> Conventional farming is mainly criticized for its chemical intervention, commonly through the use of “synthetic pesticides, herbicides, and fertilizers.”<sup>168</sup> These pitfalls of conventional farming are the prized attributes of organic farming methods, which reduce pollution and provide for cleaner water.<sup>169</sup> Most predominately, organic farmers utilize crop rotation,<sup>170</sup> composting,<sup>171</sup> and other original farming methods.<sup>172</sup>

While reduced pollution and a cleaner water supply resulting from organic farming have positive environmental impacts, the benefits of organic farming are overshadowed by its productivity issue.<sup>173</sup> Compared to conventional farming, organic farming has at least a 20 percent lower crop yield.<sup>174</sup> Since organic practices produce fewer crops than conventional methods, organic farming requires more land to produce identical crop quantities.<sup>175</sup> When compared to conventional methods, organic farming produces less greenhouse gas emissions from livestock and production, but since organic farming requires clearing more land, this increases emissions overall.<sup>176</sup> Since there is a finite

<sup>167</sup> *Id.*

<sup>168</sup> *Organic vs. Conventional Farming*, RODALE INST., <https://rodaleinstitute.org/why-organic/organic-basics/organic-vs-conventional/> [<https://perma.cc/5HZ5-MVNN>].

<sup>169</sup> *Id.*

<sup>170</sup> *Crop Rotations*, RODALE INST., <https://rodaleinstitute.org/why-organic/organic-farming-practices/crop-rotations/> [<https://perma.cc/7LHV-6979>] (“Crop rotation is the practice of planting different crops sequentially on the same plot of land to improve soil health, optimize nutrients in the soil, and combat pest and weed pressure.”).

<sup>171</sup> Keith R. Baldwin and Jackie T. Greenfield, *Composting on Organic Farms*, N.C. STATE UNIV. COLL. OF AGRIC. & LIFE SCI., <http://www.carolinafarmstewards.org/wp-content/uploads/2012/12/9-CEFS-Composting-on-Organic-Farms.pdf> [<https://perma.cc/E4GD-9V4K>] (“Compost is the material that results when recycled plant wastes, *biosolids* (solid materials like manure), fish, and other organic materials decompose *aerobically*—through the action of microorganisms that live in the presence of air.”).

<sup>172</sup> *See 7 Environmental Benefits of Organic Farming*, LIVEMORE ZONE (Apr. 12, 2021), <https://www.livemorezone.com/do-more/benefits-of-organic-farming/> [<https://perma.cc/7YA3-V8DA>].

<sup>173</sup> *See* Wilcox, *supra* note 165.

<sup>174</sup> *See id.* Exact ratios for gauging how productive organic farms are as compared to conventional farms, is just an estimate because crop-by-crop yields vary, as do yields based on location; *See* Holger Kirchmann, *Why Organic Farming Is Not the Way Forward*, 48(1) *OUTLOOK ON AGRIC.* 22, 22–25 (2019).

<sup>175</sup> *See* Kirchmann, *supra* note 174, at 22.

<sup>176</sup> *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> [<https://perma.cc/RA7D-B3HY>] (“Greenhouse gases trap heat and make the planet warmer.”). In 2019, agriculture accounted for 10 percent of greenhouse gas emissions in the United States. *Id.*; Lisa Elaine Held, *The Real Climate Impact of Organic Farming*, *FOODPRINT* (Feb. 18, 2020), <https://foodprint.org/blog/the-real-climate-impact-of-organic-farming/> [<https://perma.cc/V5GB-CFNM>].

amount of arable land globally, land use optimization is crucial.<sup>177</sup> Switching to entirely organic farming “would require 1.5 times more land to make up for the” decreased food production.<sup>178</sup> “[M]ore than a third of the Earth’s ice-free land” is already cleared for agricultural use,<sup>179</sup> and expanding the use of organic farming generates a need for more space, thereby causing further “deforestation and land clearing.”<sup>180</sup>

Beyond the land use concern, lower productivity raises a question of sustainability.<sup>181</sup> Sustainability involves “meeting our own needs without compromising the ability of future generations to meet their own needs.”<sup>182</sup> Sustainability depends on productivity, economic profitability, environmental soundness, and social justice.<sup>183</sup> In some respects, organic farming is sustainable. First, although crop yields are lower, farmers can make a higher profit on organic products.<sup>184</sup> Organic farming also creates more employment opportunities: a study using data predominately from California and Washington found that organic farms hire “more [people] per acre,” compared to conventional farms.<sup>185</sup> Further, these workers also experience less “exposure to pesticides and . . . chemicals,”<sup>186</sup> which reduces

<sup>177</sup> See Naomi Zimmerman, *So, Is Organic Food Actually More Sustainable?*, COLUM. CLIMATE SCH. (Feb. 5, 2020), <https://news.climate.columbia.edu/2020/02/05/organic-sustainable/> [<https://perma.cc/9RY4-PCK8>].

<sup>178</sup> James Temple, *Sorry—Organic Farming is Actually Worse for Climate Change*, MIT TECH. REV. (Oct. 22, 2019), <https://www.technologyreview.com/2019/10/22/132497/sorryorganic-farming-is-actually-worse-for-climate-change/> [<https://perma.cc/6XS5-MN44>].

<sup>179</sup> See *Wilcox*, *supra* note 165.

<sup>180</sup> See Zimmerman, *supra* note 177.

<sup>181</sup> See John Reganold, *Can We Feed 10 Billion People on Organic Farming Alone?*, GUARDIAN (Aug. 14, 2016, 10:00 AM), <https://www.theguardian.com/sustainable-business/2016/aug/14/organic-farming-agriculture-world-hunger> [<https://perma.cc/ZHR5-6FLU>].

<sup>182</sup> UNIV. OF ALTA., OFF. OF SUSTAINABILITY, WHAT IS SUSTAINABILITY? 1, <https://www.mcgill.ca/sustainability/files/sustainability/what-is-sustainability.pdf> [<https://perma.cc/8YA6-UHG9>].

<sup>183</sup> See Reganold, *supra* note 181; Organic growing is socially just because it often encourages nonexploitive treatment of farm workers through fair practices and better preserves land for future use. Elizabeth Henderson, *Reviving Social Justice in Sustainable and Organic Agriculture*, FAIR WORLD PROJECT (Aug. 8, 2012), <https://fairworldproject.org/reviving-social-justice-in-sustainable-and-organic-agriculture/> [<https://perma.cc/56T7-XNP3>].

<sup>184</sup> *Id.*

<sup>185</sup> Lynn Finley et al., *Does Organic Farming Present Greater Opportunities for Employment and Community Development Than Conventional Farming? A Survey-Based Investigation in California and Washington*, 42 *AGROECOLOGY & SUSTAINABLE FOODS* 552 (2018).

<sup>186</sup> See Reganold, *supra* note 181.

chemical-related injuries for workers, farmers, their families, and communities.<sup>187</sup>

At the same time, organic farming may not be sustainable given the ever-growing population.<sup>188</sup> In a 2016 study from the Institute of Social Ecology in Vienna, Austria, researchers looked at five hundred food production scenarios and analyzed whether it is possible to feed the expected world population in 2050 using just our existing farmland.<sup>189</sup> The study found that it is possible, but would require people globally to adopt vegan, vegetarian, and higher plant-based diets, which is unrealistic.<sup>190</sup> Eating organically does not alone solve this issue. Another reason organic food likely cannot feed the world's population is because of its cost.

#### D. *The Monetary Issues with Organic Food*

Despite the ability of farmers to make higher profits on their organic crops, as previously mentioned,<sup>191</sup> both producing and purchasing organic products is costly. First, from the consumer perspective, most people cannot afford organic products,<sup>192</sup> and those who can still face inflated prices perhaps based on the misconception that “organic foods are . . . healthier [and] better for the environment” than nonorganic food.<sup>193</sup> Approximately “82 percent of Americans buy some organic food, and availability [of organic food] has improved.”<sup>194</sup> Within the United States, “[t]here are certified organic farms in all fifty states.”<sup>195</sup> Organic products are no longer just at specialty stores: chain stores including “Walmart, Costco, Kroger, Target, and Safeway” carry organic products, as well.<sup>196</sup> Even though these retailers are known for low prices, organic products remain

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<sup>187</sup> Allison Johnson, *Organic Farming Protects Communities from Toxic Chemicals*, NRDC (Aug. 14, 2020), <https://www.nrdc.org/experts/allison-johnson/organic-farming-protects-communities-toxic-chemicals> [<https://perma.cc/AJ6W-FQ75>] (“Exposure also extends beyond the workplace. Workers can carry pesticides home on clothes, shoes, and skin, inadvertently exposing their children and other family members, and pesticide drift can harm people living, working, and learning near farms.”).

<sup>188</sup> See Zimmerman, *supra* note 177.

<sup>189</sup> Karl-Heinz Erb, et al., *Exploring the Biophysical Option Space for Feeding the World Without Deforestation*, 7 NATURE COMM'NS 4 (2016).

<sup>190</sup> *Id.*; see Reganold, *supra* note 181.

<sup>191</sup> See *supra* Section III.C.

<sup>192</sup> See Bjorn Lomborg, *Organic Food Is for the Wealthy, Not the Poor*, N.Y. TIMES (Sept. 11, 2012, 9:55 AM), <https://www.nytimes.com/roomfordebate/2012/09/10/is-organic-food-worth-the-expense/organic-food-is-for-the-wealthy-not-the-poor> [<https://perma.cc/DW5K-47P8>].

<sup>193</sup> See *id.*

<sup>194</sup> See Merrigan, *supra* note 12.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

expensive. In a study by Consumer Reports,<sup>197</sup> organic products compared to conventional ones at multiple grocery stores were found to be more expensive by varying amounts.<sup>198</sup> In some cases, “organic iceberg lettuce cost at least one and a half times more than . . . conventional” iceberg lettuce.<sup>199</sup> Even habitual organic shoppers sometimes forego organic buying due to price concerns.<sup>200</sup> Factors that make organic foods more expensive include production costs associated with adhering to USDA guidelines, higher processing and transport costs, and demand exceeding supply.<sup>201</sup> These costs are borne by consumers.<sup>202</sup>

For organic growers, it may be costly to obtain organic certification. The costs and fees vary based on location, who the certifying agent is, and the size and scope of the organic operation.<sup>203</sup> These certification costs may amount to anywhere between “a few hundred to several thousand dollars.”<sup>204</sup> To transition to a certified operation, land that will be used to produce raw organic products must not be treated with prohibited substances for a period of thirty-six months.<sup>205</sup> During this period, organic growers cannot “[s]ell, label, or represent the[ir] product as ‘organic’” or “[u]se the USDA organic or certifying agent’s seal” on their products.<sup>206</sup> This is costly because the growers and producers must follow organic methods, which often require more labor, but cannot profit from the organic price premium.<sup>207</sup>

Once an organic operation is certified, eligible producers can apply to the USDA Organic Certification Cost Share Program

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<sup>197</sup> *The Cost of Organic Food*, CONSUMER REPS. (Mar. 19, 2015), <https://www.consumerreports.org/cro/news/2015/03/cost-of-organic-food/index.htm> [<https://perma.cc/NG6L-4TRJ>].

<sup>198</sup> *Id.* (examining Amazon Fresh, Fresh Direct, Harris Teeter, and Peapod, Price Chopper, Safeway, Walmart, and Whole Foods).

<sup>199</sup> *Id.*; Evelyn Jacob, *Is Organic Farming Truly Sustainable?*, EARTH.ORG (Apr. 3, 2020), <https://earth.org/is-organic-farming-truly-sustainable/> [<https://perma.cc/XV4C-RM5Q>].

<sup>200</sup> See Merrigan, *supra* note 12.

<sup>201</sup> See Maria Scinto, *The Real Reason Organic Food Is More Expensive*, MASHED (Dec. 12, 2019), [https://www.mashed.com/178976/the-real-reason-organic-food-is-more-expensive/?utm\\_campaign=clip](https://www.mashed.com/178976/the-real-reason-organic-food-is-more-expensive/?utm_campaign=clip) [<https://perma.cc/7BN9-9XWL>].

<sup>202</sup> *Id.*

<sup>203</sup> See Jennifer Chait, *How Much Does Organic Certification Cost?*, LIVEABOUT (Mar. 20, 2019), <https://www.thebalancesmb.com/how-much-does-organic-certification-cost-2538018> [<https://perma.cc/77YK-NT4C>].

<sup>204</sup> *Becoming a Certified Operation*, USDA, <https://www.ams.usda.gov/services/organic-certification/becoming-certified> [<https://perma.cc/5R2B-K7LV>].

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> Alexandra Jones, *Farmers Still Face Barriers in Their Quest to Becoming Certified Organic, Including Making It Through an Onerous 3-Year Window When Costs Are Higher*, COUNTER (Jan. 4, 2021, 2:14 PM), <https://thecounter.org/farmers-face-barriers-to-becoming-certified-organic-usda/> [<https://perma.cc/LB53-RQ9G>].

to help offset the certification costs.<sup>208</sup> Eligible operations may be reimbursed up to 50 percent of their certification costs, up to a maximum amount of \$500.<sup>209</sup> Not all costs are eligible for reimbursement.<sup>210</sup> “[A]pplication fees, inspection costs,” and user fees are among the costs eligible, while “equipment, materials . . . transitional certification fees, [and] late fees” are not eligible for reimbursement.<sup>211</sup> Even though reimbursement through the cost share program is helpful, the costs borne by organic growers and producers does not stop after certification. For example, certified organic growers are charged fees “for inspections, assessments, and travel costs” of their certifying agent, along with annual renewal fees.<sup>212</sup>

Overall, because of these financial burdens, some growers do not even bother certifying their farm, finding the process too onerous.<sup>213</sup> Especially for small, local farms that sell directly to their customers, actual certification does not improve the perception about the quality of their operation.<sup>214</sup> Farmers who do not want to obtain USDA certification can still produce high quality products and run operations that would comply with all guidelines set by USDA rules and regulations.<sup>215</sup> This means that some growers can produce items of USDA organic quality, but simply choose to forego the actual certification and USDA organic seal. There are alternative ways farmers can assure consumers that their products are high quality, such as joining the Certified Naturally Grown program, a peer-review certification program for farmers.<sup>216</sup> The standards imposed by that program are similar to the USDA standards, but the program is less stringent and operates through “peer-review certification [for] farmers and beekeepers producing food, flowers, and fiber for their local communities.”<sup>217</sup> This program

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<sup>208</sup> USDA, ORGANICS: ORGANIC CERTIFICATION COST SHARE PROGRAM (2021), [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/organics\\_fsa\\_fact\\_sheet\\_040221\\_final.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/organics_fsa_fact_sheet_040221_final.pdf) [<https://perma.cc/9M79-TRGW>].

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> See Chait, *supra* note 203.

<sup>213</sup> See *5 Reasons Getting USDA Organic Certification Is Really Difficult*, MODERN FARMER (May 24, 2018), <https://modernfarmer.com/2018/05/5-reasons-getting-usda-organic-certification-is-really-difficult/> [<https://perma.cc/WG74-DQVW>].

<sup>214</sup> K. Annabelle Smith, *For Many Small Farmers, Being Certified ‘Organic’ Isn’t Worth the Trouble*, BLOOMBERG CITYLAB (Aug. 13, 2014, 8:40 AM), <https://www.bloomberg.com/news/articles/2014-08-13/for-many-small-farmers-being-certified-organic-isn-t-worth-the-trouble> [<https://perma.cc/TUA5-S9L9>].

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> See *Who We Are*, CERTIFIED NATURALLY GROWN, [https://www.cngfarming.org/who\\_we\\_are](https://www.cngfarming.org/who_we_are) [<https://perma.cc/DZ37-3SMF>].



may be just as effective as certified organic in terms of producing quality products but, for the most part, the public does not know what it means or simply does not realize the quality is comparable to food labeled “organic.”<sup>218</sup>

*E. Cause for Further Concern: Discrepancies Between US and EU Organic Regulations*

The final major issue with organic labeling is the discrepancies that exist between organic regulations in the United States and the European Union. The EU’s organic certification process is regarded as more comprehensive and better regulated as compared to the US program.<sup>219</sup> The organic programs in both places highlight standards for production, labeling, and marketing products as organic, but the EU system is considered more focused and aggressive.<sup>220</sup> The EU enacted regulations in the 1990s, like the United States,<sup>221</sup> to set standards for labeling of organic plant products,<sup>222</sup> and later concerning organically managed livestock.<sup>223</sup> Similar to the midlevel of US organic labeling, the EU organic label is permitted on products where “at least 95 [percent] of the ingredients of agricultural origin are organic.”<sup>224</sup>

However, there are significant differences between the US and EU organic food systems. First, compared to the United States, where the system is federalized and followed in all states, each of the EU’s member states interpret and implement the rules in their own way, and handle enforcement, monitoring, and inspection individually.<sup>225</sup> Another difference alarming to

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<sup>218</sup> *Id.*

<sup>219</sup> See Amanda Zaluckyj, *The Meaning of the Organic Label in the U.S. vs. the EU*, AG DAILY (Jan. 8, 2021), <https://www.agdaily.com/insights/meaning-of-organic-label-in-us-vs-eu/> [<https://perma.cc/8UJS-7KHG>].

<sup>220</sup> Kathleen Merrigan, *Unlike the U.S., Europe Is Setting Ambitious Targets for Producing More Organic Food*, ECOWATCH (Nov. 15, 2021, 3:26 AM), <https://www.ecowatch.com/organic-food-us-europe-2655552029.html> [<https://perma.cc/3LAM-GRNF>].

<sup>221</sup> See Carolyn Dimitri & Lydia Oberholtzer, *EU and U.S. Organic Markets Face Strong Demand Under Different Policies*, USDA (Feb. 1, 2006), <https://www.ers.usda.gov/amber-waves/2006/february/eu-and-us-organic-markets-face-strong-demand-under-different-policies/> [<https://perma.cc/DBC4-AMG3>].

<sup>222</sup> Commission Regulation 2092/91, 1991, O.J. (L 198); Commission Regulation 834/2007, 2007 O.J. (L 189).

<sup>223</sup> Commission Regulation 1804/99, 1999, O.J. (L 222).

<sup>224</sup> *The EU’s Organic Food Market: Facts and Rules*, EUROPEAN PARLIAMENT (Oct. 4, 2018, 9:16 AM), <https://www.europarl.europa.eu/news/en/headlines/society/20180404STO00909/the-eu-s-organic-food-market-facts-and-rules-infographic> [<https://perma.cc/B2U5-KDAL>]; see *supra* Section III.A. This is the same requirement as the USDA’s requirement for a product to be sold, labeled, or represented as organic.

<sup>225</sup> Dimitri & Oberholtzer, *supra* note 221.

American commentators is the discrepancy regarding food additives that are banned in the EU, but are allowed in the United States.<sup>226</sup> With respect to food additives, the EU takes a more precautionary and preventative approach, while the US system looks to “the probability of hazard” when deciding whether to ban an additive.<sup>227</sup> Without diving into every difference among the two systems, the core reason for the differentiation stems from the historic and cultural differences in the two regions “concerning agriculture [and] the environment, and [therefore the approach to] organic agriculture.”<sup>228</sup> EU countries acknowledge the “environmental and social benefits” of organic farming and strive to support the market.<sup>229</sup> Therefore, the government intervention is seen as a means to provide a public good, which involves “environmental and social benefits.”<sup>230</sup> While the US system supports environmental and social benefits as well, it also treats the organic market as an opportunity for producer expansion and an additional product choice for consumers.<sup>231</sup>

In recognition of the rapid expansion of organic farming and increased demand for organic products, the EU updated its regulations in the organic sector.<sup>232</sup> These changes make it easier for farms to convert to organic production and stimulate demand through ensuring consumer trust. The new action plan for organic production in the EU sets a target to convert “at least 25% of the EU’s agricultural land [to] organic farming . . . by 2030.”<sup>233</sup> The plan outlines a three prong approach: (1) to “stimulate demand and ensure consumer trust,” (2) to “stimulate

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<sup>226</sup> Becky Upham, *Why Are Some Food Additives That Are Banned in Europe Still Used in the U.S.?*, EVERYDAY HEALTH (July 22, 2021), <https://www.everydayhealth.com/diet-nutrition/why-are-some-food-additives-that-are-banned-in-europe-still-used-in-the-us/> [<https://perma.cc/7JFU-VNKC>]; Sylvia Tomczak, *This Common Food Additive Is Now Banned In The EU*, TASTINGTABLE (June 23, 2022, 1:00 PM), [https://www.tastingtable.com/905229/this-common-food-additive-is-now-banned-in-the-eu/?utm\\_campaign=clip](https://www.tastingtable.com/905229/this-common-food-additive-is-now-banned-in-the-eu/?utm_campaign=clip) [<https://perma.cc/C5P9-7SGT>] (“In addition to titanium dioxide, additives listed by the Advisory Board that are also banned in Europe but continue to be used in the U.S. include potassium bromate (oxidizing agent), azodicarbonamide (whitening agent), butylated hydroxyanisole and butylated hydroxytoluene (flavor enhancer), brominated vegetable oil (flavor enhancer), and red dye No. 40 and yellow food dyes No. 5 and No. 6 (coloring agents).”).

<sup>227</sup> Tomczak, *supra* note 226.

<sup>228</sup> Dimitri & Oberholtzer, *supra* note 225.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Organics at a Glance*, EUROPEAN COMM’N, [https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organics-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organics-glance_en) [<https://perma.cc/SG75-8FQF>]; Council Directive 2020/1693, 2020, O.J. (L 381).

<sup>233</sup> *Organic Action Plan*, EUROPEAN COMM’N, [https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organic-action-plan\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organic-action-plan_en) [<https://perma.cc/W9AH-A9AQ>].

conversion and reinforce the entire value chain,” and (3) to “improve the contribution of organic farming to environmental sustainability.”<sup>234</sup> The plan accounts for consumer survey results and statistics in each of these three areas, and, overall, aims to help the organic market reach its full potential and ultimately create a sustainable food system for the European Union.<sup>235</sup>

By comparison, in the United States, The Food Labeling Modernization Act—first proposed in 2013, then again in 2015 and 2018<sup>236</sup>—was designed to, as Senator Blumenthal stated, “bring much-needed clarity to food labels so Americans can make informed, healthy decisions for themselves and their families.”<sup>237</sup> The proposed bill called for the FDA to update its requirements on front-of-package and nutrition labels to ensure consumers have access to information necessary to make informed decisions when purchasing food products.<sup>238</sup> The proposed bill was motivated by increased concerns with dieting and food products in connection with obesity and diet-related disease, as well as new threats and illnesses, such as COVID-19.<sup>239</sup> The bill directs the FDA to define terms such as “natural,” “healthy,” “artificial,”<sup>240</sup> and “synthetic,” which, as noted earlier, are largely unregulated and undefined, creating confusion in the organic and health food sector.<sup>241</sup> Unfortunately, the bill has yet to pass.

Reintroduction of this bill could be a significant step toward achieving clarity regarding labeling, and could in turn improve the marketplace for organic products by setting them apart from products labeled as “natural.”<sup>242</sup> However, it is questionable whether the bill would pass, given that the past versions of the bill were unsuccessful.<sup>243</sup> Perhaps the recent

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<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> Karin F.R. Moore, *It's Groundhog Day for Food Labeling, Again: The Food Labeling Modernization Act Is Back*, HYMAN, PHELPS & MCNAMARA PC (Aug. 20, 2021), <https://www.thefdalawblog.com/2021/08/its-groundhog-day-for-food-labeling-again-the-food-labeling-modernization-act-is-back/> [https://perma.cc/K5R3-XH2F].

<sup>237</sup> Press Release, House Committee on Energy & Commerce, Pallone, Delauro, Blumenthal, Whitehouse, and Markey Introduce Food Labeling Modernization Act (Aug. 4, 2021) [hereinafter House Press Release], <https://energycommerce.house.gov/newsroom/press-releases/pallone-delauro-blumenthal-whitehouse-and-markey-introduce-food-labeling> [https://perma.cc/36Z6-8YRS].

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *See supra* Section IV.B.

<sup>242</sup> Federal Labeling Modernization Act, S. 2594, 117th Cong. §§ 1–2, 4 (2021).

<sup>243</sup> Maria Kalousi-Tatum & Kathleen Sanzo, *Food Labeling Modernization Act Reintroduced in Congress*, JD SUPRA (Sept. 15, 2021), <https://www.jdsupra.com/legalnews/food-labeling-modernization-act-4268295/> [https://perma.cc/54UT-NENT].

surge and focus on these problems following publication of the SOE will increase motivation to pass the bill.

#### IV. THE STRENGTHENING ORGANIC ENFORCEMENT FINAL RULE

The USDA recently changed the organic regulation landscape by promulgating the Strengthening Organic Enforcement final rule, which is primarily focused on reducing fraudulent organic sales.<sup>244</sup> The entities and persons subject to regulation by the organic industry have until March 2024 to bring themselves into compliance with the SOE final rule.<sup>245</sup> Acknowledging the growth of the organic marketplace, the amendments in the “SOE protects organic integrity and bolsters farmer and consumer confidence in the USDA organic seal by supporting strong organic control systems, improving farm to market traceability, increasing import oversight authority, and providing robust enforcement of the organic regulations.”<sup>246</sup> The SOE targets the gaps in organic regulations, including critical links in the supply chain that have allowed for organic fraud. The high demand for organic products and the absence of effective enforcement opened the door for fraudulent activity in this space.<sup>247</sup> The SOE serves as a step in the right direction towards bringing organic regulation and enforcement in line with consumer expectations, but it does not solve every issue identified in this note.

Some important changes include those to the certification process. Under the SOE, there are new “uniform qualification and training standards for” certifying agents.<sup>248</sup> The rule also requires unannounced on-site inspections by certifying agents of

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<sup>244</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. 3548, 3548 (2023) (codified at 7 C.F.R. § 205 (2023)).

<sup>245</sup> Lawrence Reichman & Thomas Tobin, *USDA Issues New “Organic” Labeling Rule, Strengthening Enforcement*, JD SUPRA, (Feb. 9, 2023), <https://www.jdsupra.com/legalnews/usda-issues-new-organic-labeling-rule-6237900/> [<https://perma.cc/72WZ-LFGV>].

<sup>246</sup> Press Release No. 0008.23, USDA, *USDA Publishes Strengthening Organic Enforcement Final Rule* (Jan. 18, 2023), <https://www.usda.gov/media/press-releases/2023/01/18/usda-publishes-strengthening-organic-enforcement-final-rule> [<https://perma.cc/DQ59-WM8H>].

<sup>247</sup> For example, in 2022, an organic certified farmer was indicted for selling \$46 million worth of fraudulent grain in Minnesota because, among other violations, he used fertilizers and pesticides prohibited by organic regulation. Press Release, U.S. Att’y’s Off., Dist. of Minn., *Cottonwood County Farmer Charged with \$46 Million Organic Grain Fraud Scheme* (July 11, 2022), <https://www.justice.gov/usao-mn/pr/cottonwood-county-farmer-charged-46-million-organic-grain-fraud-scheme> [<https://perma.cc/R46J-WQAJ>].

<sup>248</sup> Kelly McCarthy, *New USDA Rule Strengthens Integrity of Foods Labeled ‘Organic,’* GOOD MORNING AM., <https://www.goodmorningamerica.com/food/story/new-usda-rule-strengthens-integrity-foods-labeled-organic-96561565> [<https://perma.cc/C2GH-K7SB>].

five percent or more of their certified operations.<sup>249</sup> These inspections are in addition to full annual inspections, and certifying agents are encouraged to select different types of operations and locations for unannounced on-site inspections.<sup>250</sup> Additionally, the SOE amends the certification process and clarifies who must obtain certification, including more businesses along the supply chain.<sup>251</sup>

The SOE also eliminates the distinction between exempt and excluded operations by collapsing these categories into just exemptions from certification.<sup>252</sup> This change is helpful because both exempted and excluded operations are functionally the same because they do not have to be certified, so this change to the language provides more clarity for those seeking to comply with the regulations. Under the SOE, more types of operations will need to be certified including those who produce or handle organic products, but lower-risk operations are exempt from certification, although they still have recordkeeping and other handling requirements.<sup>253</sup> There are also increased recordkeeping requirements for exempt operations.<sup>254</sup> Last in this overview of the key changes presented by the SOE, there is increased regulations of organic products imported from countries that have organic trade agreements with the United States, and there are other regulations for shipping, storing, and tracing organic products shipped from other countries.<sup>255</sup> With this change, NOP Import Certificates will be mandatory for all organic imports.<sup>256</sup> These certificates will be electronic and serve as a mechanism to record and trace products to their port of entry and a way to audit, if needed.<sup>257</sup> Given an increase in organic fraud cases, this part of the SOE was included to improve oversight and act as an enforcement mechanism.<sup>258</sup>

The SOE represents an attempt by the USDA to better regulate the organic marketplace, and it reflects the concerns

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<sup>249</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. 3548, 3548 (2023) (codified at 7 C.F.R. § 205.403(b) (2023)).

<sup>250</sup> *Id.* at 3572.

<sup>251</sup> *Id.* at 3548; McCarthy, *supra* note 248.

<sup>252</sup> National Organic Program (NOP) Strengthening Organic Enforcement, 88 Fed. Reg. at 3555; *see* 7 C.F.R. § 205.101 (2023).

<sup>253</sup> JENNIFER TUCKER, NAT'L ORGANIC PROGRAM, USDA, STRENGTHENING ORGANIC ENFORCEMENT (SOE) FINAL RULE INTRODUCTION 10 (2023), <https://www.ams.usda.gov/sites/default/files/media/NOPSOEFinalRuleWebinar02212023.pdf> [<https://perma.cc/3NTS-VXLL>].

<sup>254</sup> *Id.* at 3549, 3554; *see* 7 C.F.R. § 205.101(i) (1).

<sup>255</sup> *Id.* at 3549–50; *see* Reichman & Tobin, *supra* note 245.

<sup>256</sup> *Id.* at 3564; *see* Reichman & Tobin, *supra* note 245.

<sup>257</sup> *See* Tucker, *supra* note 253, at 12.

<sup>258</sup> *Id.* at 4.

voiced in public comments by stakeholders before the final rule was published. However, the rule's focus on fraud by targeting more players in the supply chain may be wrongly placed. April Vasquez, the Chief Certifications Officer at California Certified Organic Farmers, noted that there are many good operations out there and fraud "is a small problem when we're looking at the whole organic industry," even though the tightened certification requirements will help eliminate bad actors in the industry.<sup>259</sup> California is home to approximately 20 percent of organic farms in the United States, and therefore has a particularly large stake in the industry as these new rules are implemented.<sup>260</sup>

In administrative rulemaking, federal agencies have the opportunity to "fill in" the gaps left by legislation.<sup>261</sup> Congress delegates this rulemaking power to these agencies who have more expertise and the ability to tackle more specific, granular details.<sup>262</sup> Here, by focusing primarily on organic fraud, the USDA missed an opportunity to go further in combating consumer confusion in the industry. There remains room to bridge the gap between consumer understanding and how regulators go about rulemaking and overseeing the organic marketplace. Legislators must pick up where the SOE left off and further regulate the organic industry to ensure that organic products are what they purport to be, and that consumers know what they are purchasing and consuming.

## V. PROPOSAL TO IMPROVE THE ORGANIC MARKETPLACE

As explained throughout this note, the United States organic food market has grown from its original existence as a niche, alternative subset of the marketplace to a dominant component of American food consumption. Certainly, government intervention—and particularly the new SOE—has supported this, but there is more work to be done. Organic production could be a significant part of the solution to many problems facing our society, including obesity and health concerns, environmental pollution, and sustainable

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<sup>259</sup> Randol White/CapRadio, *California Watches as the USDA Tightens Organic Certification Regulations to Reduce Label Fraud*, JEFFERSON PUB. RADIO (Feb. 12, 2023, 6:54 AM), <https://www.ijpr.org/food-and-agriculture/2023-02-12/california-watches-as-the-usda-tightens-organic-certification-regulations-to-reduce-label-fraud> [<https://perma.cc/LJS4-DNSV>].

<sup>260</sup> *Id.*

<sup>261</sup> CONG. RES. SERV., AN OVERVIEW OF FEDERAL REGULATIONS AND THE RULEMAKING PROCESS 1 (2021), <https://sgp.fas.org/crs/misc/IF10003.pdf> [<https://perma.cc/FGB5-T4AS>].

<sup>262</sup> *Id.*

agriculture.<sup>263</sup> This final Part will address solutions and recommendations to address the problems identified in Part III, namely: ambiguity surrounding the term “organic,” financial issues in the organic marketplace, and discrepancies among the US and EU organic systems.

First, the SOE’s requirements are mostly process-based, as organic regulations have been since their inception, which means that there are regulatory requirements for different stages in organic production to create consistency and lower production risks.<sup>264</sup> However, because consumers only interact with the finished product, these process-based requirements fail to address consumer perspectives because the end product consumers buy may not be entirely organic as they perceive it to be. For example, a company began marketing their product as “organic water,” but water cannot be organic, given that it is simply hydrogen and oxygen, and it was explicitly excluded by the USDA for products that can be certified as organic.<sup>265</sup> However, the company was able to certify its operation because they filtered the water through a maple tree.<sup>266</sup> This illustrates how the process by which a product is made can render it organic.

Since manufacturers communicate with consumers through labeling,<sup>267</sup> it is the role of regulators to ensure that such communications are truthful and do not mislead health-conscious consumers. Yet, the SOE fails to better define “organic” and related terms, leaving a major gap in organic regulations, especially if the main objective of the SOE is to eliminate organic fraud. Failing to strengthen the definitions of these terms perpetuates consumer confusion when selecting amongst options in the marketplace. The knowledge and perceptions of the average American shopper should be at the core of regulatory reforms governing how organic products are labeled. With this, there should be increased focus on product-based reforms, such as defining organic and ensuring that end-products meet that definition. Consumers should not only know but should also be able to understand the definition of organic

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<sup>263</sup> Boban Melovic et al., *The Analysis of Marketing Factors Influencing Consumers’ Preferences and Acceptance of Organic Food Products-Recommendations for the Optimization of the Offer in a Developing Market*, 9 FOODS 259, 3 (2020).

<sup>264</sup> See *supra* note 74 and accompanying text.

<sup>265</sup> Carly Ledbetter, *Organic Water Is A Sign That Americans Have No Idea What ‘Organic’ Is*, HUFFINGTON POST, (July 10, 2017), [https://www.huffpost.com/entry/organic-water\\_n\\_596388c2e4b02e9bdb0e3569](https://www.huffpost.com/entry/organic-water_n_596388c2e4b02e9bdb0e3569) [<https://perma.cc/4X6B-SDWG>]; Jillian Guernsey, *The ‘Natural’ Disaster: How Americans’ Obsession with ‘Natural’ Foods Encourages Misinformation, Stifles Innovation, and Harms The Planet*, 29 HASTINGS ENVTL. L. J. 81, 98 (Winter 2023).

<sup>266</sup> *Id.*

<sup>267</sup> See Toomey, *supra* note 131, at 129.

as it is promulgated by the USDA. Organic is a broad term that can be internalized differently by different people, sometimes in a fraudulent manner. Therefore, American shoppers have unique, and often false, understandings of what it means for a product to be sold, labeled, or represented as organic. The SOE does little to change this critical issue.

The USDA or Congress should consider defining organic in a more scientific way.<sup>268</sup> This would create a more finite definition of the term. For example, the use of quantitative metrics on labels could help environmentally conscious organic consumers choose amongst products.<sup>269</sup> This example illustrates a more product-based approach, compared to the current process-based approach taken by the USDA. The downside to this is that a technical term may not be understood by consumers, either, which in turn would not address the main concern of increasing consumer understanding. Additionally, regulators must formally define the word “natural.” Placing “natural” on front-of-package food labels is highly deceptive and hurts the efficacy of the USDA organic seal because consumers think of these health-related labels as equivalent.<sup>270</sup> Granted, since most consumers do not read federal regulations anyway, adjusting the definition will only go so far. Even though most consumers may not know about the definition, it still impacts manufacturers and food handlers who would have to comply with the redefined terms.<sup>271</sup> It is important to acknowledge that many of these bills take time to pass or are ultimately unsuccessful, as seen through the efforts to pass The Food Labeling Modernization Act. Still, despite the possible futility of these proposals, the USDA should try to pass these new definitions as a step towards better informing the public and making it easier for consumers to informedly select among food products.

In the meantime, the USDA should take a more active role in educating American consumers on organic standards and regulations. This could occur through partnerships with private leaders in the organic space, such as the Rodale Institute. There are many eager advocates in the organic and health food sectors, and the

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<sup>268</sup> See Dhyani, *supra* note 66, at 3.

<sup>269</sup> *Id.* at 27.

<sup>270</sup> See *Food Label Confusion: Why Organic, Non-GMO Labels Are Often Misleading*, CBS MIAMI (Nov. 12, 2019, 2:02 PM), <https://www.cbsnews.com/miami/news/organic-non-gmo-food-labels-misleading/> [<https://perma.cc/LQA7-7FEP>].

<sup>271</sup> See Robert G. Edwards, *What Is Healthy Food? FDA Proposes To Redefine the Term*, NAT'L L. REV. (Oct. 4, 2022), <https://www.natlawreview.com/article/what-healthy-food-fda-proposes-to-redefine-term> [<https://perma.cc/PD3N-YFNB>].



government should lean on these private organizations that are already active in the marketplace. Additionally, the USDA and FDA should join together to educate people on how to read, interpret, and understand food labels. Efforts to help consumers decipher food labels already exist, such as “Labels Unwrapped,” a website made by The Center for Agriculture and Food Systems of Vermont Law School that provides a user friendly resource for understanding food labels.<sup>272</sup> With government support, this type of resource could become more mainstream through increased publicity and accessibility, such as with a mobile app that individuals could use while shopping. It is important for the government to aid in this, rather than solely private entities, because, as discussed, the government carries weight in consumers’ minds regarding food quality and standards.

The next recommendation for improving the US organic food system relates to the environmental impacts of organic farming. While some differences between organic and conventional farming show that organic farming can be more harmful to the environment, it is overall better for the planet in terms of sustainability and aids in environmental concerns.<sup>273</sup> The United States has much to learn from EU perspectives on the organic market and should enact similar legislation to further sustainable farming efforts.<sup>274</sup> Instead of subsidizing chemical dependent agriculture, GMOs, or factory farming, Congress should support policy reforms and legislation to convert conventional farms to organic ones.<sup>275</sup> This means expanding the USDA Organic Certification Cost Share Program to cover conversion expenses beyond the current \$500 limit. Also, the United States should set goals for increasing the percentage of US agricultural land that is organically farmed, as the EU did in its action plan.<sup>276</sup>

Lastly, in the meantime, while the government hopefully works to improve the organic marketplace by passing the already proposed Food Labeling Modernization Act and other solutions already discussed, consumers and farmers can improve their position in the current market. The financial barrier for health-

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<sup>272</sup> *Learn How to Read Food Labels*, VT. L. SCH. CTR. FOR AGRIC. & FOOD SYS., <https://labelsunwrapped.org/> [<https://perma.cc/SM9B-HZLK>].

<sup>273</sup> *See supra* Section III.C.

<sup>274</sup> *See supra* Section IV.E.

<sup>275</sup> Julie Wilson, *Can Organic Farming Save the World? Yes. But Only Through a Transformation in U.S. Food & Farm Policy*, ORGANIC CONSUMERS ASS’N (Oct. 10, 2019), <https://www.organicconsumers.org/blog/can-organic-farming-save-world-yes-only-through-transformation-us-food-farm-policy> [<https://perma.cc/E455-SPLU>].

<sup>276</sup> *See* Smith, *supra* note 214.

conscious shoppers to buy organic products<sup>277</sup> could be mitigated by shoppers selectively, rather than entirely, purchasing organic products. Typically, prioritizing buying organic fruits and vegetables is recommended, while deferring to conventional, nonorganic grains and other staple crops is deemed just as good as buying organic.<sup>278</sup> Within that distinction, particular fruits and vegetables tend to have higher pesticide residue, and so shoppers can prioritize buying those items organic to help with costs.<sup>279</sup> One easy to apply suggestion is if eating a fruit or vegetable requires peeling its skin off, then it is okay to switch to a conventionally grown option, as most of the pesticides live on the outside of produce.<sup>280</sup> As outlined by DC-based nonprofit, the Environmental Working Group, strawberries, spinach, grapes, cherries, peppers, and tomatoes are among the dirtiest produce;<sup>281</sup> therefore, shoppers should prioritize purchasing these organically. Alternatively, purchasing conventional foods that are known as the least contaminated can save consumers some money and peace of mind. These include avocados, eggplants, pineapples, kiwis, and mushrooms.<sup>282</sup>

Along with these more specific recommendation to shoppers, buying local may be the best solution for consumers while they wait for legislative reform.<sup>283</sup> Buying local products offsets the environmental impact of food transportation, such as carbon emissions, and is often cheaper for consumers and better for the local economy.<sup>284</sup> This is also beneficial to farmers and growers who can build their local reputation and even forego the heavily bureaucratic process of federal organic certification and compliance.<sup>285</sup> Overall, there are actions organic consumers and

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<sup>277</sup> See *supra* Section IV.D.

<sup>278</sup> See Zimmerman, *supra* note 177.

<sup>279</sup> See *The Dirty Dozen: 12 Foods You Should Buy Organic*, EATING WELL (last updated Mar. 17, 2021), [hereinafter *Dirty Dozen*], <https://www.eatingwell.com/article/15806/the-dirty-dozen-12-foods-you-should-buy-organic/> [<https://perma.cc/GLX6-L6Y4>].

<sup>280</sup> See Penelope Wall, *15 Foods You Don't Need to Buy Organic*, EATING WELL (last updated Mar. 17, 2021), <https://www.eatingwell.com/article/15808/15-foods-you-dont-need-to-buy-organic/> [<https://perma.cc/F2UJ-UQS7>].

<sup>281</sup> *Dirty Dozen*, *supra* note 279; *Are Organics Worth It?*, HARV. HEALTH PUBL'G (Dec. 10, 2019), <https://www.health.harvard.edu/healthbeat/are-organics-worth-it> [<https://perma.cc/SEE3-6U95>].

<sup>282</sup> *Id.*

<sup>283</sup> See Benjamin Ferguson & Christopher Thompson, *Why Buy Local?*, 38 J. APPLIED PHIL. 104, 105–06 (2020).

<sup>284</sup> *Id.* at 105; See generally *Why Buying Local is Important*, S. CLYDE WEAVER, (Feb. 13, 2020), <https://sclydeweaver.com/blog/why-buying-local-is-important/> [<https://perma.cc/H2Y4-L2JC>] (describing how buying meats and cheeses locally may be cheaper due to less shipping and packaging expenses associated with products).

<sup>285</sup> See Zimmerman, *supra* note 177.

farmers can take in the meantime, while awaiting legislative reform, to combat the uncertainty and cost of the organic market.

## CONCLUSION

The US organic food market has blossomed into an integral part of the American food system. However, increased options and alternatives for consumers have also wrought consumer confusion, regulatory issues, and public misconceptions.<sup>286</sup> The organic food market continues to grow as regulators, environmentalists, and consumers push for increased availability. The recent SOE is a step towards improved regulation in the organic sector; however, there are still gaps between the increased oversight that will occur once the SOE is fully implemented and consumer clarity in the marketplace. This note discussed the various benefits of the organic food market, including health, environmental, and ethical benefits, while also pointing out the fallacies, concerns, and discrepancies within the organic sector. Americans should be able to trust the organic food system and have confidence in the government to uphold the integrity of the organic seal, which is incredibly regulatorily burdensome to obtain and maintain.<sup>287</sup>

The broad meaning of “organic” has led consumers to internalize its meaning in different ways, and a more finite definition is one way to alleviate this problem. There is also little regulation covering similarly associated health terms on food labels such as the word “natural.” The Food Labeling Modernization Act is one bill that, if enacted, could positively address food labeling confusion;<sup>288</sup> however, in the meantime, the USDA should actively educate consumers on organic standards and empower partnerships with other advocacy groups and private institutions in the organic health sector. From the perspective of growers, educating local consumers on the quality of their product may be a cheaper, easier, and more effective way to target consumers who want organic products for environmental, health, or other reasons, and to combat consumer misconceptions while waiting for legislation to pass.

Overall, the average American shopper’s perceptions should be the focus of regulatory reforms governing how organic products are represented and sold. While awaiting regulatory efforts, the USDA should collaborate with institutional leaders

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<sup>286</sup> See Wolkowitz, *supra* note 31, at 569.

<sup>287</sup> See generally USDA ENFORCEMENT UPDATE, *supra* note 123 (providing an overview of the USDA’s organic seal certification process).

<sup>288</sup> See House Press Release, *supra* note 237.

and organic advocacy groups to educate consumers about organic farming methods and quality. Improving the US organic food market through these various suggestions will help all consumers—those who buy organic and those who do not—by improving the efficacy of the food sector overall.

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