



# Consumer Federation of America

May 10, 2016

The Honorable Robert M. Califf  
Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

**Re: Docket No. FDA-2014-N-1207: Request for comments on use of the term “natural” on food labeling**

Dear Commissioner Califf:

Consumer Federation of America appreciates the opportunity to submit comments on the use of the term “natural” in the labeling of human food products. CFA has joined a coalition of consumer and public health groups to recommend that FDA reduce consumer confusion caused by “natural” labeling claims by banning the claims altogether, or alternatively, by defining the term to incorporate and exceed the National Organic Program (NOP) standards. We write separately to recommend an alternative approach in the event that the agency rejects those options. Specifically, if FDA continues to allow “natural” labeling claims for products that do not meet NOP certification requirements, we recommend that FDA require the following disclaimer:

**\*“Natural” means that this product contains no artificial or synthetic ingredients. It does NOT mean that this product meets USDA National Organic Program standards related to the use of pesticides or other synthetic chemicals, irradiation, fertilizers made with synthetic ingredients, and bioengineering.**

Such a disclaimer would reduce consumer confusion between products labeled “natural” and those certified under the NOP.

Survey data demonstrates that this confusion is widespread and that “natural” labeling frequently misleads consumers. In response to a recent Consumer Reports survey, 63% of consumers reported that “natural” means “no toxic pesticides were used” to produce the food,

and 60% reported that it means “no GMOs were used.”<sup>1</sup> A survey conducted by the Hartman Group found similar results, including “a significant overlap in the ways that consumers think about organic and natural.”<sup>2</sup> Yet another study, which involved a representative sample of 1,005 consumers, found that 36% of respondents agreed with the statement: “there are no differences between Natural and Organic Food.”<sup>3</sup>

These perceptions raise concerns because almost no standards apply to “natural” labeling claims, whereas a robust set of rules governs organic certification. Consistent with the Organic Foods Production Act, certified organic farms and processors must follow a defined set of standards governing soil and water quality, pest control, livestock practices, and allowable food additives. USDA verifies producers’ adherence to those standards via annual onsite inspections by third parties.<sup>4</sup> By contrast, as FDA notes in its Federal Register notice, the agency an informal policy that “natural” means “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food.” However, FDA does not require producers to verify “natural” claims or attempt to enforce its informal policy, and even those products that conform to the “nothing artificial or synthetic” policy may contain GMOs, rely on production processes that involve heavy use of toxic pesticides and synthetic fertilizers, and employ food handling practices, such as irradiation, which the organic standards prohibit.

The organic program represents a significant public investment. USDA spends millions of dollars each year on initiatives such as help for farms transitioning to organic practices, certification cost assistance, seed-breeding and other organic agriculture research, and risk management tools.<sup>5</sup> This investment has resulted in a rapidly growing, globally recognized standard, and a U.S. retail market for organic products valued at over \$39 billion.<sup>6</sup> As it has grown, the organic program has struggled at times to stay consistent with consumer expectations.<sup>7</sup> But even critics of the organic program concede that “the organic label is the most

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<sup>1</sup> *Natural Food Labels Survey: 2015 Nationally-Representative Phone Survey*, CONSUMER REPORTS NATIONAL RESEARCH CENTER 6, available at [http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer\\_Reports\\_Natural\\_Food\\_Labels\\_Survey\\_2015.pdf](http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf).

<sup>2</sup> See Hartman Group. “Where Organic Ends and Natural Begins, (2010) available at: <http://www.hartman-group.com/hartbeat/334/where-organic-ends-and-natural-begins> (last visited Dec. 10, 2015).

<sup>3</sup> Organic & Natural Health Association. “Consumer Insights on Organic and Natural: a Research Study Prepared by Natural Marketing Institute” (Feb. 2015) available at: <http://organicandnatural.org/wp-content/uploads/2015/10/Consumer-Insights-on-Organic-and-Natural-A-Research-Study.pdf>

<sup>4</sup> See USDA. “What is Organic Agriculture?” available at:

<http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=organic-agriculture.html> (explaining that, consistent with the Organic Foods Production Act, “organic farmers, ranchers, and food processors follow a defined set of standards to produce organic food and fiber” and “receive annual onsite inspections.”)

<sup>5</sup> USDA. “Organic Agriculture” available at:

<http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=usda-results-organic-agriculture.html>

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

<sup>7</sup> See, e.g. USDA Agricultural Marketing Service. “Proposed Rule: National Organic Program; Organic Livestock and Poultry Practices,” 81 *Fed. Reg.* 21955 available at: <https://www.federalregister.gov/articles/2016/04/13/2016-08023/national-organic-program-organic-livestock-and-poultry-practices#h-62> (noting that the “disparity in amounts of

stringently regulated and trustworthy label on foods in the marketplace.”<sup>8</sup> FDA should not allow comparatively meaningless “natural” labeling claims to continue to confuse consumers and erode the value of organic certification.

As noted in the letter we submitted with our partner advocacy organizations, we believe that a “natural” definition that sets organic certification as a baseline would work best to bridge the gap between consumer expectations and regulatory requirements. However, FDA may use this review to revise the definition of “natural” in other ways, and make it more meaningful by, for example, incorporating the USDA rule that “natural” products be “not more than minimally processed.”<sup>9</sup> We agree with the Center for Science in the Public Interest (CSPI) that harmonizing the “natural” standards used by FDA and USDA would better serve producers and consumers than the current regime.<sup>10</sup> More importantly, we agree with CSPI that, however FDA defines the term “natural,” the agency should require a disclaimer explaining what “natural” does *not* mean. So long as the standards governing “natural” labeling claims fall short of the organic standards, a mandatory disclaimer as outlined above will serve a vital informational purpose for consumers.

Requiring such a disclaimer falls well within FDA’s statutory authority. The Federal Food, Drug, and Cosmetic Act provides that a “food shall be deemed to be misbranded . . . if its labeling is false or misleading in any particular,” and the Act gives FDA broad authority to promulgate regulations prescribing the content of labeling.<sup>11</sup> Just as USDA has authority to require disclosure related to “natural” claims on meat and poultry products, so too can FDA require clarifying information on the labels of the products it regulates.

A disclaimer requirement falls well within FDA’s constitutional authority as well. The U.S. Supreme Court has held that government agencies may require disclosure of “purely factual and uncontroversial information” that is “reasonably related to [the government’s] interest in preventing deception of consumers.”<sup>12</sup> A disclaimer that distinguishes “natural” labeling claims from organic certification qualifies as “purely factual and uncontroversial information,” and it is “reasonably related” to the correction of deception, as demonstrated by the abundance of survey data showing that “natural” labeling claims mislead a majority of consumers. Moreover, the recommended disclaimer serves other government interests, such as those cited in the Organic

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outdoor access” for poultry on organic farms “has economic implications for producers and lessens consumer confidence in the organic label.” See also Georgina Gustin. “Animal Welfare Rule Exposes Cracks in Organic Egg Industry” (April 15, 2016) available at: <http://theplate.nationalgeographic.com/2016/04/15/animal-welfare-rule-expose-cracks-in-organic-egg-industry/>

<sup>8</sup> The Cornucopia Institute “Frequently Asked Questions: Can I trust the organic label?” available at: <http://www.cornucopia.org/faq/>

<sup>9</sup> See USDA Food Safety and Inspection Service. *Food Standards and Labeling Policy Book* (Aug. 2005) available at: [http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf).

<sup>10</sup> We also agree with CSPI that FDA should *not* follow USDA’s lead in carving out exemptions for sugar, or other additives, from a “minimally processed requirement” if it chooses that option, because such exemptions confuse the public and erode consumer confidence. See *id.* (“Note: Sugar and natural flavorings from oleoresins or extractives are acceptable for ‘all natural’ claims.”).

<sup>11</sup> 21 U.S.C.A. § 343.

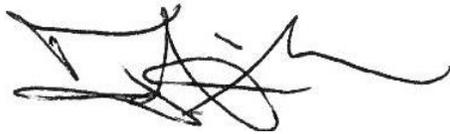
<sup>12</sup> *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985).

Foods Production Act.<sup>13</sup> Those interests, even if they extend beyond correction of deception, provide an independent constitutional basis for requiring disclosure.<sup>14</sup>

### Conclusion

We appreciate the opportunity to submit comments on this important issue. The lack of standards governing “natural” labeling claims has encouraged unscrupulous marketing practices and resulted in significant consumer confusion. We urge FDA to act expeditiously towards a regulatory solution that resolves this confusion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gremillion', with a long horizontal flourish extending to the right.

Thomas Gremillion  
Director of Food Policy  
Consumer Federation of America

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<sup>13</sup> See 7 U.S.C.A. § 6501 (“It is the purpose of this chapter--(1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced.”).

<sup>14</sup> See *American Meat Institute v. USDA*, 760 F.3d 18, 23-25 (D.C. Cir. 2014) (upholding USDA’s authority to require country-of-origin labeling on meat and poultry products).