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NatAgLaw@uark.edu • (479) 575-7646

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**JUMPING ON THE NEXT BANDWAGON: AN OVERVIEW  
OF THE POLICY AND LEGAL ASPECTS  
OF THE LOCAL FOOD MOVEMENT**

by

Marne Coit

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# JUMPING ON THE NEXT BANDWAGON: AN OVERVIEW OF THE POLICY AND LEGAL ASPECTS OF THE LOCAL FOOD MOVEMENT

**Marne Coit**  
Attorney at Law

## I. INTRODUCTION

In recent years, the number of farmers' markets in the United States has drastically increased. The number of farms set up as Community Supported Agriculture (CSAs) has also grown, and there are restaurants that pride themselves on the fact that they source their ingredients from local farmers. Farm-to-school programs are being established all across the country, and groups of people are organizing and referring to themselves as "localvores" or "locavores." All of these seemingly disparate acts are covered by the collective umbrella of the local food movement.<sup>1</sup>

At the core of the local food movement are individuals and organizations making conscious decisions about how and why they eat particular foods. Wendell Berry has famously described eating as "an agricultural act."<sup>2</sup> Michael Pollan further explains, "[i]t is also an ecological act, and a political act, too. Though much has been done to obscure this simple fact, how and what we eat determines to a great extent the use we make of the world—and what is to become of it."<sup>3</sup>

People have different ideas of what it means to eat locally. For some, it may mean choosing to eat a particular food only if it is grown or produced close to their homes. For example, someone living in Washington state may choose to eat only cherries grown in that state, or someone living in Vermont may choose to buy only cheese produced in that state. Others take eating locally a step further, trying to only eat food grown in the region in which they reside, or food grown within their local foodshed.<sup>4</sup> People who follow such consumption patterns have been dubbed "localvores."<sup>5</sup>

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<sup>1</sup> For a variety of informational resources related to the local foods movement, see the Local Food Systems Reading Room at <http://www.nationalaglawcenter.org/readingrooms/localfood>.

<sup>2</sup> MICHAEL POLLAN, THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS 11 (2006).

<sup>3</sup> *Id.*

<sup>4</sup> Upper Valley Localvores, <http://www.uvlocalvore.com>. The "foodshed" concept was first introduced as early as 1929, but the term is especially well-suited to a discussion of the modern local foods movement:

The intrinsic appeal the term had and continues to have for us derives in part from its relationship to the rich and well-established concept of the watershed. How better to grasp the shape and the unity of something as complex as a food system than to graphically imagine the flow of food into a particular place? Moreover, the replacement of "water" with "food" does something very important: it connects the cultural ("food") to the natural ("...shed"). The term "foodshed" thus becomes a unifying and organizing metaphor for conceptual development that starts from a premise of the unity of place and people, of nature and society.

This article is an exploration of this new and growing local food movement. It is not a cohesive movement, nor is it one that is organized by a particular group. Rather, it is a grassroots movement comprised of people who are interested, for various reasons, in obtaining food grown or produced where they live or in producing this food themselves. The purpose of this article is to explore what the local food movement is, why consumers are interested in basing their food purchasing choices on where their food originates, current and future regulation of local food, and where this movement may be headed in the future.

## II. DEFINING LOCAL FOOD

A good starting point for the discussion of the local food movement is to define the phrase “local food.” There is no single, set definition. The most common approach defines local food in terms of the distance that food had to travel to get from where it was grown to the consumer. Even this concept, however, does not provide a unified definition. For example, the Internet company Google recently opened a restaurant on its California campus called Café 150; its name reflects the decision to serve food that has been sourced from within a 150 mile radius of the campus.<sup>6</sup> Author Gary Nabhan says that local food is food grown or produced within a 250 mile radius.<sup>7</sup> Author and nutritionist Joan Dye Gussow’s definition of local food is food that can be procured “within a day’s leisurely drive of our homes.”<sup>8</sup>

The term “local” can also be defined by geographic region, such as food grown within a particular state or a certain region, which might cross state lines. For example, Valley Food & Farm, a program of the nonprofit organization Vital Communities which promotes the sale and consumption of local food, defines its service region as the Upper Valley, a region which crosses the state lines of Vermont and New Hampshire.<sup>9</sup>

As these various approaches reveal, “local food” is defined in a variety of ways. Without a clear definition, the concept of local food and the local food movement are most accurately understood by a consideration of the consumer motivations that have created them.

## III. WHY PEOPLE BUY LOCAL FOOD

Consumers have a number of reasons to choose locally raised or produced food. These reasons can be broken down into four main areas of concern: 1) a sense of

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Jack Kloppenburg et al., *Coming in to the Foodshed*, 13 *AGRIC. & HUM. VALUES* 33 (1996), available at <http://www.cias.wisc.edu/wp-content/uploads/2008/07/comingin.pdf>.

<sup>5</sup> *Id.*; see also Localvore, <http://www.localvore.co.uk>.

<sup>6</sup> John Cloud, *My Search for the Perfect Apple*, *TIME MAG.*, Mar. 12, 2007, at 42.

<sup>7</sup> *Id.*

<sup>8</sup> JOAN DYE GUSSOW, *THIS ORGANIC LIFE* 82-83 (2001).

<sup>9</sup> Valley Food & Farm, *Learn more about Local Foods*, <http://www.vitalcommunities.org/Agriculture/localfood.htm>.

connection, 2) quality, 3) environmental impact, and 4) political and social support for a particular type of agriculture. This section will explore each of these reasons.

#### *A. Connection Between Consumers and Agricultural Producers*

Our current food system is structured in a way that often disconnects consumers from the source of their food.<sup>10</sup> Buying food locally allows consumers to connect with the people who grow their food and sometimes with the greater community as well. This system stands in marked contrast to a consumer's typical relationship with most food production and distribution systems, in which the consumer usually has very little connection to the person who grew the food, or the place where it was grown. For example, if a person walked into the nearest supermarket to purchase an apple, how likely is it that he or she would know where that piece of fruit was grown or who was involved with the process of growing and transporting it?

In recent history, the trend in the American food system has been towards larger, more consolidated systems at each phase of production and distribution.<sup>11</sup> The result has been compared to "an hour glass with thousands of farmers producing farm products which had to pass through a relatively few processing firms before becoming available to the millions of consumers in this and other countries."<sup>12</sup> All of the relationships between those who play a role in providing our food have been affected:

The structure of food retailing is strongly aligned with the structure of the food distribution industry. Large corporate chain stores are typically organized around regional or national food distribution, with warehouses occupying the central position in the flow of goods. Retail stores are either a direct subsidiary of the distribution corporation or operate under a contractual relationship with a distributor. Warehouses often charge food processors a slotting fee for delivery and stocking services, a relationship which creates a clear advantage for large food processors.<sup>13</sup>

The structure of our food system has both direct and indirect effects on the relationships that consumers have with their food and with the communities where they live. The industrial model described above "demands that relationships among people and between people and nature be impartial, and thus impersonal. As a result, many people today have no meaningful understanding of where their food comes [from], and thus, no

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<sup>10</sup> Author Brian Halweil describes this phenomenon as "anonymous food." BRIAN HALWEIL, *EAT HERE: RECLAIMING HOMEGROWN PLEASURES IN A GLOBAL SUPERMARKET* 6 (2004).

<sup>11</sup> HOLLY HILL, NAT'L SUSTAINABLE AGRIC. INFO. SERV. (ATTR), *FOOD MILES: BACKGROUND AND MARKETING* 1-2 (2008), available at <http://attra.ncat.org/attra-pub/PDF/foodmiles.pdf>.

<sup>12</sup> MARTIN C. HELLER & GREGORY A. KEOLEIAN, CTR. FOR SUSTAINABLE SYS. (UNIV. OF MICH.), *LIFE CYCLE-BASED SUSTAINABILITY INDICATORS FOR ASSESSMENT OF THE U.S. FOOD SYSTEM* 26 (2000), available at [http://css.snre.umich.edu/css\\_doc/CSS00-04.pdf](http://css.snre.umich.edu/css_doc/CSS00-04.pdf) (quoting William Heffernan, Professor of Rural Sociology at the University of Missouri).

<sup>13</sup> *Id.*

understanding of the ecological and social consequences of its production.”<sup>14</sup> If one were to go into a supermarket and buy peppers imported from Holland or orange juice made from oranges grown in Florida, an economic exchange does occur, but the purchase and consumption of that product does not provide a deeper connection beyond the financial one.

This desire to have a connection with one’s food provides the impetus for many people to buy local food. One of the reasons most often given is that consumers appreciate the sense of connection it provides with the place where the food they eat is produced.<sup>15</sup> Unlike the “hour glass” model of conventional systems, the typical local food system has fewer, if any, stops between when food is harvested or produced on the farm and the time that it reaches the consumer. This is the inherent nature of local food. For example, if a farmer in Vermont makes cheese and then sells it at a farmers’ market located thirty miles from his or her farm, the product travels directly from the producer to the consumer. This face to face interaction provides a connection not available when purchasing food at a supermarket.

The ability to see the person who grew or made a food product adds a human dimension otherwise missing from our food purchasing. It is what Neil Hamilton, Director of the Agricultural Law Center at Drake University, refers to as “putting a face on our food.”<sup>16</sup> In addition, it provides consumers the opportunity to talk to the farmer about how a particular crop is grown or how a food product is made. In some cases, farmers may allow buyers to come to the farm to purchase food, such as with farm stands or some Community Supported Agriculture farms (CSAs). As these personal relationships develop, a sense of connection with place and the local community can start to develop. This is particularly true due to the fact that, as stated earlier, most local food purchasing will occur within close proximity to where the consumer lives. “Many people first begin to understand the critical need for this lost sense of connectedness when they develop personal relationships with their farmers . . . . [R]econnecting is one of the most important reasons for eating local.”<sup>17</sup> The appeal of this sense of connectedness, while intangible, cannot be discounted.

### *B. Product Quality*

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Another often cited reason that consumers buy local food is that they want fresh, high quality produce and other food products. This concept is often tied to the idea of food miles, which is “the distance food travels from where it is grown to where it is

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<sup>14</sup> John Ikerd, *Eating Local: A Matter of Integrity*, presented at The Eat Local Challenge, Portland, OR (June 2, 2005) and at Sierra Club Farm Tour and the Alabama Sustainable Agriculture Network Field Day, Banks, Ala. (June 18, 2005), available at <http://www.ssu.missouri.edu/faculty/jikerd/papers/Alabama-Eat%20Local.htm>.

<sup>15</sup> See POLLAN, *supra* note 2, at 242.

<sup>16</sup> Neil D. Hamilton, *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 *DRAKE J. AGRIC. L.* 407, 407 (2002).

<sup>17</sup> Ikerd, *supra* note 14.

ultimately purchased or consumed by the end user.”<sup>18</sup> It is estimated that typical supermarket produce travels approximately 1,500 miles.<sup>19</sup> The underlying premise is that the longer food has to travel, the less fresh it will be by the time it reaches the consumer. Buying local food is a way to ensure that the food will be fresher than if it were to travel those 1,500 miles. For example, it is not difficult to imagine that an eggplant or strawberries which have been grown less than twenty miles away would be fresher than those which have been packaged and then shipped across the country, or even halfway around the world. The flavor of food may also be affected. As one author explains, “it makes sense that a snow pea grown by a local farmer and never refrigerated will retain more of its delicate leguminous flavor than one shipped in a frigid plane from Guatemala.”<sup>20</sup> Buying locally grown or locally produced food is a way to ensure freshness and quality.

Another perceived benefit to consuming food that does not travel long distances from the farm to the consumer is that it can be better health-wise. This is not necessarily to claim that local food is inherently more nutritious, although there is some debate as to whether food loses nutrients as it gets older.<sup>21</sup> This benefit relates back to the idea that local food is consumed within a short time period after it leaves the farm and does not have to travel as far as non-local food. Therefore, it usually does not require the addition of chemical inputs to preserve it.<sup>22</sup> On the other hand, preservatives and additives are added to many food products that will travel long distances or be stored for long periods of time before reaching the consumer.<sup>23</sup> Local food, therefore, can be beneficial to those looking for food that has less (or no) chemicals added during the processing stage.

### C. Environmental Impacts and Energy Consumption

The notion of food miles is also relevant to the concepts of environmental impact and energy consumption. Those concerned with energy usage and global warming may support the use of local food to reduce energy consumption. The current food system in the United States is extremely energy intensive. This is true from the starting point to the end point—from the growing of the crops through the processing, packaging, and transport of food to the end user. It is estimated that the agricultural system consumes one-fifth of the total petroleum used in the United States.<sup>24</sup>

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<sup>18</sup> RICH PIROG ET AL., LEOPOLD CTR. FOR SUSTAINABLE AGRIC., CHECKING THE FOOD ODOMETER: COMPARING FOOD MILES FOR LOCAL VERSUS CONVENTIONAL PRODUCE SALES TO IOWA INSTITUTIONS 1 (2003), available at [http://www.leopold.iastate.edu/pubs/staff/files/food\\_travel072103.pdf](http://www.leopold.iastate.edu/pubs/staff/files/food_travel072103.pdf).

<sup>19</sup> *Id.* This estimate was based on a 1980 study. Due to increasing industrialization and globalization, the actual distance is likely to be even greater today.

<sup>20</sup> Cloud, *supra* note 6.

<sup>21</sup> HILL, *supra* note 11, at 2. There is some debate as to whether locally grown produce is, in fact, more nutritious. Some research has indicated that up to half of the nutrients can be lost if produce is handled improperly during transit. See Maria Condo, *5 Healthy Trends Worth Following*, <http://www.cnn.com/2007/HEALTH/diet.fitness/10/02/cl.trends.to.watch/index.html>. See generally Diane M. Barrett, *Maximizing the Nutritional Value of Fruits and Vegetables*, 61 FOOD TECH. 40 (2007), available at <http://fruitvegquality.ucdavis.edu/publications/MaxFoodVegApril%202006.pdf>.

<sup>22</sup> See HALWEIL, *supra* note 10, at 14.

<sup>23</sup> *Id.*

<sup>24</sup> POLLAN, *supra* note 2, at 183.

At the farm level, fossil fuels are consumed in the form of chemical inputs such as fertilizers, herbicides, and pesticides.<sup>25</sup> The machinery that farmers utilize in crop production, such as tractors and plows, also consumes fossil fuel. Once the crops are grown, most are then transformed into food products through various methods of processing. In fact, it is estimated that over 75% of food products are subjected to some form of processing before consumption.<sup>26</sup> The majority of food purchased at a grocery store has been processed in some way, including some produce. The amount of energy used to process food is between one-quarter to one-third of the total energy used in the food system.<sup>27</sup>

Consumer preferences (guided by advertising) for fast, convenient foods have pushed energy use in the sector. Food packaging has become increasingly energy intensive with the use of energy-intensive materials, excess packaging, and the proliferation of smaller, single serving packages. In numerous instances, the energy used to manufacture food packaging exceeds the inputs of energy for the food product.<sup>28</sup>

Packaging alone accounts for approximately 15% of the total energy used in the food system.<sup>29</sup>

After processing, the next step in the food system is transportation. Under the current structure of our food system, a processed food item will travel an average of over 1,300 miles, and produce will travel an even greater average distance of over 1,500 miles, before reaching the end consumer.<sup>30</sup> For example, one of the main regions for growing fresh vegetables in the United States is the San Joaquin Valley in California.<sup>31</sup> The process of transporting and distributing these items across the country entails additional energy consumption, depending almost entirely on oil-based fuels.<sup>32</sup> Furthermore, many food and food items travel not just nationally, but internationally, increasing the amount of energy consumed in transportation.<sup>33</sup> However, due to the size and complexity of the global food system, quantifying the amount of energy consumed by transportation through this global infrastructure is difficult.<sup>34</sup>

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<sup>25</sup> JOHN HENDRICKSON, CTR. FOR INTEGRATED AGRIC. SYS., ENERGY USE IN THE U.S. FOOD SYSTEM: A SUMMARY OF EXISTING RESEARCH AND ANALYSIS 5 (1994), *available at* <http://www.cias.wisc.edu/pdf/energyuse.pdf>.

<sup>26</sup> *Id.* at 6. “Processing” can refer to a variety of activities, such as transforming a raw agricultural crop like wheat into flour. It can also refer to the packaging of products. Some examples are mushrooms that are sold in plastic containers covered in plastic wrap, blueberries in plastic containers, and apples that have been sliced and put into plastic packaging.

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

<sup>28</sup> *Id.*

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

<sup>30</sup> HILL, *supra* note 11, at 1.

<sup>31</sup> HENDRICKSON, *supra* note 25, at 8.

<sup>32</sup> *Id.*

<sup>33</sup> See HALWEIL, *supra* note 10, at 37.

<sup>34</sup> See HENDRICKSON, *supra* note 25, at 8.

Using bagged, prewashed lettuce from Earthbound Farms as an example, author Michael Pollan discusses how much energy is consumed by the whole process discussed above, following the lettuce leaves after they have been machine-harvested:

A fan blows the cut leaves over a screen to shake out any pebbles or soil, after which a belt conveys the greens into white plastic totes that workers stack on pallets on a wagon trailing alongside. At the end of each row the pallets are loaded onto a refrigerated tractor trailer, entering a “cold chain” that will continue unbroken all the way to the produce section at your supermarket. . . . Once filled, the trucks deliver their cargo of leaves to the loading dock at the processing plant in San Juan Bautista, essentially a 200,000-square-foot refrigerator designed to maintain the lettuce at exactly thirty-six degrees through the entire process of sorting, mixing, washing, drying, and packaging.<sup>35</sup>

Once at the processing plant, the lettuce is washed three times, the first time in lightly chlorinated water.<sup>36</sup> Afterward, the lettuce is dried, weighed, and packaged. Energy is consumed during each step of this process. It is estimated that a one pound package of prewashed lettuce contains eighty calories of food energy, in comparison to the 4,600 calories of fossil fuel energy required to get that same lettuce from California to the East Coast.<sup>37</sup>

One of the benefits cited by consumers of locally grown food is that it helps address some of the above concerns regarding energy consumption.<sup>38</sup> While on-farm energy consumption may be comparable during the production phase, local foods may provide significant energy savings in the areas of processing and transportation.

In terms of processing, less packaging may be needed when food items are sold locally. One of the clearest examples of a venue for local food sales is a farmers’ market. At a typical farmers’ market, the produce offered for sale usually is picked either that morning or the day before and is displayed on benches or tables in its natural form.<sup>39</sup> It is not normally boxed, packaged, or sealed in plastic wrap. This presentation is in sharp contrast to traditional retail food sales where, of the total expense of packaging, about 33% of the cost results from the use of cardboard boxes commonly needed to ship processed food.<sup>40</sup>

Local food sales also reduce the number of food miles an item travels, thus reducing the amount of fossil fuels consumed in transportation.<sup>41</sup> Most transactions of

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<sup>35</sup> POLLAN, *supra* note 2, at 166-67.

<sup>36</sup> *Id.* at 167.

<sup>37</sup> *Id.*

<sup>38</sup> HILL, *supra* note 11, at 5.

<sup>39</sup> MICHAEL POLLAN, IN DEFENSE OF FOOD: AN EATER’S MANIFESTO 157 (2008).

<sup>40</sup> HELLER, *supra* note 12, at 29.

<sup>41</sup> See Sustainable Table, *The issues: buy local*, <http://www.sustainabletable.org/issues/buylocal>.

Advocates of local food often cite reduced food miles as leading to a reduction in fuel usage during transportation. This is equated with a reduction in the amount of carbon dioxide produced, which is

local food involve the harvesting or preparation of the food item by the farmer, followed by its sale either at a local farmers' market, through a CSA, or to a local restaurant. Whether it is fresh produce or a processed product such as farm-made cheese, maple syrup, or apple cider, the very nature of food sold locally means that it will not travel as far as most food distributed through conventional channels. Since transportation is heavily dependent on oil-based fuels and local foods are transported over much shorter distances, local food purchasing may provide a less energy-intensive alternative.<sup>42</sup>

#### *D. Social and Political Support for Local Farmers*

A related concept is the choice to buy local food to help support local farmers. By purchasing products locally, money directly supports the farmer. An average American farmer receives an average of about twenty cents for each dollar that a consumer spends on food.<sup>43</sup> The remainder covers other expenses such as processing, transportation, packing, and marketing.<sup>44</sup> With direct sales of local foods, farmers retain a much higher percentage of the food products' price.<sup>45</sup> The aggregate effect of consumers' decisions to purchase local foods can help to keep farmers in the profession of farming and keep land in agricultural production. This support is increasingly important as we continue to see farmers, particularly those with small or medium operations, struggle financially. The increase in the control of the farming industry by large multinational corporations has had negative consequences for many small farmers.<sup>46</sup> The United States has lost over 300,000 farmers since 1979, and the farmers who are still in business earn about 13% less for each dollar spent by consumers.<sup>47</sup> Without financial support, more farmers will be forced to leave the land, and in turn we

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important because carbon dioxide is a greenhouse gas linked to climate change. Energy Info. Admin., *Greenhouse Gases, Climate Change, and Energy*, available at <http://www.eia.doe.gov/bookshelf/brochures/greenhouse/greenhouse.pdf>. However, other research indicates that this may not be the case, and that the type of transportation system used is a better indicator of environmental health, rather than simply the number of miles that a product has traveled. "A food item traveling a short distance may produce more CO<sub>2</sub> than an item with high food miles, depending on how it is transported." HILL, *supra* note 11, at 4. According to the Leopold Center for Sustainable Agriculture at Iowa State University, water transportation is the most energy efficient form of transportation, followed by rail, truck, and air. RICH PIROG ET AL., LEOPOLD CTR. FOR SUSTAINABLE AGRIC., FOOD, FUEL, AND FREEWAYS: AN IOWA PERSPECTIVE ON HOW FAR FOOD TRAVELS, FUEL USAGE, AND GREENHOUSE GAS EMISSIONS 15, available at <http://www.leopold.iastate.edu/pubs/staff/ppp/foodmiles.htm>. Rich Pirog explains, "[c]ase in point; grapes shipped by water transport from Chile to Philadelphia, Pennsylvania rack up higher food miles than California grapes shipped by truck to Philadelphia. But since water transport is much more fuel-efficient, the fuel use and CO<sub>2</sub> emissions per pound of grapes transported are about the same for both systems." Rich Pirog, *Food Miles: A Simple Metaphor to Contrast Local and Global Food Systems*, HUNGER & ENVTL. NUTRITION NEWSL., Summer 2004, available at [http://www.leopold.iastate.edu/pubs/staff/files/local\\_foods\\_HEN0604.pdf](http://www.leopold.iastate.edu/pubs/staff/files/local_foods_HEN0604.pdf). This illustration demonstrates that it is necessary to consider more than just the number of miles a food has traveled to determine its potential environmental impact.

<sup>42</sup> See HENDRICKSON, *supra* note 25, at 8.

<sup>43</sup> Ikerd, *supra* note 14.

<sup>44</sup> *Id.*

<sup>45</sup> *See id.*

<sup>46</sup> See HILL, *supra* note 11, at 2.

<sup>47</sup> *Id.*

will see more farmland converted to other uses.<sup>48</sup> In addition, those farmers who sell locally and are supported by their community will also spend at least a part of their income at local businesses, which helps to strengthen the overall economy of a community.<sup>49</sup> Local food purchasing turns what could be a purely economic transaction into one that provides additional social benefits, important although difficult to quantify, to an entire community.

#### IV. WHERE LOCAL FOOD IS AVAILABLE

There are a number of venues through which consumers can purchase local foods. These can be broken down into two categories: direct sales from the farmer to the consumer, and sales with an intermediary between the farmer and consumer. Each of these categories will be discussed in detail below.

##### A. *Direct Sales to Consumers*

Local food is often available through direct marketing, which involves sales handled directly between the farmer or producer and the consumer. Direct marketing is a broad category and can include many different venues, such as farmers' markets, farm stands, community supported agriculture (CSAs), and pick-your-own farms.<sup>50</sup> Direct marketing is beneficial to farmers because it "lets producers sell their crops as 'products' rather than commodities, giving them the opportunity to be 'price setters' rather than 'price takers.'" It also gives farmers direct contact with consumers and lets them produce the types of food their customers desire."<sup>51</sup> Direct marketing is a business model which suits local food very well.

##### 1. Farmers' Markets

Farmers' markets are probably the best known form of direct marketing.<sup>52</sup> They are defined as "local open air markets held regularly during the growing season where producers sell directly to consumers."<sup>53</sup> The structure of each individual market will vary, depending on its location, the rules of the particular market, and the culture of the market itself.<sup>54</sup> For example, the Fayetteville Farmers' Market, located in Fayetteville, Arkansas, is open three days a week from April through October, and one day a week in

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<sup>48</sup> "The Nation's cropland acreage declined from 420 million acres in 1982 to 368 million acres in 2003, a decrease of about 12 percent. The net decline between 1997 and 2003 was 8 million acres, or about 2 percent." NATURAL RES. CONSERVATION SERV., 2003 ANNUAL NATURAL RESOURCES INVENTORY, available at <http://www.nrcs.usda.gov/technical/NRI/2003/nri03landuse-mrb.html>.

<sup>49</sup> Ikerd, *supra* note 14.

<sup>50</sup> LocalHarvest, *A Short Glossary of Direct Marketing Avenues*, <http://www.localharvest.org/descriptions.jsp> (last visited June 12, 2008).

<sup>51</sup> NEIL D. HAMILTON, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* 22 (1999).

<sup>52</sup> *See id.* at 25. *See also* NEIL D. HAMILTON, *FARMERS' MARKETS: RULES, REGULATIONS AND OPPORTUNITIES* (2002), available at [http://www.nationalaglawcenter.org/assets/articles/hamilton\\_farmersmarkets.pdf](http://www.nationalaglawcenter.org/assets/articles/hamilton_farmersmarkets.pdf).

<sup>53</sup> HAMILTON, *supra* note 51, at 22.

<sup>54</sup> *See generally* Farmers' Legal Action Group, Inc., *Understanding Farmers' Market Rules* (2006), available at <http://www.flaginc.org/topics/pubs/arts/FarmersMarket.pdf>.

November.<sup>55</sup> Vendors must be from a specified four-county area.<sup>56</sup> Consumers can expect to find flowers, plants, produce, meat, and dairy products as available throughout the growing season.<sup>57</sup>

In comparison, the Norwich Farmers' Market, located in Norwich, Vermont, historically has been open one day each week from May through October.<sup>58</sup> In November 2006, the Market took the innovative step of running a Winter Farmers' Market which was open one day each month in the off-season (November through April). It is intended to be "a venue for local farms, food producers and craftspeople to sell their wares during the winter months when outdoor summer farmers' markets are closed, and will serve as a reminder that a wide variety of locally grown food is available during the fall, winter, and spring." The Winter Market plans to offer products such as meats, eggs, dairy products, some fruits and vegetables, baked goods, prepared foods, and crafts.<sup>59</sup> The Norwich Farmers' Market uses a formula to determine the types of food and products that may be sold there; its goal is to have 60% of the products be agricultural, horticultural, or animal products; 20% crafts; and 20% prepared foods and baked goods.<sup>60</sup> This market also limits vendors to selling products grown or produced within a four county region. It is interesting to note that this geographical distinction crosses state lines, as two of the counties are located in Vermont and two are located in New Hampshire.<sup>61</sup>

Consumers seem to appreciate the opportunities that farmers' markets provide for buying local food, as evidenced by the dramatic increase in the numbers of farmers' markets throughout the United States. According to the United States Department of Agriculture (USDA), 4,385 farmers' markets exist today, compared to only 300 in the 1970s.<sup>62</sup> These markets are visited by about three million customers each week, and over \$1 billion is spent at them each year.<sup>63</sup> As noted in the discussion of energy consumption, the produce sold at farmers' markets is typically harvested on the day of the market or the day before. As a result, the produce is very fresh. In addition, the consumers are able to have direct contact with the growers. Farmers benefit because they are able to keep a larger percentage of the price of their food, as there is no middleman to pay.<sup>64</sup> Whether it is the direct contact with the farmers or the quality of the food, farmers' markets obviously have a strong appeal which draws increasing numbers of consumers.

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<sup>55</sup> Fayetteville Farmers' Market, <http://www.fayettevillefarmersmarket.org>.

<sup>56</sup> Fayetteville Farmers' Market, *Application Form*, <http://www.fayettevillefarmersmarket.org/contact.html> (follow "Application Form" hyperlink; last visited July 15, 2008).

<sup>57</sup> Fayetteville Farmers' Market, *supra* note 55.

<sup>58</sup> Norwich Farmers Market, <http://www.norwichfarmersmarket.org>.

<sup>59</sup> Vital Communities, *Norwich Farmers Market Launches Winter Market*, <http://www.vitalcommunities.org/articles/Article.cfm?ArtID=623>.

<sup>60</sup> Norwich Farmers Market, *Membership*, [http://www.norwichfarmersmarket.org/stories/storyReader\\$13](http://www.norwichfarmersmarket.org/stories/storyReader$13).

<sup>61</sup> *Id.*

<sup>62</sup> Agric. Mktg. Serv. (AMS), USDA, *Wholesale and Farmers Markets*, <http://www.ams.usda.gov/farmersmarkets/facts.htm>; HALWEIL, *supra* note 10, at 111.

<sup>63</sup> HALWEIL, *supra* note 10, at 111-12.

<sup>64</sup> See HAMILTON, *supra* note 51, at 13, 22.

## 2. On-Farm Sales

Another example of direct marketing is on-farm sales, which allow consumers to go to the farm itself to buy local food. This approach can take several different forms. One way is for the farmer to establish a farm stand from which to sell his or her goods. Farm stands will generally be located right on the farm property; however, some are located off the property itself, but are still within close proximity to the farm.<sup>65</sup> Farm stands are typically inexpensive to operate and farmers usually advertise using only a few signs—characteristics that hold a strong appeal for many farmers who want a simple way to reach out directly to the public.<sup>66</sup> Some farmers have established their businesses, or a part of their businesses, as pick-your-own operations (PYO). As the name suggests, these businesses are structured such that consumers can visit the farm and harvest the type and amount of that crop for themselves. This is commonly done with fruit crops, such as berries and apples, and some farms have PYO operations for pumpkins and flowers.<sup>67</sup> PYO operations provide consumers with the opportunity get a glimpse into the work that goes into producing food, even if only at the harvesting stage. For farmers, it means less labor, both in terms of harvesting and transporting the products. However, it also brings certain liability issues, a discussion that is beyond the scope of this article.<sup>68</sup>

Both farm stands and PYO operations allow consumers to obtain local food directly from the farm. The food procured in this manner is very fresh, and minimal to no processing occurs before the food reaches the consumers. As with farmers' markets, on-farm sales provide the customer with direct contact with the farmer. They also permit the farmer to keep all of the money earned on a product because there is no intermediary.

## 3. Community Supported Agriculture

Community supported agriculture (CSA) is another business structure used to sell local food directly between farmers and consumers. CSAs are structured so that consumers buy a "share" in the harvest for a growing season, which they pay for before the growing season starts. These upfront payments provide capital for the farmers to use to at the beginning of the season when they have the greatest expenses.<sup>69</sup> CSAs are typically diversified, meaning that more than one type of crop is grown on an individual farm. The consumer is buying a share in whatever crops are harvested on any given week.<sup>70</sup> One of the other financial benefits to farmers who use this structure is the assurance of an income, no matter what happens to the crop. For example, on a conventional farm, if the farmer produces only corn and has trouble with the crop due to pests or weather in a particular year, the farmer stands to lose all of his or her income for

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<sup>65</sup> *Id.* at 25.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 26.

<sup>68</sup> These issues include insurance coverage and landowner liability considerations. *See id.* at 26, 139-57; *see also* the National Agricultural Law Center's Landowner Liability Reading Room, <http://www.nationalaglawcenter.org/readingrooms/landownerliability>.

<sup>69</sup> *See* HALWEIL, *supra* note 10, at 112-13.

<sup>70</sup> *Id.* at 112.

that year. CSAs are structured so that the consumer shares in this risk.<sup>71</sup> In addition, because the crops are diversified, a farmer is less likely to end up losing his or her entire crop in any given year. If one crop has trouble, the CSA members will not get that particular crop, but they will still receive a portion of all of the other produce that is harvested.

Every CSA is set up differently. In addition to fruits and vegetables, many offer other items as well, such as milk, meat, honey, flowers, and maple syrup.<sup>72</sup> Members receive these goods on a schedule established by the farm, often once a week. CSAs vary in their methods of delivery to their shareholders; some require the members to pick up their shares from the farm, while others will deliver the shares to their members.

The number of CSAs, like farmers' markets, is increasing. In 1985, there was one CSA in the United States, and today there are over 1,500.<sup>73</sup> "This success is, to some extent, a testament to the high quality of the produce and the social interactions they offer."<sup>74</sup> Again, as in the case of farmers' markets, consumers seem to find something in CSAs which fulfills a certain need that is not being addressed elsewhere in the food system.

#### *B. Sales Through Intermediaries*

In addition to food sales directly between the farmer and the consumer, local food is also available to consumers through venues in which it first passes through an intermediary. Restaurants, government institutions, and retail grocery stores are all examples of such venues.<sup>75</sup>

Consumers may be able to find local food at some restaurants in their area.<sup>76</sup> The previously mentioned Google's Café 150 is a good example.<sup>77</sup> In this situation, the farmers sell directly to the restaurant; therefore, they still receive the full value of the product being sold. The farmers also benefit from having a ready market for their products. The restaurants gain a supply of fresh produce and other locally produced food items and have the benefit of being able to charge accordingly for the menu items created with local ingredients. "An increasing number of restaurants and food stores are interested in obtaining high quality locally produced food. . . . In these cases buyers will

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<sup>71</sup> GUSSOW, *supra* note 8, at 259.

<sup>72</sup> Wilson College, *What is Community Supported Agriculture (CSA)?*, <http://www.wilson.edu/wilson/asp/content.asp?id=1273>.

<sup>73</sup> HALWEIL, *supra* note 10, at 112. For information about the early history of the CSA movement, see Wilson College, *supra* note 72.

<sup>74</sup> HALWEIL, *supra* note 10, at 113.

<sup>75</sup> See Michael S. Rosenwald, *A Growing Trend: Small, Local and Organic*, WASH. POST, Nov. 6, 2006, at D1; see also GAIL FEENSTRA ET AL., *SELLING DIRECTLY TO RESTAURANTS AND RETAILERS* (2003), available at <http://www.sarep.ucdavis.edu/cdpp/sellldirect.pdf>; ROBERT LUEDEMAN & NEIL D. HAMILTON, *SELLING TO INSTITUTIONS: AN IOWA FARMER'S GUIDE* (2003), available at [http://www.leopold.iastate.edu/research/marketing\\_files/institutions\\_DALC.pdf](http://www.leopold.iastate.edu/research/marketing_files/institutions_DALC.pdf).

<sup>76</sup> See generally JANET BACHMANN, NAT'L SUSTAINABLE AGRIC. INFO. SERV., *SELLING TO RESTAURANTS* (2004), available at <http://attra.ncat.org/attra-pub/PDF/sellingtorestaurants.pdf>.

<sup>77</sup> See Cloud, *supra* note 6.

often pay a premium to obtain dependable local supplies of the quality products they desire.”<sup>78</sup> Restaurant patrons also benefit by having access to meals produced with fresh, high quality ingredients.<sup>79</sup>

The local-sourcing trend goes beyond restaurants. An increasing number of institutions, such as schools, colleges and universities, hospitals, and government entities, are also making efforts to source their food from local producers.<sup>80</sup> For example, the goal of farm-to-school programs is to get fresh, local food from farms into the school systems. These programs will often have an educational component—farm visits, a demonstration garden, or lessons on nutrition—to reinforce an overall message about eating well. The National Farm to School Program, based at the Center for Food and Justice at Occidental College, explains, “[t]hese programs connect schools with local farms with the objectives of serving healthy meals in school cafeterias, improving student nutrition, providing health and nutrition education opportunities that will last a lifetime, and supporting local small farmers.”<sup>81</sup> At least thirty-eight states now have farm-to-school programs.<sup>82</sup>

The purchase of local food by other institutional buyers, such as hospitals, universities, and government entities, has a similar effect to the farm-to-school programs.<sup>83</sup> Like sales to restaurants, institutional purchasing provides farmers with an assured market for their products, and it provides the end consumer with meals made from high quality, locally grown, fresh products.

Retail grocers are increasingly taking note of consumer interest in local food. Two large international chains have joined this movement to promote and sell local food. The first is Whole Foods, a large grocery chain known for its sale of “natural” products. The company has described its philosophy towards local food:

Our history and reputation are intimately linked to our support of local farmers. For more than 25 years, we have worked to provide you with the broadest possible selection of the highest quality produce available. Our search for that produce begins right outside our front door in every community where we do business. We are permanently committed to buying from local producers whose fruits and vegetables meet our high quality standards . . . . We are greatly increasing our efforts in this regard

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<sup>78</sup> HAMILTON, *supra* note 51, at 27.

<sup>79</sup> There are a number of restaurants across the United States that use the sale of local food as a marketing tool. A few examples are the Farmers Diner in Quechee, Vermont, the White Dog Café in Philadelphia, Pennsylvania, and the Greenhouse Grille in Fayetteville, Arkansas. More information can be found on these establishments’ websites: The Farmers Diner, <http://www.farmersdiner.com>; White Dog Café, <http://www.whitedog.com>; Greenhouse Grille, <http://www.localharvest.org/restaurants/M17451>.

<sup>80</sup> See HALWEIL, *supra* note 10, at 117-18.

<sup>81</sup> See Nat’l Farm to School Program, *What is Farm to School?*, <http://www.farmtoschool.org/about.htm>.

<sup>82</sup> Nat’l Farm to School Program, <http://www.farmtoschool.org>.

<sup>83</sup> See generally ELIZABETH SACHS & GAIL FEENSTRA, AGRIC. SUSTAINABILITY INST., EMERGING LOCAL FOOD PURCHASING INITIATIVES IN NORTHERN CALIFORNIA HOSPITALS, available at [http://sarep.ucdavis.edu/CDPP/fti/Farm\\_To\\_Hospital\\_WebFinal.pdf](http://sarep.ucdavis.edu/CDPP/fti/Farm_To_Hospital_WebFinal.pdf); ATLANTA LOCAL FOOD INITIATIVE, A PLAN FOR ATLANTA’S SUSTAINABLE FOOD FUTURE, available at <http://www.georgiaorganics.org/Files/ALFI.pdf>.

by further empowering our individual store and regional buyers to seek out locally grown produce.<sup>84</sup>

Whole Foods uses the term “locally grown” for produce, and defines it as produce which has traveled seven hours or less by car or truck from the farm to its facility.<sup>85</sup> In addition to its stated commitment to buying local produce when possible, Whole Foods has also started a pilot loan program for local producers. To further support local food, the company has committed \$10,000,000 annually in the form of low-interest loans for small-scale, local producers.<sup>86</sup>

The other large international retail store that is entering the local food market is Walmart. In January 2007, Walmart began testing “buy-local” programs in two of its stores in Ohio.<sup>87</sup> The program includes products that are either made in Ohio or supplied by companies based in Ohio, and it claims to have purchased \$12.5 billion of products from 2,251 Ohio suppliers in 2006.<sup>88</sup> It is important to note, however, that Walmart’s “buy-local” campaign includes both food items and nonfood items.

The sale of local food in large, chain retail grocery stores brings an interesting dynamic to the local food movement. On the one hand, it does provide consumer access to locally grown foods. It also provides farmers with a consistent market for their goods. However, it is less clear whether it fulfills some of the other, non-tangible goals of the movement, such as creating a sense of connection and community between consumers and farmers and educating consumers about where their food comes from and how it is produced. It will be interesting to see how the foray of large chain stores, such as Whole Foods and Walmart, will affect the marketing and sales of local foods, as well as the culture of the local food movement, as it moves forward.<sup>89</sup>

## V. FEDERAL GOVERNMENT INVOLVEMENT IN LOCAL FOOD

Minimal federal regulation applies specifically to local food, and there is no federal regulation of local food per se. The term “local food” is not defined by federal statute or regulation and there is no law dictating how local food can be sold; however, some federal policies and laws affect, or have the potential to affect, the sale and promotion of local food.

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<sup>84</sup> Whole Foods Market, *Locally Grown—The Whole Foods Market Promise*, <http://www.wholefoodsmarket.com/products/locallygrown/index.html>.

<sup>85</sup> *Id.*

<sup>86</sup> Whole Foods Market, *Local Producer Loan Program*, <http://www.wholefoodsmarket.com/products/locallygrown/lplp/index.html>.

<sup>87</sup> Jeffrey Sheban, *Tested in Columbus: Wal-Mart Broadens ‘Buy-Local’ Emphasis*, COLUMBUS DISPATCH, Apr. 12, 2007, at 1F.

<sup>88</sup> *Id.*

<sup>89</sup> Whether large retail stores will actually benefit the local foods movement has been questioned. While some see clear benefits, such as increased access and potentially lower prices for consumers, others worry that it will result in lower prices for farmers and a smaller variety of crops being grown, dictated by the demands of major retailers. See Candice Novak, *Can Wal-Mart Do ‘Local’?*, U.S. NEWS & WORLD REP., July 24, 2008, available at <http://www.usnews.com/articles/business/economy/2008/07/24/can-wal-mart-do-local.html>.

For example, the Farmer-to-Consumer Direct Marketing Act of 1976,<sup>90</sup> administered by United States Department of Agriculture (USDA), is relevant to a discussion of local food. The purpose of this statute is “to promote, through appropriate means and on an economically sustainable basis, the development and expansion of direct marketing of agricultural commodities from farmers to consumers.”<sup>91</sup> Direct marketing is defined as

the marketing of agricultural commodities at any marketplace (including, but not limited to, roadside stands, city markets, and vehicles used for house-to-house marketing of agricultural commodities) established and maintained for the purpose of enabling farmers to sell (either individually or through a farmers’ organization directly representing the farmers who produced the commodities being sold) their agricultural commodities directly to individual consumers, or organizations representing consumers, in a manner calculated to lower the cost and increase the quality of food to such consumers while providing increased financial returns to the farmers.<sup>92</sup>

This statute has three substantive sections. The first is a directive that the Secretary of Agriculture work with state departments of agriculture to promote direct marketing within those states. The Secretary is to prioritize assistance “on the basis of the types of activities which are needed in the State.”<sup>93</sup> The types of activities the Secretary is to consider includes:

- (1) sponsoring conferences which are designed to facilitate the sharing of information (among farm producers, consumers, and other interested persons or groups) concerning the establishment and operation of direct marketing from farmers to consumers;
- (2) compiling laws and regulations relevant to the conduct of the various methods of such direct marketing within the State, formulating drafts and enabling legislation needed to facilitate such direct marketing, determining feasible locations for additional facilities for such direct marketing, and preparing and disseminating practical information on the establishment and operation of such direct marketing; and
- (3) providing technical assistance for the purpose of aiding interested individuals or groups in the establishment of arrangements for direct marketing from farmers to consumers.<sup>94</sup>

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<sup>90</sup> 7 U.S.C. §§ 3001-3007 (1994).

<sup>91</sup> *Id.* § 3001.

<sup>92</sup> *Id.* § 3002.

<sup>93</sup> 7 U.S.C. § 3004(a) (Supp.V 2005).

<sup>94</sup> *Id.*

The Secretary is further commanded to provide assistance to states in developing farmers' markets.<sup>95</sup> The Secretary is to take consumer preferences into account when carrying out these provisions.<sup>96</sup>

The second substantive provision of the statute creates the Farmers' Market Promotion Program (Program).<sup>97</sup> The dual purposes of the Program are:

(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, and other direct producer-to-consumer infrastructure.<sup>98</sup> To carry out these purposes, grants are conferred to eligible entities. Eligible entities can include agricultural cooperatives, local governments, nonprofit corporations, public benefit corporations, economic development corporations, and regional farmers' market authorities.<sup>99</sup> For fiscal year 2007, approximately \$1 million was allocated for the Program.<sup>100</sup> Individual grants cannot exceed \$75 thousand.<sup>101</sup>

The third substantive provision is the creation of the Seniors Farmers' Market Nutrition Program (SFMNP).<sup>102</sup> The purpose of the SFMNP is as follows:

(1) to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors; (2) to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and community supported agriculture programs; and (3) to develop or aid in the development of new and additional farmers' markets, roadside stands, and community support agriculture programs.<sup>103</sup>

In order to meet these three goals, the USDA provides grants to states, territories of the United States, and Indian tribal governments.<sup>104</sup> These entities then give assistance to low-income seniors in the form of coupons, which can be used towards the purchase of eligible foods from farmers' markets, roadside stands,

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<sup>95</sup> *Id.* § 3004(b).

<sup>96</sup> *Id.* § 3004(c).

<sup>97</sup> *Id.* § 3005.

<sup>98</sup> 7 U.S.C. § 3005(b) (Supp.V 2005).

<sup>99</sup> *Id.* § 3005(c). The Secretary may also designate other eligible entities under the program. *Id.*

<sup>100</sup> AMS, *supra* note 62.

<sup>101</sup> *Id.*

<sup>102</sup> 7 U.S.C. § 3007 (Supp. V 2005).

<sup>103</sup> *Id.* § 3007(b).

<sup>104</sup> Food & Nutrition Serv. (FNS), USDA, *Senior Farmers' Market Nutrition Program*, <http://www.fns.usda.gov/wic/SeniorFMNP/SeniorFMNPOverview.htm>.

and Community Supported Agriculture farms (CSAs).<sup>105</sup> The USDA has defined eligible foods to be locally grown fresh fruits, vegetables, and herbs that have not been processed or prepared in any way, except for cleaning.<sup>106</sup> Under this definition, the USDA has determined that dried fruits and vegetables, such as raisins, prunes, and dried chili peppers are not eligible.<sup>107</sup> In addition, “[p]otted fruit or vegetable plants, potted or dried herbs, wild rice, nuts of any kind (even raw), honey, maple syrup, cider, seeds, eggs, meat, cheese and seafood are also not eligible foods for purposes of the SFMNP.”<sup>108</sup>

The SFMNP was allocated \$15 million per year for fiscal years 2003 through 2007.<sup>109</sup> According to the Food and Nutrition Service (FNS), the USDA agency responsible for administering the program, 825,000 seniors were served by 14,575 farmers under the SFMNP in 2006.<sup>110</sup>

The FNS also administers the WIC Farmers’ Market Nutrition Program (FMNP), authorized under the Child Nutrition Act of 1966.<sup>111</sup> The FMNP is similar to the SFMNP, except that the target population is “women, infants and children who are nutritionally at risk.”<sup>112</sup> The structure of the program is similar; the states are granted money to allocate to eligible participants for use with farmers, farmers’ markets and roadside stands.<sup>113</sup> Thirty-seven states currently participate in the FMNP, and 2.6 million people participated in the program in fiscal year 2005.<sup>114</sup>

The existence of both the Seniors Farmers’ Market Nutrition Program and the Farmers’ Market Nutrition Program, as well as the Farmers’ Market Promotion Program, indicates that Congress has recognized the significance of local food venues like farmers’ markets and CSAs, and the important role they can play in providing fresh, nutritious food to the public. In doing so, Congress has also indicated a willingness to support local food.

In addition to the laws discussed above specifically addressing direct marketing and local food, other federal laws do not deal directly with local food but may have an impact on them nonetheless. Some federal laws impact the sale of particular food items which, by their nature, are local foods. Raw milk is a good example of one such product.

Raw milk is milk that has not been pasteurized. Pasteurization is “[t]he process of heating a beverage or other food, such as milk . . . in order to kill microorganisms that

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<sup>105</sup> 7 C.F.R. § 249.10 (2008).

<sup>106</sup> *Id.* § 249.2.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> 7 U.S.C. § 3007 (2002).

<sup>110</sup> FNS, *supra* note 104.

<sup>111</sup> 42 U.S.C. §§ 1771 – 1791 (2002).

<sup>112</sup> 7 C.F.R. § 248.1 (2008).

<sup>113</sup> FNS, *WIC Farmers’ Market Nutrition Program*, <http://www.fns.usda.gov/wic/FMNP/FMNPfaqs.htm>.

<sup>114</sup> *Id.* The District of Columbia, Guam, Puerto Rico, and five Indian Tribal Organizations also administer the program. *Id.*

could cause disease, spoilage, or undesired fermentation.”<sup>115</sup> The sale of raw milk is a local food issue because it becomes more difficult to ship raw milk over long distances, and it is often sold right from the farm.<sup>116</sup>

The Food and Drug Administration (FDA) is the federal agency that regulates milk under the authority of the Federal Food, Drug, and Cosmetic Act.<sup>117</sup> The relevant regulation states that all milk or milk products intended for human consumption that are entering interstate commerce must be pasteurized.<sup>118</sup> This requirement is based on the FDA’s conclusion that “[r]aw milk, no matter how carefully produced, may be unsafe,” and the agency strongly advises against the consumption of raw milk.<sup>119</sup> Individual states are left to regulate raw milk that is sold intrastate (including the decision of whether to allow the sale of raw milk at all), as well as raw milk that is sold for purposes other than human consumption.

In order to promote the uniform regulation of milk and milk products, the FDA has drafted a Grade “A” Pasteurized Milk Ordinance (PMO), a model statute regarding milk sanitation practices.<sup>120</sup> It was written “in order to encourage a greater uniformity and a higher level of excellence of milk sanitation practice in the United States. An important purpose of this recommended standard is to facilitate the shipment and acceptance of milk and milk products of high sanitary quality in interstate and intrastate commerce.”<sup>121</sup> The agency recommends that states adopt the model statute, although there is no requirement to do so, and that they keep their state regulation as close to the

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<sup>115</sup> American Heritage Dictionary (4th ed. 2001).

<sup>116</sup> While primarily a local food issue at the moment, new methods are being developed that could improve the ability to ship raw milk longer distances. See, e.g., M. Rajagopal et al., *Low Pressure CO<sub>2</sub> Storage of Raw Milk: Microbiological Effects*, 88 J. DAIRY SCI. 3130 (2005).

<sup>117</sup> 21 U.S.C. §§ 301–399.

<sup>118</sup> 21 C.F.R. § 1240.61 (2008).

<sup>119</sup> Ctr. for Food Safety & Applied Nutrition (CFSAN), Food & Drug Admin. (FDA), Position Statement: Sale/Consumption of Raw Milk, available at <http://www.cfsan.fda.gov/~ear/mi-03-4.html>. The health benefits and risks associated with the consumption of raw milk are contested issues. Proponents of raw milk argue that not only is it safe to consume, but also that pasteurization, in effect, destroys some of the components of milk which make it healthy. A Campaign for Real Milk, a project of the Weston A. Price Foundation, claims that “[p]asteurization destroys enzymes, diminishes vitamin content, denatures fragile milk proteins, destroys vitamins C, B12 and B6, kills beneficial bacteria, promotes pathogens and is associated with allergies, increased tooth decay, colic in infants, growth problems in children, osteoporosis, arthritis, heart disease and cancer.” A Campaign for Real Milk, Weston A. Price Found., *What is Real Milk?*, <http://www.realmilk.com/what.html> (last visited June 12, 2008). The FDA’s Department of Health and Human Services, on the other hand, has clearly come out against the consumption of raw milk in its Position Statement. The FDA argues that it has

determined that pasteurization was the only means to assure the destruction of the pathogenic microorganisms that might be present . . . . FDA and the Centers for Disease Control and Prevention (CDC) in Atlanta have documented illnesses associated with the consumption of raw milk, including ‘certified raw milk’ and have stated that the risks of consuming raw milk far outweigh any benefits.

CFSAN, *supra* note 119.

<sup>120</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., GRADE “A” PASTEURIZED MILK ORDINANCE v (2003 Revision), available at <http://www.cfsan.fda.gov/~ear/pmo01.html#foreword>.

<sup>121</sup> *Id.*

model as possible for purposes of national uniformity.<sup>122</sup> However, the federal government has not expressly preempted this area, and states are permitted to make changes to the PMO if they choose to adopt it.

The PMO states that “only Grade ‘A’ pasteurized, ultra-pasteurized, or aseptically processed milk and milk products shall be sold to the final consumer, to restaurants, soda fountains, grocery stores or similar establishments,” thus prohibiting the sale of raw milk.<sup>123</sup> Some states have created exemptions to this restriction when they adopted the PMO. Vermont, for example, has created an exemption if one is selling less than fifty quarts per day of raw milk.<sup>124</sup> In Arkansas, one can only sell raw goat milk, up to 100 gallons per month, and it must be sold directly to the consumer on the farm.<sup>125</sup>

The sale of raw milk is an issue because some consumers want to be able to purchase raw milk, just as some farmers want to be able to provide it to the public.<sup>126</sup> Again, if a state has an exemption for the sale of a limited amount of raw milk, as is the case in Vermont, then a farmer can sell up to that amount; however, these exemptions are often for very limited quantities. As an alternative, farmers have created a mechanism for dealing with this issue— “milk share” or “cow share” programs. These arrangements are structured so that consumers actually purchase a cow (or purchase a share in a cow) and then pay the farmer a fee for the care and boarding of the animal.<sup>127</sup> The farmer milks the cow and “gives” the raw milk to the consumer. The farmer is not selling the raw milk to the consumer, because the milk is coming from a cow that the consumer owns, and money is not exchanged for the receipt of the milk itself.

Due to the structure of cow share programs and the technicality that the milk is not being sold, this system does not violate the FDA’s prohibition against the sale of raw milk. The issue then becomes a matter of whether this arrangement is valid under state law.<sup>128</sup>

Colorado is an example of a state that has promulgated legislation to address cow share programs directly. In 2005, the state passed legislation that exempts cow share programs from their definition of “sale.” The statute provides, “[t]he acquisition of raw milk from cows or goats by a consumer for use or consumption by the consumer shall not

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 109.

<sup>124</sup> Vt. Act of Apr. 22, 2008, No.101, H. 616 (to be codified at VT. STAT. ANN. 6, § 2723). The limit was increased from twenty-five quarts per day in April 2008. A prior version of the 2008 bill would have allowed an unlimited amount of raw milk to be sold per day if the seller was certified, but this provision was cut from the final bill due to fears that its inclusion would jeopardize passage of the legislation. See Robert Plain, *Taking the unpasteurized milk movement national*, BRATTLEBORO REFORMER (Vt.), May 10, 2008.

<sup>125</sup> ARK. CODE ANN. § 20-59-248 (1993).

<sup>126</sup> For information on the alleged health benefits of consuming raw milk, see A Campaign for Real Milk, Weston A. Price Found., <http://www.realmilk.com>.

<sup>127</sup> A Campaign for Real Milk, Weston A. Price Found., *Share Agreements: Cow Shares, Herd Shares, Farm Shares*, <http://www.realmilk.com/cowfarmshare.html>.

<sup>128</sup> For a listing of individual states’ regulations of raw milk, see A Campaign for Real Milk, Weston A. Price Found., *United States*, <http://www.realmilk.com/happening.html>.

constitute the sale of raw milk and shall not be prohibited” if the statute’s provisions are met.<sup>129</sup> The statute specifies that the milk must be obtained directly from the farm where the animal providing the milk is located.<sup>130</sup> The consumer and the farmer must have a written contract, including a bill of sale for the interest (the “share”) and a boarding contract, and the farmer must provide a label stating that the milk is not pasteurized.<sup>131</sup> In addition, farms engaged in cow share programs must be registered with the Colorado Department of Public Health and Environment.<sup>132</sup> The statute is also very clear that raw milk may only pass from the farmer to the consumer.<sup>133</sup> The consumer may not sell the raw milk obtained through the cow share, and retail sale of raw milk is strictly prohibited.<sup>134</sup>

The Colorado statute is a good compromise. It permits access to raw milk for consumers who are interested in purchasing it. The clear labeling regarding pasteurization and the requirement that farms register with the Department of Public Health and Environment offer a layer of protection to consumers. This statute is beneficial for farmers who are interested in meeting consumer demand for raw milk, as it offers a way for them to provide this product, and the extent of regulation does not appear to be overly burdensome. Lastly, it allows the state to make raw milk available to those who want it, while at the same time limiting accessibility. In the event that a problem occurs with the milk, tracing the problem back to the source would be easier for the state.

## VI. CONCLUSION

Consumer awareness of and interest in local food is increasing. This trend can be seen in the increase in the number of farmers’ markets, Community Supported Agriculture farms, and other systems of direct marketing. In addition, the fact that some retail giants are now promoting local food, as well as the federal government’s recognition of the importance of direct marketing of locally grown food, is significant. These varying interests are all parts of the broader local food movement.

The local food movement is important because it provides benefits to producers, consumers, and the communities in which they live. Author Brian Halweil sums up nicely the effect that local food sales can have on both the farmer and the local community:

As more farmers raise a variety of crops for local markets, it can quickly become easier and cheaper for school cafeterias, restaurants, government offices, and households to incorporate local foods into their cuisine. The presence of a farmers market or community garden often inspires neighboring areas to create their own, and the possibilities for start-up

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<sup>129</sup> COLO. REV. STAT. § 25-5-5-117(1) (2005).

<sup>130</sup> *Id.* § 25-5-5-117(1)(a).

<sup>131</sup> *Id.* § 25-5-5-117(1)(b), (c).

<sup>132</sup> *Id.* § 25-5-5-117(2)

<sup>133</sup> *Id.* § 25-5-5-117(3), (4).

<sup>134</sup> COLO. REV. STAT. § 25-5-5-117(3), (4) (2005).

food businesses, including bakeries, butchers, greengrocers, canneries, and caterers, multiply with the growing availability of local foods.<sup>135</sup>

When these benefits, as well as the others highlighted in this article, are considered, this movement's growing momentum is not surprising. The interest in local food which has been developing in recent years seems likely to continue to grow in the future.

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<sup>135</sup> HALWEIL, *supra* note 10, at 12.