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SUPPORT FOR LOCAL FOOD IN THE 2014 FARM
BILL

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I. INTRODUCTION

I have been following the intersection of legal issues and the local food movement since its inception. In 2008, I published an article entitled “Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement.”¹ That article was the first to be published in a legal journal that was specifically in regards to the applicable laws and policies on local food. At that point, the local food movement was a grass roots movement in its infancy. This is particularly true with regards to the legal framework for local food systems. The purpose of this Article is to demonstrate how far local foods have progressed—from a movement, to a viable sector of the agricultural economy in its own right.

There has been a shift in local foods from grassroots movement to the next level, where it has become more established in the mainstream. The legal framework has also continued to develop, and there are certainly more laws and policies specifically crafted with local food systems in mind than there were even six years ago. In addition, local food systems have enjoyed increasing support in terms of government programs and funding in recent years, and this trend continues to grow. I think it is important to consider this support as a show of how established local food has become. The most notable area to find information on these programs and funding is the 2014 Farm Bill, which is why I chose to focus on this area for this presentation and article. I have also included a short section on other federal programs that support local food, that are found outside of the Farm Bill, followed by the upcoming trends for local food.

II. WHAT IS LOCAL FOOD?

Right now, there is no one set legal definition of the term “local food.” So, what does it mean? The answer depends on who is defining the term, and in what context it is being used. Because local food is not legally defined, businesses, non-profits, universities, and other organizations may define the term in whatever way they choose. This section will explore some of the common meanings, and provide some examples. Looking at the history and context of what this term means can provide insight into how it has evolved, and much momentum and interest it has gained, over the past ten years.

To start, the first federal definition of “local food” was provided by the federal government in the text of the 2008 Farm Bill.² Under Title VI, the Rural Development title, the Business and Industry (B&I) loan and loan guarantee

1. Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL’Y 45 (2008).

2. See generally Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 923.

program was amended to include a provision that stipulated five percent of the funds must be used to support local food production.³ For the purposes of this loan program, the definition of locally or regionally produced agricultural food product means:

any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product or the State in which the product is produced.⁴

It is important to note that this definition applies only within the context of this particular loan program, and is not legally binding in other settings. This is significant, as it is the first instance the federal government created a statutory definition pertaining to local foods.

Some states have also passed laws in regards to local food. Not surprisingly, these laws typically define local food as products coming from within that particular state. For example, Illinois passed the Local Food, Farms, and Jobs Act, which went into effect in August of 2009.⁵ The overall goal of this law is to strengthen local food systems within the state of Illinois.⁶ The significant parts of this legislation are the creation of the Illinois Local Food, Farms, and Jobs Council, and local food production targets for state agencies and state-funded institutions of twenty percent and ten percent, respectively, by 2020.⁷ For the purposes of this legislation, it is clearly stated that “[l]ocal farm or food products are products grown, processed, packaged, and distributed by Illinois citizens or businesses located wholly within the borders of Illinois.”⁸

An example of how an educational institution has defined the term is Emory University, a private university located in Atlanta, Georgia. Under their self-created guidelines, the school has set out to have seventy-five percent of the food in its hospitals and cafeterias be locally or sustainably grown by 2015.⁹ Emory University has adopted the position that, “[s]ustainably grown food supports environmental health, worker welfare and wages, and farm viability, as well as taste and nutrition.”¹⁰ For these purposes, the geographic boundary for local food to qualify as local is divided into a two-tiered system.¹¹ The first tier represents

3. 7 U.S.C. §§ 1926(a)(1), 1926(a)(26)(c) (2012), *amended by* Agriculture Act of 2014, Pub. L. No. 113-79, § 6006, 128 Stat. 649, 842-43.

4. 7 C.F.R. § 4284.902 (2015).

5. 30 ILL. COMP. STAT. 595 (2009).

6. *See id.*

7. *Id.* 595/10(a),(b).

8. *Id.* 595/5.

9. *Sustainable Food*, EMORY UNIV., <http://sustainability.emory.edu/page/1008/Sustainable-Food> (last visited Sept. 16, 2015).

10. *Id.*

11. *Id.*

the highest priority purchasing area, which is from within the state of Georgia.¹² The second tier represents the second priority purchasing area, which is from an eight-state region, which includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.¹³

Walmart provides an example of how a private business has defined local food. In 2010, the company committed to a plan in which nine percent of all of the produce it sold in the United States would be locally grown.¹⁴ “Wal-Mart defines local produce as that grown and sold in the same state.”¹⁵ This is important, because, “[g]iven that Wal-Mart is the world’s largest grocer, with one of the biggest food supply chains, any change it made would have wide implications.”¹⁶

III. LOCAL FOOD IN THE 2014 FARM BILL

The purpose of this section is to highlight some of the most meaningful sections of the 2014 Farm Bill that serve to enhance local food production and local food systems. Due to the limited scope of this Article, it will not cover every Farm Bill provision that may apply to local food. Relevant sections will be discussed in the order in which they appear in the text of the Farm Bill.

A. *Title IV – Nutrition*

1. *Retail Food Stores*

The first place support for local food systems can be found in the 2014 Farm Bill is in the Nutrition Title, the title under which the majority of programs that support local food can be found in the Farm Bill.¹⁷ The first is section 4002 which falls within the Supplemental Nutrition Assistance Program (SNAP). This section specifically provides that the USDA will require retail food stores that participate in SNAP to pay the full cost of acquiring and setting up electronic benefit transfer (EBT) point-of-sale equipment.¹⁸ However, the language that follows clearly exempts farmers’ markets and other markets that sell directly to consumers.¹⁹

This is significant in that it has the potential to expand access to local food to SNAP participants who may otherwise not have this opportunity.²⁰ At the same

12. *Id.*

13. *Id.*

14. Stephanie Clifford, *Wal-Mart to Buy More Local Produce*, N.Y. TIMES, Oct. 14, 2010, <http://www.nytimes.com/2010/10/15/business/15walmart.html>.

15. *Id.*

16. *Id.*

17. Agricultural Act of 2014, Pub. L. No. 113-79, §§ 4001-4214, 128 Stat. 649 782-832.

18. *Id.* § 4002(b).

19. *Id.*

20. *See id.*

time, it increases the market potential for farmers selling at either farmers' markets or other direct-to-consumer outlets, as the cost of EBT equipment can be a barrier for farmers to accept SNAP benefits.²¹

2. Use of Benefits for Purchase of Community-Supported Agriculture Share (SNAP)

Another change was made to the SNAP program via section 4012, which amends the Food and Nutrition Act of 2008.²² Section 4012 pertains to Community-Supported Agricultural operations (CSAs), and provides for the use of SNAP benefits at CSAs, which is a shift from how the program operated in the past.²³ CSAs are a form of direct-to-consumer marketing, and this shift strengthens both systems in terms of expanding markets for producers, as well as providing increased access to fresh food for low-income 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 at the beginning of the season when they have the greatest expenses The consumer is buying a share in whatever crops are harvested on any given week. 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 that year. CSAs are structured so that the consumer shares in this risk.²⁴

However, unlike a traditional CSA where consumers pay an annual or semi-annual flat fee, payment with SNAP benefits must occur no more than fourteen days before the product's delivery.²⁵ The rationale behind this is due to the fact that

SNAP clients have limited means and resources, they can neither afford nor risk payment for an entire growing season at the season's start . . . For this reason, if an authorized direct marketing farmer or non-profit food buying cooperative elects to do business via a CSA, payment may be accepted no more than 14 days in advance of product delivery.²⁶

Additionally, SNAP benefits may only be used for food, and may not go

21. *Local and Regional Foods*, ERS, USDA, available at <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/local-and-regional-foods.aspx> (last updated Apr. 11, 2014).

22. Agricultural Act of 2014 § 4012.

23. *Id.*

24. Coit, *supra* note 1.

25. *Operating a CSA and SNAP Participation*, FOOD & NUTRITION SERV., USDA (May 20, 2015), <http://www.fns.usda.gov/sites/default/files/snap/CSA.pdf> [hereinafter *Operating*].

26. *Id.*

towards a CSA membership or administrative fees of the CSA.²⁷

3. Pilot Project for Procurement of Unprocessed Fruits and Vegetables

The next section that pertains to local food is section 4202 – the Pilot Project for Procurement of Unprocessed Fruits and Vegetables.²⁸ This new provision requires the USDA to conduct a pilot project in up to eight states with the overall goal of providing these states with flexibility when procuring unprocessed fruits and vegetables.²⁹ The USDA is authorized to permit participating states to “utilize multiple suppliers and products established and qualified by the Secretary and to allow geographic preference, if desired, in the procurement of the products under the pilot project.”³⁰

In terms of qualifying states, the Farm Bill requires that of the eight states chosen to participate, one state is located in each of the following regions: the Pacific Northwest, the Northeast, the Western, the Midwest and the Southern regions.³¹ In addition, prioritization of qualifying states will be based on the quantity and variety of produce growers on a per capita basis, a state’s proven commitment to farm-to-school programs efforts, and “whether the States contain a sufficient quantity of local educational agencies, various populations sizes, and geographical locations.”³² States chosen to participate, and the applicable school food authorities of those eight states, are required to keep records of the produce received.³³ In addition, each state is required to submit a report on the success of the program, detailing the quantities of fruits and vegetables, as well as the benefits incurred by participation in the program.³⁴

It is important to note that under this program, states are not required to purchase locally-grown fruits and vegetables,³⁵ but they will have increased flexibility to do so if they choose. According to the USDA’s Food and Nutrition Service (FNS):

The pilot project will provide State Distributing Agencies (SDAs) in selected states additional flexibility in the procurement of locally-grown unprocessed fruits and vegetables. School food authorities (SFAs) in selected states, or SDAs acting on behalf of participating SFAs, will be permitted to competitively solicit a USDA-approved vendor using USDA Foods National School Lunch Program (NSLP) entitlement funds. SDAs or SFAs will also be able to use pre-existing commercial distribution channels and relationships with growers, produce wholesalers, and

27. *Id.*

28. Agricultural Act of 2014 § 4202.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

distributors. Use of geographic preference, as allowed by FNS regulation, is permitted in the procurement of these products . . . It offers states an additional opportunity to bolster local farm economies while providing the children who participate in our school meals programs with healthy food from within their own communities.³⁶

This program comes at a time when participation in farm-to-school programs is at an all-time high.³⁷ When the USDA conducted the first-ever Farm to School Census for the 2011-2012 school year, it found that farm to school purchases accounted for more than \$385 million in local food sales.³⁸ Local food sales conducted via farm to school programs are expected to continue to grow.³⁹

4. Seniors Farmers' Market Nutrition Program

The Seniors Farmers' Market Nutrition Program is also run by USDA-FNS, although it is administered by the states.⁴⁰ This program serves to "provide low-income seniors with coupons that can be exchanged for eligible foods (fruits, vegetables, honey, and fresh-cut herbs) at farmers' markets, roadside stands, and community-supported agriculture programs."⁴¹ Again, the use of this program supports the increased access of more fresh, local produce and other food products to low-income individuals.⁴² There were no substantive changes made to the program under the 2014 Farm Bill; however, this provision did amend the Farm Security and Rural Investment Act of 2002 to extend the program through 2018.⁴³ The program was funded at \$19 million through fiscal year 2014.⁴⁴

5. Healthy Food Financing Initiative

The USDA also leads the Healthy Food Financing Initiative.⁴⁵ Section 4206 of the Farm Bill amends the Department of Agriculture Reorganization Act

36. Press Release, USDA Food & Nutrition Serv., USDA Request for Applications for Unprocessed Fruit and Vegetable Pilot (July 21, 2014), *available at* <http://www.fns.usda.gov/pressrelease/2014/fns-0004>.

37. *See id.*

38. *Id.*

39. Press Release, Food & Nutrition Serv., USDA Food & Nutr. Serv., USDA Selects States for Participation in Pilot Project for Procurement of Unprocessed Fruits and Vegetables, (Dec. 8, 2014), *available at* <http://www.fns.usda.gov/pressrelease/2014/fns-001214> (noting as of December 8, 2014, the eight states chosen to participate in the pilot project are: California, Connecticut, Michigan, New York, Oregon, Virginia, Washington and Wisconsin).

40. *Senior Farmers' Market Nutrition Program*, FOOD & NUTRITION SERV., USDA, <http://www.fns.usda.gov/sfmnp/senior-farmers-market-nutrition-program-sfmnp> (last updated Apr. 15, 2015) [hereinafter *Senior*].

41. *Id.*

42. *Id.*

43. Agricultural Act of 2014, Pub. L. No. 113-79, § 4203, 128 Stat. 649, 822.

44. *Senior*, *supra* note 40.

45. Agricultural Act of 2014 § 4206.

of 1994.⁴⁶ The purpose of this provision is to give the USDA authority to create “an initiative to improve access to healthy foods in underserved areas, to create and preserve quality jobs, and to revitalize low-income communities by providing loans and grants to eligible fresh, healthy food retailers to overcome the higher costs and initial barriers to entry in underserved areas.”⁴⁷ Priority is given to projects located in low-income communities that create or maintain jobs for low-income residents, support local and regional food systems, are accessible by public transportation (if available in the area), or integrate women and minority owned businesses.⁴⁸ The Farm Bill provides an appropriation for up to \$125,000,000 in funding for this initiative.⁴⁹

6. Food Insecurity Nutrition Incentive

Section 4208 covers the Food Insecurity Nutrition Incentive.⁵⁰ This section amends the Food, Conservation, and Energy Act of 2008.⁵¹ The initiative represents a new grant program designed to provide incentives to increase the purchasing power of Supplemental Nutrition Assistance Program (SNAP) benefits when used to purchase fruits and vegetables.⁵² The goal is to test strategies that could contribute to the National Institute of Food and Agriculture’s (NIFA) understanding of the best way to increase the purchase of fruits and vegetables by SNAP participants that would inform future efforts, and develop effective and efficient benefit redemption technologies.⁵³

Entities that are eligible to participate include, but are not limited to, agricultural cooperatives, producer associations, farmers’ markets and CSAs.⁵⁴ Among other criteria, priority should be given to projects that utilize direct marketing to consumers and provide locally grown fruits and vegetables.⁵⁵ Again, while not strictly limited to local food, the program is set up in such a way as to increase the potential expansion of local food sales.⁵⁶ Overall, funding is provided at \$160,000,000 over five years.⁵⁷

46. *Id.*

47. *Id.* § 4206(a).

48. *Id.* § 4206(c)(2)(C)(ii)(I)-(V).

49. *Id.* § 4206(d).

50. *Id.* § 4208.

51. *Id.*

52. *Id.*

53. *Food Insecurity Nutrition Incentive (FINI) Grant Program*, NAT’L INST. OF FOOD & AGRIC., USDA, <http://nifa.usda.gov/program/food-insecurity-nutrition-incentive-fini-grant-program> (last visited Sept. 16, 2015).

54. Agricultural Act of 2014 § 4405(a)(1)(A)-(L).

55. *Id.* § 4405.

56. *See id.*

57. *Id.* §§ 4405(c)(1) to (c)(2)(a)-(c).

B. Title VI – Rural Development

1. Locally or Regionally Produced Agricultural Food Products

Title VI, the Rural Development title, includes section 6014, which pertains to loans and loan guarantees for locally or regionally produced agricultural food products.⁵⁸ This is the loan program in which we saw the first federal definition of local food as discussed earlier.⁵⁹ The 2014 Farm Bill amends the Consolidated Farm and Rural Development Act again.

The program targets low-income areas without access to fresh fruits and vegetables. An increase of up to 7% of the appropriation for the Business and Industry Loan Guarantee program is authorized. Funding priority is given to projects benefitting underserved communities (i.e., those with limited access to affordable, healthy foods and with high rates of poverty or food insecurity).⁶⁰

This loan program, which applies to locally or regionally produced food, defines local as food that has traveled less than 400 miles between where it is produced and where it is sold, or “the state in which the product was produced.”⁶¹ No significant substantive changes were made to the program; however, under the authority of the 2014 Farm Bill it was extended through 2018.⁶²

2. Value-Added Agricultural Product Market Development Grants

Value-Added Agricultural Product Market Development Grants were included in the 2014 Farm Bill, and modified somewhat from previous iterations, as it amends the Agricultural Risk Protection Act of 2000.⁶³ The USDA also administers this competitive grant program. It serves to support producers with processing and marketing value-added products: “[g]enerating new products, creating and expanding marketing opportunities, and increasing producer income are the end goals of this program.”⁶⁴

There are two types of grants. The first are planning grants, which are currently eligible for awards of up to \$75,000.⁶⁵ These can be used for economic planning activities, which “include conducting feasibility studies and developing business plans for processing and marketing of the proposed value-added

58. *Id.* § 6014.

59. *See infra* Section II.

60. TADLOCK COWAN, CONG. RESEARCH SERV., R47318, RURAL DEVELOPMENT PROVISIONS IN THE 2014 FARM BILL (P.L. 113-79) 5 (2014).

61. 7 U.S.C. § 1932(g)(9)(A)(i)(I) (2012).

62. Agricultural Act of 2014 § 6014.

63. *Id.* § 6203.

64. *Value Added Producer Grants*, RURAL DEV., USDA, <http://www.rd.usda.gov/programs-services/value-added-producer-grants> (last visited Sept. 16, 2015) [hereinafter *Value Added*].

65. Agricultural Act of 2014 § 6201.

product.”⁶⁶ The second are working capital grants, which are eligible for awards of up to \$200,000.⁶⁷ These grants can be utilized for “[p]rocessing costs, [m]arketing and advertising expenses, [and] [s]ome inventory and salary expenses” directly related to the value-added product.⁶⁸

What is new under this amendment includes an expansion of the category of priority projects to be considered, which now includes producers with small and medium-sized family farms, beginning, socially disadvantaged and veteran farmers and ranchers.⁶⁹ Funding was authorized for \$63,000,000 over 5 years.⁷⁰ This is significant for local food systems, as these grants support food products and businesses that are often made from locally grown agricultural products and then sold back into the local food system.⁷¹ They also support the businesses that make these products. According to the USDA, “[t]he program helps agricultural producers grow their businesses by turning raw commodities into value-added products, expanding marketing opportunities and developing new uses for existing products.”⁷² Secretary Vilsack adds that “[t]he funding . . . will have far-reaching, positive impacts in rural communities across the country . . . The investments will help businesses create new products, expand their operations, and support local and regional food systems. The new Farm Bill expands this program to provide even more of these opportunities.”⁷³

C. Title X – Horticulture

1. Farmers’ Market & Local Food Promotion Program

Title X of the Farm Bill is the Horticulture Title.⁷⁴ Section 10003 pertains to the Farmers’ Market & Local Food Promotion Program (FMLFPP).⁷⁵ This is one area where significant changes have been made under the 2014 Farm Bill. This program was formerly known as the Farmers’ Market Promotion Program (FMPP); section 10003 adds “local food promotion.”⁷⁶ This is significant in that the addition of “local food” extends the reach of the program to include

66. *Value Added*, *supra* note 64.

67. Agricultural Act of 2014 §7603.

68. *Value Added*, *supra* note 64.

69. Agricultural Act of 2014 § 6203.

70. *Id.*

71. *See id.*

72. Press Release, USDA, USDA Announces \$25 Million for Agricultural Entrepreneurs to Turn Commodities into Value-Added Products (Aug. 19, 2014), *available at* <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2014/08/0183.xml&printable=true&contentidonly=true>.

73. *Id.*

74. Agricultural Act of 2014 §§ 10001-10017.

75. *Id.* § 10003.

76. *Id.*

intermediaries, whereas the program formerly covered only projects based on direct to consumer sales.⁷⁷

The Farmers' Market & Local Food Promotion Program (hereinafter "FMLFPP") is authorized by the Farmer-to-Consumer Direct Marketing Act of 1946.⁷⁸ The FMLFPP provides for two competitive grant programs, both of which are overseen by the USDA's Agricultural Marketing Service (AMS).⁷⁹ These grants are the Farmers' Market Promotion Program (FMPP) and the Local Food Promotion Program (LFPP). Under the 2014 Farm Bill, total funding for the FMLFPP is set at \$30,000,000 a year for each year from 2014-2018, with funding split equally between the two grant programs.⁸⁰

The purpose of the FMPP is:

to increase domestic consumption of, and access to, locally and regionally produced agricultural products, and to develop new market opportunities for farm and ranch operations serving local markets by developing, improving, expanding, and providing outreach, training, and technical assistance to, or assisting in the development, improvement, and expansion of, domestic farmers markets, roadside stands, community-supported agriculture programs, agritourism activities, and other direct producer-to-consumer market opportunities.⁸¹

Grant awards range from \$15,000 to a maximum of \$100,000 per project.⁸²

The goal of the newly created LFPP is to "support the development and expansion of local and regional food business enterprises to increase domestic consumption of, and access to, locally and regionally produced agricultural products, and to develop new market opportunities for farm and ranch operations serving local markets."⁸³ Again, this program targets intermediaries, which includes food businesses that "process, distribute, aggregate, [and/] or store locally or regionally produced food products."⁸⁴

There are two types of projects funded through the LFPP. First, planning grants are provided for the purposes of planning a new food business enterprise, or for planning the expansion of a currently existing business.⁸⁵ For 2014, planning

77. *Id.*

78. Press Release, USDA, USDA Announces \$97 Million Available to Expand Access to Healthy Food, Support Rural Economies (Mar. 16, 2015), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2015/03/0064.xml&contentidonly=true>.

79. *Id.*

80. Agricultural Act of 2014 § 1003.

81. *Farmers Market Promotion Program*, AGRIC. MKTG. SERV., USDA, <http://www.ams.usda.gov/services/grants/fmpp> (last visited Sept. 16, 2015).

82. *Farmers Market Production Program Frequently Asked Questions*, AGRIC. MKTG. SERV., USDA (Mar. 6, 2015), <http://www.ams.usda.gov/sites/default/files/media/FMNPFAQ.pdf>

83. *Local Food Promotion Program*, AGRIC. MKTG. SERV., USDA, <http://www.ams.usda.gov/services/grants/lfpp> (last visited Sept. 16, 2015).

84. *Id.*

85. *Id.*

grants are funded in the amounts of \$5,000-\$25,000 for a period of one year.⁸⁶ Second, implementation grants are aimed towards establishing a new local food business enterprise, or implementing the expansion of a currently existing food business.⁸⁷ These are funded in the amounts of \$25,000-\$100,000 for a period of two years.⁸⁸

2. Specialty Crop Block Grant

Section 10010 of the 2014 Farm Bill amends the Specialty Crops Competitiveness Act of 2004, which pertains to the Specialty Crop Block Grant (SCBGP).⁸⁹ The purpose of this grant is to “enhance the competitiveness of specialty crops.”⁹⁰ The grants are managed by the USDA Agricultural Marketing Service (AMS) and administered through the states.⁹¹ For the purposes of this grant, specialty crops are defined as “fruits and vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture).”⁹²

One substantive change to this grant under the 2014 Farm Bill is the authorization of multistate projects.⁹³ In addition, funding was increased to \$72,500,000 per year from 2014-2017, and then is set to increase again to \$85,000,000 in 2018.⁹⁴ In contrast, the funding level was \$55,000,000 through 2012.⁹⁵

While not specifically targeted at local food, the grant is often used for projects that support local and regional food systems, particularly as it is geared towards fruits and vegetables.⁹⁶ The National Sustainable Agriculture Coalition states that

[g]iven the flexibility of the Specialty Crop Block Grant program to potentially support farm to school initiatives, farmer food safety training, food hubs, processing businesses, marketing research . . . the increased funding for this program represents

86. AGRIC. MKTG. SERV., USDA, LOCAL FOOD PROMOTION PROGRAM 6-7 (2015), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5110857>.

87. *Id.*

88. *Id.*

89. Agricultural Act of 2014, Pub. L. No. 113-79, § 10010, 128 Stat. 649, 949-50.

90. *Id.*

91. *See id.*

92. 7 U.S.C. § 1621 (2012), amended by Agriculture Act of 2014 § 10010; *Specialty Crop Block Grant Program-Farm Bill*, AGRIC. MKTG. SERV., USDA, <http://www.ams.usda.gov/services/grants/scbgp> (last visited Sept. 16, 2015).

93. *See* Agricultural Act of 2014, § 10010.

94. *Id.* § 10010(k)(5)(B)(1)(E).

95. Food, Conservation and Energy Act of 2008, Pub. L. 110-234, § 10109(c)(j)(3), 122 Stat. 923, 1339.

96. *See 2014 Farm Bill Drilldown: Local and Regional Food Systems, Healthy Food Access, and Rural Development*, NSAC’S BLOG (Feb. 11, 2014), <http://sustainableagriculture.net/blog/2014-farmbill-local-rd-organic/>.

an improved opportunity for farmers . . . to find support for the development of local and regional food systems.⁹⁷

3. Local Food Production and Program Evaluation

In the Horticulture Title, Section 10016 of the Farm Bill also provides for a new initiative.⁹⁸ The so-called Local Food Production and Program Evaluation requires the USDA to collect data on both the production and marketing of locally produced food as well as the costs to comply with the applicable regulatory requirements.⁹⁹ In addition, the USDA is mandated to facilitate interagency collaboration on programs that deal with local food systems as well as provide evaluation data on the ways in which local food systems facilitate community food security and enable increased access to healthy food.¹⁰⁰

This initiative would have provided for much-needed information and data analysis related to local food systems. However, no funding was authorized for this program.¹⁰¹

IV. ADDITIONAL FEDERAL SUPPORT FOR LOCAL FOOD – OUTSIDE THE FARM BILL

As stated earlier, there has been increasing support at the federal level for local foods for a number of years now. In order to highlight what this support looks like, I will mention a few federal programs in this section. This is not to be considered an exhaustive list.

A. Know Your Farmer, Know Your Food

One of the most far-reaching programs that exist at the federal level is the USDA's Know Your Farmer, Know Your Food initiative (KYF2).¹⁰² This initiative brings together programs throughout the USDA that support farmers, food businesses, and others entering local food markets. It also supports relationships between consumers and producers.¹⁰³ The USDA recognizes that “[a] surge in consumer demand for locally-produced food is creating jobs and opportunity throughout rural America [l]ocal and regional food is already a multi-

97. *Id.*

98. *See* Agricultural Act of 2014 § 10016.

99. *Id.* § 10016(a)(1).

100. *Id.* § 10016(a)(2)(4).

101. *See id.* § 10016.

102. *See generally* USDA, KNOW YOUR FARMER, KNOW YOUR FOOD, <http://www.usda.gov/wps/portal/usda/knowyourfarmer?navid=KNOWYOURFARMER> (last visited Sept. 16, 2015).

103. *See Our Mission*, USDA, KNOW YOUR FARMER, KNOW YOUR FOOD, http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_MISSION (last updated May 14, 2015).

billion dollar market and growing quickly.”¹⁰⁴ Through KYF2, the agency:

integrates programs and policies that: [s]timulate food- and agriculturally-based community economic development, [f]oster new opportunities for farmers and ranchers, [p]romote locally- and regionally-produced and processed foods, [c]ultivate healthy eating habits and educated, empowered consumers, [e]xpand access to affordable fresh and local food, and [d]emonstrate the connection between food, agriculture, community and the environment.¹⁰⁵

On the dedicated KYF2 website, one can find information on a large variety of topics related to local food, including relevant loans and grant programs,¹⁰⁶ as well as a list of resources covering everything from the census of agriculture, to a handbook on the topic of SNAP at farmers’ markets.¹⁰⁷ Looking at the KYF2 initiative, the level of support that the USDA has dedicated to local and regional food systems becomes very apparent.

B. Local Food Directories

The USDA-AMS has developed local food directories, under their “mission of facilitating the fair and efficient marketing of U.S. agricultural products.”¹⁰⁸ These directories specifically aim “[t]o better connect farmers and buyers, and enhance awareness of available local food sources.”¹⁰⁹

There are currently four online directories, in the following categories: 1) Farmers Markets; 2) CSA; 3) Food Hub and 4) On-Farm Markets.¹¹⁰ The first directory was the National Farmers Market Directory.¹¹¹ The other three were started after the National Farmers Market Directory gained popularity.¹¹² Information available within the directories includes “a mapped location, operating hours, months of operation, the types of products available, number of farmers at each market and the accepted forms of payment.”¹¹³ All of the directories are free for vendors to list their operations, and are also free for the end users.¹¹⁴

104. *Id.*

105. *Id.*

106. *See generally Grants, Loans & Support*, USDA, KNOW YOUR FARMER, YOUR FOOD, http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_GRANTS (last updated Apr. 20, 2015).

107. *See Tools and Resources*, USDA, KNOW YOUR FARMER, KNOW YOUR FOOD, http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_RESOURCES (last updated July 13, 2015).

108. *Local Food Directories*, AGRIC. MKTG. SERV., USDA, <http://www.usdalocalfooddirectories.com> (last visited Sept. 26, 2015).

109. *See id.*

110. *See id.*

111. *See id.*

112. *See id.*

113. *Id.*

114. *See id.*

C. Local Foods, Local Places Initiative

The Local Food, Local Places Initiative is a new initiative, announced in June of 2014, and is a joint effort between multiple entities.¹¹⁵ The partners include the USDA, the Environmental Protection Agency (EPA), the Department of Transportation (DOT), as well as the Appalachian Regional Commission (ARC) and the Delta Regional Authority (DRA).¹¹⁶ The goals of the initiative include increasing economic opportunities for local farmers and businesses; improving access to healthy, local food, particularly for communities that traditionally have limited access; and revitalizing downtowns and neighborhoods.¹¹⁷

This initiative will provide “direct technical support and expertise to community partners integrating local food systems into regional economic action plans.”¹¹⁸ The first round of applications was due in July of 2015.¹¹⁹ Awards were announced in December of 2014, and included 26 projects in 19 states.¹²⁰ The partnering entities funded a combined \$800,000.¹²¹

V. UPCOMING ISSUES

When asked to present at the AALA, I was asked to include thoughts on potential upcoming issues for local food systems. Below are three areas where I see the possibility for growth or expansion, both within local food systems themselves, and also with where these systems intersect with law and policy.

A. Continued Interest in Local Food – And the Role of Attorneys

For a variety of reasons beyond the scope of this article, it remains difficult to find sources of hard data regarding the economic impact of local food systems. The information for the most recent time period available states that, as of 2008, local food sales accounted for \$4.8 billion of the agricultural market in the United States.¹²² Representing 1.6% of the overall market, this is a very small fraction of

115. See Doug McKalip, *Local Food, Local Places: Bringing Expertise and Executive Thinking to Community Economic Development*, WHITE HOUSE RURAL COUNCIL (Dec. 3, 2014, 10:16 AM), <https://www.whitehouse.gov/blog/2014/12/03/local-food-local-places-bringing-expertise-and-creative-thinking-community-economic->.

116. *Id.*

117. *See id.*

118. *Id.*

119. *Local Foods, Local Places Announcement of Federal Assistance for Sustainable Communities*, WHITEHOUSE.GOV, https://www.whitehouse.gov/sites/default/files/docs/announcement_-_local_foods_local_places_2014_final.pdf (last visited Sept. 16, 2015).

120. Press Release, USDA, Obama Administration Selects Communities to Develop Local Food Projects, Encourage Economic Expansion (Dec. 3, 2014), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/12/0262.xml>.

121. *Id.*

122. RENÉE JOHNSON ET AL., CONG. RESEARCH SERV., R42155, THE ROLE OF LOCAL FOOD

total product sales.¹²³ However, relatively speaking, it represents a significant – and growing – share of the total market. With continued (and growing) interest in local food, it seems likely that this share will continue to increase over time. In addition, the number of individual farms that are participating in local and regional food markets will likely continue to grow. Again, as of 2008, approximately 107,000 farms were considered to be participating in local food markets, and with sustained consumer interest this also seems likely to continue to increase.¹²⁴

As consumer interest and demand in local food continues to increase, so will the number of farms and food businesses that participate in this market. This group of farmers will include experienced farmers who are looking for ways to enter new market opportunities and to diversify their businesses. New and beginning farmers are also entering these markets. In addition, there will continue to be new food businesses entering local food markets at a steady rate as demand continues to increase. At the same time, there is an increasingly complex network of local, state and federal laws and regulations that are applicable to farming and food businesses.

This influx of participants in local food translates to an increased need for legal help in a variety of areas. The needs of beginning and experienced farmers may overlap in some ways and diverge in other ways; the same is true for food businesses. There is a corresponding need for attorneys who are prepared to meet the particular needs of each of these groups. Examples of topics for which farmers and food businesses will need legal advice include, but are certainly not limited to: contracts, food safety, food labeling, the National Organic Program, labor and employment issues, business formation, tax, estate planning, and land access. In some ways these legal needs will differ from those of other agricultural clients. It will be critical to the continued success of local food systems to have prepared, accessible attorneys who are ready to meet these needs.

B. Consumer Confusion Between “Local” and “Organic”

Just as there is continued consumer demand for local food, there has also been a steady increase in demand for organic food and food products.¹²⁵ As of 2012, the organic market was estimated at \$28.4 billion.¹²⁶ This estimate increased for 2014 to \$35 billion.¹²⁷ At the same time, there seems to be increased confusion among consumers as to what these labels mean. In preparing the presentation for the AALA – and this article — I made a choice to focus on local food, and did not

SYSTEMS IN U.S. FARM POLICY 1 (Mar. 12, 2013).

123. *Id.*

124. *Id.*

125. See *Organic Market Overview*, ECON. RESEARCH SERV., USDA, <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx> (last updated Apr. 7, 2014) [hereinafter *Organic Market Overview*].

126. *Id.*

127. *Id.*

include information pertaining specifically to organic agriculture, in an effort to keep these two classifications separate.

In May of 2014, the International Food and Agribusiness Management Review released a study on this topic.¹²⁸ The study indicated that 17% of consumers confused the terms “organic” and “local”, and didn’t understand the distinction between them.¹²⁹ This is a problem for a number of reasons. First, if consumers rely on these labels, their ability to make these decisions is forfeited if they do not understand the labels. Second, if consumers do not understand the difference between these two terms, then the terms themselves lose their meaning and significance over time.

For food businesses and farmers who go through the process of becoming certified organic, this label means being able to use this certification as a marketing tool.¹³⁰ One outcome of doing so is often receiving a higher premium for products that are certified organic.¹³¹ Organic certification also has a very specific legal meaning, set out in the standards under the National Organic Program.¹³² As was mentioned earlier in this article, the term “local” does not have one specific legal definition. If the distinction between the two terms is incorrectly blurred, then both run the risk of losing their meaning and their significance for consumers. In order to clear this up, there needs to be greater clarification and public education around food labels and production practices.

C. *Invasivores*

Ten years ago, the term “locavore” did not exist. Today, many will recognize this term as a reference to people who eat locally grown foods. The term was coined in 2005,¹³³ and in 2007 was named Oxford American Dictionary’s word of the year.¹³⁴

Today, another movement related to local food is starting to attract more attention—invasivores. As the name suggests, this term is used to describe people who eat invasive species.¹³⁵ As defined by the National Invasive Species Council (NISC), an “invasive species” is “a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic

128. See generally Benjamin L. Campbell et al., *U.S. and Canadian Consumer Perception of Local and Organic Terminology*, 17 INT’L FOOD & AGRIBUSINESS MGMT. REV. 21 (2014).

129. *Id.* at 26.

130. See *Organic Market Overview*, *supra* note 125.

131. See *id.*

132. See Organic Certification, 7 U.S.C. §§ 6514-6515 (2012); General Requirements for Accreditation, 7 C.F.R. § 205.501 (2015).

133. *Locavore Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/locavore> (last visited Sept. 16, 2015).

134. *Oxford Word of the Year: Locavore*, OUPBLOG (Nov. 12, 2007), <http://blog.oup.com/2007/11/locavore>.

135. *About*, INVASIVORE.ORG, <http://invasivore.org/about/> (last visited Sept. 16, 2015).

or environmental harm or harm to human health.”¹³⁶ Some examples include kudzu, lionfish, dandelions and feral pigs.¹³⁷ By nature, the eating of plants or animals that are considered to be invasive in one’s local or regional area also falls within the context of local food.

Changing climate conditions—and correspondingly, environmental conditions—as well as increased trade and travel worldwide contribute to the increased potential for the spread of invasive species.¹³⁸ As these trends continue, we are likely to see the invasive movement grow accordingly.

VI. CONCLUSION

As I wrote in the conclusion to my 2008 article on legal and policy issues of the local food movement, “[t]he interest in local food which has been developing in recent years seems likely to continue to grow in the future.”¹³⁹ Six years later, this statement has held true, and seems likely to hold true for the foreseeable future, as we see local food continue to expand even further. Consumer demand for local food has not shown signs of slowing down, and does not seem likely to any time soon. The interest in local food has developed from a grass-roots movement into a mainstay of our food system, and correspondingly we are seeing it become more entrenched at various levels the business and political landscape, including at large retailers and the state and federal government. Due to the nature of what local food is, I do not believe that it will go the way of the organic movement - meaning I do not think we will see one definition at the federal level that preempts all other definitions. However, there is a need for increased consumer education about food labels and production practices in order to sustain the integrity of the current labels.

In addition, as the movement continues to mature, an increasing number of farmers and food businesses are entering local food markets. Simultaneously, there are increasingly complex regulations and legal issues those local food producers and businesses will be required to follow. We need agricultural attorneys who are prepared to work with local food producers and businesses and to take on the unique challenges that present themselves for these clients and the valuable work that they are doing.

136. NAT’L INVASIVE SPECIES COUNCIL, INVASIVE SPECIES DEFINITION CLARIFICATION AND GUIDANCE WHITE PAPER 1 (2006), *available at* <http://www.invasivespeciesinfo.gov/docs/council/isacdef.pdf>.

137. *Browse Species & Recipes*, INVASIVORE.ORG, <http://invasivore.org/browse-species-recipes> (last visited Sept. 16, 2015).

138. NAT’L INVASIVE SPECIES COUNCIL, NATIONAL INVASIVE SPECIES MANAGEMENT PLAN 4 (2008), *available at* <https://www.doi.gov/sites/doi.gov/files/migrated/invasivespecies/upload/2008-2012-National-Invasive-Management-Plan.pdf>.

139. Coit, *supra* note 1, at 70.