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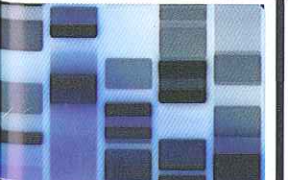

A LABEL BY ANY OTHER NAME

.... What do labels really tell us about the food we are eating?

by: Tracy Kane and Kori Lopreore

If you have walked the aisles of your local grocery or market lately you may have noticed a slew of labels or claims that products are "whole grain," "natural," "organic," "healthy,' "Non-GMO," "cage free," "pasture-raised," "local," "biodynamic," "sustainable" and the list goes on. The use of these types of labels or claims has proliferated in the last few years as the demand for such products has increased. U.S. sales of organic food and beverages, for example, have grown from $1 billion in 1990 to $26.7 billion in 2010.[1] In 2010 alone, organic sales grew an enviable 7.7%, despite high unemployment and a deep recession, while sales of non-organic food essentially were stagnant, growing less than 1%.[2] You might be surprised to learn, however, that many of these labels or claims are neither defined nor regulated by any government agency, independent group or even industry association. So which labels *mean* something and which are just marketing hype? We have attempted to decipher a few of the most common labels or assertions.

NATURAL

Perhaps the most difficult labeling standard to disambiguate is the word "natural" on food labels. Consumers are generally willing to trust the "natural" label as an indication of a food product's overall healthfulness, cleanliness, and pristine nature. According to a survey of over 1000 consumers conducted by The Shelton Group, 31% of respondents indentified "100% natural" as the most desirable product label claim in consideration of ecological concerns, compared to 14% who chose "100% organic."[3] A 2010 poll by the Hartman Group found that 62% of respondents believe "natural" implies "absence of pesticides"; 59% believe it implies "absence of herbicides; and 61% believe "natural" indicates an "absence of genetically modified foods."[4]

Despite consumer perception and marketing suggestion, however, the word "natural" on labels does not indicate any of those absences, or answer any questions concerning the way that such products were grown or fed. The Food and Drug Administration (FDA) has provided the following description of the meaning of "natural" on food labels:

> From a food science perspective, it is difficult to define a food product that is 'natural' because the food has probably been processed and is no longer the product of the earth. That said, *FDA has not developed a definition for use of the term natural or its derivatives*. However, the agency has not objected to the use of the term if the food does not contain added color, artificial flavors, or synthetic substances."[5]

In essence, there are no FDA standards for the appropriate use of the term "natural," and such use has instead been left to the discretion of manufacturers and their marketing companies. Despite strong consumer faith in the term "natural," in many instances the label may amount to no more than pure marketing hype.

The United States Department of Agriculture (USDA) has provided some guidance for use of the label "natural" relative to the production and processing of meat and poultry, although the standards are still loose. The USDA defines "natural" as it appears on labels on meat and poultry products as "a product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in *a manner that does not fundamentally alter the product.*"[6] These standards for the "natural" label do not address and, therefore, hold no bearing on the conditions in which the animal was raised or the food and additives it was fed.[7]

Foods labeled "natural" may conform to consumer expectations, but they are not required to. As a result, many consumers such as those represented in the aforementioned polls associate the label with a standard for food quality that companies are not required to meet.

GMO stands for Genetically Modified Organism and the term has been adopted by activists and consumer groups in favor of labeling requirements for food or ingredients that are developed or processed using recombinant deoxyribonucleic acid (rDNA) technology. The industry producing these products prefers to use terms like biotechnology, genetically engineered or transgenic to describe food or ingredients produced using rDNA technology.

In crops, genetic engineering is used to boost production or lower costs, although opponents claim these benefits have not been realized by farmers. The plants are generally modified to resist weed killers or to generate their own insect repellent. In animals, biotechnology may be used to introduce new, desirable traits into the animal's DNA or the animals may be fed genetically-engineered plants. According to the USDA, about 90% of all soybeans, corn, canola, and sugar beets raised in the United States today were grown from genetically engineered or what scientists now call transgenic foods. New bioengineered crops are being created each year and approved for use by the USDA, most without any restriction or regulation on how and where the plants can be grown or used.[8] The majority of processed foods rely on one or more of these crops for their production.

Over the last decade, more than 50 countries have adopted regulations ranging from labeling requirements to restrictions or outright bans on the production and sale of GMOs.[9] The USDA and FDA share regulatory authority over the use and production of biotechnology in plants and animals, but both agencies have resisted consumer group requests for restrictions on the use of GMOs and any labeling requirements.[10] Citing pervasive use of biotechnology in the food industry today and the lack of definitive scientific evidence that bioengineered food, whether in plants or animals, is harmful to humans or animals, the FDA has maintained that "the fact that a food or its ingredients was produced using bioengineering is [not] a material fact that must be disclosed under section 403(a) and 201(n) of the Federal Food, Drug, and Cosmetic Act" and discourages labeling foods as "GMO free" as such is not only difficult to substantiate and technically inaccurate, but also may be misleading.[11]

Consumer resistance to bioengineered foods remains high with 93% of those responding to a nationwide telephone poll conducted in October 2010, by Thomson Reuters and National Public Radio believed that food that has been genetically engineered or has genetically engineered ingredients should say so on its label. While consumer groups have had little success getting legislatures or government regulators to require such labeling, a consumer group in California was recently successful in qualifying a GMO labeling proposition, "The Right to Know Genetically Engineered Food Act," for the November 6 ballot in that state.[12] In 2005, a group of consumers and several grocery stores teamed up to create a standardized meaning of non-GMO for the North American food industry. They created a voluntary enrollment and verification system and a label for food producers and manufacturers to use on their products ("Non-GMO Project Verified"). The labeling system is not perfect, however, and a recent study testing some of the products displaying the "Non-GMO Project Verified" label contained high levels of genetically-engineered ingredients.[13]

Consumers may also see labels bearing the word "healthy." Like "natural," the "healthy" label conveys little to no information to consumers about the raising or processing of the food product. Unlike "natural," however, the "healthy" label does carry some regulated standards that must be met. The Food Safety and Inspection Service (FSIS) and the FDA have adopted a set of standards for foods to be labeled "healthy," encompassing a set of criteria that limits the amount of fat, saturated fat, cholesterol, and sodium, and requires minimum amounts of vitamins, mineral, and nutrients.[14]

Labels touting that their products are "healthy" imply that the products conform to the collective standards for labeling for each of the following: "low fat;" "low saturated fat;" "low cholesterol;" and "low sodium."[15] Consumers can be sure that foods labeled "healthy" comply with the individual standards for all of the above. For food that is labeled "low fat," the product must contain 3 g or less total fat per reference amount or per 100 g for meal-type products.[16] "Low saturated fat" claims require 1 g or less saturated fat per reference amount or per 100 g for meal-type products.[17] FDA

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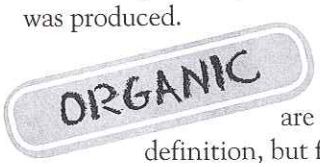
disclosure levels for cholesterol are 60 mg per reference amount for individual foods.[18] Sodium disclosure levels are 48 mg per reference amount for individual foods.[19] Foods that are labeled "healthy" must meet all of the above criteria.[20]

The "healthy" label provides significantly more information on a regular and trustworthy basis than does the "natural" label, and is particularly informative for consumers interested in the facial nutritional value of the product they're buying. Like the "natural" label, however, "healthy" offers little to no information concerning the way in which the food was produced.



Organic foods are natural by definition, but foods labeled "natural" are by no means necessarily organic.[21] Products labeled "organic" must contain at least 95% organic ingredients.[22] The standards for organic foods address both the final food product and the way in which the product is grown and produced.[23] Organic foods cannot be grown using synthetic fertilizers, chemicals, or sewage sludge, and cannot be genetically modified or irradiated.[24]

Organic agricultural products certified to the USDA organic standards are regulated by the National Organic Program and organic farmers, ranchers, distributors, processors, and traders are subject to USDA oversight, inspection, and auditing.[25] In order to qualify as producers of organic products, producers must follow all of the extensive specifications set out by the USDA organic regulations. USDA guidelines forbid the use of chemicals or animal or plant material that would contaminate or compromise the integrity, purity, or cleanliness of the soil and dirt in fields used to grow organic crops, and requires the use of traditional rotation systems.[26] Everything from soil temperature and pH content to seed origins and traditional, non-chemical means of pest control are regulated.[27] Organic animals must be managed using organic management techniques from a very young age (the last third of a gestation period, the second day of life, or the first year of life, depending on the type of animal and intended use) until the end of their lives, and must be fed organic feed.[28]

Products labeled "organic" are required to meet the strictest standards of the labels discussed by this article, and when consumers are faced with products labeled "organic" they can know the entire specific history of that product. This sets the "organic" label apart from the materially empty "natural" label, the misleading "Non-GMO" label and the "healthy" label, which addresses only the current qualities of the product. ■

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Label Facts

If you still are confused by all these different labels or want to learn more about all the different labels being used and their respective efficacy, there are lots of resources on the web these days, but below are a few sites that we recommend:

www.ams.usda.gov – USDA Agricultural Marketing Service

www.fda.gov/food/biotechnology/default.htm – U.S. Food and Drug Administration

www.sustainableable.org – Sustainable Table, a program of Grace Communications Foundation

www.ota.org – Organic Trade Association

(Endnotes)

[1] Organic Trade Association, *Industry Statistics and Projected Growth*, http://www.ota.com/organic/mt/business.htm (2011).

[2] Sales of organic fruits and vegetables grew the most, up 11.8% to account for nearly 12% of all U.S. fruit and vegetable sales. Organic dairy, the second-largest category, grew 9% and comprised nearly 6% of the U.S. dairy market. *Id.*

[3] Press Release, The Shelton Group, *National Survey: Green Is Officially Mainstream –But Consumers Are Confused, Skeptical About Products Press release* (June 29, 2009), *available at* http://www.sheltongroupinc.com/press/ecopulse/press_releases/EcoPulseNews-ReleaseNaturalvOrganic.pdf.

[4] The Hartman Group, Poll, *Beyond Natural and Organic*, as quoted in Cornucopia Institute, *Cereal Crimes: how "Natural" Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, (Oct. 2011).

[5] U.S. Food & Drug Administration, *What is the meaning of 'natural' on the label of food?* (Apr. 4, 2012)

http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm (emphasis added).

[6] U.S. Department of Agriculture, *Food Labeling Fact Sheet* (Apr. 12, 2011), http://www.fsis.usda.gov/Factsheets/Meat_&_Poultry_Labeling_Terms/index.asp#14 (emphasis added).

[7] Sustainable Table, Glossary of Meat Production Methods, http://www.sustainabletable.org/spread/handouts/Glossary_of_Meat_Production.pdf.

[8] Lyndsey Layton, *Genetically modified crops get boost over organics with recent USDA rulings*, WASH. POST, Mar. 23, 2012.

[9] Guillaume P. Gruere & S.R. Rao, *A Review of International Labeling Policies of Genetically Modified Food to Evaluate India's Proposed Rule*, AG. BIO. FORUM, 10(1): 51-64 (2007).

[10] The USDA Animal and Plant Health Inspection Service (APHIS) Biotechnology Regulatory Services regulates the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms that may pose a risk to plant health. The U.S. Food and Drug Administration Center for Veterinary Medicine regulates the manufacture and distribution of food additives and drugs that will be given to animals, including the use of biotechnology to alter the DNA of animals.

[11] U.S. Food and Drug Administration, *Guidance for Industry: voluntary labeling indicating whether foods have or have not been developed using bioengineering* (Jan. 2001). The FDA draft guidance states "[t]erms like 'not genetically modified' and 'GMO free' that include the word 'modified' are not technically accurate . . . [because] [m]ost, if not all, cultivated food crops have been genetically modified." The draft guidance further explains that the term "GMO free" may be misleading on most foods because most foods do not contain organisms and "free" without a definition of some minimum level of bioengineered constituents is likely to be misunderstood by consumers to mean "zero." Finally, the FDA cautions that "[a] statement that a food was not bioengineered or does not contain bioengineered ingredients may be misleading if it implies that the labeled food is superior to food that are not so labeled."

[12] Elizabeth Weise, *Fight over genetically engineered crops on Calif. Ballot*, USA TODAY, JUNE 12, 2012.

[13] The Cornucopia Institute tested non-organic "natural" cereal products making "non-GMO" claims and found that Barbara's Bakery® Puffins® and Whole Foods' 365® Corn Flakes both had more than 50% genetically-engineered corn, despite being enrolled in the Non-GMO Project Verified program. Cornucopia Institute , *Cereal Crimes: How "Natural" Claims Deceive Consumers and Undermine the Organic Label – A Look Down the Cereal and Granola Aisle*, at 29 (Oct. 2011).

[14] Food & Drug Administration, *Food Label Helps Consumers Make Healthier Choices* (Mar. 2008).

[15] Nutrition Labeling; Use of "Healthy"' and Similar Terms on Meat and Poultry Product Labeling, 59 FR 24220,-24222-23 (1994).

[16] 9 C.F.R. § 317.362.

[17] 9 C.F.R. § 381.462.

[18] 21 C.F.R. § 101.13(h).

[19] Nutrition Labeling, *supra* note 15, at 24223.

[20] *Id.*

[21] It is worth noting that organic foods are not necessarily "healthy" in accordance with the USDA and FDA's standards for labeling.

[22] Food Marketing Institute, *Natural and Organic Foods*, FMI Backgrounder.

[23] U.S. Food and Drug Administration, *Food Label Helps Consumers Make Healthier Choices* (Mar. 2008).

[24] Sustainable Table, *supra* note 7.

[25] The National Organic Program at the USDA regulates the organic industry and enforces organic labeling laws as required by the Organic Foods Production Act of 1990, codified at 7 U.S.C.A. §§ 1501 *et seq.*

[26] 7 C.F.R. § 205.203.

[27] 7 C.F.R. §§ 205.203-205.206.

[28] 7 C.F.R. §§ 205.236-205.237.