

## ESSAY

# “SHAKE THE HAND THAT FEEDS YOU”: CREATING CUSTOM FOOD SAFETY CERTIFICATIONS FOR FARM TO SCHOOL PROGRAMS

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“Shake the hand that feeds you.”

— Michael Pollan, *In Defense of Food: An Eater’s Manifesto*

### INTRODUCTION

The United States is home to approximately 14.4 million obese children.<sup>1</sup> Federal government encouragement that schools “purchase unprocessed agricultural products, both locally grown and locally raised, to the maximum extent practicable and appropriate” with federal funds has fallen upon the receptive ears of administrators, whose schools often feed America’s youth two out of three meals daily.<sup>2</sup> This

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<sup>1</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, *Childhood Overweight and Obesity* (2021), <https://www.cdc.gov/obesity/data/childhood.html> [<https://perma.cc/2EK6-RSMB>].

<sup>2</sup> Food, Conservation, and Energy Act of 2008 § 4302 (to be codified at 42 U.S.C. § 1758(j)(1)); Ashley Leyda, *From Farm to School Through the Statehouse: The Importance of State Legislation for Iowa’s Farm to School Program*, 16 *DRAKE J. AGRIC. L.* 169, 171 (2011); see also Christine Armario, *More schools serve students dinner as demand expands*, *OSHKOSH NW.* (Jan. 15, 2015), <https://www.thenorthwestern.com/story/life/food/2015/01/15/schools-serve-students-dinner-demand-expands/21841371/> [<https://perma.cc/56UM-HBEE>] (noting that while participation for breakfast and lunch programs are higher, participation in dinner programs are increasing); Marisol Bello, *Schools Becoming the ‘Last Frontier’ for Hungry Kids*, *USA TODAY* (Apr. 5, 2015), <http://www.usatoday.com/story/news/2015/04/05/public-school-dinners-pantries/70389176/> [<https://perma.cc/DV2H-XE9E>] (observing that more schools now provide dinner); Heather Hollingsworth, *More Public Schools Dish Up 3 Meals A Day*, *TULSA WORLD* (Feb. 18, 2012), [https://tulsaworld.com/news/more-public-schools-dish-up-3-meals-a-day/article\\_7a6fa39e-6d8a-5160-b120-90e55abcda22.html](https://tulsaworld.com/news/more-public-schools-dish-up-3-meals-a-day/article_7a6fa39e-6d8a-5160-b120-90e55abcda22.html) [<https://perma.cc/7SQP-MZ6G>] (observing that many poor children are

charge, found within the Food, Conservation, and Energy Act of 2008, paved the way for the rise of farm to school programs.<sup>3</sup> As ways to both fight the childhood obesity epidemic and stimulate local economic growth, farm to school programs have sprung up across the country, endeavoring to bring fresh, healthy food grown or produced by local vendors into school cafeterias.<sup>4</sup> However, there exists a significant gap between this law and the reality of implementing its mandate.

In a country where obesity affects one in five children, farm to school programs appear to be panaceas, bringing fresh, healthy foods to young consumers while simultaneously stimulating the local economy.<sup>5</sup> However, these programs face significant legal vulnerabilities.<sup>6</sup> Key among those vulnerabilities is food safety.<sup>7</sup> Because of potential food safety liabilities, school administrators admit a reluctance to embrace farm to school programming or to purchase from small local vendors, preferring instead to rely upon standardized food service providers.<sup>8</sup> Currently, there is no certification requirement to become a farm to school supplier, nor is there uniform certification or distinction for farm to school products; there is no unique farm to school “seal of approval” indicating quality assurance that schools can depend on when shopping for a local vendor or local product.

This Essay has two goals: first, to increase farm to school programming by making the programs easier for school administrators to utilize, and second, to help cement farm to school programs’ place in the cafeteria, school system, and society. This Essay contends that the creation of special

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increasingly getting all their meals at school.

<sup>3</sup> See Leyda, *supra* note 2, at 171.

<sup>4</sup> See *infra* Part I.

<sup>5</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 1.

<sup>6</sup> See PUB. HEALTH L. CTR., *Legal Issues Impacting Farm to School and School Garden Programs in Minnesota* (2011), <http://www.publichealthlawcenter.org/sites/default/files/resources/ship-f2s-school%20garden%20legal%20issues-2011.pdf> [<https://perma.cc/F4XF-5DTA>].

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

<sup>8</sup> See USDA FNS, USDA FARM TO SCHOOL TEAM 2010 SUMMARY REPORT 45 (2011), [http://www.fns.usda.gov/sites/default/files/2010\\_summary-report.pdf#page=50](http://www.fns.usda.gov/sites/default/files/2010_summary-report.pdf#page=50) [<https://perma.cc/2DK2-FEEL>]; Betty T. Izumi, Ola S. Rostant, Marla J. Moss & Michael W. Hamm, *Results from the 2004 Michigan Farm-to-School Survey*, 76 J. SCH. HEALTH 169, 171 (2006); Nathan Rosenberg & Emily Broad Lieb, *Expanding Farm to School in Mississippi: Analysis and Recommendations*, HARV. L. SCH. HEALTH L. AND POL’Y CLINIC & HARV. L. SCH. MISS. DELTA PROJECT 19 (2011), <http://www.chlpi.org/wp-content/uploads/2013/12/Expanding-Farm-to-School-in-Mississippi.pdf> [<https://perma.cc/2GTV-MXDL>].

certification for farm to school producers and their products will help establish and strengthen farm to school programs in school environments, thereby closing a gap between policy and practice. Ultimately, this special certification will thereby ensure a sustainable source of fresh, healthy meals and positive health outcomes for students, as well as to provide positive economic impacts for community producers.

This Introduction provides an overview of both farm to school programs and relevant existing agricultural certifications. Part I highlights the gap between policy and practice by explaining the insufficiency of current recommendations and standards at each level of governance. It will showcase the inadequacy of federal and state health and safety standards that impact farm to school programs, as well as the impracticability school administrators encounter at the local and district levels. Part II strategizes how to close this policy-practice gap by advocating for the creation of a distinct farm to school producer certification. Should lawmakers fail to adopt this recommendation, state and local governments can consider alternatives, such as requiring and facilitating Good Agricultural Practice (GAP) certification or providing quality training access to school administrators who purchase from local vendors.

## I

### BACKGROUND—WHAT IS FARM TO SCHOOL?

#### A. Farm to School, Briefly Defined

Farm to school is broadly defined as an effort to both provide healthy, fresh, and locally sourced foods to students at school meal times and to educate students about their food systems.<sup>9</sup> Farm to school programs can encompass a range of activities, but most often target food procurement, educational

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<sup>9</sup> See USDA., THE FARM TO SCHOOL GRANT PROGRAM FY 2013-FY 2015 SUMMARY OF AWARDS REPORT 4 (2015), [http://www.fns.usda.gov/sites/default/files/f2s/F2S\\_Grant\\_Summary\\_Report.pdf](http://www.fns.usda.gov/sites/default/files/f2s/F2S_Grant_Summary_Report.pdf) [<https://perma.cc/WN72-NU55>]; Anupama Joshi, Andrea M. Azuma & Gail Feenstra, *Do Farm-to-School Programs Make a Difference? Findings and Future Research Needs*, 3 J. OF HUNGER & ENV'T NUTRITION 229, 230 (2008) (defining Farm to School as “a school-based program that connects schools (K-12) and local farms with the objectives of serving local and healthy foods in school cafeterias or classrooms, improving student nutrition, providing health and nutrition education opportunities, and supporting small and medium-sized local and regional farmers”).

programming, and school gardens.<sup>10</sup> Of those three activities, the most popular program is procurement, or purchasing and serving local products in school cafeterias.<sup>11</sup> Generally, schools procure foods for their farm to school programs according to the following steps: 1) identify the specifications of desired products; 2) solicit bids for those products; and 3) accept the lowest bidder that meets the school's product specifications.<sup>12</sup> Product specification can include references to quality, quantity, geographic preference, harvest technique, crop diversity, or other desired characteristics.<sup>13</sup>

Farm to school has found success in many school districts across the country.<sup>14</sup> For example, in Ohio's Fremont City Schools, local collaborations have brought 5,000 pounds of chicken and beef, as well as much other local produce, into schools.<sup>15</sup> This endeavor yields positive feedback from students (and their taste buds), as well as producers, who have built positive relationships and experienced positive economic outcomes.<sup>16</sup> Similarly, in the 2011-2012 school year, Vermont spent \$1,380,280 on local foods, which helped students in the state's farm to school program consume twice as many

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<sup>10</sup> See Vermont Feed, *What is Farm to School?*, <https://vtfeed.org/what-farm-school> (last visited Aug. 21, 2022) [<https://perma.cc/C9V5-U66R>]; Nat'l Farm to School Network, *About Farm to School*, [www.farmtoschool.org/about/what-is-farm-to-school](http://www.farmtoschool.org/about/what-is-farm-to-school) (last visited Aug. 21, 2022) [<https://perma.cc/6PMA-3BKY>].

<sup>11</sup> See Evie Blad, *Farm-to-School Participation Is Up: Fast Facts About Serving Local Foods*, EDUCATION WEEK (Mar. 22, 2016), <http://blogs.edweek.org/edweek/rulesforengagement/2016/03/farm-to-school-participation-is-up-fast-facts-about-serving-local-foods.html> [<https://perma.cc/YLR2-LLQB>]; Vermont Feed, *supra* note 10.

<sup>12</sup> See USDA FNS, *Finding, Buying and Serving Local Food: Introduction to Procurement* (2014), [https://fns-prod.azureedge.us/sites/default/files/f2s\\_010914\\_webinar\\_intro.pdf](https://fns-prod.azureedge.us/sites/default/files/f2s_010914_webinar_intro.pdf) [<https://perma.cc/35U5-B54V>].

<sup>13</sup> See USDA FNS, *PROCURING LOCAL FOODS FOR CHILD NUTRITION PROGRAMS* 54 (2015), [http://www.fns.usda.gov/sites/default/files/f2s/F2S\\_Procuring\\_Local\\_Foods\\_Child\\_Nutrition\\_Prog\\_Guide.pdf](http://www.fns.usda.gov/sites/default/files/f2s/F2S_Procuring_Local_Foods_Child_Nutrition_Prog_Guide.pdf) [<https://perma.cc/97MJ-B4EG>].

<sup>14</sup> See Anupama Joshi, Marion Kalb & Moira Beery, *Going Local: Paths to Success For Farm to School Programs* (2006), [https://mda.maryland.gov/farm\\_to\\_school/Documents/goinglocal.pdf](https://mda.maryland.gov/farm_to_school/Documents/goinglocal.pdf) [<https://perma.cc/S5GZ-9F4U>].

<sup>15</sup> See Amy Fovargue, *Fremont City Schools Celebrate Local in Everyday Menus*, OHIO ST. UNIV. EXTENSION (Feb. 1, 2016), <http://farmtoschool.osu.edu/2016/02/01/fremont-city-schools-celebrate-local-in-everyday-menus/> [<https://perma.cc/AF7Z-88W8>].

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

vegetables as the national average.<sup>17</sup> The most recent USDA Farm to School Census indicated that 67,369 schools feature local foods on their menus or are educating students through farm to school activities.<sup>18</sup> Nationally, school districts spent nearly \$1.26 billion during the 2018-2019 school year on locally sourced fruits, vegetables and other products.<sup>19</sup>

#### B. Farm to School Programs’ Benefits

Farm to school programs deserve legislative support because of the countless benefits they offer students and communities.<sup>20</sup> Farm to school programs positively impact students’ health. They not only provide students access to a variety of fresh, healthy produce, but they also teach students how to make healthy food choices.<sup>21</sup> In this way, farm to school can help combat child obesity, obesity related illnesses such as diabetes and heart disease, and food insecurity.<sup>22</sup> Farm to school also benefits communities by stimulating local economies.<sup>23</sup> These programs help support small farmers and provide local producers with new and steady markets.<sup>24</sup>

#### C. Food Safety Protocols & Concerns

As the advent of farm to school programs has been a relatively recent movement, the programs, and consequently their relationship with the law, still have adapting to do. As a result, they may encounter growing pains. Chief among those growing pains are food safety concerns. Many school administrators cite food safety as one of the greatest challenges

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<sup>17</sup> See also Vermont Feed, *supra* note 10 (“Nearly 2/3 of Vermont schools offer farm to school programming, and 95% of those serve local foods.”).

<sup>18</sup> USDA, *Farm to School Census*, <https://farmtoschoolcensus.fns.usda.gov/> (last visited Aug. 21, 2022) [<https://perma.cc/L63N-3NZL>].

<sup>19</sup> *Id.*

<sup>20</sup> See *New USDA Data Show Growing Farm to School Efforts Help to Reduce Plate Waste, Increase Student Participation in Healthier School Meals Program*, USDA (Oct. 20, 2015), <https://www.usda.gov/wps/portal/usda/usdahome?contentid=2015/10/0292.xml> [<https://perma.cc/KF8B-X8GR>]; Lauren Tonti, *Food for Thought: Flexible Farm to School Procurement Policies Can Increase Access to Fresh, Healthy School Meals*, 27 HEALTH MATRIX: J.L. MED. 463 (2017).

<sup>21</sup> See USDA, *supra* note 20.

<sup>22</sup> See NAT’L FARM TO SCHOOL NETWORK, *The Benefits of Farm to School 2* (2017), [https://assets.website-files.com/5c469df2395cd53c3d913b2d/611027419232d281ad2f51ff\\_BenefitsFactSheet.pdf](https://assets.website-files.com/5c469df2395cd53c3d913b2d/611027419232d281ad2f51ff_BenefitsFactSheet.pdf) [<https://perma.cc/SNN5-78MZ>].

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

<sup>24</sup> *Id.*

or barriers to farm to school implementation.<sup>25</sup> Their trepidation is reasonable, as many foodborne illnesses can result from improper cultivation and care along the long food production chain.<sup>26</sup> Food passes through multiple channels before it even reaches a school lunch tray, thus leaving many points of contact and opportunities for contamination.<sup>27</sup> Administrators are rightly wary given not only the rates of foodborne illnesses,<sup>28</sup> but also prior costly lawsuits involving students who have fallen ill because of improper handling of food within school cafeterias.<sup>29</sup>

### 1. *Food Safety Measures for Farm to School Providers*

Fears about food safety have given rise to preventative policies, measures, and requirements. Farm to school producers can adopt these measures to help alleviate administrators' concerns. These measures include, but are not limited to, implementing Hazard Analysis and Critical Control Point (HACCP) programs,<sup>30</sup> employing Good Agricultural Practices (GAP)<sup>31</sup> or Good Handling Practices

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<sup>25</sup> See USDA FNS, FOOD-SAFE SCHOOLS ACTION GUIDE: CREATING A CULTURE OF FOOD SAFETY, A FOOD SAFETY RESOURCE FOR SCHOOL NUTRITION DIRECTORS 25 (2014), <http://www.fns.usda.gov/sites/default/files/Food-Safe-Schools-Action-Guide.pdf> [<https://perma.cc/RXG9-FJN6>]; PUB. HEALTH L. CTR., *supra* note 6; see generally SPARK POLY INST., *Just the Facts Please: A Guide to Food Safety & Farm to School for Producers* (2012), <http://coloradofarmtoschool.org/wp-content/uploads/downloads/2013/02/Just-the-Facts-Please-Producers-FINAL.pdf> [<https://perma.cc/5PQP-5ELB>] (noting that the school's biggest concern is food safety).

<sup>26</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, *Foodborne Germs and Illnesses*, (2020), [www.cdc.gov/foodsafety/foodborne-germs.html](http://www.cdc.gov/foodsafety/foodborne-germs.html) [<https://perma.cc/2V3H-PJGE>].

<sup>27</sup> See CTRS. FOR DISEASE CONTROL & PREVENTION, *How Food Gets Contaminated - The Food Production Chain* (2017), <https://www.cdc.gov/foodsafety/production-chain.html> [<https://perma.cc/DLA4-DHG4>].

<sup>28</sup> See U.S. FOOD & DRUG ADMIN., *Frequently Asked Questions on FSMA*, <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247559.htm> (last visited Aug. 21, 2022) [<https://perma.cc/TZ6H-BXKD>].

<sup>29</sup> See *Almquist v. Finley Sch. Dist. No. 53*, 57 P.3d 1191, 1193 (Wash. Ct. App. 2002).

<sup>30</sup> See *Hazard Analysis Critical Control Point* (HACCP), U. S. FOOD & DRUG ADMIN. (2018), [www.fda.gov/food/guidanceregulation/haccp/](http://www.fda.gov/food/guidanceregulation/haccp/) [<https://perma.cc/M7HC-SS3R>] (According to the U.S. Food & Drug Administration, "HACCP is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product.").

<sup>31</sup> See *infra* Section I.C.2.

(GHP),<sup>32</sup> and carrying liability insurance.<sup>33</sup> Because many farm to school suppliers provide fresh produce to schools, and other evaluations like HACCP are tailored toward manufacturing, production, or storage practices,<sup>34</sup> the scope of this paper focuses on GAP audit programs, for these are the likely evaluations with which many farm to school producers would engage.

## 2. GAP—What is it?

Both GAP and GHP programs are voluntary assessments specific to fruit and vegetable food safety.<sup>35</sup> These programs follow recommendations outlined in the USDA’s Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables, as well as other industry established food safety practices, to help producers ensure food safety.<sup>36</sup> GAP audits hone in on produce production, packaging, handling, and storage to determine whether or not the producer has taken appropriate actions to reduce the risk of microbial contamination.<sup>37</sup> GAP certification targets four facets—soil,

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

<sup>33</sup> See *Implementing Farm to School Activities: Food Safety*, USDA FNS (2017), [www.fns.usda.gov/farmtoschool/implementing-farm-school-activities-food-safety](http://www.fns.usda.gov/farmtoschool/implementing-farm-school-activities-food-safety) [https://perma.cc/36R5-5LDC], See SPARK POL’Y INST., FARM TO SCHOOL FOOD SAFETY: A REVIEW OF AGRICULTURAL POLICIES & PRACTICES 14 (2012), <http://coloradofarmtoschool.org/wp-content/uploads/downloads/2013/02/HFHP-FTS-Food-Safety-Legal-Regulatory-Analysis-FINAL.pdf> [https://perma.cc/XF6M-XVG9].

<sup>34</sup> See SPARK POL’Y INST., *supra* note 33, at 14 (“A farm will be considered a food facility if it processes food, or if it acts as an aggregation and holding facility for multiple farms.”); USDA FNS, *supra* note 25 at 7 (“The food safety program must be based on Hazard Analysis and Critical Control Points (HACCP) principles. The Healthy, Hunger-Free Kids Act (HHFKA) of 2010 clarified that the food safety program requirements based on HACCP principles must be applied to any location where food is stored, prepared, or served as part of school nutrition programs; not just the cafeteria.”).

<sup>35</sup> See *Good Agric. Practices (GAP) Audits*, USDA AMS., [www.ams.usda.gov/services/auditing/gap-ghp](http://www.ams.usda.gov/services/auditing/gap-ghp) (last visited Aug. 21, 2022) [https://perma.cc/5JRX-QTG4]; U.S. DEP’T OF AGRIC. AGRICULTURAL MARKETING SERV., FRUIT VEGETABLE PROGRAMS, FRESH PRODUCTS BRANCH, AUDIT USER’S GUIDE FOR GAP & GHP 2 (2011), [https://www.ams.usda.gov/sites/default/files/media/GAPGHP\\_Audit\\_Program\\_User%27s\\_Guide%5B1%5D.pdf](https://www.ams.usda.gov/sites/default/files/media/GAPGHP_Audit_Program_User%27s_Guide%5B1%5D.pdf) [https://perma.cc/P9VJ-NDNC].

<sup>36</sup> See *Good Agric. Practices (GAP) Audits*, USDA AMS [www.ams.usda.gov/services/auditing/gap-ghp](http://www.ams.usda.gov/services/auditing/gap-ghp) (last visited Aug. 21, 2022) [https://perma.cc/5JRX-QTG4].

<sup>37</sup> See *Harmonized GAP*, USDA AMS, [www.ams.usda.gov/services/auditing/gap-ghp/harmonized](http://www.ams.usda.gov/services/auditing/gap-ghp/harmonized) (last visited Aug. 21, 2022) [https://perma.cc/N25S-ARMF]; Jason Ellis, Dan Henroid, Catherine Strohbehm & Lester Wilson, *On-farm Food Safety: Guide to Good Agricultural*

water, surfaces, and hands. It assesses chemical, microbiological, and physical hazards.<sup>38</sup> Producers request GAP audits from approved auditors, who then, for a fee, assess the level of accord sites are in with the guidelines. Importantly, these audits are voluntary; the law does not require them.<sup>39</sup> Published farm to school safety guidance recommends GAP auditing; this may be because schools want to encourage more fruit and vegetable consumption, it is specific to produce, or it audits food from soil to table.<sup>40</sup> Mississippi's Department of Education, for example, "chooses to only purchase food from distributors and farmers with GAP/GHP certification or certification from another third-party auditing system. However, there are no regulations that require individual schools or school districts to only purchase from GAP/GHP-certified farmers."<sup>41</sup>

However, small and medium-sized local producers face significant challenges to acquiring GAP certification, namely expense and availability.<sup>42</sup> Though GAP audit costs can vary,

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*Practices (GAPs)* (2004), [http://lib.dr.iastate.edu/extension\\_pubs/54](http://lib.dr.iastate.edu/extension_pubs/54) [<https://perma.cc/AQ7Q-GQHG>].

<sup>38</sup> See Catherine Strohbehn, Margaret Smith, Paul A. Domoto & Lester Wilson, *On-farm Food Safety: Cleaning and Sanitizing Guide*, IOWA ST. UNIV. HUM. SCIS. EXTENSION & OUTREACH PUBL'N (2013), [http://lib.dr.iastate.edu/extension\\_families\\_pubs/102](http://lib.dr.iastate.edu/extension_families_pubs/102) [<https://perma.cc/G2NV-F8EV>]; USDA FNS, *supra* note 33.

<sup>39</sup> See *Community Food Systems – Food Safety FAQs*, USDA FNS, [www.fns.usda.gov/farmentoschool/faqs-food-safety#6](http://www.fns.usda.gov/farmentoschool/faqs-food-safety#6) (last visited Aug. 21, 2022) [<https://perma.cc/7UCN-VXN2>].

<sup>40</sup> See *e.g.*, *Food Safety*, COLO. FARM TO SCHOOL, [coloradofarmentoschool.org/food-safety/](http://coloradofarmentoschool.org/food-safety/) (last visited Aug. 21, 2022) [<https://perma.cc/8H92-LYAM>] (mentioning GAP and GHP in relation to food safety measures); Rodney Holcomb, Lynn Brandenberger, William McGlynn, Anh Vo & Chris Kirby, *Farm to School Program: Tips, Tools & Guidelines for Food Distribution & Food Safety*, OKLA. DEPT' AGRIC., FOOD & FORESTRY, <http://okfarmtoschool.com/wp-content/uploads/fts-tips-tools-and-guidelines.pdf> (last visited Aug. 21, 2022) [<https://perma.cc/6BAB-TTMS>] (noting that auditing entails a third-party certifying that a food safety plan is in place after the auditor reviews the farm and packing sheds).

<sup>41</sup> Ona Balkus et al., *Farm To School In Mississippi: A Step-by-Step Guide To Purchasing Mississippi Products* 12 (2012), <http://www.chlpi.org/wp-content/uploads/2013/12/MSPurchasingGuide-9-28-final.pdf> [<https://perma.cc/U538-UGK3>].

<sup>42</sup> See Lindsey Lusher Shute & Eric Hansen, *Helping More Farmers Bring Farm to School*, NAT'L FARM TO SCHOOL NETWORK (Oct. 17, 2016), <http://www.farmentoschool.org/news-and-articles/helping-more-farmers-bring-farm-to-school> [<https://perma.cc/8MVF-9LLL>]; Ona Balkus et al., *supra* note 41, at 12 ("Depending on a grower's target market and the size of their farm, GAP/GHP certification may be cost prohibitive."); Roderick M. Rejesus, *Good Agricultural Practices GAP Certification: Is It Worth It?*, <https://www.sare.org/wp->



one study suggests that the average cost of a GAP audit was \$925, which encompasses an auditor’s hourly fee plus travel time, and a \$50 USDA administrative fee.<sup>43</sup> Outdated Food and Drug Administration (FDA) figures suggest that audits can cost anywhere from \$300-\$500, not including the investments producers may have to make to become GAP compliant.<sup>44</sup> Some farm to school programs have addressed the significant audit costs to small producers. Mississippi, for instance, subsidizes the cost of GAP or GHP programs for participating farmers.<sup>45</sup> South Carolina’s Farm to School program will pay for the GAP audit of farms that agree to sell to institutions,

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content/uploads/IsGAPWorthIt.pdf (last visited Aug. 21, 2022) [https://perma.cc/9EM3-F4GV].

<sup>43</sup> Nat’l Sustainable Agric. Coal., *Good Agricultural Practices and Good Handling Practices Audit Verification Program* (2014), <http://sustainableagriculture.net/publications/grassrootsguide/food-safety/good-agricultural-practices-and-good-handling-practices-audit-verification-program/> [https://perma.cc/M5YY-B28A]; Benjamin Chapman, *About the Opening Markets Project*, <https://foodsafety.ces.ncsu.edu/about-the-opening-markets-project/> (last visited Aug. 21, 2022) [https://perma.cc/25DE-EQ5U]; 2021/2022 Rates Charged for AMS Services, 86 Fed. Reg. 20476 (Apr. 21, 2021) (establishing \$115 hourly rate audit fee); *Good Agricultural Practices: Frequently Asked Questions*, NY DEP’T AGRIC. & MKTS., <https://agriculture.ny.gov/food-safety/good-agricultural-practices> (last visited Aug. 21, 2022) [https://perma.cc/M6AF-WU4L] (stating that auditors’ current hourly fees were \$115 per hour); MICH. DEP’T AGRIC. & RURAL DEV., *Fruit and Vegetable Inspection*, <https://www.michigan.gov/mdard/plant-pest/fruit-veg> (last visited Aug. 21, 2022) [https://perma.cc/XS7H-WQBX] (stating that auditors’ current hourly fees are \$115 per hour plus travel time); N.H. DEP’T AGRIC., MKTS. & FOOD, *GAP Certification*, <https://www.agriculture.nh.gov/divisions/regulatory-services/gap.htm> (last visited Aug. 21, 2022) [https://perma.cc/5SLU-SN4J] (stating that auditors’ current hourly fees are \$115 per hour); UNIV. MINN. EXTENSION, *Navigating the USDA GAP audit process* (2020), <https://extension.umn.edu/growing-safe-food/navigating-usda-gap-audit-process> [https://perma.cc/8TL2-CHBX] (stating that auditors’ hourly fees in 2019 were \$115 per hour).

<sup>44</sup> Rejesus, *supra* note 42; SPARK POL’Y INST., *supra* note 33, at 38 (“Currently, food safety training for food preparation in retail establishments, for HACCP plan development for food processors, or for producers to create GAP and/or *Good Handling Practices* (GHP) on-the-farm plans or pass GAP audits are not housed in one place or coordinated in content development and implementation.”); Leah Cook, *The Goods on USDA GAP Audits*, ME. DEP’T AGRIC., CONSERVATION & FORESTRY, <https://www.maine.gov/dacf/qar/gapaudits/docs/goods-on-usda-gap-audits-presentation-2020.pdf> (last visited Aug. 21, 2022) [https://perma.cc/Y4RC-6KAY] (stating the cost of average USDA GAP audits ranges from \$230–\$575).

<sup>45</sup> See Ona Balkus et al., *supra* note 41, at 12 (“In order to help offset these costs, in 2013, the Mississippi Department of Agriculture and Commerce and Alcorn State University will begin to offer farmers the option to participate in GAP/GHP cost share programs. MDAC’s program will cover 75% of costs up to \$500 for participating farmers.”).

even though GAP certification is not a requisite for schools shopping for farm to school vendors.<sup>46</sup> In Kentucky, the department of agriculture offers producers free state GAP training, and Florida has launched a cost-share/reimbursement program for Florida producers interested in selling produce to local schools.<sup>47</sup> Although this training will not GAP certify those producers, it does better educate producers about best practices for vending to schools.<sup>48</sup> Though challenges to obtaining GAP audits exist, these challenges are not insurmountable.

Ultimately, GAP is a voluntary certification system that producers can employ, if they so choose. Having this certification does not necessarily mean that potential buyers, school administrators, will understand components of certification. Even if they do, the GAP standards may fall short of safeguards a school administrator would like to see in its suppliers.

## II

### THE CHALLENGE—WHY ARE CURRENT REGULATIONS ON FARM TO SCHOOL FOOD SAFETY INADEQUATE?

#### A. Federal Level

Federal law is largely absent on farm to school specific food safety regulation, in favor of state-based oversight. No mandatory farm to school safety regulations exist—only federal recommendations or voluntary audits.<sup>49</sup> Some federal laws pertaining to school food or food safety relate to farm to school

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<sup>46</sup> See *Frequently Asked Questions*, S.C. FARM TO SCHOOL, <https://scfarmtoschool.com/about/faqs/> (last visited Aug. 21, 2022) [<https://perma.cc/R56J-S49G>].

<sup>47</sup> See *Kentucky Good Agricultural Practices (GAP) Program*, KY. DEP'T AGRIC., <http://www.kyagr.com/marketing/GAP.html> (last visited Aug. 21, 2022) [<https://perma.cc/JVP2-XAZK>]; *Good Agricultural Practices/Good Handling Practices Certification Program*, FLA. DEP'T AGRIC. CONSUMER SERV., <https://www.fdacs.gov/Food-Nutrition/Nutrition-Programs/Farm-to-School/GAP-GHP-Certification-Program> (last visited Aug. 21, 2022) [<https://perma.cc/JKZ7-TU4H>].

<sup>48</sup> USDA FNS, *supra* note 8, at 45.

<sup>49</sup> SPARK POL'Y INST., *Whose Role is It? Colorado State & Local Agency Roles in Farm to School Food Safety* (2012), <http://coloradofarmtoschool.org/wp-content/uploads/downloads/2013/01/FTS-TF-Just-the-Facts-Please-State-Agencies-FINAL.pdf> [<https://perma.cc/WZ96-BWHC>] (“There are no mandatory on-farm food safety regulations – only federal guidance and USDA Agricultural Marketing Service voluntary certification programs . . .”); SPARK POL'Y INST., *supra* note 33, at 28.

programs. These include the Food & Drug Administration (FDA) Food Safety Modernization Act (FSMA) and National School Lunch Act.

By focusing on prevention, the FSMA aims to preempt foodborne illnesses through updated mandatory inspection, compliance, surveillance, and response measures.<sup>50</sup> After outcries from farm to school producers during the rulemaking process,<sup>51</sup> the FDA incorporated the following language into the act in order to ensure that updated food safety rules would not cripple small farmers by imposing burdens on food tracking or record keeping:

In establishing requirements under this subsection, the Secretary shall, in consultation with the Secretary of Agriculture, consider the impact of requirements on farm to school or farm to institution programs of the Department of Agriculture and other farm to school and farm to institution programs outside such agency, and shall modify the requirements under this subsection, as appropriate, with respect to such programs so that the requirements do not place undue burdens on farm to school or farm to institution programs.<sup>52</sup>

Small producers are otherwise excluded under the act’s definition of farm.<sup>53</sup> Thus, the FDA acknowledges that the demands and standards asked of other producers cannot encompass the needs and capacities of small, local farm to school suppliers, exempting them from burdensome regulations.<sup>54</sup> The federal government shares, if not relinquishes, the responsibility of farm to school safety

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<sup>50</sup> *FDA Food Safety Modernization Act (FSMA)*, U.S: FOOD & DRUG ADMIN. (2015), <https://www.fda.gov/Food/GuidanceRegulation/FSMA/> [<https://perma.cc/66MD-BDVU>]; CTRS. FOR DISEASE CONTROL & PREVENTION, *CDC and the Food Safety Modernization Act (2015)*, <https://www.cdc.gov/foodsafety/fsma/index.html> [<https://perma.cc/8QCX-QRUZ>].

<sup>51</sup> *See, e.g.*, 80 FR 74353; 80 FR 74407 (“There is no reason to believe that produce is unsafe or otherwise unfit for consumption by individuals at schools or hospitals simply because it was produced by a farm not subject to part 112 or eligible for a qualified exemption.”); NAT’L SUSTAINABLE AGRIC. COAL., *Food Safety Modernization Act: What do FDA’s re-proposed food safety rules mean for farmers, on-farm processors, and food businesses?*, [http://okfarmtoschool.com/wp-content/uploads/2014-FSMA\\_2-page\\_handout.pdf](http://okfarmtoschool.com/wp-content/uploads/2014-FSMA_2-page_handout.pdf) [<https://perma.cc/637N-4GQ8>] (noting that the FSMA rules are re-proposed to ensure good food safety practices without imposing unfair burden on family farmers).

<sup>52</sup> 21 U.S.C.A. § 2223(A) (West 2011).

<sup>53</sup> Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, 80 Fed. Reg. 74373 (Jan. 26, 2016).

<sup>54</sup> PUB. HEALTH L. CTR., *supra* note 6; SPARK POLY INST., *supra* note 33, at 13.

education to lower levels of governance.<sup>55</sup> While small producers may be exempted under the FSMA, “they are not relieved of the burden to provide safe products for their own sake” and must still observe state and local regulations.<sup>56</sup>

The Richard B. Russell National School Lunch Act (“NSLA”) establishes the national school lunch program, and it outlines criteria for schools to receive federal reimbursements for school meals they serve. Amended by both the Child Nutrition and WIC Reauthorization Act of 2004<sup>57</sup> and Healthy, Hunger Free Kids Act of 2010,<sup>58</sup> the NSLA does establish food safety standards, requiring school food authorities to enact food safety programs applicable to food storage, preparation, and service, and to obtain bi-annual safety inspections.<sup>59</sup> These mandates are legislative floors, not ceilings; the act empowers states and local governments to conduct more frequent inspections. However, these actions primarily target food safety *after* it is in school custody, not before. Neither act mandates inspection requirements for school food suppliers, other than food service management companies who must contract to abide by “local food safety standards.”<sup>60</sup> The National School Lunch Act requires school food authorities (SFAs) to “develop a written food safety program that covers any facility or part of a facility where food is stored, prepared, or served.”<sup>61</sup> There remains little federal food safety focus on where school food comes from or how it arrives at schools.

The USDA has issued guidance on farm to school food safety, advising “[s]chool food service professionals and farmers [to] familiarize themselves with Good Agricultural Practices (GAP) and Good Handling Practices (GHP). In addition, it is advisable for school districts and farmers to contact their state and/or County Health Department for

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<sup>55</sup> Laurie J. Beyranevand, *Balancing Food Safety and Burdens on Small Farms*, 28 NAT. RESOURCES & ENV'T 17 (2013)

<sup>56</sup> *Id.* at 20.

<sup>57</sup> See Child Nutrition and WIC Reauthorization Act of 2004, PL 108–265, § 111, June 30, 2004, 118 Stat 729, 747 (2004) SEC. 111.

<sup>58</sup> See Healthy, Hunger Free Kids Act of 2010, PL 111-296, 124 Stat 3183 (2010).

<sup>59</sup> USDA FNS, *supra* note 25, at 18; 7 C.F.R. §§ 210.13, 220.7 (LexisNexis 2022); School Food Safety Inspections, 74 Fed. Reg. 45305 (Oct. 2, 2009); SPARK POLY INST., *supra* note 33, at 29; PUB. HEALTH L. CTR., *supra* note 6.

<sup>60</sup> 42 U.S.C.A. § 1761 (LexisNexis 2021); see USDA FNS, *supra* note 39 (“USDA fresh fruit and vegetable inspections are used to determine the grade of a product, and not for food safety purposes.”).

<sup>61</sup> 7 C.F.R. § 210.13 (LexisNexis 2022).

information on local food safety requirements.”<sup>62</sup>

The federal government deflects farm to school food safety regulation to states. This deflection is logical, as the federal government merely asks that these state-supported programs, which can vary drastically between states, be monitored and controlled by states themselves.

#### B. State Level

Though the federal government may leave farm to school food safety regulation largely up to states,<sup>63</sup> states vary widely in their respective approaches, particularly when it comes to small and medium-sized farms.<sup>64</sup> States derive their powers to control foodborne illnesses from a range of authorities, including general public health laws, communicable disease laws, food or food safety laws, or express statutes or regulations.<sup>65</sup>

Specifically, concerning farm to school programs, some states are altogether silent on farm to school food safety, while others include food safety provisions in their farm to school legislation. Wisconsin, for example, states that its Department of Agriculture, Trade and Consumer Protection must “[c]onduct training and provide technical assistance for school food service personnel and managers, farmers, and food

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<sup>62</sup> USDA FNS, *supra* note 33.

<sup>63</sup> See Patricia I. Elliott, *Practitioners’ Handbook On Legal Authorities For Foodborne Disease Detection And Outbreak Response*, COUNCIL TO IMPROVE FOODBORNE OUTBREAK RESPONSE 13 (2012), <http://cifor.us/uploads/resources/CIFORPractitionersHandbookLegalAuthorities.pdf> [<https://perma.cc/A6UM-RHK2>].

<sup>64</sup> *Id.* at 15 (“Variations in how states structure their implementation of food safety and foodborne disease outbreak activities might or might not reflect the underlying legal authorities that direct and allow agencies to take action. Thus, an agriculture agency may be responsible for administering laws located within the health title of a state’s statutes. This seeming incongruence can reflect changes to government organizational structures or responsibilities over time that might not have been likewise reflected in the organization of statutes and regulations. These differences also can result in differences in how laws are administered.”); see generally Tonti, *supra* note 20, at 487–88 (explaining school vendor selection); SPARK POLY INST., *supra* note 33, at 16–17 (“[T]he Colorado Department of Agriculture (CDA) has the authority to regulate farms that grow produce; however, because GAP/GHP is voluntary the only farms audited are those that request a formal food safety audit.”) (“it is likely that regulation of small farms is neglected. FDA only has finite resources, and its resources in this area mainly go to ensure that large farms are complying with FDA requirements”) (“These standards, such as FDA GAP and GHP, are recommendations for small farms to follow, and therefore they are not heavily regulated by the state.”).

<sup>65</sup> Elliott, *supra* note 63, at 17–23.

distributors and processors concerning farm to school programs and food safety and procurement.”<sup>66</sup> While some states include provisions for farm to school safety standards directly in farm to school authorizing legislation, this wording can often prove overly broad. For instance, food from school gardens or farms in Washington must “meet appropriate safety standards,”<sup>67</sup> but the statute itself does not clearly identify what code provisions are implied. It does not specifically state what rules schools should follow to be compliant. Conversely, states may only narrowly legislate for food safety regulations. For instance, food safety provisions are more explicit when it comes to school gardens<sup>68</sup> or proper food handling once products already delivered, not necessarily for school food procurement. Many “local safety standards” govern schools; there is plenty of regulation on products once they arrive in a cafeteria, such as the many regulations regarding food inspections and proper food preparation. But an apple can come into contact with many contaminants after it is plucked from a tree, loaded into a crate, transported to a school, placed on a lunch tray, and finally served to a student. The policy-practice gap lies in the preliminary steps—the growing and processing that may not be accounted for by state health and safety codes.

Other states do not provide for farm to school safety regulations in farm to school legislation at all. For example, in Minnesota:

On a state level, the food safety requirements that apply to farm to school and school garden programs are the same as the food safety requirements for other school food. Minnesota has no specific state legal requirements addressing food safety requirements for farm to school or school garden programs. However, farmers and schools involved in farm to school or school garden programs should follow accepted food safety practices and have a food safety plan to reduce the risk of foodborne illnesses from these

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<sup>66</sup> WIS. STAT. ANN. § 93.49(2)(b)(4) (West 2022).

<sup>67</sup> WASH. REV. CODE ANN. § 28A.320.185(1) (West, 2022).

<sup>68</sup> See, e.g., *Id.* § 28A.320.185 (“School districts may operate school gardens or farms, as appropriate . . . . All such foods used . . . shall meet appropriate safety standards.”); CAL. EDUC. CODE § 49565.6 (West 2022) (To qualify for funding, schools participating must include tasting and sampling of nutritious fruits and vegetables as part of nutrition education, which includes “[a] produce sampling program that supports a school garden’s harvest . . .”).

programs.<sup>69</sup>

Overall neither GAP, nor any similar form of audit, is required; auditing is voluntary.<sup>70</sup>

Some state legislation simply mandates the provision of information about food safety.<sup>71</sup> States’ departments of agriculture, health, or education often issue farm to school safety guidelines. Often, to aid prospective farm to school producers and school administrators, state departments of agriculture will issue food safety guidelines, even if not mandated. States like Colorado and Oklahoma have issued comprehensive guidelines on the roles of various state and local government actors in farm to school food safety.<sup>72</sup> But these guidelines instruct to perform self-audits and inspections.

Just as the federal government defers to states, states in turn pass the buck onto local administrators and farmers themselves.<sup>73</sup> States divide food safety law administration between state and local governments.<sup>74</sup> For example, “Colorado law states that districts, in their procurement process, should ensure that the farms from which they are purchasing are following the necessary FSMA requirements and other applicable laws.”<sup>75</sup> However, with some small farms exempt from certain FSMA regulations,<sup>76</sup> such comprehensive guidance creates confusion for local administrators tasked with carrying out the law. Can districts purchase from small producers who are exempt from FSMA guidelines? Or does state law direct potential suppliers to guidelines that are irrelevant to them? While states may circulate plenty of guides or tips on farm to school safety, codification is key, for it increases the likelihood of compliance.

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<sup>69</sup> See PUB. HEALTH L. CTR., *supra* note 6.

<sup>70</sup> See *supra* Section II.C.2.

<sup>71</sup> See LA. STAT. ANN. § 17:195.1(d) (West 2021) (“Disseminate specific farm to school procurement guidelines for farmers and schools regarding contracting with schools and school districts and school food safety and liability insurance requirements.”); TEX. AGRIC. CODE ANN. § 12.0026(D) (West 2021) (“food safety”).

<sup>72</sup> See *e.g.*, COLO. FARM TO SCHOOL, *supra* note 40 (Colorado Farm to School Task Force has partnered with other institutions to provide five reports that provide a “comprehensive review and analysis of statutory and regulatory structure of agricultural policies” related to farm to school.).

<sup>73</sup> See SPARK POL’Y INST., *supra* note 33, at 28 (“Ultimately, districts must ensure the food they buy is free of contamination.”); Elliott, *supra* note 63, at 13.

<sup>74</sup> *Id.* at 14.

<sup>75</sup> See SPARK POL’Y INST., *supra* note 33, at 28

<sup>76</sup> See *supra* Section I. A.

### C. Local School Administrator Control is Impracticable

Placing the onus of ensuring farm to school safety on local school administrators is impracticable. Currently, to promote the safest possible food service to children, the USDA recommends three main ways school administrators can ensure farm to school food safety: 1) mandate that producers have GAP certification; 2) request that producers voluntarily audit themselves; and 3) have school administrators visit and inspect farm to school producers' sites.<sup>77</sup> The USDA and state agencies offer many resources to help guide school administrators through the annals of farm to school food safety.<sup>78</sup> For example, the USDA points administrators toward extension school check lists, such as the food safety checklist produced by the Iowa State University Cooperative Extension and Outreach program.<sup>79</sup> These food safety checklists ask assessors, like school administrators, to answer "yes" or "no" questions about producers, such as "[a]re coliform tests conducted on soil in frequently flooded land?"<sup>80</sup>

Despite the many available resources, relying on school administrators is impractical, for four main reasons. First, relying on school administrators to ensure school food safety themselves demands time and attention that administrators may not have given their other administrative responsibilities.<sup>81</sup> Especially in communities that do not employ farm to school coordinators, school administrators must not only schedule and balance visits to producers' production sites alongside their regular administrative duties, but they must also allot time for visit preparations; adequate

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<sup>77</sup> See USDA FNS., THE USDA FARM TO SCHOOL PLANNING TOOLKIT 30, <https://fns-prod.azureedge.net/sites/default/files/resource-files/F2S-Planning-Kit.pdf> (last visited Aug. 21, 2022) [<https://perma.cc/8QHS-Y7TQ>]; USDA FNS, *supra* note 39.

<sup>78</sup> See *Tonti*, *supra* note 20, at 484; USDA FNS, *supra* note 33; *see, e.g.*, COLO. FARM TO SCHOOL, *supra* note 40 (presenting numerous guides and resources that explain regulatory and statutory food safety requirements); Oklahoma Farm to School, *Food Safety Resources*, <http://okfarmtoschool.com/growers-tools/food-safety-resources/> (last visited Aug. 21, 2022) [<https://perma.cc/8BHH-9EBQ>] (listing food safety resources, including checklists, guidelines and manuals).

<sup>79</sup> See USDA FNS, *supra* note 33.

<sup>80</sup> Amy Casselman, Catherine Strohbehn & Sam Beattie, *Checklist for Retail Purchasing of Local Produce*, IOWA ST. UNIV. EXTENSION & OUTREACH PUBL'NS (2011), [https://cms.agr.wa.gov/WSDAKentico/farm-to-school/6-3\\_Sample\\_Food\\_Safety\\_Checklist\\_by\\_ISU\\_Ext.pdf](https://cms.agr.wa.gov/WSDAKentico/farm-to-school/6-3_Sample_Food_Safety_Checklist_by_ISU_Ext.pdf) [<https://perma.cc/T2WD-VN7U>].

<sup>81</sup> See SPARK POLY INST., *supra* note 33, at 34–35.



training and reading literature on farm to school may demand more attention and time than administrators can freely or comfortably give.<sup>82</sup>

Second, school administrators may not have the expertise or experience that a trained or veteran food safety inspector has. As a result, school administrators may inadvertently overlook potential food safety hazards during producer site visits. Even producers with many years of farming experience cannot always guarantee that they have expert food safety knowledge, especially about microbial hazards.<sup>83</sup> This naturally beckons the third impracticality, that suggesting school administrators should use a guideline, even a simple, user-friendly one, is ineffective if they do not understand its basic premises—what exactly they should look for, what should raise red flags, or what questions they should ask in order to detect potential red flags. Finally, school administrators can read food safety guidelines, but they cannot station themselves on farms to regularly monitor a producer’s food safety practices. Other than self-policing and voluntary inspection, no inspection ensures that farm to school producers meet food safety requirements.

### III

#### THE SOLUTION: CREATION OF SPECIAL FARM TO SCHOOL CERTIFICATION

The insufficiency of current recommendations and standards for farm to school food safety calls for regulation innovation. This Essay proposes the following strategies to help close the policy-practice gap.

##### A. Creation of Special Farm to School Certification at the State Level

Given the challenges stated above,<sup>84</sup> GAP certification does not necessarily provide the best fit farm to school program operations.<sup>85</sup> Insufficient time, wariness that food is safe,<sup>86</sup> or

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<sup>82</sup> See Rosenberg & Lieb, *supra* note 8, at 18. (“The school food service director knows a few farmers in the area interested in selling produce to his district, but a busy work schedule and concerns about food safety keep him from experimenting.”).

<sup>83</sup> See Beyranevand, *supra* note 55, at 19.

<sup>84</sup> See *supra* Section I.C.

<sup>85</sup> See SPARK POLY INST., *supra* note 33, at 18 (“. . . some of the standards may not be applicable for small farmers . . .”).

<sup>86</sup> See *supra* Section I.C.

unfamiliarity dealing with farm to school vendors<sup>87</sup> are all reasons administrators cite for not implementing Farm to School programs. Additionally, there is little law to dictate requirements for third-party farm to school GAP auditors.<sup>88</sup> To help eliminate these barriers to expanding farm to school activity across the country, states and local governments should adopt a special farm to school certification that is 1) easily attainable for producers; 2) easily understandable for schools; and 3) relevant to the specific fresh, local, healthy products schools seek to purchase from producers. Therefore, lawmakers and regulators should propose a special farm to school certification, either at the federal level or independently at the state level, that is tailored to the needs of Farm to School product buyers and suppliers. While this certification (hereinafter “F2S Cert”) can certainly rely on GAP principles, or use GAP as a framework, a special certification will account for the unique nature of farm to school relationships.<sup>89</sup>

This proposal is not radical or unprecedented—it is a mere adoption of other well known “consumer confidence” seals, like that of the National Organic Program.<sup>90</sup> F2S Cert can resemble other national consumer certifications, such as USDA Organic. For the USDA to award “organic” certification to a producer, the agency’s accredited certifying agents inspect and certify that the producer’s crops, livestock, or processed items meet the requisite criteria.<sup>91</sup> The award of such a seal from the USDA signifies that the producer complies with USDA standards for organic products, thus inspiring confidence in

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<sup>87</sup> *Id.*

<sup>88</sup> See SPARK POL’Y INST., *supra* note 33, at 18 (highlighting that “train[ing] the trainers” is necessary) (“A significant gap in the law is the lack of requirements for third party auditors. . . . none of the other legislation or guidance speaks to this issue.”).

<sup>89</sup> See William McGlynn & Lynn Brandenberger, *DEVELOPING A FOOD SAFETY PLAN FOR YOUR FRESH PRODUCE OPERATION*, ROBERT M. KERR FOOD & AGRIC. PROD. CTR. 168-1, <http://pods.dasnr.okstate.edu/docushare/dsweb/Get/Document-6659/FAPC-168web.pdf%20> (last visited Aug. 21, 2022) [<https://perma.cc/4RBG-8KF5>]

(“However, there is not a one-size-fits-all plan for food safety. GAPS must be uniquely tailored to crops and management practices for each farm. Basically, we need to focus on reducing the risk of contaminating fresh produce. It is not possible at this time to completely eliminate food safety risks . . .”).

<sup>90</sup> Jason Czarnezki, Andrew Homan, Meghan Jeans, *Creating Order Amidst Food Eco-Label Chaos*, 25 DUKE ENV’T. L. & POL’Y F. 281, 290 (2015).

<sup>91</sup> See *Becoming a Certified Operation*, USDA AMS, <https://www.ams.usda.gov/services/organic-certification/faq-becoming-certified> (last visited Aug. 21, 2022) [<https://perma.cc/2UE4-6VN3>].

consumers that the products are of the expected quality.<sup>92</sup> While USDA organic criteria may differ from that of F2S Cert, F2S Cert can adopt a similar model for certifying producers.

Overall, F2S Cert is the best strategy for two key reasons. First, F2S Cert will foster a sense of trust, or “consumer confidence,” that is unique to schools. It can prove to be highly recognizable and clear, and can facilitate ease and inspire confidence in Farm to School procurement transactions. Second, given proposed tailoring to the Farm to School relationship, F2S Cert creators can streamline the seal’s metrics as to reduce its cost for small farmers. While a Group GAP option exists,<sup>93</sup> where farmers band together for certification, the real utility of F2S Cert lies in an easy, trustworthy certification to which a school official can turn to confidently make purchases.

### 1. *State F2S Cert: Advantages and Disadvantages*

State legislators can create F2S Certs for their respective states. A Statewide F2S Cert has advantages and disadvantages. Favorably, F2S Cert can be unique to each state. Each state would create the criteria and accept responsibility for assessing whether or not producers with the certification meet the criteria. State schools can then look for their state-created F2S Cert. This option is attractive, because it allows flexibility for legislators to tailor certification to best suit the needs and requirements of various states, which may be nonuniform across the country.

Admittedly, the advantages of having fifty unique state F2S Certs breeds consequential challenges. The main disadvantages are particularly evident in cases where schools sit just across a state border from a viable farm to school supplier. Legislators would have to decide whether or not schools could purchase from geographically proximate but technically “out-of-state” suppliers who may hold an F2S Cert from the neighboring state, but not their own, and if producers may secure multiple state F2S Certs. Unfamiliarity with other

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<sup>92</sup> See *What is Organic Certification?*, USDA AMS, <https://www.ams.usda.gov/publications/content/what-organic-certification> (last visited Aug. 21, 2022) [<https://perma.cc/2WAK-GZL4>].

<sup>93</sup> See *GroupGAP Food Safety Program*, USDA AMS, <https://www.ams.usda.gov/services/auditing/groupgap> (last visited Aug. 21, 2022) [<https://perma.cc/CAD5-JRBD>]; *GroupGAP Frequently Asked Questions*, USDA AMS, <https://www.ams.usda.gov/sites/default/files/media/FAQs%20GroupGAP.PDF> (last visited Aug. 21, 2022) [<https://perma.cc/U2XZ-LRLR>].

state F2S Certs criteria may lead to diminished confidence in neighboring and potentially competent producers. Unique state F2S Certs may require additional work and red tape for administrators, which F2S Cert aims to ameliorate. State F2S Certs may not inspire the same confidence standard that a nationally recognized F2S Cert would. Instead of making transactions easier for schools, a unique F2S Cert might complicate transactions. However, legislators and administrators can tackle these challenges by crafting reciprocity agreements or memorandums of understanding between states for the recognition of each respective F2S Cert that address, clarify, and resolve these issues.

2. *State versus Federal F2S Cert: Why State Control is Most Feasible*

Despite a federal program's potential benefits, state F2S Cert is more feasible than federal F2S Cert. A national F2S Cert promotes uniform standards, and centralized control and regulation by federal agencies may ensure maintenance of F2S Cert criteria. A federal F2S Cert may also allow farm to school to more easily integrate with the National School Lunch and School Breakfast programs, two child nutrition programs where the federal government's umbrella already coordinates their standards (though operations are delegated to states).

However, Trump-era actions illustrate the fickleness that can be associated with a federal certification option. The Trump administration fostered an inhospitable regulatory environment in which new F2S Cert regulations could not flourish.<sup>94</sup> The administration not only implemented regulatory freezes and personnel reductions upon federal agencies, but also took steps to abrogate Obama-era school nutrition standards.<sup>95</sup> Such politically-motivated actions

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<sup>94</sup> See Ian Kullgren & Matthew Nussbaum, *White House Calls for Deep Agency Cuts*, POLITICO (Apr. 11, 2017), <http://www.politico.com/story/2017/04/white-house-agency-cuts-237139> [https://perma.cc/RWC9-EWNR]; Lydia Wheeler, *Trump's Regulatory Freeze in Full Force*, HILL (Feb. 17, 2017), <http://thehill.com/regulation/administration/320014-trumps-regulatory-freeze-in-full-force> [https://perma.cc/4W6E-36BX].

<sup>95</sup> *Id.*; see also Jessica Taylor, *Trump Administration Rolls Back Michelle Obama's Healthy School Lunch Push*, NPR (May 1, 2017), <http://www.npr.org/2017/05/01/526451207/trump-administration-rolls-back-2-of-michelle-obamas-signature-initiatives> [https://perma.cc/KBE2-ATT6] (highlighting that as the school nutrition standards have been a controversial topic for long, it also became more likely to be targeted by the Trump

illustrate how F2S Cert conditions could change from one political administration to the next. Moreover, a federal option may disenchant local lawmakers and citizens. Some states may feel the standards are too strict, while others may decide that proposed standards are not strict enough, thus rejecting a federal F2S Cert on grounds of a poor fit. Under auspices of state-level administrations, states can tailor their certifications according to regional and local needs and are at will to negotiate regional recognitions that would facilitate transactions between schools located across state borders from viable producers.

#### B. Alternatives to F2S Cert

States have already begun to take up the mantle of farm to school food safety regulation. For example, the Massachusetts Commonwealth Quality Program “provides a lower cost option for food safety certification for products that will be sold within the state.”<sup>96</sup> Michigan is also exploring alternative food safety audit options for small farmers.<sup>97</sup> While this Essay advocates primarily for national or state F2S Cert, it also recommends the following interim alternatives to F2S Cert to help ensure the longevity of Farm to School programs.

Without the creation of an F2S Cert, lawmakers can attempt to utilize the legal structures and certifications already in place to ensure the safety and longevity of farm to school programs. The first alternative to F2S Cert to ensure farm to school success involves two steps. First, states can encourage schools to include GAP certification in their school food bid solicitations.<sup>98</sup> Or, states and local governments can explore mandatory GAP certification for farm to school vendors. If lawmakers choose these strategies, then the requisite second step is to make GAP certification more accessible to small and mid-size producers. That is, if lawmakers impose mandatory GAP certification, they will need to give local vendors a way to satisfy the requirement, financially and logistically. This second step is critical. Surely, schools can specify GAP certification in their bids right now. But given the current

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Administration); Lydia Wheeler, *Trump Unwinding Michelle Obama’s School Lunch Program Rules*, THE HILL (May 1, 2017), <http://thehill.com/regulation/healthcare/331400-trump-unwinding-first-ladys-school-lunch-program-rules> [<https://perma.cc/X9QJ-BEA8>].

<sup>96</sup> See Ona Balkus et al., *supra* note 41, at 12.

<sup>97</sup> *Id.*

<sup>98</sup> See Tonti, *supra* note 20, at 484–85.

challenges in acquiring GAP certification, schools that require GAP certification in their bid submissions will limit the applicant pools if producers have difficulty securing GAP certification. States need strong incentives to help small producers acquire this certification.

Lawmakers can further consider alternate ways to ensure food safety in farm to school programs. These include promoting and hosting streamlined, expert-led trainings for school officials who operate farm to school programs. Trainings tailored to farm to school audiences can be widely broadcasted, especially when states partner with universities and their extension schools.<sup>99</sup> Better training for school officials may make them feel more comfortable adopting farm to school programs. Increased confidence in food safety will help to promulgate farm to school and help bring more produce into the cafeteria.

#### CONCLUSION

Legislators should create farm to school certifications so that farm to school programs can blossom. This Essay is not meant to suggest that small, local producers are less qualified than commercial producers; it should not imply that small producers lack knowledge of food safety measures, or are otherwise less capable or responsible. Rather, this Essay purports the exact opposite.<sup>100</sup> This Essay hopes only to institute a standard that will cement local producers' places in the school system by building confidence in local producers and facilitating easy transactions between schools and suppliers. Though increased regulation is sometimes viewed as a hindrance rather than a help, by using the law to protect students, producers, schools, and farm to school programs, legislators will reduce the otherwise persisting risk that the seeds of promising farm to school programs sown by innovative individuals will be lost in the weeds of a lawsuit. By passing progressive laws today that outline clear and robust standards, legislators can help avoid costly litigation for school districts and their suppliers. Legislators should not nip these programs

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<sup>99</sup> See e.g., SPARK POLY INST., *supra* note 25, at 18–19 (highlighting that schools like Colorado State University Extension, Cornell University, and others have published materials that are accessible to the public).

<sup>100</sup> See Ona Balkus, et al., *supra* note 41, at 11 (“In fact, locally grown produce can be a safer option than food shipped from far away. During the major spinach recall in 2006, a senior F.D.A. official advised that ‘the risk is significantly reduced if you know the farmer and know his farm’ as the bacteria making people sick was suspected to be from a large commercial farm on the West Coast.”).

in the bud by failing to act. Instead, they must give schools an opportunity to carry out Congress’s mandate to buy local to the maximum extent possible.