

April 23, 2010

**MEMORANDUM FOR THE CHAIRMAN OF THE NATIONAL ORGANIC
STANDARDS BOARD**

FROM: Miles McEvoy
Deputy Administrator
National Organic Program

SUBJECT: Organic Certification and Labeling of Cosmetics and Personal Care Products

ISSUE:

Organic labeling on personal care products has been a divisive issue within the organic food industry for many years. At the core of the debate lies the question of whether the scope of the Organic Foods Production Act of 1990 (OFPA) and the National Organic Program (NOP) regulations extends to the certification of personal care products.

In November 2009, the National Organic Standards Board (NOSB) recommended that the Department of Agriculture (USDA) regulate organic labeling of personal care products (the recommendation was approved by a vote of 12 to 1). Specifically, the recommendation requested that NOP develop a single national standard for personal care products. Underpinning that recommendation was concern that the array of private standards obscured the requirements for organic claims for both manufacturers and consumers.

SUMMARY:

As a matter of course, the NOP will do the following:

1. Collaborate with the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) to understand the issues associated with the use of the term “organic” in personal care products. The objective of this collaboration is to have a comprehensive approach that aligns with each respective agencies mission and regulations.
2. Begin gathering information regarding the organic labeling of personal care products in the marketplace. The exact methods for obtaining this information have not been finalized yet, but NOP will engage with the public at large. Methods to collect this information might include a public survey and/or Advanced Notice of Proposed Rulemaking.
3. Consider the recommendations of the NOSB on rulemaking and take them under advisement for future incorporation.

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DISCUSSION:

Statutory and Regulatory Scope

The primary purposes of the OFPA are to establish national standards governing the marketing of certain agricultural products for human or livestock consumption as organically produced products and to facilitate interstate commerce in organically produced fresh and processed food. The law frames organically produced agricultural products in the context of food and contains no references to personal care products or cosmetics.

The NOP regulations do not include provisions that are specific to the manufacturing of personal care products. The definition for agricultural products states, “Any agricultural commodity or products, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the U.S. for human or livestock consumption.”

History of Related NOP Statements and Policies

In an August 2005 memorandum to USDA accredited certifying agents, the NOP declared that agricultural products may be certified as organic if they comply with the NOP regulations irrespective of the end use. This marked a different stance to previous statements from the NOP which had stated that only the agricultural ingredients in personal care products, not the finished products, could be represented as NOP-certified. The 2005 memo specifically stated that personal care products are eligible to be NOP-certified as “100% organic,” “organic” or “made with organic (specified ingredients or food group(s)).” The memo also indicated that rulemaking would ensue, as warranted, to address labeling issues and uses of synthetics unique to the context of personal care products.

In April 2008, the NOP published a fact sheet on personal care products that stated:

- USDA does not have authority over cosmetics, body care products and personal care products that do not contain agricultural ingredients.
- Personal care products that contain agricultural ingredients may be certified under the NOP regulations.
- Cosmetics, body care products, and personal care products may be certified to foreign organic standards, or other labeling claims.

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Labeling: Relevant Authorities and Current Marketplace Practices

FDA has authority to regulate the labeling and safety of personal care products. In March 2010, the FDA stated in a website Q&A that organic labeling of personal care products must comply with NOP organic standards. This differs from the current NOP policy which limits the scope of NOP authority to only products which bear the USDA seal.

In March 2010, Consumer Union filed complaint with the FTC about organic labeling of personal care products. It urged the FTC to investigate unfair and deceptive labeling practices among “organic” personal care products. The complaint highlighted inconsistency between food and personal care products such that personal care products which have organic claims but do not use the USDA seal could contain synthetic substances that would be prohibited in organic food.

There are a number of organic labeling schemes in the marketplace that utilize different, private standards (or no standard at all) to label personal care products as organic. In addition to the NOP regulations, there are three other standards that apply to organic labeling of personal care products and that are common in the U.S. market: National Sanitation Foundation—Personal Care Products Containing Organic Ingredients; Ecocert; and Oasis (Organic and Sustainable Industry Standards) Organic Production Standards for Health and Beauty Products. There are also a number of products that bear organic claims but have no reference to any specific standard.

In March 2010, the NOP Compliance and Enforcement staff conducted monitoring activities at the 2010 Natural Products Expo West trade show and noted the following product claim observations among 26 personal care product exhibitors: 6 products were USDA certified by an accredited certifying agent, 21 products were not USDA certified and 14 of these products included the term “organic” in the company trade name or a general claim on the principal display panel that the product was organic.