

COMMENTS
TO THE
NATIONAL ORGANIC STANDARDS BOARD

BY
MICHAEL MCGUFFIN, PRESIDENT
OF THE AMERICAN HERBAL PRODUCTS ASSOCIATION

ON THE MATTER OF
INCLUSION OF COSMETICS, BODY CARE PRODUCTS, AND PERSONAL CARE PRODUCTS
IN THE SCOPE OF THE NATIONAL ORGANIC PROGRAM

WASHINGTON, DC
MAY 4, 2009

Good afternoon. My name is Michael McGuffin and I am the president of the American Herbal Products Association, or AHPA. AHPA is the trade association and voice of the herbal products industry, representing growers, processors, manufacturers and marketers of herbs and herbal products. AHPA members sell food products such as herbal teas, dietary supplements such as tablets and tinctures, and herbal cosmetics, such as salves and soaps. Our members also include growers of organic herbs who supply their crops to marketers in each of these product categories.

In a discussion document issued on March 13, 2009 by NOSB's Certification, Accreditation, and Compliance Committee (CACC), the CACC stated that it "recommends that organic cosmetics and personal care products be recognized explicitly by the National Organic Program (NOP) to ensure consumers and businesses alike that the products have an unquestioned home in the USDA National Organic Program." The stated purpose of this document was "to present the topic for public discussion and comment and then to incorporate feedback into a CACC Recommendation for the NOSB Public Meeting in Fall 2009." I am here today to express support for this stated purpose and appreciation to the CACC for raising the topic for discussion and comment.

I last addressed this board on the subject of dietary supplements, at a time when USDA had taken the position that dietary supplements could not be marketed as organic under the National Organic Program. This issue was ultimately resolved in August 2005 when USDA's Agricultural Marketing Service issued a memorandum,

addressed to “all USDA accredited certifying agents,” to “clarify the NOP’s position” with regard to “the issue of products that meet the NOP program standards for organic products based on content, irrespective of the end use of the product.” This memo stated that “[a]gricultural commodities or products that meet the NOP standards for certification under the [OFPA] can be certified under the NOP and be labeled as ‘organic’ or ‘made with organic’ pursuant to the NOP regulations.” The memorandum went on to acknowledge that “[t]here are agricultural products, including personal care products, that, by virtue of their organic agricultural product content, may meet the NOP standards and be labeled as ‘100 percent organic,’ ‘organic,’ or ‘made with organic’ pursuant to the NOP regulations.” This document closed by stating that “[i]f additional rulemaking is required to address additional labeling issues or the use of synthetics in such products, the NOP will pursue such rulemaking as expeditiously as possible.”

So we have known for nearly four years that cosmetics and personal care products may be marketed as organic under the NOP and there are now NOP compliant organic cosmetic products in the marketplace. These cosmetics are agricultural products due to the fact that they are made up of ingredients that are derived from plants, including herbs.

There has been less clarity, however, and in fact considerable controversy as to whether cosmetics and related products are allowed to bear the word “organic” if they are not in full compliance with the NOP. Some companies view the NOP as designed primarily to deal with foods and incapable in its current form of addressing many of the ingredients used in cosmetics that, while derived from organically grown herbs and other plants, fall into the Organic Food Production Act’s (OFPA’s) definition of synthetic. And while the NOP has a process for dealing with some synthetic ingredients, many companies do not see any real options for marketing organic cosmetics under the NOP.

The continuing interest in marketing organic cosmetics, coupled with the belief in some quarters that the NOP has a narrow application for such products, has led to the development of “private standards” for labeling cosmetics as organic. In April 2008, USDA’s NOP issued a document on cosmetics, body care products, and personal care

products in which it stated that these products “may be certified to ... private standards and be marketed to those private standards in the United States,” and that “USDA’s NOP does not regulate these labels at this time.”

Some AHPA member companies have been active in the development of private standards for labeling cosmetics as organic. Other AHPA member companies view USDA’s April 2008 position on allowing certification of cosmetics to private standards as an abdication of the agency’s responsibility to protect the integrity of the organic “brand” across all product categories. In looking for consensus among AHPA’s members, it is clear that additional effort must be given to making the NOP work for all agricultural products, including cosmetics and body care and personal care products.

While AHPA therefore supports the CACC’s purpose of presenting this topic for public discussion and comment, AHPA has some suggestions for modifying the specific recommendations made in that committee’s March 2009 discussion document. I will be happy to follow up with CACC in considering any of the following suggestions.

- On recommendation 1, to add a definition of cosmetics, AHPA suggests that if such definition is added the proposed definition be replaced with one that simply states, “an article defined by 21 U.S.C. 321 (i), and soap.”
- AHPA also requests that CACC consider whether definitions should also be added for other finished products that may be marketed as organic, such as dietary supplements.
- With regard to recommendations 2 through 5, AHPA believes that the intention of these four recommendations could be better met by revising the definition of “agricultural product” in 7 CFR 205.2 by adding a descriptive sentence at the end of the current definition, such as: “This term is used herein without regard to the end use of the product, so that an agricultural product may be in the form of a food, a dietary supplement, a nonprescription drug, a cosmetic, or any other product that is processed from agricultural crops or from livestock.”
- Finally, AHPA also suggests that CACC consider recommending that a new paragraph be added to Title 7 of the Code of Federal Regulations, Section 205.605

(7 CFR 205.605). This section currently consists of paragraph (a): “Nonsynthetics allowed;” and paragraph (b): “synthetics allowed.” A third paragraph should be added to identify “synthetics allowed in or on processed cosmetic products labeled as ‘organic’ or ‘made with organic (specified ingredients or ingredient groups)’”), and listings in this new paragraph could also address, as needed, the allowed processing of any ingredients listed therein.

One point of agreement among AHPA’s members is on advocating for a finished product certification system that will maximize the marketplace for organically grown herbal crops; the vision implied by this point of advocacy is one of many more acres of organically grown herbal crops. It may be that now is the time to take up USDA’s NOP on its 2005 promise to pursue additional rulemaking to address labeling issues and the use of synthetics in organic cosmetics and related products. AHPA again expresses appreciation to the CACC for initiating a conversation on this topic at this time.