

**GREEN GUIDES – ORGANIC ROUNDTABLE**  
**Project No. P954501**

**BEFORE**  
**THE UNITED STATES OF AMERICA**  
**FEDERAL TRADE COMMISSION**

**COMMENTS OF THE**  
**AMERICAN HERBAL PRODUCTS ASSOCIATION**

**ON**  
**Consumer Perceptions of “Organic” Claims**

Submitted electronically to  
<https://ftcpublic.commentworks.com/ftc/organicroundtable/>

**December 1, 2016**

## **Prefatory remarks**

The Federal Trade Commission (FTC or the Agency) on August 10, 2016 released a study titled “Consumer Perception of ‘Recycled Content’ and ‘Organic’ Claims” (the Study) that was conducted to examine consumer understanding of “recycled content” and “organic” claims. On October 20, 2016, FTC and the United States Department of Agriculture (USDA) co-hosted a public roundtable on Consumer Perceptions of “Organic” Claims (the Roundtable) to discuss consumers’ interpretations of certain “organic” claims.

The focus of the Roundtable was identified in the Study as “organic claims for non-food products.” On the other hand, in a posting on FTC’s website dated August 11, 2016 the focus of the Roundtable was identified as “non-agricultural products like personal care products.”<sup>1</sup>

The American Herbal Products Association (AHPA) is the national trade association and voice of the herbal products industry. AHPA is comprised of companies doing business as marketers of herbs and herbal products. AHPA serves its members by promoting the responsible commerce of products that contain herbs, including personal care products, dietary supplements, and other products.

Numerous AHPA members market personal care products and dietary supplements produced in compliance with USDA’s National Organic Program (NOP) and labeled as “organic;” such products may contain agricultural and non-agricultural ingredients, as permitted by NOP. As such, AHPA’s members are engaged in activities that could be directly impacted by FTC’s assessment of consumer perception of “organic” claims and potential FTC guidance on the marketing of “organic” products. AHPA’s members, therefore, have an interest in FTC’s accurate assessment of consumer perception of “organic” claims, and in ensuring that any approaches taken by FTC to address potential deception accurately reflect the existing NOP regulatory framework for personal care products and dietary supplements containing agricultural ingredients. In its announcement of the Roundtable FTC issued an invitation to comment on the subject “organic” claims. These comments are submitted on behalf of AHPA and its members.

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<sup>1</sup> Fair L. August 11, 2016. What does it mean to consumers when it says “organic”? Accessed November 17, 2016 at <https://www.ftc.gov/news-events/blogs/business-blog/2016/08/what-does-it-mean-consumers-when-it-says-organic>.

## Summary of points

In these comments AHPA (1) notes that many personal care products may contain agricultural ingredients; (2) records that NOP has acknowledged that non-food products, including personal care products, can comply with the NOP and as such can be labeled as “organic” under the NOP; (3) requests that FTC use language when addressing the issue of “organic” labeling that accurately reflects that non-food products, including personal care products, may be agricultural products and may conform with the NOP; and (4) opines that any consumer product or service labeled as “organic” should necessarily contain or use one or more agricultural ingredient. Each of these points is articulated in greater detail below.

## Personal care products may contain agricultural ingredients

A wide variety of personal care products are available in the marketplace, including products that meet the definition of a “cosmetic” under the Food, Drug and Cosmetic Act, that is, as “articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance.”<sup>2</sup> Such articles include shampoos and hair conditioners, moisturizers and other lotions and creams, lipstick and other makeup preparations, perfumes, etc. Personal care products also include soap, although soap is specifically excluded from the FD&CA’s definition of “cosmetic.”

Personal care products may contain both agricultural and non-agricultural ingredients.<sup>3</sup> Common agricultural ingredients in many such products include nut and seed oils, waxes derived from various plant species, plant essential oils, and herbal extracts, among others.

FTC’s Study focused only on shampoo as one form of personal care products. As with other personal care products, there are numerous shampoos in the market that contain agricultural ingredients such as aloe vera juice, plant essential oils, and herbal extracts, among others.

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<sup>2</sup> 21 U.S.C. 321(i).

<sup>3</sup> Although not within the scope of FTC’s Study or the current comments, other product categories that are not conventional foods also contain agricultural ingredients. Of particular interest to AHPA is the category of dietary supplements, especially the subcategory of herbal supplements, which by its very description includes herbs as agricultural ingredients.

## **NOP has acknowledged that personal care (and other non-food products) that are agricultural products are covered under the NOP**

Over a period of several years, starting in 2000, USDA’s NOP issued sometimes contradictory statements with regard to the application of the Organic Foods Production Act (OFPA), and by extension of the NOP rule that implemented the OFPA, to agricultural products other than conventional foods. However, for over a decade NOP’s communications have clearly communicated that agricultural products that are not conventional foods, such as personal care products, may comply with and be labeled and marketed under the NOP. For example:

- NOP issued a memorandum to USDA accredited certifying agents in August 2005 in which it stated, “There 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. Businesses that manufacture and distribute such products may be certified under the NOP, and such products may be labeled as ‘100 percent organic,’ ‘organic,’ or ‘made with organic’ so long as they meet NOP requirements. Additionally, products that may be labeled ‘100 percent organic’ or ‘organic’ may also carry the USDA organic seal.”<sup>4</sup>
- NOP memorialized the same position as stated in the above-cited 2005 memorandum with the issuance in April 2008 of a fact sheet which stated that a “cosmetic, body care product, or personal care product” that contains or is made up of agricultural ingredients “may be eligible to be certified under the NOP regulations” if the product meets the USDA/NOP organic production, handling, processing and labeling standards. This fact sheet also clarified that once certified, “cosmetics, personal care products, and body care products are eligible for the same 4 organic labeling categories as all other agricultural products, based on their organic content and other factors.”<sup>5</sup>

To the best of AHPA’s knowledge the above-cited August 2005 memorandum and April 2008 fact sheet together represent NOP’s current position on this issue, such that any agricultural product may meet the NOP standards and be labeled with any of

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<sup>4</sup> Robinson BC. August 23, 2005. Memorandum To: All USDA Accredited Certifying Agent; Subject: Certification of agricultural products that meet NOP standards.

<sup>5</sup> USDA, Agricultural Marketing Service, National Organic Program. April 2008. Cosmetics, Body Care Products, and Personal Care Products.

the relevant “organic” labels under the NOP, irrespective of whether the end use of the product is as a conventional food, a dietary supplement or some other product, such as a personal care product or a cosmetic.

The above discussion of NOP’s current position on the applicability of the NOP to non-food agricultural products also has relevance to the FTC Study that is the subject of the present comments. As already noted, FTC identified the products that were the subject of the Study variously as “non-food products” and as “non-agricultural products like personal care products.”

AHPA is concerned that the inconsistency of FTC’s language used to describe these products may lead to confusion as to what products are currently regulated under the NOP, or may suggest that all personal care products are non-agricultural products. There are, however, readily available in the marketplace many personal care products that consist of or contain agricultural ingredients and that may be certified under the NOP and make “organic” claims consistent with the NOP.

AHPA therefore requests that FTC clarify in any further communication on the issue of “organic” labeling of personal care products that these are not necessarily synonymous with non-agricultural products, and that personal care products that are, in fact, agricultural products may make “organic” claims in compliance with the NOP.

### **Consumer products and services labeled as “organic” should contain or use one or more agricultural ingredient**

Irrespective of whether a consumer product labeled as “organic” is a conventional food, a dietary supplement, a personal care product, such as a shampoo, or some other consumer product or service, such as a mattress or dry cleaning, it is AHPA’s view that any such product or service should contain or use one or more agricultural ingredient.<sup>6</sup> The term “organic” has been used to describe a particular type of agriculture and products derived therefrom for many years. This meaning has been memorialized for decades, not only in state and third-party organic certifications, but also in the USDA’s NOP. AHPA is concerned that applying the term “organic” to

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<sup>6</sup> By “agricultural ingredient” AHPA means both cultivated and wild-harvested plant- or animal-derived articles, and notes that the NOP includes “wild-crop harvesting and handling” operations under its regulations, such that wild-harvested plants and animals may be “organic” ingredients in compliance with the NOP.

entirely-non-agricultural items or services could therefore distort and muddle the meaning of the term and could create consumer confusion over its meaning.

AHPA acknowledges that the word "organic" has meanings and definitions that extend beyond the use of the word in relation to agricultural practices. For example, in the world of chemistry, "organic" is used simply to indicate a compound in which carbon is present. In offering the opinion above – that any consumer product or service labeled as "organic" should contain or use at least one agricultural ingredient – AHPA does not propose to affect uses of the word "organic" outside of the consumer marketplace.

AHPA greatly appreciates the opportunity to present comments on this matter. AHPA staff and counsel will make themselves available at any mutually convenient time to further address any of the topics addressed herein. Please feel free to contact us if clarification or additional discussion is needed on the issues raised in these comments.

Respectfully submitted,



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