

**Task Group on Labeling
Teleconference
April 22, 2008**

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Participants

Tim Schaeffer- *Avalon Natural Products (Chair)*; David Bronner- *Dr. Bronner's*; Curt Valva- *Aubrey Organics, Inc.*;
& Lorna Badman – *NSF International*

Action Item

L. Badman will draft the response memos for T. Schaeffer to complete.

Discussion

Lorna Badman read the Anti- trust statement and took roll call. Tim Schaeffer called the meeting to order. The purpose of the teleconference was to address the comments received during the ballot and public comment period.

The following are the comments received on section 7:

Ernest Julian – Rhode Island Department of health

Comment 1: The consumer is purchasing these products under the assumption that they are safer. The NSF seal with "Live Safer" also implies safety. We need to make certain that these products are not, in fact, hazardous.

The commenter is referring to the NSF mark that is used in the various NSF programs. Products certified to this Standard will carry the Q (certifying agency) and the Standard logo/seal. This group is comfortable with using the Standard logo/seal on the label with greater than 70% organic content, unlike the USDA where a product making a 'made with' claim cannot use the USDA Logo. This is not a safety Standard.

Comment 2: The proposed standard does also not specify how much organic ingredients need to be present to meet the standard. To avoid misleading the consumer, the percent organic necessary to fall under the standard should be specified. The consumer should also be clear as to the percent organic in the product.

Language will be added to the Standard indicating that the minimum organic content of a personal care product is 70%. The group supports allowing the truthful percentage to be used on the label.

Carrie Gregory - Personal Care Products Council (formerly CTFA)

Comment 3: Order of ingredients (7.7.1)

The Draft Standard's order of ingredient listing is not consistent with federal law and may be confusing or potentially misleading. In the Draft, NSF states:

Ingredients at a concentration of more than 1% shall be listed on the label in descending order of predominance, in their concentration by weight. Ingredients that are present at a concentration of 1% or less shall be listed in any order after the ingredients present at a concentration of more than 1% or as required by federal regulation.

This ingredient listing conflicts with FDA regulation and mandated by the Fair Package Labeling Act. Legally, a cosmetic product's order of ingredients may appear in one of three ways. The Draft Standard's ordering scheme is inconsistent with federal law and, if followed, may cause a product's label to be misleading.

The group discussed the comment in depth. Some were confused if you were complying with one of three methods, how could you be against regulation. The language ‘federal regulation’ is included in the proposed language. The proposed Standard is trying to make it more restrictive by requiring that the ingredients be listed in predominance. The law indicates that after 1%, ingredients do not have to be listed in predominance but there are 3 options. We only list one of the 3 options. The other 2 are covered by the language ‘or federal regulation’. The group decide to modify the language to ‘...labeled according to federal regulation in the jurisdiction where the product shall be sold.’

Comment 4: Ingredient Labeling (7.7)

In the Draft Standard, NSF outlines ingredient labeling practices that augment current regulatory and INCI standards. NSF lacks authority to revise regulation or INCI nomenclature. In Section 7.7 of the Draft, NSF states:

Each organic personal care product shall list the ingredients on its label using the International Nomenclature for Cosmetic Ingredients (INCI) labeling system as found in the most recent edition of the International Cosmetic Ingredient (ICI) Dictionary and Handbook as applicable. The list of ingredients shall appear on the outer label of the personal care product. Extra descriptive or marketing terminology, unless specified in 7, shall not be deemed acceptable in the ingredient list.

Emphasis added. The wording in the Standard “unless specified in 7” indicates that there are exceptions to FDA labeling regulations.

The group believes they are taking issue with ‘unless specified in 7’ because the draft is indicating there can be exceptions to the FDA regulations. It is important that the labeling is truthful in language the consumer can understand. INCI is not a consumer tool. It is a reference used by chemists, formulators, or regulatory tool. If the labeling is truthful that is what matters. It is believed that there is language in the FDA regulations that there is a specific allowance that in the absence of it being treated in accepted dictionaries, the method most understood by consumers can be used.

Adding qualifications are important to educating the consumer for full disclosure. If adding truthful information, no one should be against the addition. If a company has invested in a particular ingredient, the company should have the opportunity to inform the public about it.

Comment 5: Also, in Section 7.5.2 of the Draft Standard, NSF states:

products in packages described in 7 CFR 205.301(c) shall: – In the ingredient statement, identify each organic ingredient with the word “organic” or with an asterisk or other reference mark that is defined below the ingredient statement to indicate that the ingredient is organically produced.

NSF has no authority to make such changes to INCI nomenclature or federal regulation.

Field departures are necessary for full disclosure to the consumer.

Na True

Comment 6: 7.1 Use of the term "organic"

The term "organic" shall only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the requirements of this Standard. The term "organic" shall not be used in a product name unless the product meets USDA-NOP criteria or criteria defined in this Standard.

In the draft version at these points (where it is not simply a selection that is being dealt with) reference is made to the NOP/the National List. There are various reasons which would make the development of a separate positive list desirable:

- a) A reference to the NOP entails a dependency (e.g. any future changes in the NOP).
- b) The NOP is a state program. The development of a separate positive list would give the NSF standard more the character of an international standard. This would be very desirable from the point of view of the producers as well as the consumers.
- c) Only a positive list of the permissible raw materials and manufacturing processes makes it possible to clearly define what may be used and what not. And it is only thus that transparency is created for the consumers who are otherwise forced to collect information themselves from various programmes and lists.

In Germany a committee of experts, working for the BDIH, spent several years compiling a list of raw materials which may be used in the production of natural cosmetics. In our opinion a similar positive list made available to the NSF standard as quickly as possible by NaTrue would be the simplest solution.

NATRUE's concerns are 2 fold: 1. No reference to the NOP; 2. Create a positive list. The Standard is very self-contained and there is no crucial dependency on the USDA NOP, which is stable. NATRUE is recommending a positive list. The TG on Composition agreed to create an illustrative list, which would not have to be comprehensive. The illustrative list will be similar to the BDIH List but would be more illustrative, which would be reviewed on an annual basis.

Comment 7: 7.5.1 Personal care packaged products labeled "made with organic"

Personal Care products in packages described in 7 CFR 205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

The statement: "Made with organic [specified ingredients or ingredient groups]," provided that the statement does not list more than three organically produced ingredients. The text shall not exceed one-half the size of the largest type size on the panel. This statement shall be made in the same type size, style, and color without highlighting;

or Reason: 'or ingredient groups' added. This allows categorical claims, such as "made with organic oils, fragrances, and colors" if all ingredients in those categories were organically produced. This construction is more consistent with the NOP rule, reducing consumer confusion.

What if a company indicates that 3 of the 4 oils being used are organic, would this be acceptable? The NOP indicates that all ingredients of a type have to be organic in order for you to say the ingredients are organic. It was agreed to modify 7.5.1 to include the NATRUE suggested recommendation.

Curt Valva - Aubrey Organics, Inc.

Comment 8: In general I am in support of this standard. I do need some clarification on the 'organic' claim. 95 or 100 % is to default to the NOP. ok - but is NSF going to completely defaulting to the NOP and NOT certify to that standard (NOP) at all? In other words if I have products in both categories of organic and MWO, do I need to go to two different certification processes ... one with NSF and one with USDA? If so, why? Which seal do we use ... USDA or NSF?

If products can be certified in 2 different categories, will the proposed NSF be able to certify both categories? Can the products be certified to both Standards at the same time? If above the 095, a product could use this standard and not go to the NOP. The USDA seal could not be used. Most manufacturers that meet the requirements of the USDA NOP want to use the mark. This Standard fills a void in the market place. To certify to this Standard, a manufacturer would need to follow the USDA processes put in place. This Standard was developed to be just as burdensome as the processes and plans the USDA has put into place. Why would a manufacturer that could meet the USDA NOP use the seal? The USDA logo would give the product more recognition. The Standard as written a 'made with' standard and O95 & O100 will be referred to the USDA NOP.

James Hahn – TerrEssentials

Comment 9: We believe that there should NOT be a separate, different, standard for personal care products other than the USDA NOP.

Numerous studies have shown that consumers are very confused by the various organic categories under the NOP and also by "organic" standards from other countries. Adding other "organic" standards further confuses consumers.

This Standard allows for an O70 claim for personal care products. There is a place in today's market place for products that are of O70 content. This Standard is filling a void that is in the marketplace.

Comment 10:

7.2 -- The term in company names and in a company's marketing/promotional materials should not be used in a manner that conflicts with the contents of any product. The word organic should NOT be used in a company name if that company does not produce predominantly certified organic products.

Litigation is ongoing on this topic. This is outside of the scope of NSF International. The informational annexes provide guidance on misleading branding of products. This language is not in the body of the Standard and therefore is not a requirement.

Comment 11:

7.7. Labeling of ingredients

This entire section should be eliminated as it is covered by FDA regulations. Any other sections that contain information that is covered by current FDA regs/guidelines should also be removed.

The language has been modified in this section to allow labeling per federal regulation in the jurisdiction the product is sold. Asterisking and other ways of distinguishing ingredients will be allowed. Organic information must be conveyed. FDA regulations should be followed but truthful ingredients claims will be allowed.

Tim Schaeffer

Comment 12:

To me, the standard has two goals: 1) Support organic agriculture by creating a marketplace for such goods and 2) Uniformity in organic label claims.

I believe great progress has been made with this standard, but I feel the standard can be strengthened in how it supports organic agriculture. Namely, I'm not confident that the labeling system and allowed ingredients will create products that have above-average appeal to the consumer. While the standard could likely help normalize the industry with respect to uniform label claims, without heightened appeal I don't see the standard contributing to the growth of organic agriculture. To me, it only satisfies half of the equation.

Proposal:

While I originally voted to use the USDA 095 for personal care, I've come to believe that was a mistake. I think we should revisit an organic (95%) category specifically tailored to personal care. Moreover, I believe we should allow an organic label claim.

The Standard should allow organic products to be sold to help support organic farmers, who reduce pollution and contamination of waterways. The Standard should excite consumers. Without an 'organic' claim, T. Schaeffer feels that it might not happen. Products can be made but the USDA NOP was developed with organic personal care products in mind. T. Schaeffer would like this topic re-opened at the JC meeting even though there was an overwhelming vote by the JC to have only a 'made with'. An 'organic' claim specific to cosmetic is something T. Schaeffer supports.

It would be suggested to have 2 organic claims: the USDA Claim – which offers a level prestige and NSF organic which would be less stringent than the USDA. USDA seal will carry more weight and prestige than the NSF seal.

Originally when an O95 and O100 claim were being included, the requirements were similar to the USDA NOP. Over time requirements started to deviate from the USDA NOP, support for a O95 and O100 claim reduced. The meeting where this topic was discussed, a decision was made without much discussion of the JC members. A member made a motion to have a 'made with' only standard and the motion was passed quickly. The topic has not been revisited.

This topic will be revisited at the Joint Committee Meeting.

David Bronner – Dr. Bronner's Magic Soaps

Comment 13:

7.5.2 Agricultural packaged products

Agricultural products in packages described in 7 CFR 205.301(c) shall:

In the ingredient statement, identify each organic ingredient with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate that the ingredient is organically produced. Water, mined minerals, and salt included as ingredients shall not be identified as organic.

For ingredients made with organic materials produced by processes allowed under this Standard but not the NOP, a separate asterisk should refer to the statement "Made with Organic Ingredients".

For example, on the ingredients declaration of a hypothetical NSF certified shampoo:

Ingredients: Water, Aloe Vera*, Sodium Coco Sulfate**, Coco Glucoside**, Soy Protein*, Benzoic Acid

* Organic

** Made with Organic

It was agreed to modify 7.5.2 to include the D. Bronner's suggested recommendation.

Gay Timmons

Comment 14:

What is the "seal" that is mentioned in the standard?

The seal is still being developed.

Comment 15:

Is there a cost to use the seal or the standard?

There will only be a cost associated with purchasing the Standard.

Comment 17:

Will NSF do surveillance on the use of the "seal"?

Yes, NSF will do surveillance.

Comment 18:

7.2 – These statements do not appear to discriminate between NOP certified materials and NSF certified materials. Is there any difference?

This section is limited to processed allowed under the proposed Standard. No language modifications will be made.

Comment 19:

7.2.1 – Does this section apply to NOP compliant materials? If a product is certified organic to the NOP, why should there be any obligation to disclose the process?

Language such as ‘for ingredients that are not NOP certified but process allowed under this Standard’ will be added to the Standard.

Comment 20:

“Personal Care products in packages described in 7 CFR 205.301(c)” is a mis-statement. “Personal Care products” are not described anywhere in 7 CFR Part 205 – so what is this sentence about?

The reference is to a federal regulation regarding packaging. The language is only providing guidance to packaging even though it is not specific personal care products. The reference will be further reviewed.

Comment 23:

7.6 – This section requires more info on a wholesale package than the NOP requires – this means that you are asking companies certified to the NOP to go beyond NOP requirements. Will suppliers be willing to do this? Is it necessary?

There is a series of requirements that suppliers have to disclose about their product. This should be done on NSF materials only.

Comment 24:

7.7.1 – Is this section parallel to the regulations stated in the US and Canada (the most likely export market for US cosmetics)?

This Standard will not be able to address all regulations in all countries. The group decide to modify the language to ‘...labeled according to federal regulation in the jurisdiction where the product shall be sold.’