

**NOTICE: ADDITIONAL CLARIFICATION  
HARVEY FINAL REGULATION**

On June 8, 2006, USDA's National Organic Program (NOP) published a final regulation on Harvey v. Johanns (Harvey) in the *Federal Register*. This final regulation contains changes to the feed provision of the section of the NOP regulations dealing with dairy animals, also known as the 80-20 feed exemption. This regulation also contains language on the dairy animal replacement conditions. The final language is apparently causing confusion for some producers and certifying agents. Below is a further explanation of the language in § 205.236 (a) (2) pertaining to dairy animals, feed, and dairy replacement animals, followed by a set of Q and A's. NOP may consider issuing a clarification to the final regulation in a future rulemaking.

1. Dairy animals. In order for milk and milk products to be sold, labeled, or represented as organic, animals must be under continuous organic management for no less than 12 months. Two exceptions were added to this 12-month management of dairy animals.
  - a. Crops and forage from the producer's land only, included in the producer's organic system plan, that is in the 3<sup>rd</sup> year of organic management, may be consumed on this farm by this producer's animals, during the 12 months just prior to the sale of organic milk; **OR**
  - b. If a producer is converting an entire herd to organic production, the producer may still take advantage of the old 80-20 feed exemption. This means the producer may, for the first 9 months of the year, feed a minimum of 80 percent feed that is either organic or raised from land in the organic system plan and managed in compliance with organic crop requirements, and for the last 3 months of the year, provide a total ration of organic feed; but this 12-month feed exemption must be concluded, in total, by June 9, 2007.
2. Regardless of the exception (a or b above) to the management of dairy animals selected by the producer, if a producer converts an entire, distinct herd to organic production, all future dairy animals shall be organic from the last third of gestation.\*

**NOTE\***: As we stated in the preamble to the final regulation, USDA will draft an advanced notice of proposed rulemaking (ANPR) to invite public comment on further changes necessary to the NOP regulations dealing with the origin of dairy livestock under subparagraph § 205.236(a)(2), Dairy Animals.

### Q & A's Related to Dairy Feed and Herd Conversion

- Q. What is the last date by which a producer could elect the 80-20 feed exemption?
- A. June 7, 2006 is the last date to elect the 80-20 feed exemption and still complete the 12-month conversion of a whole herd under this clause. No milk may be labeled organic, using the 80-20 feed exemption, when that exemption is completed after June 9, 2007.
- Q. If a producer elects the 80-20 feed exemption, must a whole herd be converted?
- A. Yes.
- Q. Under the 80-20 feed exemption, what feed can be used for the 80 percent feed?
- A. The 80 percent feed can be organic feed (see § 205.237), or it may come from land in the organic system plan of the producer that is managed in compliance with organic crop requirements. Therefore, the producer may use land that is in transition to organic production Provided that land is in its 3<sup>rd</sup> year of transition and is being managed to the organic crop requirements (see §§ 205.200 through 205.207). The 80 percent feed can ***not*** be conventional feed, or contain prohibited substances.
- Q. After completing the 80-20 feed exemption, what happens to dairy replacement animals?
- A. All dairy replacement animals must be managed from the last third of gestation, because an entire distinct herd was converted when the 80-20 feed exemption was used.
- Q. Can a whole herd be converted using the crops and forage from land in the organic systems plan that is in the 3<sup>rd</sup> year of organic management?
- A. Yes, a producer may convert a whole herd and use the land in the producer's organic system plan for those animals being converted. However, at the end of the conversion of the whole herd, all dairy animals must be managed from the last third of gestation.
- Q. If a producer converts less than a whole herd on 3<sup>rd</sup> year land, how are future replacement animals managed?
- A. Future animals must be under continuous organic management for not less than 12 months in order for milk to be sold, labeled, or represented as organic. USDA intends to issue an Advanced Notice of Proposed Rulemaking (ANPR) to address this two-track replacement of dairy animals and invite public comment on further changes that may be necessary to address this section of the regulation (see Note above).
- Q. Can a producer allow his or her dairy animals to be raised on another producer's land that is in the 3<sup>rd</sup> year of organic management?
- A. No. Since neither producer is yet certified until the 3<sup>rd</sup> year is completed, the producer must maintain control over the dairy animals being converted to organic production on his or her land under his or her organic system plan, to ensure an adequate compliance record for the certifying agent.