



United States
Department of
Agriculture

Agricultural
Marketing
Service

STOP 0264 – Room 2510-S
1400 Independence Avenue, SW.
Washington, D.C. 20250-0200

NOTICE TO:
ALL USDA ACCREDITED CERTIFYING AGENTS
ALL INTERESTED PARTIES

RE: HARVEY v. JOHANNIS

As part of the Consent Final Judgment and Order issued June 9, 2005, in the U.S. District Court for the District of Maine, in the case of Harvey v. Johanns (Civil No. 02-216-P-H), the U.S. Department of Agriculture's National Organic Program (NOP) will issue a notice in the Federal Register on July 1, 2005. The declaratory judgment issued by the court states that 7 CFR § 205.606 shall not be interpreted to grant a blanket exemption for certifying agents and their clients to determine the commercial unavailability of nonorganic agricultural substances. The declaratory judgment further stated that 7 CFR 205.606 shall be interpreted to permit the use of a nonorganically produced agricultural product *only* when the product has been listed in section 205.606 pursuant to the National List procedures and when an accredited certifying agent has determined that the organic form of the agricultural product is not commercially available.

This notice, in the Federal Register and on this website, supersedes all other interpretations, notices, and guidance to the contrary and is the interpretation of 7 CFR 205.606. Pursuant to the terms of the declaratory judgment, products produced in conformance with the misinterpretation identified by the Court of Appeals, and certified by an accredited certifying agent, may continue to be produced and sold for two year's from the date of the court's order.

With respect to the two remaining counts of the Final Judgment and Order, related to count 3 (dealing with synthetics) and count 7 (dealing with the dairy feed provision), USDA intends to engage in notice and comment rulemaking over the ensuing months and will be seeking input from all interested parties as rulemaking is conducted to amend 7 CFR 205 to comply with the court Final Judgment and Order.

July 1, 2005

Barbara C. Robinson
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