

## Petition for Rulemaking to Provide Clarification of Product Labeling under the Organic Foods Production Act

### Executive Summary

On January 26, 2005, the United States Court of Appeals for the First Circuit issued its opinion in the case of Harvey v. Veneman, Docket No. 04-1379 (1<sup>st</sup> Cir. 2005), *amended at*, 396 F.3d 28 (1<sup>st</sup> Cir. 2005). In the decision, the Court held that several of the USDA's National Organic Program existing regulations were inconsistent with the Organic Foods Production Act (OFPA). In particular, the court found that existing regulations:

- (1) allowing the use of synthetic substances in the handling and processing of products labeled with the USDA "Organic" label and seal were contrary to the intent and language of the OFPA; and
- (2) providing two different levels of organic feed requirements during the 12-month transition of dairy animals from conventional to organic production were inconsistent with the OFPA.

Implementation of the court's ruling may change the playing field for a number of organic processors, farmers and consumers. Organic industry members, farmers and consumer all have concerns over the impact the ruling may have on the organic market, the integrity or the organic label, and the the transition to, and expansion of the, organic dairy sector. To that end a number of organization including the Center for Food Safety, Beyond Pesticides, National Campaign for Sustainable Agriculture, National Cooperative Grocers Association, National Organic Coalition and Rural Advancement Foundation International-USA have sought to implement the court's ruling in a manner that minimizes impacts to all interested sectors of the organic community. The groups believe that the court's ruling can be realized through a number of carefully crafted regulatory changes to the USDA regulations. These proposed changes were forwarded to the USDA, National Organic Program via a petition for rulemaking on June 22, 2005. As briefly described below, the proposed changes are designed to . . .

### Synthetics in Processing

In Harvey, the court held that the existing organic regulations violated the OFPA because they allowed synthetic substances and ingredients to be used in the processing and post-harvest handling of products labeled as "organic" or "100% organic." Prior to the lawsuit, USDA had allowed 38 such synthetic substances to be used in such products. The ruling ensures that organic products cannot be diluted by an increasing use of synthetic ingredients, the loss of some of these synthetic substances could impact the ability of some food processors to meet the requirements allowing their products to bear the organic label. As a result, the proposed regulatory changes:

- § allows only those synthetic substances required by law (such as vitamins and some cleaning agents) to be used in or on products labeled as "organic";
- § identifies 8 previously categorized synthetics that should be reclassified as allowable non-synthetics including ascorbic acid and carbon dioxide;
- § allows the remaining 30 or so synthetic substances to be used in products labeled as a "made

with organic ingredients.”

### **Conversion of Dairy Cows to Organic**

In Harvey, the Court found that the existing organic regulations allowing dairy cows being converted to organic production to be fed 20% non-organic feed up to three months before final organic conversion were contrary to the OFPA. The court ruled that such animals had to be converted under a consistent twelve month standard using feed grown under organic practices. As a result, the change in the standard for farms undergoing transition into organic production could negatively affect the ability of small dairy farms to convert to the organic market. As a result, the groups petitioning USDA have proposed an alternative standard that would:

§ allow dairy producers the one time ability to convert a distinct herd to organic production by feeding the cows feed that is produced on the farm and is in its last year of transition to organic production. The feed allowed for use would be transitional - grown under organic production practices for the previous two years but not yet have completed the full certification.

The proposed change would ensure that cows undergoing conversion would be fed entirely on feed that is grown under organic practices. If adopted these amendments would mean that a conventional dairy farm can transition to organic production over a three year time period. It would provide relief for dairy farmers from having to make a four year transition, three in converting land so pasture and crops would qualify as organic feed, then another 12 months so the animals could be fed certified organic feed for the required time. A four year transition requirement penalizes dairy producers unfairly when a three year farm system plan transition to organic production is allowed for most other sectors. The proposed amendments would resolve this inequity.