Federal Register

2–17–10 Wednesday
Vol. 75 No. 31 Feb. 17, 2010

Pages 7149–7196

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Proposed Rules

Federal Register

Vol. 75, No. 31

Wednesday, February 17, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 30 and 3400

[Docket No. FR–5271–N–02]

RIN 2502–A170

SAFE Mortgage Licensing Act: HUD Responsibilities Under the SAFE Act; Extension of Public Comment Deadline

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Proposed rule.

SUMMARY: This notice advises that HUD is extending the public comment deadline to March 5, 2010, of its proposed rule addressing HUD's responsibilities under the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act), which was published on December 15, 2009. The public comment deadline was originally scheduled to close on February 16, 2010.

DATES: *Comment due date:* March 5, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9164, Washington, DC 20410; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

HUD is extending the public comment period on its SAFE Act proposed rule, published on December 15, 2009 (74 FR 66548) to March 5, 2010. The public comment period was originally scheduled to close on February 16, 2010.

Due to the severe inclement weather not only in Washington, DC but in the mid-Atlantic states that resulted in the closing of the federal government as well as many local governments and private and public businesses and organizations, HUD determined that an extension of the public comment period is appropriate to ensure interested parties have the opportunity to comment on this proposed rule.

Dated: February 12, 2010.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2010–3087 Filed 2–16–10; 8:45 am]

BILLING CODE 4210–67–P

Notices

Federal Register

Vol. 75, No. 31

Wednesday, February 17, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Friday, February 19, 2010, 10 a.m.–12 p.m. EDT.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: The Commission will hold a public meeting to discuss draft Maintenance of Expenditure/Effort (MOE) Policy and consideration of posting draft MOE Policy for public comment. Commissioners will consider administrative matters. Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–3058 Filed 2–12–10; 4:15 pm]

BILLING CODE 6820–KF–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

Federal Register Citation of Previous Announcement: 75 FR 6205.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: February 10, 2010–10 a.m.

CHANGE: 1. The Meeting scheduled on February 10, 2010 was canceled due to inclement weather and rescheduled for February 18, 2010 at 10 a.m.

2. Removal of Item 1 in the Open Session—Docket No. 06–01: Worldwide Relocations, Inc.; *et al.*—Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 CFR 515.3, 515.21, and 520.3—Request for Extension of Time.

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Assistant Secretary, (202) 523–5725.

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2010–3063 Filed 2–12–10; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

TIME AND DATE: 12:30 p.m.–4 p.m., February 25, 2010. (Closed).

PLACE: Teleconference.

STATUS: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

PURPOSE: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies; conducting research on strategies to translate, disseminate, implement, and adopt science-based recommendations and guidelines for the care of acutely injured persons; or determine and evaluate the components of trauma systems that contribute to improved outcomes for acutely injured persons.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and evaluation of applications intended to (1) Evaluate strategies to translate, disseminate, implement, and adopt science-based recommendations and guidelines for the care of acutely injured persons. (2) Determine and evaluate the components of trauma systems that contribute to improved outcomes for acutely injured persons. Requests for Applications are related to the following individual research announcement: CE10–003, Research Priorities in Acute Injury Care (R01).

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: J. Felix Rogers, Ph.D., M.P.H., Telephone (770) 488–4334, NCIPC, CDC, 4770 Buford Highway, NE., Mail Stop F63, Atlanta, Georgia 30341.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–3062 Filed 2–16–10; 8:45 am]

BILLING CODE 4163–18–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Federal Register Citation of Previous Announcement: [75 FR 5636, February 3, 2010]

STATUS: Open and Closed Meetings.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, February 8, 2010 at 10 a.m. and 11 a.m.

CHANGE IN THE MEETING: Cancellation of Meetings.

The Open Meeting scheduled for Monday, February 8, 2010 at 10 a.m. and the Closed Meeting scheduled for February 8, 2010 at 11 a.m. was cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: February 8, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3044 Filed 2–12–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [75 FR 6431, February 9, 2010]

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, February 11, 2010 at 2 p.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The Closed Meeting scheduled for Thursday, February 11, 2010 at 2 p.m. has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: February 10, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3073 Filed 2–12–10; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 6888]

60-Day Notice of Proposed Information Collection: DS-5501, Electronic Diversity Visa Entry Form, OMB Control Number 1405-0153

Correction

In notice document 2010–1863 appearing on page 4901 in the issue of January 29, 2010, make the following correction:

On page 4901, in the first column, under the **DATE(S)** heading, in the third line, "March 30, 2010" should read "January 29, 2010".

[FR Doc. C1–2010–1863 Filed 2–16–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 696X)]

CSX Transportation, Inc.—Abandonment Exemption—in Lucas County, OH

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 4.15 miles of rail line on its Northern Region, Chicago Division, Toledo Terminal Subdivision, between Temperance (milepost CTT 5.0) and Vulcan (milepost CTT 9.15), in Lucas County, OH. The line traverses United States Postal Service Zip Codes 43607, 43606, 43613, and 43612, and includes no stations.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 13, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests [4] under 49 CFR 1152.29 must be filed by February 22, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 3, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 16, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days

[1] On February 1, 2010, CSXT filed a letter certifying its compliance with the requirements of 49 CFR 1105.7, 49 CFR 1105.8, and 49 CFR 1105.11.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] CSXT states that it has been in discussions with the Toledo Metropolitan Area Council of Governments regarding the possible sale of the line for interim trail use/rail banking. CSXT also states that the line may be subject to reversionary interests.

after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 11, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 5, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3019 Filed 2–16–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35217]

Stillwater Central Railroad, Inc.—Lease and Operation Exemption—Hollis & Eastern Railroad L.L.C.

Stillwater Central Railroad, Inc. (SLWC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to a lease agreement (Agreement) entered into with Hollis & Eastern Railroad L.L.C. (H&E), 14 miles of H&E's rail line between milepost 0.0 at Duke, OK and milepost 14.0 at Altus, OK (the line).

SLWC states that there is no provision or agreement that will limit future interchange with a third-party connecting carrier. *See* 49 CFR 1150.43(h).

SLWCS certifies that its projected annual revenues as a result of the transaction will not result in SLWC becoming a Class II or Class I rail carrier. However, because its projected annual revenues will exceed $5 million, SLWC also certifies that it has complied with notice requirements of 49 CFR 1150.42(e).

The transaction is scheduled to be consummated on or shortly after March 6, 2010, at least 60 days after SLWC's certification of the notice requirements of section 49 CFR 1150.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 26, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35217, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3022 Filed 2–16–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35326]

CSX Transportation, Inc.—Trackage Rights Exemption—Grand Trunk Western Railroad Company

Pursuant to a written trackage rights agreement, Grand Trunk Western Railroad Company (GTW) has agreed to grant limited overhead trackage rights to CSX Transportation, Inc. (CSXT) [1] over GTW's Elsdon Subdivision, between milepost 30.92 at Munster, IN, and milepost 8.7 at Elsdon, IL, a distance of approximately 22.22 miles.[2]

The transaction may be consummated on or after February 27, 2010, the effective date of the exemption (30 days after the exemption was filed).

Under the agreement, the trackage rights will allow CSXT to handle trains between Thornton Junction and The Belt Railway Company of Chicago's Clearing Yard and CSX Intermodal's Bedford Park Intermodal Terminal over the Elsdon Subdivision. CSXT's initial plans are to reroute two sets of approximately 5,000 foot long high priority intermodal United Parcel Service (UPS) trains that originate or terminate at CSX Intermodal's Bedford Park Intermodal Terminal. The UPS trains handle freight to and from the southeastern region of the United States served by CSXT. The purpose of the transaction is to enable CSXT to reduce congestion on the Baltimore & Ohio Chicago Terminal's Blue Island Subdivision and enhance the efficiency of its operation in the Chicago area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 19, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35326, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, 500 Water Street, Suite J–150, Jacksonville, FL 32202, and Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 5, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–3020 Filed 2–16–10; 8:45 am]

BILLING CODE 4915–01–P

[1] GTW is a subsidiary of Grand Trunk Corporation, which in turn is a subsidiary of Canadian National Railway Company. CSXT is a subsidiary of CSX Corporation.

[2] A redacted draft version of the trackage rights agreement between GTW and CSXT was filed with the notice of exemption. The full draft version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision.

Federal Register

Wednesday,
February 17, 2010

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 205

National Organic Program; Access to Pasture (Livestock); Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–TM–06–0198; TM–05–14FR]

RIN 0581–AC57

National Organic Program; Access to Pasture (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This final rule amends livestock and related provisions of the NOP regulations. Under the NOP, the Agricultural Marketing Service (AMS) oversees national standards for the production and handling of organically produced agricultural products. AMS has taken this action to ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP and to facilitate and improve compliance and enforcement. This action is also intended to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season. This action provides clarification and specificity to the livestock feed and living conditions provisions and establishes a pasture practice standard for ruminant animals. In doing so, producers are required to: provide year-round access for all animals to the outdoors, recognize pasture as a crop, establish a functioning management plan for pasture, incorporate the pasture management plan into their organic system plan (OSP), provide ruminants with pasture throughout the grazing season for their geographical location, and ensure ruminants derive not less than an average of 30 percent of their dry matter intake (DMI) requirement from pasture grazed over the course of the grazing season. The proposed requirements for fencing of water bodies and providing water at all times, indoors and outdoors, and the requirement for a sacrificial pasture have been deleted in this final rule. In addition, the proposed amendment to the origin of livestock section has been deleted in this final rule as issues pertaining to that topic will be reviewed and evaluated separately from this action.

This final rule requires that producers maintain ruminant slaughter stock on pasture for each day that the finishing period corresponds with the grazing season for the geographical location. However, this rule exempts ruminant slaughter stock from the 30 percent DMI from grazing requirement during the finishing period. Although we are issuing this as a final rule, we are requesting comments on the exceptions for finish feeding of ruminant slaughter stock, as discussed below under "Livestock living conditions—Changes based on comments." The agency is providing an additional 60 day period to receive comments on provision § 205.239(d).

DATES: *Effective Date:* This rule becomes effective June 17, 2010.

Implementation and Compliance Dates: This rule will be fully implemented June 17, 2011. Operations which obtain organic certification by June 17, 2010 must comply with this final rule. Operations which are certified as of the publication date must fully implement the provisions of this final rule, as applicable, June 17, 2011.

Comment Date: We invite public comments on § 205.239(d). Comments should be limited to the finish feeding of ruminant slaughter stock. To ensure consideration of your comments on that provision, comments must be received by April 19, 2010.

ADDRESSES: Interested persons may submit comments pertaining to the finish feeding provision at § 205.239(d) in the final rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, Room 2646–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250–0268.

Written comments responding to this request should be identified with the document number AMS–TM–06–0198; TM–05–14FR. Clearly indicate whether you support § 205.239(d) as published in this final rule, in full or in part, and the reason(s) for your position. Please include only relevant information and data to support your position.

It is USDA's intention to have all comments, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov *(http://www.regulations.gov)* Internet site. Comments submitted in response to this request will also be available for viewing in person at USDA—AMS, National Organic Program, Room 2646–South building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments received in response to this final rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Shannon H. Nally, Acting Director, Standards Division, National Organic Programs, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250. *Telephone:* (202) 720–3252; *Fax:* (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Background

The NOP is authorized by the Organic Foods Production Act of 1990 (OFPA), as amended, (7 U.S.C. 6501 *et seq.*). The Agricultural Marketing Service (AMS) administers the NOP. Under the NOP, AMS oversees national standards for the production and handling of organically produced agricultural products. This action is being taken by AMS to ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and accredited certifying agents to efficiently administer the NOP and to facilitate and improve compliance and enforcement. This action is also intended to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season. The Secretary of Agriculture (Secretary) appointed members to the NOSB for the first time in January 1992. The NOSB began holding formal committee meetings in May 1992 and its first full Board meeting in September 1992. The NOSB's initial recommendations were presented to the Secretary on August 1, 1994. Over the period 1994–2005, the NOSB made six recommendations regarding access to the outdoors for livestock, pasture, and conditions for temporary confinement of animals.

In its February 2005 recommendation the NOSB proposed amending § 205.239(a)(2) by replacing the phrase "access to pasture" with the phrase "ruminant animals grazing pasture during the growing season." The NOSB also proposed exceptions to the general requirement for pasturing: For birthing, for dairy animals up to 6 months of age and for beef animals during the final finishing stage—not to exceed 120 days. Finally, the NOSB recommendation noted that lactation of dairy animals is not a stage of life that may be used to deny pasture for grazing.

At its August 2005 meeting, the NOSB formally approved a recommendation to

the Secretary requesting a pasture guidance document. The NOSB proposed guidance would have provided that:

- The organic system plan (OSP) shall have the goal of providing grazed feed greater than 30 percent of the total dry matter intake on a daily basis during the growing season but not less than 120 days.
- The OSP must include a timeline showing how the producer will satisfy the goal to maximize the pasture component of total feed used in the farm system;
- For livestock operations with ruminant animals, the OSP must describe: (1) The amount of pasture provided per animal; (2) the average amount of time that animals are grazed on a daily basis; (3) the portion of the total feed requirement that will be provided from pasture; (4) circumstances under which animals will be temporarily confined; and (5) the records that are maintained to demonstrate compliance with pasture requirements.

The NOSB proposed guidance also addressed temporary confinement and the conditions of pasture. In the NOSB proposed guidance, temporary confinement would be permitted only during periods of inclement weather such as severe weather occurring over a period of a few days during the grazing season; conditions under which the health, safety, or well being of an individual animal could be jeopardized, including to restore the health of an individual animal or to prevent the spread of disease from an infected animal to other animals; and to protect soil or water quality. The proposed guidance also stated that appropriate pasture conditions shall be determined according to the regional Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Prescribed Grazing (Code 528) for the animals in the OSP.

The 30 percent dry matter intake was presented to the NOSB by a diverse group of organic producers, in terms of geography and size, who suggested an intake level that would be attainable on productive pastures of farming operations in varying conditions nationwide. The Cornell Dairy Farm Business Summary and the University of Wisconsin reportedly was stated to use 30 percent of forage intake from pasture to delineate farms as "grazing" operations. While that metric is based on an as fed, rather than dry matter intake basis, it illustrates the use of a minimum threshold as a measurement of a significant intake from pasture.

As recorded in the transcripts of the 2005 NOSB meetings and the pasture symposium in 2006, the Board had examined several alternatives to the 30 percent metric. The NOSB initially considered a 50 percent minimum dry matter intake from pasture; but reverted to the 30 percent dry matter intake which had been adopted as the minimum grazing parameter for organic ruminants at an Organic Valley Task Force meeting in 2001. In 2005, the NOSB also considered a 10 percent dry matter intake from pasture averaged over a calendar year. This alternative was dismissed due to concerns that 10 percent dry matter intake over a total calendar year was more prone to abuse than 30 percent over a 120 day minimum growing season. Meeting participants expressed that a shorter, specified period of time (with a minimum dry matter intake parameter) would be easier to calculate, document and monitor/verify. The 120-day minimum for the grazing season was based upon NRCS climate data throughout the United States and was considered to be broadly applicable so as not to disadvantage or exclude producers in any one part of the country.

Alternatives to establishing a minimum dry matter intake and minimum grazing season included stocking rates/densities, alone or in combination with the 30/120 metric, or field measurements (measuring pasture density and the grass/plant height before and after grazing to determine the amount of pasture consumed). Both options were dismissed as neither viable nor enforceable due to the difficulty in setting a national standard that would be broadly applicable over varying conditions. Stocking rates would vary significantly due to the variability in the forage production on equal units of land area nationwide and would not be a sufficient standalone measure for pasture. Field measurements, moreover, were deemed to be time-consuming and onerous for producers and would be difficult to verify.

The NOSB had also considered requiring "significant" intake from pasture; however, the public commenters at the NOSB meeting expressed concern that this descriptive rather than quantitative requirement would not be verifiable or enforceable. The NOSB initially intended to recommend the 30/120 metrics only as guidance, but public comments showed strong backing for a regulatory change.

On April 13, 2006, NOP published an Advanced Notice of Proposed Rulemaking (ANPR) (71 FR 19131) seeking input on:

(1) Whether the current role of pasture in the NOP regulations is adequate for dairy livestock under principles of organic livestock management and production;

(2) If the current role of pasture as it is described in the NOP regulations is not adequate, what factors should be considered to change the role of pasture within the NOP regulations; and,

(3) What parts of the NOP regulations should be amended to address the role of pasture in organic livestock management.

We received over 80,500 comments in response to this ANPR. Support for strict standards and greater detail on the role of pasture in organic livestock production was nearly unanimous with just 28 of the over 80,500 comments opposing changes to the pasture requirements.

Some commenters expressed that the suggested 30 percent-DMI and 120-day minimum pasture requirements have never been supported by scientific evidence and appear arbitrary. Some accredited certifying agents (ACAs) expressed the concern that quantifiable minimums may present problems with compliance and enforcement. (An ACA is any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.) However, consumers and other commenters, including small entities, expressed a clear expectation that organic ruminants graze pastures for the purpose of obtaining nutritional value as well as to accommodate their health and natural behavior. Commenters supported the adoption or incorporation of quantifiable, numeric measures into the regulations for the minimum amount of feed, measured as dry matter intake (DMI) (30 percent of the daily need), obtained from pasture and the minimum amount of time that ruminants should spend on pasture during a year (120 days).

They also supported the pasturing of animals during lactation. More generally, we received comments that lactation is not a stage of production that justifies confinement and keeping animals off pasture. We received comments that animals should graze during months of the year when pasture can provide edible forage and that animals should receive a significant portion of their diet from grazing.

We also received comments identifying the OSP as the appropriate section of the NOP regulations to enhance a measurable role for pasture by livestock producers. We received comments from producers who were

concerned that regardless of the changes made, some producers would find a way around the regulations, because the problem is not the regulations themselves, but enforcement of the regulations.

We received comments on the NOSB recommendation that beef animals be exempted from pasture for the final finishing stage—not to exceed 120 days. Of the over 80,500 comments on the ANPR, the overwhelming majority spoke to the pasturing of dairy animals. However, even in these comments, there was a consistent theme of opposition to confining animals and feedlot feeding.

For an expanded version of the preceding background information, please see the background statement published in the "National Organic Program (NOP)—Access to Pasture (Livestock)" proposed rule (73 FR 63584).

On October 24, 2008, NOP published a proposed rule intended to clarify and bring uniformity in application to the livestock regulations; especially as they relate to the pasturing of ruminants. Equitable, consistent, performance standards for all ruminant livestock producers was a goal of the proposed amendments. It was also the goal that the amendments would result in livestock regulations of sufficient specificity and clarity to enable AMS and ACAs to efficiently administer the NOP and to facilitate and improve compliance and enforcement.

Five listening sessions were held after the proposed rule was published during the comment period. The listening sessions were open to the public and held in Auburn, New York (October 28, 2008); La Farge, Wisconsin (December 2, 2008); Chico, California (December 4, 2008); Amarillo, Texas (December 8, 2008); and Gap, Pennsylvania (December 11, 2008). Altogether a total of 121 comments were recorded at the listening sessions, during which a few commenters traveled to more than one listening session (their comments are counted twice). Comments at the Auburn and Gap listening sessions were also compiled and resubmitted by FOOD Farmers, and are acknowledged as that written comment throughout this final action. Comments from the Texas state government were resubmitted in a detailed written comment and taken into account throughout this final action. Transcripts of each listening session were posted on the NOP Web site and all oral comments were considered in issuing this final rule and in the discussion ("comments received") below. All oral comments were also considered in the summary of the listening sessions below.

A majority of commenters at the listening sessions generally supported the proposed rule, especially as it related to the pasturing of ruminants, but expressed concern regarding the following specific provisions that were contained in the proposed rule: The need for a sacrificial pasture, weekly cleaning of watering troughs, and the need for fencing streams and other water bodies. Most of these commenters supported adding a provision for a minimum of 120 days for finish feeding of slaughter stock; and recognizing that barnyards, dry lots and feedlots are useful structures for supplemental feeding of animals. Some commenters raised concerns about appropriate bedding materials and the requirement to provide hay in a rack for newborns. One commenter suggested (and resubmitted in written comments) that we overstepped our statutory authority in writing regulations for pasture for ruminant animals.

Like the written comments we received, there was universal support to change growing season as it appeared in the proposed rule, to grazing season. Additionally, commenters in every region pointed out that local and state NRCS and regulatory authorities already require nutrient and runoff management. They conveyed that it is unnecessary to require additional and overly prescriptive regulations in the livestock standard that would likely place producers in violation with state and local regulations.

Nearly every producer and every certifying agent raised concerns about the proposed definition of inclement weather and the proposed conditions under which animals could be confined indoors. Most producers and certifying agents who commented also raised concern over the possibility of either consumers or the local humane society contacting them if weather conditions are severe enough to jeopardize the health or safety of their animals, but the regulations would require that they be kept outdoors as part of the proposed requirement of year-round outdoor access.

Most commenters objected to the formula proposed for computing DMI. Overall, commenters stated that 120 days of grazing is possible in every part of the United States, and most believe that producers are already achieving 30 percent DMI, but would prefer that we allow them to calculate this in ways that permit more flexibility and over a grazing rather than growing season.

Comments Received

We received 26,970 written comments in response to the proposed rule. There were approximately 130 individual comments with the remaining comments consisting of three modified form letters. Comments were received from producers, retailers, handlers, certifying agents, consumers, trade associations, organic associations, animal welfare organizations, consumer groups, state and local government entities, and various industry groups. A detailed discussion of the comments received and the NOP's response to those comments follows below.

Definitions (§ 205.2)

This final rule adds 15 new terms to the NOP regulations: Class of Animal, Dry Lot, Dry Matter, Dry Matter Demand, Dry Matter Intake, Feedlot, Graze, Grazing, Grazing Season, Inclement Weather, Residual Forage, Shelter, Stage of Life, Temporary/Temporarily, and Yards/Feeding Pads. These terms were either included in the proposed rule and supported by comments or introduced by commenters with justification. This final rule also revises the definitions for crop and livestock. This final rule eliminates 3 terms that were proposed as additions to the NOP regulations in the proposed rule. The following items were dropped in this final rule: Growing season, Killing frost and Sacrificial pasture.

Definitions—Changes Based on Comments

This section differs from the proposed rule as follows:

Class of animal—This term was not in the proposed rule. Although the NOP regulations contain a definition for livestock, some commenters petitioned for the need to include a definition for "class of animal." The definition suggested most often was "a group of livestock that shares a similar stage of life or production." Variations of a definition included: "the segment of a herd or flock of livestock that shares a similar stage of life or production;" "as examples, for dairy animals—calves, young stock, lactating animals, dry stock; for slaughter stock—calves, young stock, stockers, finishing stock; for poultry—chicks, pullets, broilers, layers." Other commenters proposed a definition for a class of livestock, with several defining it as "the segment of the livestock herd or flock that shares a similar stage of life or production including, but not limited to lactating animals, dry stock, yearlings, young stock, finished animals."

Most types or species of livestock animals (beef cattle, dairy cattle, swine, sheep, goats, chickens, turkeys, rabbits), are subdivided into different classes and various terms are used to identify the

classes within types of animals. The examples in the previous paragraph are not all inclusive of the different classes among the various types of livestock. The classes within a type or species can be identified by those that need to be listed on feed labels. For example, feed labels for swine, would identify one or some combination of the following classifications depending upon the purpose of the feed: pre-starter, starter, grower, finisher, gilts, sows, and adult boars, lactating gilts and lactating sows.

We believe these comments have merit because it is essential that all producers have a common understanding of animal classification. Feed and nutrition requirements are commonly determined based upon the classes of animal within the different species. The term, "class of animal," was included to ensure that dry matter demand would be calculated appropriately for all animals in the herd. In accordance with § 205.237(d) of this final rule, dry matter demand and dry matter intake must be documented and calculated for each type and class of animal. The division of a livestock herd by class of animal will ensure that all animals in the herd obtain at least 30 percent dry matter intake from pasture, consistent with their nutritional needs. After consideration of the comments, we included a definition for class of animal in the final rule. "Class of animal" means "a group of livestock that shares a similar stage of life or production." To capture the various sets of classes within a type of livestock animal, we have also added a requirement that "the classes of animals are those that are commonly listed on feed labels" to the definition.

Crop—The proposed rule would have amended the definition of "crop" as defined in the original regulation by adding "pastures, sod, cover crops, green manure crops and catch crops" and "or used in the field to manage nutrients and soil fertility." Commenters universally supported the revised definition of "crop" in the regulations, excepting the inclusion of "sod" in the definition. Commenters opposed the addition of sod for a number of reasons, advising:

- It would result in certification of organic sod for lawns;
- Sod does not provide feed value;
- The issue has not been discussed or vetted to any real extent in the public forum; and
- Extending the scope of certification to sod farms may involve removing soil, crop, and organic matter in methods that may not be sustainable and for which there are no current standards or guidance.

As a result of the comments received, we removed the word sod from the proposed revision to the definition of a crop. We note that all agricultural operations are eligible to seek and obtain certification under the NOP when they can adhere to the NOP standards to produce an agricultural product. We acknowledge the concerns of commenters about certification to sod farms, which may remove soil, crop, and organic matter in methods that may not be sustainable and for which there are no current NOP standards or guidance. It would be premature to recognize the viability of this unique production system before the development of relevant organic production standards. Absent parameters to ensure sustainable production which is a major tenant of the NOP, this would likely lead to practices that stray from the principles of organic production.

Dry matter—The proposed definition of "dry matter" states, "The amount of feedstuff remaining after all the free moisture is evaporated out." Of the comments received responding to the proposed definition of dry matter, most supported the definition as proposed, one requested it be deleted (because the commenter requested all of the regulation be removed), and one suggested using the definition of the Association of Official Analytical Chemists (AOAC). That definition reads: "The dry matter (DM) of a feed contains all the nutrients except water. It is indirectly determined from the moisture content of the feed. After determining the moisture content by drying the sample at 100 °C for 24 hours, dry matter is calculated to be the difference."

We have not accepted the recommendations to remove the definition nor to amend it to be consistent with the AOAC. We have retained the definition as proposed. A definition of "dry matter" is needed because this term appears throughout this final rule and correct understanding of its exact meaning is essential to implementing the provisions of this rule. The AOAC definition has merit; however, we are not adopting that definition because it specifies one method for determining dry matter. There are various methods to determine the dry matter content of feed and we intend that each producer, in conjunction with the ACA, select the appropriate method.

Dry matter demand—This term was not defined in the proposed rule. A number of commenters recommended adding a definition for "dry matter demand" as, "The expected dry matter intake for a class of animal." At least 1 commenter opposed the addition of this definition because they had proposed removal of the related regulatory text.

We agree with the commenters that dry matter demand should be defined and have accepted the commenters' recommended definition and included it in this action. We believe that this definition is needed because a common understanding of the term "dry matter demand" among ruminant livestock operations will ensure a consistent basis for determining the percentage of dry matter obtained from pasture or supplemental feed.

Dry matter intake—This term was not defined in the proposed rule. A number of commenters recommended adding a definition for "dry matter intake." Nearly all of these commenters recommended a version reading: "Total pounds of all feed, devoid of all moisture, consumed by a class of animals over a given period of time." Another commenter recommended an almost identical version. At least 1 commenter opposed the addition of this definition because they had proposed removal of the related regulatory text.

We have accepted the recommendation to define "dry matter intake" as defined by the commenters above. We believe that this definition is needed because a common understanding of the term "dry matter intake" among ruminant livestock operations will ensure a consistent basis for determining the percentage of dry matter obtained from pasture or supplemental feed.

Dry lot—In the proposed rule we defined a dry lot as "a confined area that may be covered with concrete, but that has no vegetative cover." Dry lots were prohibited in the proposed rule, at § 205.239(a)(2)(ii). Comments received on this definition included: Agree as written; need areas for outdoor access when animals cannot be put on pasture; delete definition; and edit. Two similar edited versions of the definition were received. The version recommended by many commenters, which we accepted, replaced the word "confined" with the word "fenced" and modified vegetative cover as "little or no." The commenters opposing the proposed definition of "dry lot" or recommending deletion of that definition generally did so on the basis of opposing the prohibition on dry lots. The comments asserted that "dry lot" is commonly used in certain regions to describe outdoor access areas. Commenters that recommended revising the definition to include "little or no vegetative cover" were concerned that areas of sparse vegetation could qualify as pasture. Other commenters

recommended revising the definition to clearly characterize dry lots as areas for continuous total confinement.

The prohibition on dry lots in the proposed rule has been stricken from this final rule due to comments received asserting that "dry lot" is a term which, in some regions of the U.S., describes a feature that can be compatible with organic livestock production. Accordingly, the definition of "dry lot" has been amended to clarify the characteristics by which a dry lot would be acceptable for organic ruminant livestock. We have accepted the commenter's suggestion to modify vegetation with "little or no" in order to prevent the incorrect usage of dry lots that have some vegetation, as pasture. The definition of "dry lot" reads: "A fenced area that may be covered with concrete, but that has little or no vegetative cover."

Feedlot—In the proposed rule we defined "feedlot" as "a confined area for the controlled feeding of ruminants." Feedlots were prohibited in the proposed rule, at § 205.239(a)(2)(ii). Commenters presented the following concerns with the proposed definition of "feedlot": under the definition, pasture could be considered a feedlot; the definition could encompass, and, therefore, prohibit too many types of outdoor access areas that producers need for periods of recognized exemption from pasture access. To address those concerns, some commenters recommended editing or deleting the definition for "feedlot." Three similar edited versions of the definition were received. The first version recommended by commenters replaced the words "confined area" with the words "dry lot" and replaced the word "ruminants" with the word "livestock." The second version recommended by a commenter replaced the word "ruminants" with the word "livestock." The third version recommended by other commenters replaced the words "confined area" with the words "dry lot." The suggested revisions to replace "confined area" with "dry lot" were premised upon the removal of the words "confined area" from the definition of "dry lot." Since feedlots are defined as a type of dry lot, the removal is consistent with the definition of dry lot. In addition, commenters wanted the definition to reflect that other non-ruminant livestock may also be fed in feedlots.

We have accepted the first version, which incorporates the suggestions of the second and third versions. The prohibition on feedlots in the proposed rule has been stricken from this final rule due to comments received asserting that feedlots can be compatible with organic livestock production. Accordingly, the definition of "feedlot" has been amended to clarify the characteristics by which a "feedlot" would be acceptable for organic ruminant livestock. This final rule contains requirements for the size of a feedlot relative to the number of animals at § 205.239(a)(1), and that feedlots are well maintained and do not contribute to waste runoff and contaminated waters at § 205.239(a)(5). We believe that the definition of "feedlot" describes an acceptable area for providing outdoor access when pasture is not available and a location for supplemental feeding. The definition of "feedlot" reads: "A dry lot for the controlled feeding of livestock."

Graze—In the proposed rule, we defined "graze" as "(1) The consumption of standing forage by livestock. (2) To put livestock to feed on standing forage." We received comments suggesting changes to both parts of the proposed definition of "graze," to include a reference to residual forage. These commenters advocated allowing management practices which maximize pasture productivity and extend the grazing season. Methods that were mentioned include clipping pastures, stockpiling forage (the pasture is not grazed during the growing season in order to provide winter grazing), and cutting pastures, with cut pastures being windrowed. Some comments also suggested a definition of "residual forage" as "standing forage or forage cut and left to lie in place in the pasture."

We believe these comments have merit. Accordingly, we added the words "or residual forage" to both parts of the definition of graze in this final rule. Residual forage is a new term defined in this final rule as discussed below. It is not necessary to include management practices which maximize pasture productivity and extend the grazing season in the definition. The definition for "grazing" accommodates those practices in which livestock are outside grazing on pasture, which may have fresh or stockpiled forage or forage that has been cut and windrowed.

Growing season—Commenters universally opposed the proposed definition of "growing season" and suggested that it be replaced with a definition for "grazing season." Many commenters asked that every occurrence of the term "growing season" be replaced with the term "grazing season." We received one comment that suggested that the definition of "growing season" be changed to "period of the year during which growing conditions for indigenous vegetation and cultivated crops are most favorable. Growing season is affected by elevation above sea level, distance from the equator, average regional temperatures, length of maintained temperatures, frosts, wind conditions and other weather patterns." This commenter also suggested a definition for "grazing season."

Comments received about grazing season as a better description for defining periods for pasture availability made the following points:

- A more practical approach to defining the time of year when pasture forages are of a substantive quality and quantity for grazing purposes;
- The vast differences in climatic conditions across livestock production areas precludes defining growing season by last and first frosts;
- Pastures are typically not suitable for grazing immediately after the last killing frost and remain suitable for grazing for a period of time following the first killing frost;
- The proposed growing season definition did not account for periods of intense rain and heat- and dry-induced dormancy periods; and
- Such conditions, i.e., periods of intense rain and heat- and dry-induced dormancy periods, would make pastures unsuitable for grazing due to the potential for damage to the pasture stands as well as soil and water quality.

For the reasons above, commenters have conveyed that pastures which may not offer sufficient grazing during the growing season as defined in the proposed rule, could sustain grazing outside of the growing season. Therefore, we are adding a definition for "grazing season" and removing the proposed definition of "growing season." Furthermore, in each place that the term "growing season" appears, we replaced this with the term "grazing season." Based on the comments we received about the attributes and availability of pasture and grazing, we are amending and accepting the definition of grazing season as suggested by commenters: "The period of time when pasture is available for grazing, due to natural precipitation or irrigation. Grazing season dates may vary because of mid-summer heat/humidity, significant precipitation events, floods, hurricanes, droughts or winter weather events. Grazing season may be extended by the grazing of residual pasture as agreed in the operation's organic system plan. Due to weather, season, and/or climate, the grazing season may or may not be continuous. Grazing season may range from 120 days to 365 days." We have amended the above definition of grazing season by replacing the term "residual pasture" with "residual forage," because

the latter term more closely represents what is actually being grazed. We have also added the words, "per year" at the end of the definition to clarify that each grazing season occurs within or up to a one year period. The one year period does not have to be January through December, but must be within a 365 day period.

Inclement Weather—In the proposed rule, "inclement weather" was defined as, "Weather which is violent, or characterized by temperatures (high or low), that can kill or cause permanent physical harm to a given species of livestock." We received many comments suggesting changes to the definition of inclement weather, including one to remove the definition completely. All of the suggested changes were consistent that the definition should be expanded to include weather conditions beyond those that can kill or cause permanent physical harm to animals. According to the comments, as proposed, the definition is so narrowly written that producers could be prevented from using humane management practices if animals suffer extreme discomfort, stress, or non-permanent physical harm. Most of the comments suggested amending the definition by replacing "kill or cause permanent physical harm" with "cause physical harm." Others suggested "kill or cause physical harm," "kill or cause severe or permanent harm," or "pose safety or humane comfort risk." We also received one comment asserting that these regulations be based on scientific measures.

We agree that nothing in these regulations should prevent humane treatment of livestock. Therefore, we removed the words "kill" and "permanent" from the definition and added that inclement weather may also be characterized by "excessive precipitation." We added a new sentence at the end of the definition to make clear that production yields or growth rates of livestock lower than the maximum achievable do not qualify as physical harm.

Certifying agents, however, should not allow producers to abuse an allowance for denying pasture to ruminants during periods of inclement weather. For example, a rain event on its own is not justification to deny access to pasture for ruminants. A rain event must render the pasture too wet for grazing without causing damage to the pasture beyond normal wear and tear from grazing. As for extreme temperatures and humidity, the critical factor in denying pasture to ruminants is the health and safety of the animals—not the yield impact of temperature and/or humidity on growth rate or output (milk yields, for example). Further, under § 205.238(a), a producer must establish and maintain preventive livestock health care practices, including the selection of species and types of livestock with regard to suitability for site specific conditions. Thus, if the location is consistently too rainy or the temperature and humidity are too high or low to safely graze animals throughout a 120-day minimum grazing season and still comply with all applicable parts of this regulation, the animal cannot be raised in such location for organic production. The NOP standards must adhere to all applicable Federal health and safety laws which in turn may be evidenced by appropriate metrics. The NOP regulations provide for certification of an operation based on a set of sustainable practices in order to meet a marketing claim intended to satisfy consumer expectations. In the case of organic ruminant animals, consumers expect that these animals graze on pasture and derive a significant portion of their nutrition while grazing on pasture. Participation in the NOP is voluntary, but in order to enter the marketplace for organic products, compliance with these regulations as organic is mandatory in order to sell, market, or label products that will meet consumer expectations.

Killing frost—The proposed rule contained a definition of "killing frost" in order to determine the beginning and end of the growing season. Commenters who suggested removing the definition of growing season also recommended removing the proposed definition for killing frost. Their rationale was that removing the definition for growing season makes the definition of killing frost unnecessary.

We agree that removing the definition for growing season makes the definition of killing frost unnecessary. We deleted the definition of killing frost.

Livestock—In the proposed rule, "livestock" was defined as, "Any bee, cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; fish used for food; wild or domesticated game; or other nonplant life." The proposed rule amended the original definition of "livestock" by adding the words "bee," and "fish used for food." The original regulation specifically excluded bees and aquatic animals from the definition of "livestock." However, the Organic Foods Production Act (OFPA) defines livestock to include "fish used for food" and "other nonplant life." We proposed amending the definition of livestock in the proposed rule, to align the definition of the regulations more closely with the definition in the statute.

Of the numerous comments received on the definition of livestock, all but a few called for the removal of "fish used for food." These comments recommended removal because the NOP has not undertaken rulemaking to add aquatic species to the standards.

We do not currently allow the organic certification of aquatic species. Therefore, we removed "fish used for food" from the definition of livestock and retained the language that excludes aquatic animals for the production of food, fiber, feed, or other agricultural based consumer products. Comments received on bees are discussed below in "Changes Not Made."

Residual forage—This term was not defined in the proposed rule. Several commenters proposed adding a definition of "residual forage" as, "Standing forage or forage cut and left to lie in place in the pasture." We believe that the commenters' proposed definition for residual forage could be interpreted to prohibit windrowing cut forage that is left in pastures. We also believe, in light of the definition of "graze," which includes reference to standing forage and residual forage, that standing forage should not be included in the definition of residual forage. We added a definition of "residual forage" in this final rule, based on the comments received that suggest management practices to maximize pasture productivity and extend the grazing season. To make it clear that windrowing cut forage is acceptable, we removed the words "standing forage" from the definition of residual forage. In this final rule, "residual forage" has also been added to § 205.237(c)(1), to clarify that both residual forage and vegetation rooted in pasture should not be counted as dry matter fed.

Sacrificial pasture—The proposed rule contained a definition of "sacrificial pasture," which described the purpose and characteristics of this feature. This term was defined because the proposed ruled contained a requirement that each ruminant livestock operation maintain a sacrificial pasture for grazing when saturated soil prevented grazing of other pastures. Due to the near universal opposition expressed by commenters, we have removed the mandatory requirement for sacrificial pasture and hence the definition is unnecessary. Further discussion regarding the deletion of the sacrificial pasture requirement is addressed below in the Pasture Practice Standard section.

Shelter—We did not propose a definition for shelter in the proposed

rule. However, we received comments, including from FOOD Farmers, whose comments are supported by its members, suggesting adding a definition for shelter to clarify the intention of § 205.239(a)(1), which addresses livestock living conditions. Three similar versions of a definition for shelter were received. Specifically, these comments define a shelter that can be used temporarily during the grazing season and for longer periods of time outside of the grazing season. Suggested definitions read (different text in the second and third definitions is italicized):

(1) "Structures such as barns, sheds, or windbreaks, or natural areas such as woods, tree lines, or geographic land features that provide physical protection and/or housing to animals;"

(2) "Structures such as barns, sheds, or windbreaks, or natural areas such as woods, tree lines, *large hedge rows,* or geographic land features that provide physical protection and/or housing to animals;"

(3) "Structures such as barns, sheds, or windbreaks, or natural areas such as woods, tree lines, or geographic land features that are *designed or selected to provide physical protection to all animals in a herd or flock simultaneously.*"

We agree with defining the term "shelter" to clarify its meaning as used in livestock living conditions. We have used the first version suggested, but added "large hedge rows" and "simultaneously" to address unique contributions from the other two versions.

Stage of life—The proposed rule did not contain a definition for stage of life, although we received comments requesting a definition. Very similar variations were submitted and supported by some of the commenters. Common to all of the suggested definitions were the words, "a discrete time period in an animal's life which requires specific management practices different than during other periods." The types of comments we received are shown below:

- Lactation, breeding and other recurring events are not a stage of life;
- Calves and chicks were cited as examples of stage of life; this is also true for calves, piglets and chicks;
- Each comment completed the example with the word etcetera. The phrase "time period in an animal's life" makes it clear that the definition is intended to cover animals of all ages.
- The definition is needed to ensure that the exception allowing temporary confinement due to stage of life in not abused;
- The definition is needed to clearly distinguish between recurring management events such as freshening, breeding, lactating that are not a stage of life and one time life-cycle events that are in fact a stage of life; as an example, pullets, calves, heifers, and cows are examples of stages of life. According to this comment, stage of life covers animals of all ages;
- A more narrow definition for stage of life, as "a discrete time period in an animal's life which requires specific management practices to protect the health and welfare of the animal and/or their offspring that are different from practices required during other periods; such as chicks and poults after hatching; sows and piglets at farrowing, etc."

We agree that a definition for "stage of life" should be added. This final rule makes clear that an animal's "stage of life" does not alone warrant temporary denial of access to pasture or the outdoors, or temporary confinement or shelter. In order to prevent the abuse of those exceptions, it is important for producers and Accredited Certifying Agents to have a common understanding of "stage of life." The definition from the last commenter above captures the essence of denying access to the outdoors, temporarily, for health reasons. This definition recognizes, through reference to "the animal and/or their offspring" as well as sows, that stage of life covers animals of all ages. It is clear from the comments we received that a definition should cover animals of all ages. We believe a definition should fully clarify the meaning of a term used, and use of the word "etcetera" in the last comment does not provide full meaning. Accordingly, we have included a definition for stage of life, including the recommendation that lactation, breeding, and other recurring events (including freshening) are not stages of life.

Yard/feeding pad—The proposed rule did not define this term. Among the comments received suggesting a definition, there were generally three variations (numbers in parentheses) for defining a "yard/feeding pad" as:

- "An improved area for feeding, exercising, and outdoor access for livestock during the non-grazing season and a high traffic area where animals may receive supplemental feeding during the grazing season." A commenter claimed this definition "provides a clear distinction between yard/feeding pad and feed lots or dry lots."
- "An improved area for feeding, exercising, and outdoor access for livestock during inclement weather, as well as supplemental feeding during the grazing season, allowing the producer to avoid serious damage to pasture sod, soil, and water quality, and providing for the collection and management of animal waste."
- "An enriched area for eating and food searching, exercising and outdoor access for livestock during the non-grazing season and a high traffic area where animals may receive supplemental feeding during the grazing season."

We agree that the regulations need to provide for yards/feeding pads and comments we received provided sound justification for the introduction of a definition of yards/feeding pads—particularly in light of removing the provision for sacrificial pasture in this final rule. Yards/feeding pads are integral to grazing systems as they can serve as an area where lactating animals are gathered and dispersed between pastures and the milking facility. These areas minimize damage to fields that can occur during wet conditions and high impact activities such as feeding. We have incorporated the first definition recommended by commenters above because this clearly conveys the purpose of these features and the limited activities they support. We omitted the word, "improved" from the commenters definition because its meaning is unclear. The provisions in this final rule for yards/feeding pads are discussed below under livestock living conditions.

Definitions—Changes Requested But Not Made

This section retains from the proposed rule, regulations on which we received comments as follows:

Livestock—A commenter suggested removing "fiber, feed, or other agricultural based consumer products." This would leave the definition exactly as stated in the OFPA. The language "fiber, feed, or other agricultural based consumer products" was approved through notice and comment rulemaking and has been in effect since December 21, 2000. This is the only request that we have received to remove this language since promulgation in 2000. As the commenter gave no justification for the recommended change and as there was no additional support for that change, we have not adopted the commenter's suggestion.

Livestock and bees—We received a comment to change "bee" to "beehive" and another to change "bee" to "bee colony." However, we received many comments, which called for removing "bee" from the livestock definition, five never mentioned bees, and some asked for additional rulemaking relative to apiculture. A very detailed comment

described the differences between bees, livestock, and other animals—

• Including bees in the definition of livestock ignores basic bee life cycle and behavior;

• Honey bees are not raised as food, nor are they raised in order to use their skins, fur or other body part;

• Honey is not a product of the bee's body like milk, but is a harvested plant product processed by honey bees;

• Finally, the comment identified the differences between honey bees and the other animals (e.g., they are not warm-blooded, not raised as individuals, not domesticated, their movement is uncontrollable, foraging does not damage a plant or reduce its viability, it is difficult for beekeepers to feed bees a balanced and nutritional artificial diet, and beekeepers cannot administer to the bee's health in a manner similar to the other animals in the livestock definition).

A second comment acknowledged that the definition in OFPA lists "other nonplant life," but stated that it "is incorrect to make insects subject to the same regulations as, e.g., ruminants." This commenter believes that it is necessary to exclude bees from any regulation that does not consider their unique characteristics. The commenter also expressed concern that listing bees in the definition of livestock under the NOP would influence the construction and interpretation of federal, state, and local regulations and have adverse ramifications beyond the scope of the NOP. The commenter was especially concerned that including bees in the definition of livestock would restrict beekeeping within jurisdictions that prohibit or severely restrict livestock production within their borders.

Both of these commenters, and some of the others failed to address the fact that the certification of apiaries for the organic production of honey and other products of the hive under the NOP is currently allowed.

Bees are members of the animal kingdom and are managed for pollination and the products of the hive (e.g., honey, pollen, propolis, bee venom, beeswax, and royal jelly). We note that the Canadian Organic Production Systems—General Principles and Management Standards include bees in their definition of livestock. While the EU Council Regulation No. 834/2007 (replaced EEC No 2092/91) does not define livestock, it does define livestock production as "the production of domestic or domesticated terrestrial animals (including insects)." OFPA includes the phrase "other nonplant life," which includes bees. The wording "other nonplant life" is also included in the NOP definition of livestock. Adding "bee" to the definition of livestock would be consistent with the standards of two major trading partners. Adding "bee" to the definition of livestock would help to clarify that apiaries may be certified under the NOP. As proposed, we are removing the exclusion of bees for the production of food, fiber, feed, or other agricultural-based consumer products. This action, however, removes the proposed addition of "bee" from the definition of livestock as unnecessary due to the presence of the phrase "other nonplant life" and removal of the exception of bees. Removing the exclusion of bees as proposed in the proposed rule eliminates a contradiction to existing policy and the current practice of allowing the certification of apiaries under the NOP.

Temporary/Temporarily—A commenter suggested removing the definition of "temporary and temporarily," but gave no reason for doing so. A second commenter recommended removing "the period of time specified by the Administrator when granting a temporary variance" but also gave no reason. Other commenters supported adding the definition. One commenter wrote that overnight "should not, unto itself, be an allowed reason not to provide access to the outdoors or access to pasture."

We agree with the comment that nighttime should not in and of itself be reason to deny access and note that the overnight confinement must be associated with one of the conditions listed in § 205.239(b), as grounds to deny access to the outdoors. Further, justification for confinement should be addressed and documented in the operation's organic system plan. However, we do not agree with removing the definition, as suggested by some of the comments. We have retained the proposed definition of "temporary and temporarily" to prevent operations from exceeding a permissible period of confinement.

Use of the Term, "Organic." (§ 205.102)

Use of the Term, "Organic."—Changes Requested But Not Made

As originally published, § 205.102(a) required that any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic," must be produced in accordance with livestock §§ 205.236 through 205.239. In the proposed rule, we proposed amending § 205.102(a) by changing the provision to include proposed § 205.240.

We received a few comments on the proposed amendment to this paragraph, some of which supported as proposed, and others opposed because they opposed publication of § 205.240. One opposed because the commenter suggested covering the proposed pasture practice standard within the organic system plan (OSP), as described by applicable paragraphs of § 205.201.

This action retains the pasture practice standard (new § 205.240) in amended form. Therefore, we have amended § 205.102(a) by changing the provision to include § 205.240.

Origin of Livestock (§ 205.236)

Origin of Livestock—Changes Based on Comments

Origin of livestock—The proposed rule included language intended to clarify that the two tracks for replacement dairy animals remained in effect following the final rulemaking that was published June 7, 2006, (71 FR 32803). Thousands of commenters opposed this action. With few exceptions, the commenters strongly urged that we work diligently and quickly to issue a proposed origin of livestock rulemaking that would eliminate the two track system for dairy replacement and require that once an operation has been certified for organic production, all dairy animals born or brought onto the operation shall be under organic management from the last third of gestation.

We agree that this topic should be the subject of a separate rulemaking and, accordingly, have deleted the proposed change to § 205.236(a)(2)(iii). The section remains as published June 7, 2006, (71 FR 32803). Issues pertaining to this topic will be reviewed and evaluated separately from this action.

Livestock Feed (§ 205.237)

Livestock Feed—Changes Based on Comments

This section differs from the proposed rule as follows:

Section 205.237(a) *Organic livestock ration*—This paragraph clarifies that producers must provide an agricultural ration for livestock composed of agricultural products handled organically, without exception. To make this clear, we added language stating that any agricultural ingredients contained in feed additives and supplements must be handled organically. We received several comments on that clarification expressing the following positions:

• Disagree, because the clarification has been provided in NOP guidance, and the impact of the clarification needs

further examination. A commenter explained that vitamins and minerals, as supplied by the manufacturer, may contain very small amounts of nonorganic agricultural carriers and this clarification would add an obstacle to the annotation in the NOP regulation which solely requires that nutrient vitamins and minerals are FDA approved;

• Agree with the clarification provided on the basis that it will level the playing field among producers of all sizes and guarantee to consumers that all feed fed to organically certified livestock is NOP certified;

• Agree, but questions remain about the applicability. Does the requirement apply to ingredients in an ingredient listing on a package of supplements or feed additives? Or alternatively, does the requirement apply to the agricultural component of an item in § 205.603, or the substrate used to produce a nonsynthetic (natural) ingredient?

• One commenter took issue with the phrase "by operations certified to the NOP" in this paragraph. The commenter stated that each day, organic feeds are transported by haulers not certified to the NOP. The commenter went on to acknowledge that proper procedures must be followed to prevent contamination but stressed that this can be done without certification and this requirement could result in an increase in transportation costs of feed products.

Section 205.237 already requires producers to provide a total feed ration composed of agricultural products that are organically produced and handled. However, some additive and supplement handlers have used nonorganic agricultural ingredients in products for which they have sought and received certification, by claiming that the nonorganic agricultural ingredients were supplements or used as carriers. One example involved a supplement product, for which an organic label was sought, and whose primary ingredient was conventionally produced molasses. The amended language clarifies the existing requirement that organic livestock must be provided with a total feed ration composed of organically produced and handled agricultural products.

We agree that further clarification of the organic livestock ration is needed. We have clarified the provision at the end of § 205.237(a) to refer to ingredients included in the ingredients list. Section 205.603 identifies synthetic substances that are allowed for use in organic livestock production. Because these substances are not agricultural products which could be certified organic, § 205.237(a) is not applicable to those substances.

The definition of "handle" in the original NOP rule in § 205.2, specifically excludes the transportation or delivery of crops. Furthermore, § 205.100(a) defines handling operations that must obtain certification in order to sell, label, or represent agricultural products as organic. Haulers are excluded from the definition of handling operations under § 205.100(a) and are not required to be certified to transport agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients of food group(s))." Therefore, to address the confusion raised by the comment, we are clarifying that haulers are not required to be certified for transporting and delivering feed.

Section 205.237(b)(7) *Antibiotics prohibited in feed*—The purpose of this proposed paragraph is to reinforce the prohibition on the use of antibiotics currently found in § 205.238(c)(1), which states that producers must not sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics. We received the following comments:

• The provision is already covered by §§ 205.237(a) and 205.238(c)(1) and could be deleted;

• Another commenter stated that "* * * it would be unrealistic for producers to * * * collect that data from manufacturers of suppliers when the regulation calls for only organically certified feed to be fed to livestock." The commenter went on to say that "accredited certifiers of any purchased feed will be responsible for ensuring that antibiotics are not used in feeds or forages as part of their due diligence to certify the manufacturer/supplier;"

• Replace the words "to which anyone, at anytime, has added" with "which contains." The commenters' suggested language would read: "Provide feed or forage which contains an antibiotic."

We have not accepted the recommendations. Instead, we have decided to further clarify the prohibition on the use of antibiotics by adding "including ionophores" to the end of the provision. In administering this program we have found antibiotics in certified organic livestock feed. Ionophores are antibiotics used for increasing feed efficiency or rate of gain. By clarifying this provision we reinforce the prohibition on the use of all antibiotics, including ionophores. Whether used for therapeutic or subtherapeutic reasons or to increase feed efficiency or rate of gain, all antibiotics are prohibited. This provision restates this requirement—organic livestock feed to which antibiotics have been added is prohibited. It is the producer's responsibility, to obtain assurances from feed suppliers that the feed products supplied are free of antibiotics, including ionophores.

Section 205.237(b)(8) *No restriction from obtaining feed grazed from pasture during the growing season*—We received comments requesting that "growing season" be changed to "grazing season" in this paragraph. We also received comments requesting that we amend this paragraph to refer to §§ 205.239(b) and (c).

We agree and have made the change related to grazing season consistently throughout this final action. We have added a new definition for "grazing season" to § 205.2 and have addressed the change from "growing season" to "grazing season" throughout this final rule in that section above. In addition to referencing the exceptions in § 205.239(c), we have also referenced the exemptions provided in § 205.239(b), as these exceptions for temporary shelter and confinement also apply to ruminants.

Section 205.237(c) *Dry Matter Intake (DMI)—opening paragraph and paragraphs (c)(1)–(4)*—The opening paragraph required producers to demonstrate that during the growing season, animals are provided with not more than 70 percent of dry matter demand from dry matter fed, not including vegetation rooted in pasture. The paragraphs, as proposed, identified documentation requirements for demonstrating compliance with the 70 percent dry matter demand requirement. We received comments specifically addressing this section, one of which carried numerous signatures. Nearly all of the comments requested a change in the words "growing season" to "grazing season." We also received amended versions to the opening paragraph which are summarized as follows:

• Add the phrase "or mowed and left in the pasture to be grazed," or "clipped and left in place" to the paragraph;

• Insert "residual forage" into the paragraph to further define vegetation;

• Make clear that the feed consumption should be calculated over the entire grazing season, that the grazing season must be no less than 120 days, and that a grazing season may not be continuous;

• Couple the 30 percent minimum feed required from pasture, on average, with the not more than 70 percent DMI from dry matter fed required by this paragraph, and exempt certain classes of

animals, such as dairy stock under 12 months of age, slaughter stock typically grain finished, and breeding bulls and male stock;

• Other commenters suggested language requiring that all ruminants over 6 months of age receive an average of 30 percent of their dry matter demand from pasture for the entire grazing season.

Commenters also submitted language found in the new definition of grazing season, stating that the grazing season may be intermittent due to weather, season, or climate. In addition, we received other comments requesting that the 30 percent DMI from pasture requirement be an average over the grazing season and that "grazing season must be no less than 120 days."

The commenters also requested the clarification that each type and class of animal, individually, must meet the 30 percent dry matter intake from grazing requirement.

In addition to the comments above, we also received comments requesting that an exemption be added from pasturing and the 30 percent DMI from grazing requirement for breeding bulls and breeding male stock—with the stipulation that such animals also be prohibited from being sold as organic slaughter stock. Comments we received stated that while this exemption was initially offered because of some State and local regulations that make it illegal to pasture male bulls with other stock, the commenters requested this exemption for all breeding bulls.

We agree that it would be beneficial to couple the 30 and 70 percent DMI requirements together for clarity. Further, we believe that it would be beneficial to clarify the pasture derived DMI requirements for ruminant animals denied pasture in accordance with §§ 205.239(b)(1) through (8) and §§ 205.239(c)(1) through (3). We are adding a new § 205.237(c)(2), that requires producers to provide sufficient quality and quantity of pasture to graze throughout the grazing season. They shall also provide all ruminants under the organic system plan with a minimum of 30 percent, on average, of their DMI from grazing throughout the grazing season. An exception is provided for ruminant animals denied pasture in accordance with §§ 205.239(b)(1) through (8) and §§ 205.239(c)(1) through (3). That exception requires that ruminant animals who are denied pasture in accordance with §§ 205.239(b)(1) through (8) and § 205.239(c)(1) through (3) shall be provided with a minimum of 30 percent, on average, of their DMI from grazing for the remaining time that they are on pasture during the grazing season. Section 205.239(c)(4) is not included because producers are expected to keep animals on pasture long enough each day throughout the grazing season to assure that their animals derive an average of 30 percent of their DMI from pasture grazed throughout the grazing season. Further, as stated in that paragraph, milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average DMI from grazing of at least 30 percent throughout the grazing season. The paragraph also provides that milking frequencies or duration practices cannot be used to deny dairy animals pasture.

We are replacing the words "growing season" with "grazing season" throughout the regulation as discussed above. However, the commenters suggested wording that "grazing season must be no less than 120 days," would also permit producers to pasture animals for only the minimum of 120 days per year, even when the grazing season for the geographical region exceeds 120 days. Therefore, we are not accepting this wording. This final rule requires producers to graze ruminants throughout the entire grazing season for the geographical region, but this period shall be no less than 120 days per calendar year. We are accepting the comment that due to weather, season and climate, the grazing season may not be continuous in order to provide further clarification. The proposed rule at § 205.240(c)(2) used the words "an average of 30 percent of their DMI from grazing throughout the growing season." To be consistent with § 205.240(c)(2), the text of § 205.237(c) has been revised accordingly to address the 70 percent requirement as an average and the word "growing" has been changed to "grazing." We have also inserted a sentence to convey the requested clarification because the dry matter demand and intake will vary by type and class of animal.

We agree with adding "residual forage or" before "vegetation," as this will enable producers to employ management practices to extend the grazing season by leaving residuals in the pasture for livestock to eat. We also added a definition for "residual forage" in § 205.2.

We recognize it may be illegal in some localities to pasture breeding bulls. In consideration of this factor, an exception is provided for breeding bulls which exempts them from the pasturing and 30 percent DMI requirements. The requested exemption will assure that all ruminant livestock producers can maintain mature males on their operation. This exception includes a provision that excludes any animal maintained under this exemption from being sold, labeled, or represented as organic slaughter stock.

In summary, based on comments received, we deleted paragraphs (1) through (4) as written and revised the opening § 205.237(c) to clearly explain the dry matter intake feed requirements and exceptions to those requirements. The documentation requirements that were contained in the paragraphs (1)–(4) have been revised and moved to new § 205.237(d) as discussed below. The revised § 205.237(c) and new paragraphs (1) and (2) now read: "(c) During the grazing season, producers shall:

(1) Provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed (dry matter fed does not include dry matter grazed from residual forage or vegetation rooted in pasture). This shall be calculated as an average over the entire grazing season for each type and class of animal. Ruminant animals must be grazed throughout the entire grazing season for the geographical region, which shall be no less than 120 days per calendar year. Due to weather, season, or climate, the grazing season may not be continuous;

(2) Provide sufficient quality and quantity of pasture to graze throughout the grazing season and to provide all ruminants under the organic system plan with an average of not less than 30 percent of their DMI from grazing throughout the grazing season: Except, that,

(i) Ruminant animals denied pasture in accordance with § 205.239(b)(1) through (8) and § 205.239 (c)(1) through (3), shall be provided with an average of not less than 30 percent of their DMI from grazing throughout the periods that they are on pasture during the grazing season; and

(ii) Breeding bulls shall be exempt from the 30 percent DMI from grazing requirement of this section and management on pasture requirement of § 205.239(c)(2): Provided, That, any animal maintained under this exemption shall never be sold, labeled, represented, or used as organic slaughter stock."

Recommendations to exempt slaughter stock and breeding bulls and other male stock are addressed under Livestock Living Conditions—Changes Based on Comments.

Section 205.237(d) New paragraph—*Dry Matter Intake—Formula calculation*—Under the proposed §§ 205.237(c)(1) through (4), producers were required to document and maintain monthly records to show that not more than 70 percent of a ruminant

livestock's dry matter intake (DMI) is derived from dry matter fed to ruminant livestock. A summary of the comments we received follows:

- A document written by a university department of dairy and animal science was submitted explaining to producers how to evaluate forage quality;
- One comment suggested that the prescriptive nature of the DMI calculations could be avoided for most organic livestock farms by setting a threshold acreage for pasture, below which DMI calculations are required; that is, for less than 2 acres per 1,000 pound animal to devote exclusively to grazing, DMI calculations must be provided as part of the farm's organic system pasture plan;
- Some commenters suggested that reference to a single calculation should be removed because the formula provided assumes that all animals have the same dry matter demand as a percent of body weight (3 percent) but demand varies due to differences in animal species, age, weight, production ability, breed; monthly frequency is onerous; and this calculation would not be applicable to meat animals raised entirely on pasture;
- Formulas should only be offered as guidance because producers and certifying agents should determine the most appropriate way to document pasture intake as applicable to individual operations, and producers should determine what records should be maintained as part of the organic system plan to demonstrate compliance;
- Replace the calculation with new provisions that are less prescriptive, such as requiring producers to provide sufficient records to demonstrate compliance with the 30 percent DMI requirement;
- Leave the DMI calculation as is;
- Provide an exemption from the 30 percent DMI from pasture requirement for ruminant slaughter stock for the finishing period, not to exceed 120 days, and require that animals cannot be denied pasture during the finishing period;
- Allow the producer and certifying agent to determine the best way to document compliance with the DMI requirements;
- Opposition to the 3 percent of body weight figure used in the formula;
- Allow the use of other DMI intake levels within the formula.

We received six versions of proposed regulatory text from several commenters intended to provide sufficient information to allow certifying agents to assess compliance with the feed requirements of § 205.237(c) without excessive or burdensome recordkeeping. Other commenters stressed that there are many ways to measure dry matter intake and demand that vary by operations and classes of livestock. These commenters and others proposed a new paragraph that would read:

(d) Producers shall:
(1) Describe the total feed ration for each type and class of animal;
(2) Document changes that are made to all rations throughout the year in response to seasonal grazing changes;
(3) Provide the method for calculating dry matter demand and dry matter intake to certifier for approval.

A second similar version added that producers should incorporate this into their OSP, and at the end of the paragraph, stated that producers should (3) "provide sufficient documentation to certifiers to verify that feeding requirements of § 205.237(c) are being met." Other commenters proposed this same paragraph as the second version, but added in (1) that not only must total feed rations be documented for each type and class of animal, but also the amount of each type of feed fed.

One commenter stated that the regulation should reinforce the role of the OSP in documenting feed rations, changes to feed rations and methods used to determine dry matter intake. This commenter and others proposed a new paragraph that would read:

(d) Producers shall, as part of the organic system plan, document all feed rations for all species and classes of animals. For ruminants, documentation shall be maintained of changes that are made to all rations throughout the year in response to seasonal grazing changes such that records can verify the feeding requirements of § 205.237(c).

A commenter suggested adding to the end of this version language that would provide for a 150 day finishing period where access to pasture will not be practical or possible to maintain.

A certifying agent submitted a detailed comment about accurately assessing the production techniques of organic operations and the need for producers to supply certifying agents (ACAs) with anticipated feed rations, which the agent does not believe is consistently provided or collected by ACAs. According to this agent, information that must be verified includes feed sources (both on-farm and purchased feed), types of feed quantities required (percentage of each in the total ration), feed supplements and additives, and amount actually fed to the animals. With this information, ACAs can determine compliance by evaluating purchase records, grazing records, existing inventory and herd lists at inspection and review. Agents would have a clear indication whether producers are providing a significant amount of animals' dietary needs through pasture, and be able to verify accuracy of rations by inspection. This commenter and others proposed a new paragraph that would read:

(c) Producers shall:
(1) Describe the total feed ration for each species and class of animal. The description must include:
(i) All feed produced on-farm;
(ii) All feed purchased from off-farm sources;
(iii) The percentage of each feed type, including pasture, in the total ration; and
(iv) A list of all feed supplements and additives.
(2) Document the amount of each type of feed actually fed to each species and class of animal."

This commenter also stated that the 30 and 70 percent metrics would be unnecessary with the following wording included in the final rule: (1) The definition of grazing season; (2) requiring daily grazing during the grazing season; (3) specific requirements for temporarily denying a ruminant animal access to pasture; and (4) evidence at inspection of a grazing system including gates, laneways, paddocks, and a watering system, incorporated into the OSP. All of these provisions would enable certifying agents to determine compliance with a pasture-based rule.

We agree that different types and classes of ruminant animals have different DMI requirements, and that producers should have the flexibility to select the appropriate level for each class of animal. Therefore, we have removed proposed § 205.237(c)(1) through (4) and, as noted above in the discussion, DMI—opening paragraph and paragraphs (c)(1)–(4), replaced them with revised paragraphs (1) and (2). We have also added a new § 205.237(d) which describes the documentation requirements for feed rations and feed fed. The NOP will provide tools to assist producers and certifying agents in calculating dry matter demand and dry matter intake. These optional resources will be available on the NOP Web site.

We expect these requirements will add minimal additional paperwork to that which is already required for organic certification, as some commenters have indicated that many certified organic ruminant producers already maintain these records. This completes our revisions to §§ 205.237(c)(1) though (4).

We agree that defining grazing season, requiring grazing during the grazing season, specifying requirements for temporarily denying a ruminant animal

access to pasture, and looking for evidence of a grazing system to include gates, laneways, paddocks, and a watering system should all be part of a thorough inspection, but by themselves these measures do not assure compliance with a pasture based rule. We do not agree that these would render the 30 and 70 percent metrics unnecessary. Many commenters strongly support requiring that ruminants graze pasture throughout the grazing season and that a substantial portion of their diet come from grazing. Over half of those supportive comments specifically supported a minimum percentage DMI from pasture. Adding a DMI from pasture requirement completes the components necessary to assure that organic ruminant livestock producers operate within a pasture based system. We are retaining the 30 and 70 percent metrics.

We also support additional regulatory text that will enable certifying agents to assess compliance with the feed requirements of § 205.237(c) without excessive or burdensome recordkeeping for the producer. We agree that it is important that livestock producers supply their anticipated feed rations so that the certifying agent can accurately assess the production techniques of the operation. Further, we concur that the certifying agent needs to verify feed sources, feed requirements in rations, all feed supplements and additives, and amounts actually fed to animals. Without this information, an ACA cannot accurately determine compliance with the feed requirements of § 205.237(c). In fact, to be in compliance with the terms of their accreditation, certifying agents should already be requiring this information in the operation's OSP. ACAs should also review and evaluate purchase records, grazing records, existing feed inventory, and herd lists before granting certification and at least annually thereafter.

Various suggested phrases were not incorporated into new § 205.237(d). We did not include a reference to the OSP because § 205.201(a) already requires this information. We did not include the language "to certifier for approval" because § 205.201(a) compels the producer to concur with the certifying agent and the proposed language is unnecessary. We did not include a recommendation to "provide sufficient documentation to certifiers to verify that the feeding requirements of § 205.237(c) are being met," because the entire paragraph is intended to demonstrate compliance with the provisions of § 205.237. Finally, we did not incorporate language related to a 150-day finishing period in this section; this is addressed under Livestock Living Conditions—Changes Based on Comments for the discussion on slaughter stock finishing period.

Livestock Feed—Changes Requested But Not Made

Section 205.237(a) *Organic livestock ration*—Several commenters directly addressed one or more issues among the proposed changes to this paragraph. One commenter stated that the proposed revisions should be removed because they are not directly linked to the issue of pasture. In amending paragraph (a) to make clear that the total feed ration must be composed of agricultural products organically produced by operations certified to the NOP, a commenter stated that the paragraph should be amended to permit exempt producers under § 205.101(a)(1) to provide such feed, forage, and pasture. This position was not supported by other commenters who stated that the provision clarified existing requirements and should be included in the final rule. One commenter in particular, whose comments were endorsed by over 700 commenters, specifically opposed the use of uncertified feed by certified livestock operations, saying that "inclusion of this provision will guarantee to the consumer that all feed consumed by organically certified livestock is certified by a NOP accredited third party, thus ensuring the integrity of the organic seal and the future value-added income to small operations."

The commenter advocating for feed sources from exempt farmers expressed the opinion that requiring all feed sources to be certified is inconsistent with § 205.101(a)(1). The commenter cites the regulation that prohibits the use of ingredients identified as organic in processed products and argued that "feed fed to animals who produce edible products * * * is clearly not an 'ingredient identified as organic' (for example, milk cartons are not labeled 'Ingredients: organic hay')." We disagree. We have long held that livestock producers must feed animals certified organic feed products. This position is supported by § 2110(c)(1) of the OFPA, which requires producers to feed livestock organically produced feed that meets the requirements of this title. We also disagree with the assertion that this is inconsistent with § 205.101(a)(1). To the contrary, we believe this position is consistent and analogous to prohibiting the sale of uncertified products to food manufacturers for organic identification and be used in multi-ingredient products. The same problems with the use of products sourced from uncertified operations by food manufacturers exist for the use by livestock operations. Accordingly, we have retained the clarification that livestock must be provided with a total feed ration composed of organically produced and handled agricultural products, including pasture and forage, by operations certified to the NOP. Exempt producers who want to sell to certified operations may apply for certification under the NOP. In anticipation the impact of this provision on exempt livestock producers, these producers may continue to feed the crops they grow to the animals they raise.

Sections 205.237(b)(5)–(8) A commenter also recommended deleting §§ 205.237(b)(5), (6), and (7). Regarding §§ 205.237(b)(5) and (6), we proposed only minor word changes at the end of paragraphs (b)(5) and (6) in order to amend the remaining paragraphs (b)(7) and (8). As we explained in the proposed rule, because of comments, complaints, and noncompliances, we were proposing various amendments to the livestock provisions of the NOP. A commenter stated that § 205.237(b)(5), which prohibits the feeding of mammalian or poultry slaughter by-products to mammals or poultry, is unnecessary because this is already prohibited under Federal regulations. The commenter's assertion is not correct. The FDA regulations prohibit certain animal proteins in ruminant feed and certain cattle origin materials from the food and feed of all animals (21 CFR 589). The prohibitions in § 205.237(b)(5) are more comprehensive and, therefore, we are retaining that requirement.

We received several comments about § 205.237(b)(8). Commenters suggested deleting the paragraph, which as proposed, prohibits producers from preventing ruminant animals from obtaining feed grazed during the growing season, except for conditions specified in § 205.239(c). One comment gave no reason while the other said the issue is already addressed in the changes proposed to § 205.239. We disagree. The proposed rule pointed out that § 205.237(a) provides for feed from pasture and §§ 205.239(a) and (c) provides for access to pasture and reasons for temporary confinement from pasture. Amended § 205.237(b)(8) reinforces these requirements, along with those of amended § 205.239(a)(2), which requires producers to provide continuous year-round living conditions which accommodate the health and natural behavior of ruminants including management on pasture and daily grazing throughout the grazing season(s)

to meet the requirements of this paragraph. Amended § 205.237(b)(8) also includes an exception to this requirement for the 8 conditions under which a producer may temporarily provide shelter or confinement, listed in § 205.239(b). The exceptions per § 205.239(b) are included because the exceptions to § 205.237(b)(8) are also granted for temporarily denying a ruminant animal pasture or outdoor access as provided in § 205.239(c).

As proposed § 205.237(b)(8) prohibits livestock producers from preventing, withholding, restraining, or otherwise restricting ruminant animals from actively obtaining feed grazed from pasture during the growing season, except for conditions as described under § 205.239(c). Some commenters requested the words "withhold, restrain, or otherwise restrict" be removed on the grounds that they are "duplicative" of the word "prevent." We have not accepted this recommendation. The wording is intentional and conveys that, except for situations addressed in § 205.239(c), producers shall not keep ruminant animals from pasture during the grazing season. A few commenters requested the words "actively obtaining feed grazed from" be replaced with "accessing." We have not accepted this recommendation. The purpose of pasturing ruminants is not to merely provide them with access to the outdoors. The NOP regulations require producers to manage pasture as a crop and to place ruminant animals on pasture in order to provide animals with a minimum of 30 percent of DMI from grazing pasture throughout the grazing season. One commenter recommended that the words "actively obtaining feed grazed from" be replaced with "accessing and grazing." We have also not accepted this recommendation because we believe the words "actively obtaining feed grazed from" better convey the intent of these regulations that ruminant animals must obtain feed grazed from pasture.

Some commenters recommended that the following statement be added to the paragraph in 205.237(b)(8): "The grazing season(s) must not be less than 120 days per year total. Due to weather, season, or climate, the grazing season(s) may or may not be continuous." We have addressed this issue in livestock living conditions below and in the definition of grazing season, above.

General opposition to DMI metrics—A number of commenters expressed opposition to the 30 and 70 percent metrics. Reasons included: the 120 days grazing will be complicated enough without 30 percent or 70 percent; DMI-based feed reporting system is inappropriate; does not consider an average 1,400 pound lactating Holstein; method of estimating DMI is flawed; recordkeeping will be burdensome, promotes creative ration reporting; is overly prescriptive; is unnecessary; 30 percent DMI is arbitrary; has no scientific support; opposed to the inclusion of DMI metrics; DMI measurements only works well in rations that are intensively managed where all inputs can be measured (weighed) such as in feedlots; and it is impossible to document the dry matter intake of livestock on pasture.

Commenters suggested amending § 205.237(c), to substitute animal units per acre for the 70 percent DMI requirement fed during periods of low rainfall. The commenters suggested adding a statement at the end of § 205.237(c) that would state, "with exception as defined in § 205.238(c)(2)" at the end. The commenters went on to propose an exception: "Exception, In cases where the local growing season is not supported by a nominal rainfall average within ± 10 percent of the 50 year rainfall average, the 70 percent dry matter fed can be substituted with a maximum stocking rate not to exceed 3 animal units per acre maximizing the DMI grazed in previous growing seasons. DMI to be reported as defined in § 205.238 (c)(1)." We disagree and have not accepted the recommendation. The broad range of pasture types and grazing strategies available to producers makes a prescribed maximum stocking rate for pasture arbitrary and often contrary to good management practices. A mandated stocking rate could interfere with a producer's ability to balance forage supply with ruminant demand. The producer must provide ruminants with 30 percent DMI from grazing averaged over the grazing season and may otherwise determine the stocking rate appropriate for each pasture within the operation. Temporary variances due to damage caused by drought are discussed below.

A commenter suggested that the first sentence to § 205.237(c) be amended to read: "During the grazing season, producers shall provide ruminant livestock with a ration that includes grazed pasture crops." One commenter suggested that the first sentence be amended to read: "During the grazing season, producers shall provide pasture, which includes both rooted vegetation and/or residual forage." This commenter also suggested a new second sentence providing that, "The grazing season must be not less than 240 days per year." These suggestions would eliminate the requirement that producers shall provide not more than 70 percent dry matter demand from dry matter fed during the growing season. We do not support that action because the majority of consumers and producers who have commented on this rule support the 70 percent maximum from dry matter fed during the grazing season. A numerical threshold for pasture intake from grazing is needed to achieve a certain consistency in both the pasturing practices of organic livestock producers and enforcement among the certifying agents. A requirement that specifies the minimum length of the grazing season will not, alone, meet this purpose. Therefore we are not adopting either of the commenters' proposals. Another suggested rewriting paragraph (c) to include the NOSB language adopted in August 2005, including language specifying that organic producers establish pasture conditions in accordance with the regional NRCS Conservation Practice Standards for Prescribed Grazing. While we encourage producers to work with their local Cooperative Extension or NRCS to develop a pasture management plan, the dry matter intake from pasture is necessary to demonstrate the sufficiency of the pasture plan. The requirements for the pasture plan are discussed below in the Pasture Practice Standard. Another suggested deleting all of paragraph (c) but the first sentence, which would eliminate the feed ration and feed fed documentation requirements. A commenter suggested replacing the proposed paragraph (c) text with: "(c) Grazing season must be described in the operation's organic system plan and be approved by the certifier as being representative of the typical grazing season duration for the particular area. Certifiers, in reviewing the organic system plan, shall confirm that adequate fields are set aside for pasture to provide grazing for ruminants for the entire grazing season, not just for the 120-day minimum." The requirement to describe the grazing season has been incorporated into the pasture practice standard, below, and § 205.237(c)(2) requires producers to provide pasture of sufficient quality and quantity throughout the grazing season to meet the 30 percent dry matter intake from grazing throughout the grazing season. Certifying agents are required to assess that operations are complying with all requirements of this final rule.

We received one comment from a state asserting that the increased costs of acquiring 6 acres per ruminant animal needed to supply its 16,121 organic cattle with the feeding requirement as described in the proposed rulemaking (30 percent DMI for the growing season)

would cost the state just under $212 million and lead to a loss of employment of 5,000 jobs, a loss of $230 million in personal income and $380 million in output to the state economy. We are not persuaded that the purchase of land alone leads to a loss of employment. The state provided no theoretical macroeconomic support that demonstrates that when farmers acquire more land, jobs are lost in the economy. Therefore, the remaining relationships are also questionable. For this to be a valid assertion, a recent Census of Agriculture finding of a growth in the number of small farms would be a negative impact for the U.S. economy. The states' producers have alternatives, moreover. We amended this final rule to require grazing during the grazing season, for a minimum of 120 days. We also provided ruminant slaughter producers with an exemption to finish feed cattle, provided they meet the provisions of § 205.239. Producers may also use intensive, rather than extensive, grazing systems—allowing them to use less acreage more intensively. We received other studies challenging the states' assertion, in fact, that land must be purchased at all (unless producers have no land to start). These studies discuss a prevalent misconception that grazing systems require more acres for the same amount of output.[1]

We received a comment asserting that there was not sufficient land available for pasture-based systems, especially in western States. We did not receive data affirming this. The data available to us from the ARM Survey and ERS indicates otherwise. In Texas, 328,477 acres are certified pasture, for 16,121 certified ruminant dairy and beef animals. This provides a ratio of 20 acres per animal. Similarly, in the states of California, Washington, Montana, Colorado, and Idaho, there is certified pasture and rangeland to provide 17, 8, 76, 23, and 11 acres per animal, respectively. Likewise, data supplied by the Census supports adequate acreage for pasturing ruminant stock. According to 2007 Census reported acreage, 1.6 million acres are available for pasture—13 acres for each dairy and ruminant slaughter stock animal in the United States, based on total numbers of certified organic ruminant animals in the ARM survey.

Some commenters recommended moving the opening paragraph of proposed § 205.240 to § 205.237(c), a recommendation based on deleting the pasture practice standard. We have not accepted this recommendation because we have retained § 205.240.

Other commenters recommended a new § 205.237 paragraph (d) which would read:

> (d) The organic system plan required in § 205.201 must include a description of pasture management, including: frequency and duration of grazing, planting, watering, harvesting, shade and water sources, and other attributes as applicable.

This recommendation was also based on deleting the pasture standard, which we have not accepted because we have retained § 205.240, including the combining of paragraphs (b) and (c) as an amended paragraph (c).

The pasture practice standard requires pasture to be managed as a crop. Therefore, producers must understand pasture productivity and yield. The producer must know when, where, and how long to graze each pasture. To do this, a producer must be able to determine the pasture forage supply available for grazing. We believe that most producers know how to determine their pasture forage supply and if they do not, they can readily avail themselves of the information to do so. Producers know what they provide in the form of supplemental feeds and therefore can determine the DMI value of those supplemental feeds. A ruminant provided with up to 70 percent of its DMI needs through supplemental feeding will eat to its fill when provided enough time on a pasture ready for grazing.

This final action retains the requirement that producers shall provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed (dry matter fed does not include dry matter grazed from residual forage or vegetation rooted in pasture) for the reasons discussed above.

DMI will adversely affect animal welfare—We received several comments suggesting that the DMI requirements could adversely affect animal welfare during the growing season, related to quality of pasture or because producers might underfeed animals. Of the comments received:

- Some challenged the 3 percent body weight feeding provision in the formula to document the daily dry matter demand for each class of animal;
- One said that the DMI formula is inhumane for a large lactating Holstein cow;
- One said that the proposed formula for measuring DMI is inconsistent with the nutritional requirements of dairy animals and proposed that paragraph (c) require a producer to: (1) Estimate the contribution of pasture to feed rations during the grazing season and describe how they will satisfy the goal of optimizing a pasture component of total feed used in the farm system; (2) describe the amount of pasture provided per animal, the average amount of time animals are grazed daily, the portion of the total feed requirement provided from pasture, and the circumstances for temporary confinement; and (3) maintain records for compliance;
- Another said that pasture should be mandated only under conditions likely to result in a net health and welfare benefit for the animals and expressed concern that the 30 percent DMI requirement might discourage supplemental feeding during periods of poor grass growth;
- One wrote that the 30 percent DMI requirement is not a best management practice always in the animal's best welfare, suggesting that the 70 percent DMI limit on supplemental feeding could increase the risk of animals being under-fed and abused; in addition, the comment said that these requirements do not readily provide for methods of verification and enforcement;
- One said that a reasonable means of documenting pasture intake is by subtracting dry matter fed, but questioned the arbitrary nature of the 3 percent body weight figure, stating it does not reflect the specific nutritional needs of different classes of animals. This commenter recommended allowing producers to select one of several DMI levels depending on livestock class—suggesting that, 2-, 3- and 4 percent categories would probably cover most of the livestock classes without complicating documentation requirements and that the livestock health care practice standard could address any concerns about underfeeding animals;
- Another comment said that the proposed rule could unintentionally result in the malnourishment or starvation of cows by forcing over grazing, grazing during periods of nutrient depletion in pasture, inadequate feed nutrient levels, and use of inadequate dry matter demand values;
- One wrote that mandating 30 percent of DMI be derived from grazing pasture, regardless of stage of production, will compromise the health and well being of the animals and went on to state that dairy cows suffer from a 30 percent decrease in DMI during the peripartum period. To support the assertion, the commenter offered an article from the 1999 Journal of Dairy Science (82:2259–2273).

[1] Kriegl, Tom, University of Wisconsin Center for Dairy Profitability, Selected reports submitted; also comments submitted to the proposed rulemaking; see also NRCS, Profitable Grazing-Based Dairy Systems, Range and Pasture Technical Note No. 1, May 2007.

We did not find this article supportive of the commenter's argument. This article addresses the biology of dairy cows during the transition period between late pregnancy and early lactation. The author defines the transition period (also known as the periparturient period) as the last 3 weeks before parturition (birthing) to 3 weeks after parturition and states that this time is when most infectious diseases and metabolic disorders occur. The author argues that a better understanding of the biology, nutrition, and management of cows during the transition period can offer the largest gains in productivity and profitability during the next decade.

We removed the formula which contained the fixed variable for 3 percent body weight in order to determine dry matter demand in the § 205.237(c)(2) and allow the producer and ACA to determine the acceptable method for determining dry matter demand. This change is discussed above in Dry Matter Intake—Formula Calculation. The pasture practice standard in this final action requires the producer to establish and maintain pastures that will provide the required minimum of at least 30 percent grazed DMI and describe how pastures are managed to meet that provision. Producers are required to document the percentage of the feed ration from pasture, any changes to the feed ration, and the amount of feed fed. Coupled with the requirements of § 205.238(a)(2), the pasture standard provides the protections necessary to assure that the producer does not underfeed animals. Section 205.238(a)(2) requires a producer to provide a feed ration sufficient to meet the animal's nutritional requirements. If there is insufficient pasture to meet the 30 percent DMI from grazing requirement, the producer must improve the quality and productivity of the existing pastures, secure additional pasture acreage, or reduce the number of ruminant animals maintained.

Irrigation—We received several comments addressing irrigation and how irrigation may affect the length of grazing season and time that animals might spend on pasture. Some commenters recommended that § 205.237(c) be amended by adding a new paragraph which would read: "(2) Grazing season must be described in the operation's organic system plan and be approved by the certifier as being representative of the typical grazing season duration for the particular area. Certifiers, in reviewing the organic system plan, shall confirm that adequate fields are set aside for pasture to provide grazing for ruminants for the entire grazing season, showing intent to maximize grazing beyond the 120 day minimum. Irrigation must be used as needed to promote pasture growth when an operation has it available for use on crops." Additional commenters addressed this recommendation. Some only recommended including the first sentence, one suggested changing the grazing period to 240 days, and several wanted the second sentence to read: "Certifiers, in reviewing the organic system plan, shall confirm that adequate fields are set aside for pasture to provide grazing for ruminants for the entire grazing season, not just for the 120 day minimum." Others did not include the recommended irrigation provision in their recommended versions. The remaining supported the recommendation as written.

Paragraph 205.240(c) requires a pasture plan to be included in the producer's organic system plan. The regulation also requires that a pasture plan must include a description of the grazing season for the livestock operation's regional location; a description of the cultural and management practices to ensure sufficient quality and quantity pasture is available to graze throughout the grazing season, in order to provide all ruminants with a minimum of 30 percent, on average, of their DMI from grazing throughout the grazing season.

Subpart E, Certification, requires a certifying agent to review an application for certification; the organic system plan for compliance with these regulations; conduct an on-site inspection to verify compliance with the regulations and that the operation is following its OSP; and to review the on-site inspection report. All of this must be done before granting initial or continuing certification. Accordingly, to be in compliance with these regulations, the certifying agent must determine that the grazing season used in the pasture plan is representative of the grazing season for the producer's geographical location and whether there is sufficient pasture to meet the grazing requirements of these regulations. When an agent finds that a producer's organic system plan, accompanying pasture plan, or actual practices fail to comply with the regulations certification must be denied for new applicants or a noncompliance must be issued for a certified operation, according to these regulations. Irrigation is addressed in amended form below in § 205.240(a). The balance of the commenters' recommended paragraph (2) is unnecessary and has not been included in this action.

Temporary Variances—Some commenters recommended amending § 205.237(c) to add a new paragraph that would read: "(3) In areas where irrigation is not available, certifiers may grant a temporary variance from the 120 days/30 percent DMI regulation, due to damage caused by a typical drought, flooding, excessive rainfall, or fire, that is experienced during the normal grazing season. Variances are good for a single farm and a producer will only be granted a total of three over a ten year period." Several commenters also addressed this recommendation. One objected; a few suggested replacing the last sentence with "Variances are good for a single grazing system." One stated that provisions relaxing grazing requirements in drought conditions cannot be implemented in a way that exempts livestock operations that have access to irrigation water, or where irrigation is generally required for crop production in the region. This commenter went on to say that locating a livestock facility where irrigation water is unavailable, or water rights are not sustainable, should not be a reason for failure to comply with this action as amended. We agree. Ruminant livestock operations may only receive certification when they can comply with all of the NOP standards, including the requirement that ruminant livestock receive at least 30 percent of their DMI from grazing throughout the grazing season.

We have not accepted either form of this recommendation which would grant certifying agents the authority to issue temporary variances. Section 205.290 grants sole authority for the issuance of all temporary variances to the administrator. Section 205.290(b) provides that a State organic program's governing State official or certifying agent may recommend in writing to the administrator that a temporary variance from a standard set forth in subpart C of the NOP regulations for organic production or handling operations be established provided such variance is based on one or more of the reasons listed in § 205.290(a). The reasons for variances addressed in the commenters' recommendation are covered within § 205.290(a)(2).

Stocking rates—Some comments supported animal units per acre over minimum pasture intake requirements. One said that animal units per acre would be simpler and easier to enforce. Another suggested increasing the minimum days on pasture while limiting animal units per acre. One offered the combination of managing pasture as a crop, animal units per acre, and allowing additional pasture to

increase both animal density and herd size, to promote good management practices. This commenter suggested an amended § 205.237(c) to read:

(c) During the grazing season, producers shall provide access to pasture for the lactating animals in the herd as an animal unit per acre density not to exceed 3.0 for all pasture acres accessible to the lactating herd and used as pasture by the lactating herd during the grazing season. For all livestock in the herd over 6 months of age, the animal units per acre density shall not exceed 4.0 animal units per acre for all pasture acres under active management control of the certified operation, Except, that producers shall be allowed, through cooperation with their certifier and shown in a detailed process through their OSP, that when the proportion of dry matter intake consumed as pasture by the animals in the herd for either group described above to be in excess of 30 percent of the total dry matter intake consumed by the animals during the grazing season, then animal units per acres densities for the herd may be increased as long as the producer can show that not less than 30 percent of the total dry matter consumed by the animals (in the respective group) on average over the course of the grazing season is coming from pasture.

This commenter also suggested that the term "accessible" may need to be defined or clarified. The commenter suggested that the pasture must be contiguous, and possibly limited in distance to no more than a given mileage (e.g., ½, 1, or 2 miles) between the milking facility and the pasture gate. The commenter stated that using animal-units per acre allows for the variation in impact on the pasture between Holstein and Jerseys, between dairy and beef management systems, as well as between cows and goats. In addition, the commenter opined that the alternative proposal also offers operations that can handle a carrying capacity of greater than 3 (and 4) animal units per acre to qualify for those higher densities by working cooperatively with their certifying agent and documenting the details of their production system in their OSP.

Additional comments addressed the issue of animal units. One criticized the 30 percent DMI from pasture requirement because it does not consider any other pasture based management approach, such as limiting animal units per acre. Another suggested an alternative that the commenter believed might release most organic dairy and beef operations from calculating DMI from grazing pasture. This commenter said that when an operation has less than 2 acres per 1,000 lb. animal to devote exclusively to grazing, DMI calculations must be provided as part of the farm's organic system pasture plan. We have determined that 2 acres per 1,000 lb. animal will not work because stocking rates depend upon the carrying capacity of the pasture which in turn depends upon several factors including, soil productivity, rainfall, topography, moisture and management. These factors are regional and site-specific, and therefore this final rule does not set a stocking rate. In some geographical locations, producers could have more than 2 acres per 1,000 lb. animal but will not be able to provide the minimum 30 percent DMI averaged over the grazing season. For example, one commenter, opposing the 30 percent requirement, did so because it would require 6 acres of dry pasture to support one dairy cow in the West Texas region. (There is also the potential that an operation could have acreage available for grazing but because of its proximity to the milk parlor, it would not be grazed and not be used to fulfill the DMI requirement.) Accordingly, if we were to adopt the 2 acres per 1,000 lb. animal suggestion, many animals would fall far short of receiving the minimum 30 percent DMI averaged over the grazing season.

The commenter who submitted the recommended animal units regulatory text argued against requiring that the producers provide their animals with a minimum of 30 percent DMI from grazing. This commenter also recommended removing the 30 percent language from §§ 205.239(c)(6) and 205.240(c)(2). However, this same commenter's recommended language for § 205.237(c) includes the 30 percent DMI from pasture requirement. Specifically, the commenter wants to establish an upper limit on animal units per acre, but to allow that upper limit to be exceeded when the producer can show that animals receive a DMI from grazing in excess of 30 percent. Thus, the commenters' proposed language conveys the message that producers should strive to keep their grazing DMI at a level not to exceed 30 percent. This is not the intent of this regulatory language. Producers must provide at least 30 percent of their animals' DMI needs from grazing pasture. The 30 percent is not a goal, nor is this language conditional on animal units per acre or vice versa. It is a minimum level, below which the producer must not fall in order to avoid noncompliance with this part. Producers should strive for a more than 30 percent DMI averaged over the grazing season and should take full advantage of high yield periods to keep their DMI from grazing as high as possible.

Many commenters strongly supported requiring that ruminants graze pasture throughout the grazing season and that a substantial portion of their diet come from grazing. A significant number of commenters specifically stated their support for a minimum 30 percent DMI from pasture.

We continue to disagree with the concept of animal units per acre, and have not adopted an animal-unit approach as suggested because there is not a single stocking rate which would be appropriate for all organic operations. This also explains why we did not define an animal unit as suggested by one commenter. In addition, we did not prescribe a maximum distance between milking parlor and pasture gate because this should be determined by the producer in regard to the site specific conditions of the operation. We have, however, retained the requirement that producers provide their ruminant animals with a minimum 30 percent DMI from pasture.

Livestock Living Conditions (§ 205.239)

Livestock Living Conditions—Changes Based on Comments

Section 205.239(a) *Year-round living conditions to accommodate behavior*—The opening paragraph of the proposed § 205.239(a) differed from the original regulation by requiring producers to establish and maintain year-round living conditions to accommodate the natural behavior of animals. In addition, the proposed opening paragraph further specified that producers must not in any way restrain or restrict animals from being outdoors, except for the exemptions provided.

We received comments on this paragraph, and nearly all objected to the expansion of the paragraph beyond the language in the original regulation. We agree, and have deleted the second sentence in the proposed paragraph in recognition that operations which otherwise could comply with this regulation might not keep livestock outdoors on a continual basis throughout day and night. Furthermore, this would appear contradictory to the provisions in the final rule which contain exceptions for temporarily denying access to the outdoors. We are retaining the addition of the requirement that producers must now establish year-round conditions, however, despite two comments that this should be deleted. We believe this is an important clarification and have retained it in this action. Aside from adding "year-round" this action retains the original text of § 205.239(a).

Section 205.239(a)(1) *Description of year-round access (shade, shelter, sunlight)*—This paragraph described

year-round access to the outdoors to include shade, shelter, exercise, fresh air, water for drinking (indoors and outdoors), and direct sunlight suitable, to the species, its stage of life, climate and the environment. This paragraph differed from the original regulation by requiring these conditions year-round for all animals, by adding the requirements for indoor and outdoor water, and by changing stage of production to stage of life.

We received comments on this paragraph, as described below:

- Make no changes to the current regulation;
- Consumers expect access to outdoors and opportunity to graze pasture;
- Daily outdoor access should only be required when conditions permit;
- Important to avoid encouraging exposure of animals unnecessarily to adverse conditions;
- Year-round outdoor access is problematic;
- Oppose outdoor access for poultry;
- Add "nesting, play, exploration and development and maintaining a stable, positive social hierarchy";
- Support year-round access to outdoors if pasture is unavailable due to weather conditions;
- Delete this paragraph.

We also received amended versions to the paragraph submitted by commenters. Most of the comments seeking changes to the paragraph included an exception clause as proposed under § 205.239(b), which would grant conditions to temporarily deny access to the outdoors. We also received comments advocating that continuous, total confinement should be prohibited. Some of these comments recommended adding that continuous, total confinement in dry lots and feedlots is prohibited. Reasons given included that the general practice of total confinement is prohibited, but some well managed organic operations currently provide feed to their livestock in what is referred to as "feedlots" during the grazing season or during the non-grazing season.

One comment advocated that well managed yards and feeding pads for ruminant operations could be used for supplemental feeding. This comment was received from many other commenters about the proposed § 205.239(a)(2). In addition, support was provided for size specifications for the stocking density of yards, feeding pads, and feed lots, including 250 square feet per animal, 500 square feet per animal, or space per animal large enough to allow all animals to eat simultaneously with no competition for food.

We received comments to remove the reference to require water to be provided both indoors and outdoors. Some comments advocated that if clean water is required, there would be no further need to require, as proposed under § 205.239(d)(4), that water be available at all times except under specified conditions and prevented from fouling. With regard to the requirement that water be provided both indoors and outdoors, comments stated that this requirement does not take into account extreme variations in operational management and physical layout of farm operations, nor does it factor in low wintertime temperatures in many areas that would make it physically and economically impossible to provide water outside at all times.

We agree with the commenters' intention to prohibit continuous confinement, with amendment. First, we believe reference is needed that continuous confinement of any animal indoors is prohibited, to make it clear that broilers and other poultry shall not be confined indoors. Furthermore, reference to dry lots is unnecessary since a feedlot is a dry lot for controlled feeding of livestock.

We agree that yards and feeding pads have a role in the management of organic ruminant livestock. However, we believe that the statement must also mention that feedlots, as defined in this final rule, are essentially equivalent to yards and feeding pads. We do not concur that a specified square footage per animal is needed because size will vary by type of ruminant occupying the yard, feeding pad, or feedlot. We do, however, agree that any feeding area must be large enough to allow all of the ruminant animals to eat simultaneously with no crowding or competition for food. We added a statement prohibiting continuous confinement but also allow for well managed yards and feeding areas, provided animals have the ability to feed without competition for food. This makes clear that continuous total confinement also applies to yards and feeding pads, which are synonymous with feedlots, as defined in this final rule and that continuous total confinement in any of these areas is prohibited.

We added an exemption for temporary denial of access to the outdoors, with reference to the exceptions noted in §§ 205.239(b) and (c). These exceptions are intended for animal welfare concerns rather than production yields.

In agreement with comments, we have changed the requirement that water be available at all times and prevented from fouling. Furthermore, we also agree that the requirement to provide water indoors and outdoors is inappropriate. In areas of high risk for a potential outbreak of avian influenza, USDA's Animal and Plant Health Inspection Service (APHIS) has published guidance on biosecurity and disease prevention and control for non-confinement poultry production operations that comply with the NOP. These procedures recommend that producers provide feed and water for all non-confinement-raised poultry in an indoor area. Accordingly, due to circumstances when restricting open outdoor access is warranted, we have accepted the recommendation to remove the reference to indoor and outdoor water and replaced this with the requirement that water provided must be clean. This will allow producers the flexibility needed to accommodate the water needs of their livestock while also accounting for environmental factors affecting the geographical location.

Section 205.239(a)(2) *Continuous year-round management on pasture for ruminants*—Many commenters to § 205.239(a)(2) supported the use of well managed yards, feeding pads, and feed lots in organic ruminant livestock production. Others advocated for the allowance of dry lots while some opposed the use of dry lots. We addressed these issues in §§ 205.239(a)(1) above and (a)(5) below.

Many commenters requested an exemption for the finish feeding of slaughter stock. This issue is addressed in new § 205.239(d) below.

Finally, we received many comments about §§ 205.239(a)(2)(i) and (ii)—describing the time of the grazing season that ruminants must be managed continuously on pasture year round. Of these comments, most advocated for only requiring pasture during the grazing season. Other comments expressed concerns regarding the adverse impact on soil and water quality and animal health. Another commented on the inability of producers to simultaneously comply with the NOP regulation to pasture the animals and regional water quality regulations that limit animal access to pasture during the rainy season. Some suggested that pasturing should be left to the discretion of the producer. One stated that pasturing year-round and providing 30 percent DMI during the grazing season would require an increase in the acreage devoted to pasture. The commenter went on to say that it would take 6 acres of dry pasture land to support one dairy cow in the West Texas region and that Texas would need approximately 96,726 acres to provide pasture access to the state's 16,121 organic cattle herd. In

conclusion, the comment stated that feeding livestock organic-certified forage under confined conditions does not make them any less organic than those that are fed free range. One commenter expressed concern that requiring continual access to pasture would not allow livestock to be transported off-site for livestock exhibitions, county fairs, or agricultural education events.

We also received edited versions of § 205.239(a)(2). Comments recommended changing § 205.239(a)(2) to read: "For all ruminants, provision of pasture throughout the grazing season to meet the requirements of § 205.237, except as otherwise provided in paragraph (c) of this section." Another version read: "(2) For all ruminants, management on pasture, and daily grazing during the grazing season(s), except as provided for in paragraphs (b) and (c) of this section." Comments recommended adding a statement similar to the definition of a grazing season to acknowledge that the grazing season must be at least 120 days, but due to weather conditions, may not be continuous.

Livestock producers are not compelled to participate in the NOP. Producers voluntarily bring themselves within coverage of the OFPA and the NOP regulations promulgated thereunder. Livestock producers must be able to comply with the NOP regulations, however, in order to sell, label, or represent their products as organic and to meet consumer expectations.

Ruminant production under the NOP is pasture based and has been since implementation. The regulations upon implementation defined pasture, required producers to provide a feed ration to their ruminants that included pasture, required producers to provide their ruminants with pasture, and required producers to establish pasture conditions that minimize the occurrence and spread of diseases and parasites. Violation of the NOP pasturing requirements by some certified organic producers does not mean that organic production standards should accommodate those practices.

We disagree with the commenters who suggested that pasturing should be left entirely to the discretion of the producer. Since implementation of the NOP regulations on October 21, 2002, pasturing ruminants has been a requirement for certification, but has been implemented with considerable variation in the amount of access to pasture provided. Due to the demand for measureable outcomes for pasturing, we are reserving some discretion to producers to determine how to achieve these outcomes. We also disagree that feeding livestock organic-certified forage under confined conditions does not make them any less organic than those that are fed free range. One of the tenants of organic production is that animals are able to express their natural behaviors, and exercise and move freely. The routine, regular feeding under confined conditions does not uphold that tenant as grazing is a natural behavior of ruminant livestock. This position not only violates the regulations as they have existed since implementation but also contradicts the expectations of consumers. During this rulemaking, over 26,000 commenters voiced their support for, and expectation that, ruminants are managed on pasture as a condition for organic status.

We acknowledge that continuous year-round management on pasture may not be environmentally sound or in the best interest of ruminant livestock in all geographic regions due to periods of extreme heat or cold, or saturated soil conditions. Accordingly, we have removed the requirement that ruminants have continuous year-round management on pasture. For example, temporary confinement may be acceptable when animals must be removed from pasture due to rainfall during the grazing season in order to comply with local water regulations that are in place to prevent contamination of water. However, the recurrent and frequent use of temporary confinement for periods of rainfall during the grazing season for a particular geographic region, is not compliant with these regulations. The grazing season described in the organic system plan should establish a 120-day minimum grazing season in consideration of regional rainfall patterns and exclude periods during which rainfall would predictably require that animals be kept off pasture. We have also removed §§ 205.239(a)(2)(i) and (ii), as suggested by some commenters. We removed § 205.239(a)(2)(i) because the issue is addressed in § 205.237(c)(2). See Livestock Feed—Changes Based on Comments above. We removed § 205.239(a)(2)(ii) because the access to the outdoors provision is addressed in § 205.239(a)(1). See Livestock Living Conditions—Changes Based on Comments above.

In amending § 205.239(a)(2), we have combined the two recommended versions quoted above, except that reference to pasture exemptions found in §§ 205.237(b), (c) and new paragraph (d) is also added. Those recommendations were adopted because they clearly state the intent of this final rule in linking the pasturing of ruminant animals during the grazing season to meet the feed requirements from grazing pasture.

Section 205.239(a)(3) *Bedding must be organic*—The paragraph, as proposed, required producers to provide bedding for ruminants that complies with feed requirements of the NOP regulations, if such bedding is crop matter typically fed to animals. This proposed paragraph differs from the original regulation only by describing specific types of crop matter, such as hay, straw, and ground cobs, and further specifically requires such crop matter to comply with the feed requirements of § 205.237. In the final rule implementing the NOP, this paragraph has been subject to misinterpretation. The correct interpretation of this paragraph is the following: appropriate, clean, and dry bedding must be provided for animals. If, however, bedding is a substance that is matter typically consumed by an animal of that species—such as any type of feedstock, regardless of its feed value—that bedding must comply with the feed requirements of § 205.237, and be organically produced and handled.

Typical comments on this paragraph included such statements as: support that the bedding be organically produced; all bedding originating from plants grown to produce feed for livestock must be organic with no exceptions; exempt conventional non-GMO materials when certified organic bedding materials are not available; agricultural products used for bedding should be certified organic based on commercial availability but nonorganic hay or other nonorganic feed likely to be consumed in more than a negligible quantity should never be allowed; hay must be organic but other agricultural materials should be allowed from conventional sources if no prohibited substances have been applied to the material; the added cost of organic bedding is too high; organic bedding sources are limited; there are insufficient supplies of organic straw; some clients have difficulty obtaining organic bedding in sufficient quantity; remove the specific bedding examples—organic straw should be deleted because straw is not typically fed to animals and should not have to be organic; and remove all of the proposed changes.

In addition, we received comments proposing variations on the paragraph. Highlights of the variations include: removing the specific crop listings; retaining the reference to crop matter but removing the specific crop listings; adding a statement prohibiting the use of genetically modified crop matter; requiring that bedding material be non-

toxic and otherwise suitable for the species and stage of life; and qualifying the requirement for appropriate clean, dry bedding by adding "when necessary" or "as necessary."

We received comments recommending changes to the various types of bedding listed in the proposed § 205.239(a)(3). A few felt that listing a few examples of bedding materials could create more confusion about which materials must be certified organic; one said that, as written, producers might believe that agricultural products not listed do not have to be certified or handled organically. Another recommended removing the specific types of bedding for the sake of clarity and not to limit the requirement to those crop products. One commenter stated that straw is not typically fed to animals and should be exempt, because animals provided with sufficient feed and adequate nutrition will not typically consume bedding straw.

A commenter who espoused a commercial availability clause for the requirement that agricultural products used as bedding be certified organic, also stated that nonorganic hay or other nonorganic feed products used as bedding and likely to be consumed in more than a negligible quantity should never be allowed. One commenter also wrote that demand for organic bedding will not develop unless organic bedding materials are required. Other commenters acknowledged limited organic straw supplies in some areas but pointed to other areas where organic straw is sold to the conventional market due to a lack of buyers. Additional comments report limited organic bedding sources or supplies.

Some commenters suggested adding "as necessary" to appropriate clean, dry bedding. One comment said the reason was to clarify that beef animals on the range, and other production systems where bedding is not necessary, do not need to be provided with bedding. Another stated that otherwise this requirement appears to make bedding mandatory as written.

A few commenters acknowledged that the bedding requirement in the original regulation is widely interpreted in different ways by producers, inspectors, and certifying agents. This is further reinforced by comments from producers who use conventional bedding materials and a certifying agent who stated that their clients have trouble sourcing organic bedding materials. This same certifying agent expressed the belief that the use of non-organic bedding does not affect the integrity of the organic product. In all, several certifying agents and certifying agent organizations offered comments on this issue, including a statement that the current regulation is adequate and one to delay implementation of the requirement to source organic bedding materials for 24 months. A consumer group submitted the comment that if animals are using bedding materials that they may consume, such materials must also comply with the feed requirements, and doing so will help strengthen the integrity of the label.

We disagree that the original regulation is adequate with respect to bedding as evidenced by the different interpretations among the certifying agents. Section 205.239(a)(3) requires that all livestock feed products used as bedding must be organic but needs clarification to eliminate the inconsistent application across certifying agents. We proposed changes to this paragraph because in the administration of this regulation, we have observed the use of conventional bedding typically consumed by the animal species. Such producers claim that their animals do not consume their bedding. However, the regulation does not say that organic bedding is required when the animals consume their bedding. It requires organic bedding when crop matter typically consumed by the animal species is used as bedding. We agree with those commenters who stated that all bedding originating from crops raised to produce feed for livestock must be organic and that conventional straw, corncobs, hay and other agricultural products are not allowed.

In order to eliminate the erroneous interpretation of this paragraph, we have amended § 205.239(a)(3) to read: "Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP." This revision eliminates the need to include a prohibition on products of excluded methods, as requested by commenters, since § 205.105(e) already prohibits the use of excluded methods. We have replaced the examples of bedding materials with the term, "roughages" to avoid any ambiguity that only the bedding materials listed would be subject to this requirement. We disagree with removing the requirement for organic straw. Straw is a feedstuff classified by the International Feed Identification System as roughage. We also disagree with a comment that animals do not eat bedding, as some of all edible bedding material is consumed by the animals whether or not it is intended to provide feed value. The fact that straw may be low quality roughage does not change the fact that straw is roughage typically consumed by ruminants. We have not endorsed the suggestion to allow non-organic bedding when animals consume a negligible quantity because of the potential for wide variation in the interpretation.

We oppose a commercial availability clause for bedding materials, or exemptions which would have a similar effect of diluting the standard, such as, allowing conventional non-GMO materials when certified organic bedding materials are not available; allowing organic hay but conventionally-sourced other agricultural materials provided no prohibitive substances were applied; or allowing non-toxic conventional agricultural bedding products. We agree that an organic bedding market will not grow as long as producers use conventional roughages as bedding in lieu of organic roughages. A commercial availability clause or other exemptions would stifle development of the existing market for crops that can be used as bedding material. Furthermore, conventional crops are typically produced using prohibited substances under the NOP and, therefore, are very likely to contain residues of those prohibited substances.

As written, the original regulation requires appropriate bedding; it does not mandate bedding always be provided. Adding the phrase "as necessary" to "appropriate clean, dry bedding" would inappropriately modify the "clean and dry" requirement, which *is* mandatory, and weaken the requirement.

Consistent with the above livestock feed discussion, livestock producers that meet the exemption for certification under § 205.101(a)(1), may continue to use roughages they grow as bedding for the animals they raise.

New § 205.239(a)(5) *Yards and passageways*—Many comments supported allowances for well-managed yards, feeding pads, and feedlots in organic ruminant livestock production in reference to proposed rule §§ 205.239(a)(2)(ii) and (d)(2). Reasons included: (1) A need when soil, water quality, animal health or humane treatment of livestock are tenuous in certain pasture conditions; (2) commonly used for supplemental feeding during both non-grazing and grazing seasons; and (3) facilitates exercise and outdoor access during the non-grazing season. Many comments emphasized the need for yards, feeding

pads, and feedlots to be clean and well managed. Comments also suggested amending the paragraph to address the use of yards and feeding pads. A few comments recommended moving the paragraph and amending it to read: "Yards, feeding pads, and laneways kept in good condition and well-drained."

We received some comments in favor of "dry lots," and a few in opposition. Reasons in favor included all those cited above; in addition, comments also claimed that dry lots are necessary for:

- Vaccination and care;
- Producing high quality products;
- Companies that supply organic meat and those that sell animals to finishers and meat producers who direct market their product, and prohibiting them would have a dramatic impact; and
- Market conditions—their prohibition would decimate the organic industry as a whole because demand would exceed supply and drive prices to a level consumers could not afford thereby causing the entire industry to crumble.

As noted above under *Livestock Living Conditions,* we agree that yards, feeding pads, and feedlots have a role in the management of organic ruminant livestock. Thus, we added language to § 205.239(a)(1) providing that yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. We also agree that for livestock living conditions, yards, feeding pads, feedlots, and laneways must be kept in good condition and well-drained. Accordingly, we have added a new § 205.239(a)(5) to address the management of yards, feeding pads, and feedlots. The new language provides for the use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition, and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries. This new paragraph expands upon the provision in the proposed rule, § 205.239(d)(2) which required yards and passageways to be in good condition and well-drained. Section 205.239(d)(2) in the proposed rule has been deleted, but the contents have been retained in this final rule § 205.239(a)(5).

Sections 205.239(b) and (c) *Temporary denial of outdoor access or pasture*—Under the proposed rulemaking, these two sections distinguished outdoor access and pasture between non-ruminants and ruminants, and the conditions under which each could be denied for these types of animals. Paragraph (b), for non-ruminants, described two conditions for temporary denial of outdoor access, and differs from the original regulation by distinguishing stage of life from stage of production. Paragraph (c), for ruminants, listed six conditions related to illness, health, birth, weather (for goats), shearing, and milking, under which ruminants may be temporarily denied pasture.

We received comments requesting to combine the two paragraphs, and a comment that the exceptions in the paragraphs should apply more generally to all types of animals. While we are not combining the paragraphs, we have addressed the issue of applicability to all ruminant animals. It is not appropriate to combine these as paragraph (b) is applicable to livestock generally, while paragraph (c) is only applicable to ruminant animals. We received numerous comments on paragraph (b) (many of them overlapping with issues identified in paragraph (c) which dealt with denial of access to pasture), requesting that we take account of additional circumstances under which all animals might be temporarily confined or provided shelter. These comments led us to rewrite § 205.239(b) accordingly. Comments received and the changes they led to are discussed below.

Section 205.239(b) *Temporary confinement or shelter*—We received comments to replace the opening text of the paragraph which states "temporarily deny a non-ruminant animal access to the outdoors" with "provide temporary confinement and shelter for an animal" because this more accurately reflects the requirement of the exemptions for animals which may need both confinement and shelter for their welfare. We agree with these comments and have changed the opening wording of § 205.239(b) to allow producers to provide confinement or shelter in the final rule.

Section 205.239 (b)(2) *Lactation does not justify confinement*—We received comments recommending that "Lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation" be added to the proposed § 205.239(b)(2) to preclude the potential for abuse of the stage of life exemption. We agree that recurring confinement for the extended lactation periods would be inconsistent with the purpose of this rule and the expectation of consumers. We have included the recommended change in this action.

Section 205.239(b)(5) *Healthcare practices—preventive and treatment*—We received comments recommending the addition of a new paragraph to address preventive healthcare procedures. We received comments which recommended amendments related to breeding and preventive health care practices to § 205.239(c)(1), of the proposed rule. One comment recommended adding the words "other veterinary-type health care needs" under the provisions for preventive healthcare procedures and the treatment of illness or injury. Finally, some comments recommended changing the phrase about various life stages to simply state that lactation is not an illness or injury.

As we noted in the proposed rule, some producers have claimed that lactation is a stage of production for which dairy animals require constant veterinary care or oversight, and therefore have used this to deny animals time on pasture or access to the outdoors. We do not concur. An exemption from pasture or outdoor access for that period on a recurring basis would result in confinement of the milking herd for extended periods of lactation. While lactating cattle have unique nutritional needs that must be carefully attended to, these animals should not require constant veterinary care or oversight, for lactation alone, that interferes with access to pasture. For this reason we are explicitly defining lactation as a stage of life and stating that neither the various life stages, nor lactation, are an illness or injury. We also are not changing the language to "lactation is not an illness or injury" because this does not fully address the issue. It was and remains our intent that neither stage of life nor lactation is a valid reason to deny an animal outdoor access or pasture, based on the need for constant veterinary care or oversight.

We agree that preventive healthcare procedures, like the treatment of illness and injury, are regular management practices that may require temporary confinement of the animal. Therefore, we have accepted the recommendation to add a new paragraph to address preventive healthcare procedures. We have combined the provision permitting temporary denial of pasture for treatment of illness or injury, § 205.239(c)(1) in the proposed rule, with a provision for preventive healthcare procedures into § 205.239(b)(5). In this final rule, the above provision is solely contained in § 205.239(b)(5).

Section 205.239(b)(6) *Sorting and shipping animals*—At least one commenter opined that the regulations need to provide for the sorting of ruminants. Some expressed the need for a provision addressing the shipping of

animals. Finally, one questioned whether there should be a provision addressing livestock sales.

To address these concerns we have added a new paragraph (b)(6) to § 205.239. This paragraph includes a provision that the animals shall be maintained on organic feed and under continuous organic management throughout the extent of their allowed confinement. Paragraph 205.239(b)(6) reads: "Sorting or shipping animals and livestock sales: *Provided,* That, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement."

Section 205.239(b)(7) *Breeding*—We received comments that recommended addressing breeding in a new paragraph. We also received comments requesting that breeding be added as a reason for denying access to pasture, and comments that breeding animals may be temporarily confined for artificial insemination. We acknowledge that breeding is a management task that may require temporary confinement of the animal.

We have added a new paragraph (b)(7). To prevent abuse of the allowance for confinement for breeding, we have included a provision that bred animals shall not be denied access to the outdoors and, once bred, ruminants shall not be denied access to pasture during the grazing season. This precaution was taken because certain producers have denied bred dairy animals access to pasture.

Section 205.239(b)(8) *Youth events*—At least 1 comment requested the addition of a paragraph addressing 4–H, Future Farmers of America and other youth projects. The commenter was concerned that the regulations would preclude youth with organic animals from participating is such events. USDA believes that youth should be encouraged to participate in these events.

Therefore, we have added a new paragraph (b)(8) which reads: "4–H, Future Farmers of America and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event."

Section 205.239(c) *Temporary Denial of Pasture for Ruminants*—As noted above, this proposed paragraph outlined six conditions under which ruminant animals could be temporarily denied access to pasture, related to health conditions, shearing, and milking. We received comments asking to add "or outdoor access" to the opening text of this paragraph.

This comment has merit. We have accepted the recommendation in acknowledgement of conditions which, in the interest of an animal's welfare, shelter is warranted and that there are essential animal husbandry practices which typically occur indoors. As discussed above, we have amended § 205.239(b) to apply to all animals. To further clarify the relationship between paragraphs (b) and (c) we also added "in addition to the times permitted under § 205.239(b)" to the opening text of § 205.239(c).

Section 205.239(c)(1) *Parturition (birthing)*—Some commenters recommended changes to this previously designated paragraph (c)(2), including retain as written, remove, add a provision for dry off, and amend the one week prior to parturition provision. As proposed, the paragraph would allow ruminants to be denied access to pasture temporarily for one week prior to birthing, and up to one week after giving birth. The commenters which proposed changes to the one week prior to birthing provision submitted 5 different versions of changes to this section. Three versions included open time period language including pre-parturition, for brief periods, and for short time periods. Two other versions submitted stated that one week prior should be changed to two weeks and, in another version, to three weeks. One of the comments asking for a provision for dry off recommended that it be limited to the denial of pasture only, but not access to outdoors.

We believe that the recommendations for adding a dry off provision and that it be limited to denial of pasture only have merit. We have also accepted the recommendation to change the one week prior to birthing to three weeks because we agree that three weeks are needed to ensure that the producer has the ability to employ proper nutrition science for maintaining the health and well-being of the animal after parturition. Three weeks also addresses varying gestation lengths for individual animals and accommodates births occurring earlier than or later than the projected birth date. We have not accepted the open time period language to the allowed pre parturition denial of pasture and access to the outdoors because they leave room for abuse of the exemption.

Section 205.239(c)(2) *Housing of newborn dairy cows*—We received comments which made recommendations involving previously designated paragraph (c)(3). Comments included retain, remove, add "dairy" after "newborn", add "during the grazing season," change "on pasture" to "access to pasture," and add a provision that a producer shall not confine or tether an animal in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely.

We agree with inserting the word "dairy" after "newborn" to clarify that the provision applies only to dairy ruminants. We also agree with adding "during the grazing season" to make the provision consistent with the requirement that ruminants be on pasture during the grazing season. We have not accepted the recommendation to change "on pasture" to "access to pasture." Such a change would blur the requirement and create opportunity for abuse. We expect all ruminants to be on pasture throughout the grazing season, except as otherwise provided by §§ 205.239(b) and (c). We have also accepted the recommendation to add a provision providing that a producer shall not confine or tether an animal in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving freely. This provision reinforces the requirements of § 205.239(a). Finally we have redesignated the paragraph as (c)(2).

Section 205.239(c)(3) *Shearing*—We received comments involving previously designated paragraph (c)(5), which provided that shearing of sheep could justify temporary denial of access to pasture. Comments included removal, retain, and amend. Two versions of changes were submitted. One recommended shortening the provision to "for short periods for shearing." The other version recommended changing the reference to sheep to fiber bearing animals.

We agree that sheep are not the only animals sheared. As pointed out, other sheared ruminants include alpacas, goats, llamas, and yaks. Accordingly, we have modified the reference to fiber bearing animals and redesignated the paragraph as (c)(3).

Section 205.239(4) *Inclement weather for goats*—We received comments on this paragraph, most of which requested we remove the paragraph or combine it with the paragraph on shearing.

We deleted the paragraph because it is redundant. Section 205.239(b)(1) would permit temporary sheltering of goats when warranted by inclement weather.

Section 205.239(c) *Short periods for milking*—This proposed paragraph,

previously designated as § 205.239(c)(6), provided temporary denial of access to pasture for ruminant dairy animals for short daily periods of time for milking. This provision also stated that producers must schedule milking to ensure sufficient grazing time to provide each animal with an average dry matter intake from grazing of not less than 30 percent throughout the growing season and that milking frequencies or duration practices cannot be used to deny dairy animals pasture.

We received comments on this paragraph. Comments included remove, move the requirement that milking cannot be used to deny access to pasture to the paragraph (b) which deals with temporary confinement or shelter, and 6 amended versions. All of the amended versions retained the first requirement—that pasture can be denied for short periods daily for milking. Three versions removed the requirement that milking must be scheduled in a way that does not interfere with ensuring that the 30 percent DMI requirement is obtained. The other three versions retained this requirement but changed "growing season" to "grazing season." Retention of the requirement that milking cannot be used to deny access to pasture was recommended by some of the commenters, but comments also offered edited versions to the sentence.

We have retained the paragraph as originally proposed with the exception of changing, as done throughout this action, growing season to grazing season and redesignating the paragraph to (c)(4). We believe this wording is needed to clearly convey that milking practices shall not interfere with the 30 percent DMI requirement.

Section 205.239(d) *Lying area, yards, shade, water, feeding equipment, hay in racks for newborns*—Some commenters expressed opinions on one or more paragraphs in § 205.239(d). Comments included deleting all six provisions; opposition to or change paragraph (d)(3) so that producers only have to provide shade as appropriate; opposition to or change paragraph (d)(5) to remove the weekly cleaning requirement for watering equipment; and opposition to or change paragraph (d)(6) to remove the hay in a rack requirement for newborns beginning 7 days after birth.

We have deleted all of § 205.239(d). Each of the requirements is found elsewhere in the livestock practice standard with the exception of paragraph (d)(6), which we eliminated altogether. Paragraph (d)(1) addressed bedding and is covered by § 205.239(a)(3). Paragraph (d)(2) addressed yards and passageways and is covered by § 205.239(a)(5). Paragraph (d)(3) addressed shade, and paragraphs (d)(4) and (d)(5) addressed water. These are all covered by § 205.239(a)(1). Paragraph (d)(6) was removed because we agree with comments that the requirement was too prescriptive. However, the proposed requirement that dairy animals be on pasture not later than 6 months after birth has been retained and is found in § 205.239(c)(2).

New paragraph 205.239(d) *Slaughter stock finishing on pasture*—Comments on §§ 205.237(c) and 205.239(a) and (c) included recommendations for ruminant slaughter stock. Of the numerous comments received addressing this provision, the major issue was the addition of an exception to the 30 percent DMI requirement from pasture for ruminants during finish feeding prior to slaughter and the length of a finishing period on feed. The majority of the comments requested 120 days. Others submitted 90, 150, or some combination of this range of days. Some comments suggested one fifth of an animal's life, not to exceed 120 days; a few supported a 120 day finishing period, with the condition that the finishing area have space adequate for all animals to feed simultaneously and to display no competition for food. One comment suggested a stocking density of at least 250 square feet per animal—based on the Canada organic standard of 23 square meters (247 square feet) per animal.

Of the comments received on slaughter stock, most urged that animals not be denied access to pasture during the finishing feeding period. Of the comments received, most also recommended that during this finishing period, animals be exempt from the 30 percent DMI requirement from pasture. In addition to the comments on provisions for ruminant slaughter stock, we received numerous additional comments opposed to the confined feeding of organic beef animals.

The sentiment among most of the commenters is that there is no place in organic agriculture for the confinement feeding of animals nor should there be any exception for ruminant slaughter stock. This is precisely why the commenters who supported finished feeding requested that animals not be denied access to pasture during the finishing feeding period. One of the comments stated that consumer expectation that confinement is not part of organic production is not isolated to dairy cattle; consumers are also uncomfortable with the long-term confinement being used to finish beef cattle. This commenter stated that it is time for the NOP to make explicitly clear that feedlots are not acceptable in organic production.

Some commenters expressed disagreement, and asserted that there is a valid place in organic agriculture for confinement feeding of animals. These commenters stated there should be exceptions for ruminant slaughter stock. One stated that the organic meat industry relies heavily on confinement finishing of beef animals. This commenter, and a few others, wrote that a complete prohibition on confinement finishing would have a dramatic impact, not only on the larger companies supplying organic meat to consumers, but also on the cow-calf and stocker operations that sell animals to finishers and organic meat producers who direct market their product. Another commenter stated that eliminating dry lots would put an end to the most efficient means of producing high quality products. A commenter claimed that eliminating dry lots would cause the potential market for organic calves to significantly contract. One commenter asserted that prohibiting dry lots in organic production would decimate the organic food industry and that demand would exceed supply, prices would increase significantly, consumers would stop buying organic food, and the organic food industry would crumble. One commenter expressed that a prohibition on dry lots would be overly burdensome and very costly for current and future organic ruminant animal producers in Texas. Another commenter expressed the following: (1) Production systems are in place that demand temporary confinement for finish feeding; (2) these sections of the industry cannot be adjusted to meet the regulations; (3) periods that animals are confined for finish feeding should be temporary and be best managed within the organic system plan that addresses animal welfare and environmental health; (4) the need for temporary confinement to finish animals is valid in order to satisfy the growing demand; (5) organic producers are currently demonstrating that this can be accomplished within the organic standards and principles; and (6) beef animals are out on pasture usually from the day of birth up unto finishing, offering more consistent access to pasture or the outdoors than dairy cattle, swine, or poultry. Finally, a commenter supporting dry lot finish feeding acknowledged that finish feeding on pasture is feasible. However, this commenter opined that it is not practical to require the entire industry to finish feed on pasture.

One commenter wrote that while some certifying agents have allowed

temporary confinement of livestock for finish feeding for up to 120 days, other agents have not because they believe it to be prohibited under current regulations. Finally, this commenter argued for a clarification for finish feeding, but not through this rulemaking action. Other comments mentioned widespread abuse but expressed support for the status quo provided the NOSB recommendation is either incorporated into this rule or published as guidance and strictly enforced. We disagree for three reasons. First, although we did not propose an exemption for finish feeding as part of the livestock practice standard, we acknowledged in the proposed rule that total confinement for finish feeding was an issue. Second, the statute requires that a consistent, uniform standard be implemented through regulation. Third, the fact that accredited certifying agents are applying two different standards regarding the finish feeding of slaughter stock demonstrates that we require a clear standard. Thus, these points are reason to revisit this issue.

Commenters opposed to finish feeding on pasture are not in alignment with expectations and sentiments of organic consumer groups as communicated to USDA in the rulemakings related to this subject and the complaints submitted to NOP. We also do not concur with the scenarios portraying an organic beef sector that will collapse if confinement feeding is prohibited for slaughter animals. We believe organic livestock producers will be able to work within these standards, meet the expectations of consumers, grow the demand and therefore, a stronger market for organically produced meats.

In the proposed rule we stated that we would not provide an exemption for finish feeding. In consideration of the comments on slaughter stock production, we have revised that position through the addition of a new § 205.239(d). This paragraph provides that ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location. It also allows for the use of yards, feeding pads, or feedlots to provide finish feeding rations. These provisions are consistent with recommendations from commenters supporting finished feeding provided the animals are not denied access to pasture during the finishing feeding period. The paragraph also includes language exempting the animals from the not less than 30 percent DMI pasture requirement. We agree with the commenters who recommended that the finishing area have feeding space adequate for all animals to eat simultaneously and to display no competition for food. Accordingly, we have included the provision that, yards, feeding pads, or feedlots used to provide finish feeding rations must be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without competition for food. This addition is consistent with the language in § 205.239(a)(1) regarding yards, feeding pads, and feedlots. As noted above, most of the commenters expressed a preference that the finishing period not exceed 120 days. A few recommended the further restriction that the finishing period not exceed one fifth (⅕) of the animal's total life or 120 days, whichever is shorter. The 120 days was based upon the typical timeframe for finishing beef cattle at 18–24 months of age. Some livestock species, however, are slaughtered at a much younger age and the 120 days would allow these animals an exception for access to pasture and the outdoors for most of their lives. Therefore, we have accepted this latter recommendation and included it in new § 205.239(d).

As stated in the Summary section above, we are seeking further comment on the requirements pertaining to the finish feeding of ruminant slaughter stock. Although we are issuing this as a final rule, we are requesting comments on the exceptions for finish feeding of ruminant slaughter stock. This rulemaking coupled organic livestock and organic dairy production because the use and management of pasture is integral to both types of production. We received a substantial number of comments concerning both the dairy component of this rule and the lack of provisions for finish feeding. As a result of these comments, the finish feeding provisions of this final rule differ from those in the proposed rule. Specifically, this final rule contains an exemption for finish feeding through the addition of a new § 205.239(d). Although finish feeding was discussed as an issue in the proposed rule, the proposed rule did not provide for an exemption. Unlike the comments we received that pertained to the dairy components of this rule, there was uncertainty on the specific terms that commenters believed should be contained as part of an exemption to allow for the finish feeding of ruminant slaughter stock. We have determined, therefore, to receive additional comments, limited to the finish feeding provision of this final rule.

Accordingly, the agency is providing an additional 60 day period to receive comments on the finish feeding provisions. More specifically, we are seeking further comments on the following:

- The length of the finishing period, i.e., not to exceed ⅕ of the animal's total life or 120 days, whichever is shorter;
- Infrastructure hurdles and regional differences, if any, these requirements present to slaughter stock operations, including to those operations that graze animals on rangeland, and the estimated economic impact;
- The use of feedlots, as defined in this final rule, for the finish feeding of organic slaughter stock.

Comments should be limited to the portions of this rule that pertain to the finish feeding of ruminant slaughter stock. Based upon comments received, the agency will determine whether any further action is warranted.

Section 205.239(e) *Resource management of outdoor access, including fencing and buffer zones*—This proposed paragraph (designated as paragraph (f) in the proposed rulemaking) would require producers to manage outdoor access in ways that minimize risk to water and soil quality, through the use of such methods as buffer zones and fences. In the current regulation, § 205.239(c) requires producers to manage manure in ways that do not contribute to contamination of soil or water. This paragraph reinforces the current requirement by recognizing that pasture and ruminants on pasture play a role in resource management, and requires producers to actively acknowledge this resource management through such mechanisms as fencing and buffer zones of sufficient size to address potential contamination issues.

We received numerous comments on this proposed paragraph, with most suggesting replacing reference to specific management practices such as fences or buffer zones with "devices that prevent animals and waste products from entering bodies of water."

The remaining comments we received are described below:

- Delete everything after the word "risk" and combining this paragraph with existing paragraph (c), which addresses and protects soil and water quality;
- Rangeland grazing is not concentrated enough to damage soil, vegetation, or water quality;
- In the West most water is obtained from running streams, rangeland streams provide open water in winter, and with a proper grazing plan, streams

and ponds can be managed to maintain water quality;

• Fencing rangeland waterways could limit wildlife access to their source of drinking water;

• Inconsistent with the natural animal impact necessary along small streams to maintain a healthy stream environment and necessary downstream water flow;

• Flooding washes wire and fence posts downstream;

• Riparian areas can be grazed while minimizing potential negative effects to soils, water quality, and wildlife;

• Costly to small ranchers to fence and artificially convey water; costly to ranchers with large acreage; would cost the state of Texas organic cattle industry from $20.1 million to $26.8 million in terms of fencing costs;

• As written, could conflict with the state and local codes that govern water quality and manure management; the Natural Resources Conservation Service (NRCS) and State and local soil and water conservation programs have guidelines for protecting water quality.

We acknowledge that the NRCS and state and local soil and water conservation programs have guidelines for protecting water quality which are specific to the ecology of the geographical location. We also acknowledge that as proposed, the paragraph could adversely impact wildlife in some areas, which would be inconsistent with the NOP requirements that organic producers maintain or improve the natural resources of the operation, which includes wildlife. Accordingly, with minor editing, we are accepting the recommendations to delete everything after the word "risk," and to combine with current § 205.239(c). This will provide producers and ACAs the flexibility to meet this requirement in consideration of the conditions specific to the operation and its location. Furthermore, the elimination of this fencing requirement will relieve operations from incurring potentially high costs to install and maintain the fencing. The NRCS soil and water conservation programs and state and local soil and water conservation programs combined with new paragraph (e) requirements should be sufficient to protect ponds, streams, and other bodies of water on, passing through, and adjacent to, organic operations.

Livestock Living Conditions—Changes Requested But Not Made

Section 205.239(a)(1) *Exempt poultry from outdoor access*—A commenter asked that § 205.239(a)(1) be changed to remove the requirement that poultry be provided with access to the outdoors (the comment also recommended removing domestic poultry from the definition of livestock). Four reasons were given for these changes: (1) Poultry cannot meet their nutritional requirements from grazing and forage; (2) the NOP regulations prohibit feeding of animal origin ingredients but chickens will pick through fecal material which will in fact contain, among other things, sloughed intestinal cells; (3) predators are common in rural areas and poultry are defenseless against their attack; and (4) avian influenza.

The issues of removing the requirement that poultry be provided with access to the outdoors and removing domestic poultry from the definition of livestock were not specifically presented for public comment in the proposed rule. We will not enact such recommendation without providing the many stakeholders that could be affected by this action, notice of the proposed change and an opportunity for comment. Further, we are not convinced by the commenter's arguments because we believe organic poultry producers are capable of providing all poultry with access to the outdoors as required by § 205.239(a)(1). Poultry shall only be temporarily denied access to the outdoors in accordance with § 205.239(b)(1). This action adds a definition for "temporary and temporarily" to § 205.2.

USDA's APHIS has published guidance on biosecurity and disease prevention and control for non-confinement poultry production operations that comply with the NOP. These procedures recognize restricting outside open access by maintaining outdoor enclosures covered with solid roofs and wire mesh or netted sides as a protective measures option in areas of high risk for a potential outbreak of avian influenza. The procedures also recognize restricting outside open access by maintaining outdoor enclosures covered with wire mesh or netting in lower risk areas. The procedures also recommend providing feed and water for all non-confinement-raised poultry in an indoor area.

In consideration of the foregoing, we have not included the recommended changes in this action.

Section 205.239(a)(4) *Modification for shelter*—We received comments that recommended amendment to § 205.239(a)(4). Recommendations included modifying "shelter" by whatever is needed, or needed and appropriate to the species or environment. One commenter recommended that shelters be identified with more specificity—such as barns, sheds, or windbreaks, or as woods, tree lines; or that shelter describes geographical features appropriate to the species that provide physical protection to all animals simultaneously. The commenter also stated that shelters should be designed to allow for the instinctive behaviors of nesting, play, exploration, and developing and maintaining a stable, positive social hierarchy. Other comments said no changes should be made to the paragraph.

We have not acted on this recommendation because amendment to § 205.239(a)(4) was not presented for public comment in the proposed rule. Because changes to this paragraph would affect shelter for all types of livestock, not only ruminants, any amendment to § 205.239(a)(4) would need a notice and comment rulemaking process to adequately consider the options and concerns of the range of stakeholders that could be affected.

Section 205.239(b) (1) *Confinement due to inclement weather*—Some commenters suggested no change to § 205.239(b)(1). However, more commenters recommended 3 versions to change this paragraph, most of which asked for the phrase, "and conditions caused by inclement weather." The principal reason for this recommendation is that the residual effect of the weather is as great a concern as the weather itself. An example would be ice after a storm. While we do not disagree with the recommendation, we have not accepted it. This recommendation is not accepted because the recommended addition is adequately covered by § 205.239(b)(3), which permits confinement and shelter temporarily for conditions under which the health, safety, or well being of the animal could be jeopardized.

Section 205.239(b)(2) *Stage of life*—In the proposed rulemaking, this paragraph read: "the animal's stage of life," and we received comments about this paragraph. Comments included: keep as written, remove, add provision for a 150 day finishing period, insert production in front of life, and add "lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation." The commenters recommended the reference to lactation to preclude the potential for abuse of the stage of life exemption.

We have added a definition for stage of life which states that an event such as breeding, freshening, lactation and other recurring events is not a stage of life. Accordingly, lactation is excluded by definition from being considered a stage of life. Thus the recommendation made about lactation is unnecessary.

Section 205.239(b)(3) *Confinement for health, safety, and well-being*—We received comments that offered recommendations on § 205.239(b)(3). Comments included no change and amend to read "Conditions under which the health, safety, or well-being of the animals is likely to suffer."

The recommendation to amend § 205.239(b)(3) was not an issue presented for public comment in the proposed rule. Further, only one commenter suggested a revision to this provision, while all other commenters recommended no change. Accordingly, we are not accepting the recommendation.

Section 205.239(b)(4) *Risk to soil or water quality*—We received comments that offered recommendations on § 205.239(b)(4), which provided for temporary confinement due to risk to soil or water quality. Most comments included no change, but one suggested changing the paragraph to state that there must be an imminent risk to soil or water quality and that the farmer must immediately make every effort to alleviate the risk to soil or water quality so that animals are not withheld from the outdoors any longer than necessary to protect soil or water quality.

We do not concur that there is a need to further qualify§ 205.239(b)(4). We believe this provision is already reinforced by § 205.240(b) which requires producers to maintain pastures to provide the 30 percent minimum dry matter intake and to refrain from putting soil or water quality at risk.

Pasture Practice Standard (§ 205.240)

Pasture Practice Standard—Changes Based on Comments

Opening paragraph—This paragraph requires producers to have auditable records to document a functioning management plan (a pasture practice standard) for pasture to meet all applicable requirements of § 205.200–§ 205.240. We received the following comments on this paragraph to the pasture practice standard:

- The entire practice standard should be deleted altogether;
- Issue the practice standard as guidance;
- Leave the opening paragraph as written;
- Adopt a requirement to use a NRCS pasture plan;
- Recommend a Pasture Grazing System Plan;
- Condense into the Organic System Plan;
- Move the opening paragraph to 205.237(c), which deals with livestock feed.

We removed the wording "that meets all requirements of §§ 205.200—205.240" because producers are already required to maintain an organic system plan which documents compliance with the crop and livestock practice standards in the current regulations. We do not concur with comments to delete this section as the pasture practice standard contains requirements that are unique to pasturing. In fact, we believe that the provisions of the pasture practice standard will help foster viable pasture-based operations and will help certifying agents to evaluate the operation. In regards to the use of an NRCS pasture plan, § 205.201(b) allows producers to substitute a plan that meets the requirements of another Federal, State, or local government regulatory program, provided that the plan meets the requirements of subpart C. We will likewise allow producers to use an NRCS pasture plan that meets the requirements of this section, 205.240. The introductory paragraph now reads: "The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture."

Section 205.240(a) *Manage pasture as a crop*—This paragraph requires producers to manage pasture as a crop in compliance with applicable crop practice standards. The comments we received offered the following suggestions:

- Issue as guidance;
- Support as written;
- Delete;
- This requirement is already covered by the application for certification;
- There are concerns over the effect on rangeland, and another request that pasture not be subject to crop rotation;
- This paragraph, together with the definition of crop provided in § 205.2, is fundamentally different. The comment questioned the applicability of practices included in §§ 205.202 through 205.206 to native rangeland.

We also received comments recommending that § 205.237(c) should contain a new paragraph to address irrigation, which we believe is more appropriately addressed in the pasture practice standard. According to the commenters, this change should read that "irrigation must be used as needed to promote pasture growth when an operation has it available for use on crops." This change was supported by commenters as written.

We agree that not all crop practice standards apply to rangeland, and specific reference to rangeland is conspicuously absent from the NOP standards. We have amended paragraph (a) by removing references to §§ 205.200 and 205.201, which are redundant because they are already required. We also removed §§ 205.203(a) through (c), 205.205, and 205.206(a), which do not apply to pasture. Those removed sections are also not applicable to rangeland because they require crop rotation and crop pest, disease and weed control practices that would not occur on uncultivated rangeland. We note that certifying rangeland for organic production of livestock has occurred, with applicable sections of 205.200 through 205.206 as the basis for certification and this final rule does not preclude such certification. Any additional issues that are specific to rangeland should be referred to the NOSB for consideration whether to recommend regulatory language more specific to rangeland.

We also amended paragraph (a) to include a sentence to convey that land used for the production of annual crops that will be used to graze livestock is subject to the provisions of §§ 205.202 through 205.206. Finally, we added a sentence on irrigation to require its use, as needed and when available, to promote pasture growth.

Section 205.240(e) (new (b)) *Compliance with applicable §§ of 205.236–205.239*—This paragraph required pasture to comply with applicable livestock practice standards. We received the following comments on this section:

- Accept the section as written;
- Delete the section;
- Include this in guidance and provide for it in the relevant section of the OSP;
- Delete all but the opening paragraph of the pasture practice standard, which should be added to the feed section;
- We received comments that rewrote the practice standard.

We are retaining the provision but rather than require compliance with all of §§ 205.236 through 205.239, we identified the applicable sections, moved the paragraph up, and redesignated it as paragraph (b). With this rule, pasture management is tied to compliance with the feed requirements for ruminants and therefore these sections must be linked in the regulations. This section essentially requires producers to do several things: (1) Provide ruminants with continuous year-round access to pasture; (2) manage pasture to provide a minimum of 30 percent of a ruminant's dry matter intake, on average, over the course of the grazing season(s); (3) minimize the occurrence and spread of diseases and

parasites; and (4) to refrain from putting soil or water quality at risk. Paragraph 205.240(b) now reads: "(b) Producers must provide pasture in compliance with § 205.239(a)(2) and manage pasture to comply with the requirements of: § 205.237(c)(2), to annually provide a minimum of 30 percent of a ruminant's dry matter intake (DMI), on average, over the course of the grazing season(s); § 205.238(a)(3), to minimize the occurrence and spread of diseases and parasites; and § 205.239(e) to refrain from putting soil or water quality at risk."

Section 205.240(c) *Comprehensive pasture plan*—This paragraph and its paragraphs require producers to annually update and include a detailed pasture plan in the organic system plan, but when there is no change, the previous year's plan may be submitted. Required details are specified in the paragraphs that follow the opening paragraph. We received the following comments on (former) paragraph (b) and paragraph (c) of § 205.240:

- Delete both paragraphs, as they are already required as part of the OSP;
- Edit the paragraph—comments are discussed in more detail below;
- Combine paragraphs (b) and (c) into a single paragraph (b) with edits—comments are discussed in more detail below;

Some comments recommending deletion did so because they believe that a comprehensive pasture plan can already be covered within a producer's OSP, or that if this needs to be enforced, it should be integrated into existing sections. Another comment supporting deletion was based on a statement that this requirement far exceeds that of any other type of producer.

Commenters recommending combining the paragraphs with edits expressed the opinion that the proposed pasture practice standard required extensive, detailed information from producers. They stated that some provisions should remain "to ensure that there is a comprehensive pasture plan in every ruminant livestock operation's organic system plan, describing their pasture management system." They also stated that the provisions regarding haymaking should be removed as well as those covered by pasture being classified as a crop.

A revised, combined paragraph that was proposed would read (differences with proposed text are italicized): "(b) A pasture plan containing *at least* the following information must be included in the producer's organic system plan, which *may consist of the certifier's farm and livestock questionnaires, and be updated annually when any changes are made.*"

We received comments that suggested deleting the sentence which allows submitting the previous year's plan when there have been no changes. Another comment suggested annual updates or updates when significant changes are made.

We disagree with the recommendations to delete this section and that a pasture plan is already covered within the scope of organic system plans. We believe this section is necessary to provide support for consumer expectations that animals are raised on pasture and derive a significant portion of their feed from a pasture-fed diet, as well as to enhance the enforceability of the requirement that ruminant animals are pastured during the grazing season.

To minimize reporting burdens, we have retained in amended form, the provision that the producer may resubmit the previous year pasture plan when no changes have occurred. Under § 205.400(f)(2), producers are already required to immediately notify the certifying agent concerning any changes that may affect the operation's compliance with OFPA and the NOP regulations, and we are modifying § 205.240(c) to remind producers and certifying agents of this requirement. This requirement makes clear that changes that could affect the operation's compliance must be cleared through the operation's certifying agent. This will help protect producers from making mid-year changes to their pasture plan which might result in enforcement action against the operation's certification.

We disagree with comments that would allow producers to submit revisions to pasture plans that consist of "the certifier's farm and livestock questionnaires." Since administering this program, we have observed that questionnaires used by certifying agents often do not require sufficient detail to allow for enforcement when necessary. Therefore, the producer must provide the certifying agent with a separate pasture plan document that fully addresses the requirements of §§ 205.240(c)(1) through (8), as specified in this action. Alternatively, an operation's pasture plan may consist of a pasture/rangeland plan developed in cooperation with a Federal, State, or local conservation office, provided that such plan addresses all of the requirements of § 205.240(c). This is consistent with § 205.201(b) which allows producers to substitute a plan that meets requirements of another Federal, State, or local government regulatory program for the organic system plan, provided the submitted plan meets all the requirements of subpart C.

We have combined paragraphs (b) and (c) into a new paragraph (c). To reflect the comments received, paragraph (c) now reads: "(c) A pasture plan must be included in the producer's organic system plan, and be updated annually in accordance with § 205.406(a). The producer may resubmit the previous year's pasture plan when no changes have occurred. The pasture plan may consist of a pasture/rangeland plan developed in cooperation with a Federal, State, or local conservation office: *Provided,* That, the submitted plan addresses all of the requirements of §§ 205.240(c)(1) through (8). When a change to an approved pasture plan is contemplated, which may affect the operation's compliance with the Act or the regulations in this part, the producer shall seek the certifying agent's agreement on the change prior to implementation. The pasture plan shall include a description of the: * * *"

Section 205.240(c)(1) *Crops in pasture and haymaking system*—This proposed paragraph required a description of the crops to be grown in the pasture and haymaking system. In addition to those who recommended deleting the overall comprehensive pasture plan, a few recommended deleting this paragraph. Another comment recommended removing the reference to the haymaking system. Some commenters recommended amending the text to acknowledge the feed requirements of § 205.237. These commenters wrote that this language defines what needs to be in the pasture plan and emphasized that pasture must meet all the requirements of the livestock feed section. This recommendation was supported by additional comments.

We agree that the feed requirements should be specifically acknowledged and have incorporated the suggested language. We have replaced the requirement to describe the pasture crops and haymaking system with the requirement to describe the type of pasture. The organic system plan already covers descriptions of pasture plantings and haymaking and, therefore, it is not necessary to incorporate those specific requirements here.

Section 205.240(c)(2) *Cultural practices*—This proposed paragraph required a description of the cultural practices about crops, to ensure pasture is available to graze, and to provide all ruminants with a minimum of 30 percent, on average, of their DMI from grazing throughout the grazing season. In addition to those who recommended

the deletion of this paragraph, some expressed opposition to the paragraph because of the 30 percent DMI requirement. While many commenters expressed support for the 30 percent DMI requirement, one comment with numerous signatures expressed support for all of § 205.240(c)(2) as did numerous other commenters. In addition to the supporters of the paragraph, others recommended edits. One of the commenters recommended that § 205.240(c)(2) be amended to provide an exemption from the 30 percent DMI for beef cattle in the finishing stage during the grazing season. Other commenters suggested that § 205.240(c)(2) be redesignated as § 205.240(b)(2) and edited to include periods of time when animals may be denied access to the outdoors and not subject to the 30 percent DMI requirement, and to strike the language related to crops and their maturity dates. This comment also replaced growing season with grazing season. This recommendation was supported by additional commenters.

We accepted most of the last recommendation discussed immediately above, with the exception of redesignating this provision as § 205.240(b)(2), and modified the paragraph to cite a reference to §§ 205.239(c)(1) through (3), which address exemptions for denying ruminants pasture. Paragraph 205.239(c)(4) is the exemption which allows dairy ruminants to be off pasture for milking and is not included because producers are expected to keep animals on pasture long enough each day throughout the grazing season to assure that animals derive an average of 30 percent of their DMI from pasture grazed throughout the grazing season. As stated in this paragraph, milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average DMI from grazing of at least 30 percent throughout the grazing season. This paragraph also states that milking frequencies or duration practices cannot be used to deny dairy animals pasture.

We amended § 205.240(c)(2) by removing the specific cultural practices that producers would be required to utilize, and document in the pasture plan, to meet the 30 percent DMI requirement, and including the phrase, "management practices". We believe that the producers and certifying agents can determine what cultural and management practices will ensure sufficient pasture, and the level of detail with which these should be described in the pasture plan. We have addressed comments that oppose the 30 percent DMI requirement above.

Section 205.240(c)(3) *Haymaking system*—As proposed § 205.240(c)(3) required a description of the haymaking system. Some commenters requested deleting the paragraph, stating the haymaking system is not necessary for a pasture plan and its description can be found elsewhere in the operation's organic system plan. Their recommendation was supported by additional comments.

We agree that a haymaking system is not necessary to the pasture plan. However, an organic system plan according to § 205.201(a), must include a description of practices and producers, monitoring practices and procedures, as well as a list of each substance used as a production or handling input. Therefore, to be complete, the organic system plan should address the operation's haymaking system. Accordingly, we have deleted proposed § 205.240(c)(3).

Section 205.240(c)(3) New Paragraph—*Regional grazing season identified*—We received comments that suggested adding a new paragraph to require the pasture plan include a description of the grazing season. These commenters wrote that if the grazing season is the basis of the pasture plan, a clear description of the grazing season expected for the operation is an essential part of the pasture plan. Their recommendation was supported by additional commenters. Commenters also stated that ruminant animals are raised in a multitude of ecosystems where the environmental factors influence the grazing season starting and ending dates as well as whether the dates are contiguous.

We agree that the pasture plan must include a description of the grazing season that clearly defines the duration of the grazing season and times of the year when the operation's ruminant animals must be feeding on pasture. We have concerns, however, that without more specificity, some producers might try to create their own identification of the grazing season rather than identifying the grazing season for the region within which the operation is located, or only graze for the minimum 120 days when the regional grazing season would be longer. Therefore, we are accepting the recommendation and redesignating it as a new § 205.240(c)(3). But we are modifying the language to make clear that the producer is expected to describe the grazing season for the operation's regional location. This should be relatively simple inasmuch as many well-developed models for regionally appropriate grazing plans already exist that producers and certifying agents can readily obtain to determine the grazing season to incorporate into the pasture plan. To be in compliance with subpart E and the certifying agent's accreditation, the certifying agent must determine that the grazing season used in the pasture plan is representative of the grazing season for the producer's geographical location.

Section 205.240(c)(4) *Location of pasture*—This proposed paragraph required a description of the location of pasture and haymaking fields, including maps showing the pasture and haymaking system and giving each field its own identity. Some commenters suggested amendments to remove references to haymaking fields and haymaking system. This recommendation was supported by additional commenters. Most of the commenters suggested that the provision be rewritten to read: "The location of pastures, including maps giving each field its own identity." This recommendation was supported by additional commenters. One commenter suggested the same rewrite but retained the word "fields" rather than "pasture." Another suggested the same language as the above comment, but changed "identity" to "identification."

We agree with the suggestion to remove the references to haymaking, for consistency with removal elsewhere in this section and because we agree it is unnecessary in a pasture plan. We also agree with changing "identity" to "identification" since this more appropriately conveys how pasture is readily identified. These commenters recognized the importance of the pasture plan showing where the pastures are located and their size which will enable the certifying agent to assess the livestock carrying capacity of the pasture. We have accepted the suggested rewrite with two changes. We are changing the word "field" to "pasture" and inserting the words "and size."

Section 205.240(c)(6) *Fencing*—This proposed paragraph required a description of the location and type of fences and the location and source of shade and water. We received the following comments specifically addressing this paragraph:

- Insert language that excludes temporary fences from this requirement, because in some grazing systems temporary fences are frequently moved;
- Edit the paragraph to acknowledge temporary fencing, and the location and source of shade;
- Keep the proposed language but add language that ties the paragraph to livestock living conditions;

• Keep the proposed language, tie the paragraph to livestock living conditions, and acknowledge that fencing may be impractical on some lands, by making the paragraph subject to the OSP as it relates to beef cattle grazing on lands such as BLM, National Forest and ranch meadows and grasslands where fencing is impractical and not economically feasible.

Because producers will describe the grazing methods used within the pasture system as a result of changes to § 205.240(c)(5), we agree with excluding temporary fences from this requirement. We also agree with requiring a description of the location and sources of shade to ensure compliance with § 205.239(a)(1). We believe these amendments make the other suggested changes unnecessary.

Section 205.240(c)(7) *Soil fertility*—This paragraph required a description of the soil fertility, seeding, and crop rotation systems. We received comments specifically addressing this paragraph. One questioned its applicability to rangeland; another suggested deleting the paragraph. A few recommended adding "as necessary and as described in the OSP" at the end of the paragraph. The other comments recommended retaining the paragraph as written, and their recommendation was supported by additional commenters. However, in the earlier discussion of § 205.240(a) we amended paragraph (a) to eliminate the crop rotation requirement because pasture/rangeland is not typically subjected to crop rotation.

To prevent duplication of effort in the crop rotation reporting requirements, we removed the requirement for crop rotation system within the pasture plan.

Section 205.240(c)(8) *Pest, weed, disease control*—This proposed paragraph required a description of the pest, weed, and disease control practices. Some commenters specifically addressed this paragraph. One suggested no change, while others recommended adding "as necessary and as described in the OSP" to the end of the paragraph. The remaining commenters who specifically addressed the paragraph, recommended deleting this paragraph because these practices should be addressed elsewhere in the organic system plan. This recommendation was supported by additional commenters.

Because we are requiring producers to manage pasture as a crop we expect them to address their pest, weed, and disease practices. But we agree that producers are already required to describe these practices for all crops, including pasture, elsewhere in their organic system plan. To prevent duplication of effort in the pest, weed, and disease reporting requirements, we have deleted proposed § 205.240(c)(8).

Section 205.240(c)(9) *Erosion control*—This paragraph required a description of the erosion control and protection of natural wetlands, riparian areas, and soil and water quality practices. We received comments specifically addressing this paragraph:

• No change—keep the paragraph as written;

• Add "as necessary and as described in the OSP" to the end of the paragraph;

• We received a comment that supported the paragraph and elaborated on the environmental and soil sustainability requirements;

• Remove the paragraph, because these practices should be addressed elsewhere in the organic system plan.

We disagree that the requirements in the proposed paragraph are addressed elsewhere in the organic system plan. Section 205.203(a) requires the producer to select and implement tillage and cultivation practices that minimize soil erosion. However, pastures are not typically tilled or cultivated. Section 205.205(d) requires the producer's crop rotation practices to provide erosion control. However, pastures are not typically subjected to crop rotation. Thus, it might be argued that the provision does not apply to pasture. In administering this program, we have observed acreage certified as pasture that did not qualify as pasture and managed in a way that did not control for erosion and did not protect soil and water quality. Therefore we are retaining the erosion control practices provision. This will clarify for producers, inspectors, and certifying agents that producers must provide for erosion control in the management of their pastures.

The commenter addressing the environmental and soil sustainability requirements of the proposed rule wrote "that such regulations are in compliance with the original intent of the organic standard and OFPA to be environmentally sustainable and conscious." We agree. Commenting on the environmental and soil sustainability provisions of the pasture plan, this commenter stated "This requirement dovetails with and strengthens the existing regulations mandating that organic operations conserve biodiversity." In referencing the existing regulations, the commenter was referring to the final rule preamble language addressing conservation of biodiversity (65 FR 80563 Thursday, December 21, 2000) and the definition of "organic production" (65 FR 80640 Thursday, December 21, 2000). This final paragraph requires the producer to describe the operation's pasture management practices for the protection of natural wetlands, riparian areas, and soil and water quality. This requirement is consistent with the definition of organic production and the intent of the standards that producers be good stewards of the environment.

We are retaining the protection of natural wetlands and riparian areas practices provision. This will clarify for producers, inspectors, and certifying agents that producers must provide protection of natural wetlands and riparian areas in the management of their pastures.

We have included in § 205.239 the requirement that organic livestock producers manage outdoor access areas, including pastures, in a manner that does not put soil or water quality at risk. We expect producers to address their soil and water quality protection practices in their organic system plan. To prevent duplication in reporting requirements, we have removed the reference to soil and water quality in this paragraph.

Section 205.240(c)(10) *Sustainability practices*—This proposed paragraph required a description of the pasture and soil sustainability practices. We received the following comments:

• Make no change;

• Add "as necessary and as described in the OSP" to the end of the paragraph;

• Remove the paragraph because the meaning is unclear.

We removed the proposed paragraph. We now view this requirement as unnecessary based on the requirement that pasture be managed as a crop in compliance with the applicable crop production standards and that the pasture plan requires a description of the grazing methods used, soil fertility and seeding systems, and erosion control practices. Taken together these requirements plus the definition of pasture should ensure that the pastures and their soils are sustainably managed.

Section 205.240(c)(11) *Restoration of pasture*—This proposed paragraph required a description of the restoration of pasture practices. We received comments which specifically addressed this paragraph. Many comments agreed that restoration should be required only when necessary, but added the requirement be described in the OSP as well. The remaining comments which specifically addressed the paragraph recommended removal because the requirement should be addressed elsewhere in the organic system plan.

To prevent duplication in reporting requirements, we removed the proposed paragraph. Producers are required to

include a description of the grazing methods used, soil fertility and seeding systems, and erosion control practices in the pasture plan. Taken together these requirements plus the definition of pasture should ensure that the pastures and their soils are sustainably managed. A detailed description of these practices also would provide information on the restoration of pastures as necessary.

Section 205.240(d) *Sacrificial pasture*—This proposed paragraph required producers to set aside a portion of their pasture as sacrificial pasture and to describe that pasture within their pasture plan. We received many comments on this paragraph:

- The majority of comments supported the use of sacrificial pastures but requested that their use be encouraged rather than mandatory;
- We received comments that supported as written;
- Expand the paragraph to include outdoor access in the non-grazing season;
- Include an allowance for the temporary housing of young stock as predator control;
- Amend the paragraph to tie the use of sacrificial pasture to Natural Resources Conservation Service (NRCS) approval and making it mandatory when NRCS finds the use acceptable;
- Many comments simply expressed concerns based on soil, weather, and topographical conditions, or water quality implications;
- We received several comments simply opposing the requirement altogether.

Commenters wrote that not all operations have land that can meet the requirement for a sacrificial pasture. One of the commenters suggested that producers unable to include a sacrificial pasture in their comprehensive pasture plan be required to provide a brief description citing the reasons and including details on how they will ensure that animals receive more than 120 days on pasture and 30 percent dry matter intake from pasture. Some commenters recommended that the provision be amended to read: "The pasture system *may* include a sacrificial pasture, for grazing, to protect the other pastures from excessive damage during periods when saturated soil conditions render the pasture(s) too wet for animals to graze; and for outdoor access in the non-grazing season." [Emphasis added] Opposition to the required use of sacrificial pastures was based on the lack of suitable land and concern for pasture damage, animal health and safety, and the potential impacts on soil and water quality.

Our purpose in proposing this requirement in this action is related to our observation in administering this program that minimal amounts of rainfall have been used to deny access to pasture based on claims that these wet conditions are detrimental to the pasture and the health and well being of the animals. Further, we have observed approval for producers to include, in their organic system plan, a blanket denial of access to pasture for any or all rain events. As we remind producers and agents in this final action on the definition of inclement weather, not all rain events are of a nature necessitating that animals be kept off pasture. Certifying agents must not approve an organic system plan that includes a blanket denial of access to pasture due to rain. As two soil and crop scientist commenters pointed out, "Many soils, even when saturated, are not subject to 'excessive damage' from grazing livestock due to soil texture (sand) and good ground cover." Certifying agents must be diligent in assuring that producers have adequate justification for denying ruminant animals access to pasture due to a rain event and that such justification is documented within the organic system plan.

We acknowledge that not all soil structure and topography is compatible with the use of a sacrificial pasture concept. We further acknowledge that their required use, in some locations, could violate regional water quality regulations. Rather than expand this paragraph to include outdoor access in the non-grazing season, as some commenters suggested, this final rule allows for yards, feeding pads and feedlots to serve this purpose. Most of the commenters have sought retention of the sacrificial pasture provision, but only as an option available to producers. We agree that producers should determine whether a sacrificial pasture is suitable to the conditions of their operation. We deleted the mandatory sacrificial pasture requirement, but this does not preclude a producer from using this feature. However, it is unnecessary to provide for the optional use of sacrificial pastures in this regulation, therefore we have removed the definition of sacrificial pasture and § 205.240(d) as discussed above.

Pasture Practice Standard—Changes Not Made

Section 205.240(c)(5) *Grazing methods*—This proposed paragraph required a description of the types of grazing methods to be used in the pasture system. Commenters who specifically addressed this paragraph all supported retention as written.

We made no changes to this § 205.240(c)(5) because grazing methods are fundamental in demonstrating how a producer intends to meet the requirements of this final rule. This paragraph is finalized as proposed.

Temporary Variances (§ 205.290)

Temporary Variances—Changes Requested But Not Made

Under the final NOP regulation, published December 21, 2000 (65 FR 80548), § 205.290(a) authorized temporary variances from the requirements in §§ 205.236 through 205.239 related to the livestock practice standard. In the proposed rule, we proposed amending § 205.290(a) to include proposed § 205.240.

We received some comments on the proposed amendment to § 205.290(a); most supported as proposed, 1 commenter opposed because they opposed publication of § 205.240. This action retains § 205.240 in amended form as explained in the beginning of the above discussion on the pasture practice standard. Accordingly, we have amended § 205.290(a) by changing the provision to include § 205.240.

OMB Control Number (§ 205.690)

OMB Control Number—Changes Based on Comments

Section 205.690 lists the Office of Management and Budget (OMB) control number assigned to the information collection requirements in this part by the OMB pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as 0581–0181. This number was listed incorrectly in the final regulations published December 21, 2000 (65 FR 80548). The correct number is 0581–0191.

We received at least 2 comments on the proposed correction to § 205.290(a); both supported the correction. Accordingly, this action amends § 205.690 to correct the OMB control number. Section 205.690 reads: "The control number assigned to the information collection requirements in this part by Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB number 0581–0191."

A. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This final rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in paragraph 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under §§ 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to paragraph 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to paragraph 2120(f) of the OFPA (7 U.S.C. 6519(f)), this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

B. Executive Order 12866

This action has been determined significant for purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget. Executive Order 12866 requires the agency to consider alternatives to this rulemaking and the benefits and costs of this rule.

Need for the Rule

AMS has determined that current regulations regarding access to pasture and the contribution of grazing to the diet of organically raised ruminant livestock lack sufficient specificity and clarity to enable AMS to efficiently administer the Program. The current provisions in the regulations regarding access to pasture and conditions warranting temporary confinement are too general. This has resulted in significant variations in practice.

For example, "Stage of production," as a limited exception for temporary confinement, was included in the NOP final rule, but without specifying the circumstances under which the exception would be warranted. The final rule was promulgated with the clear expectation of future NOP and NOSB collaboration to provide specificity regarding the above provisions. However, the final rule was also promulgated with the expectation that a pasture-based system would play a prominent role in feeding ruminant livestock.

In February 2005, the NOSB reengaged in the discussion that began prior to the publication of the NOP final rule, concerning the pasture requirements and delivered a recommendation for greater specificity of the pasturing requirements. The NOSB process for the development of recommendations consists of: (1) Identification of a need by members of the public, the NOSB, or the NOP; (2) development of a draft NOSB recommendation; (3) public meeting notice published by the NOP on its Web site and in the **Federal Register;** (4) solicitation of public comments on the recommendation through regulations.gov and at the NOSB's public meetings; (5) finalization of the recommendation; (6) NOSB approval of the recommendation; and (7) NOSB referral to the Secretary for the Secretary's consideration and any appropriate action (e.g., rulemaking, policy development, guidance).

In 2005, the NOSB referred a recommendation to the Secretary that consisted of proposed regulatory changes and guidance on the interpretation of "access to pasture." The regulatory changes contained 2 components: (i) Replace "access to pasture" with "ruminant animals grazing pasture during the growing season;" and, (ii) permit exceptions to the pasturing requirement for birthing, dairy animals up to 6 months of age, and beef animals during the final finishing stage—not to exceed 120 days with the provision that lactation of dairy animals is not a stage of life that may be used to deny pasture for grazing.

The NOSB also asked NOP to issue guidance stating that producers should develop organic system plans with the goal of providing not less than 30 percent dry matter intake (DMI) from grazed feed during the growing season and not less than 120 days. It further clarified the existing provisions for temporary confinement and noted the regional Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Prescribed Grazing (Code 528) as the tool for determining appropriate pasture conditions.

The 30 percent DMI from grazing figure was recommended to the NOSB by dairy producers through public testimony at NOSB meetings. The choice of 30 percent was based on producer collaboration on the minimum amount of grazing that is necessary for ruminants to obtain feed value from the grazing of pasture.

When the NOSB recommendation was finalized in 2005, AMS had received 5 complaints alleging violations of pasture provisions on certified organic operations. In part, these resulted from OSPs dealing with livestock management that reflected varying application of existing regulations and interpretations of requirements across accredited certifying agents (ACAs). "Temporary" confinement exceptions, for example, have been granted for lactation and brief periods of moderate rainfall which do not warrant confinement. AMS, therefore, initiated the rulemaking process for comprehensive regulatory changes to ensure that compliance with pasture provisions would be readily discernable.

On April 13, 2006, NOP published an Advanced Notice of Proposed Rulemaking (ANPR) (71 FR 19131) seeking input on the role of pasture in the NOP regulations and what parts of the NOP regulations should be amended to address the role of pasture in organic livestock management. Over 80,500 comments, nearly all from consumers, were received on the ANPR. Support for strict standards and greater detail on the role of pasture in organic livestock

production was nearly unanimous with consumers requesting regulations that would clearly establish grazing as a primary source of nourishment. Organic consumers have clearly stated in comments that they expect organic ruminants to graze pasture and receive not less than 30 percent of their DMI needs from grazing.

On October 24, 2008, the NOP published a Proposed Rule on Access to Pasture (Livestock) (PR) (73 FR 63584). The PR proposed basic parameters for pasturing ruminants including that producers manage pasture as a crop, provide year-round access to pasture for ruminants, ensure an average of 30 percent DMI from pasture for all ruminants over the growing season, 120-days at minimum, and incorporate pasture practices into the OSP. The PR further stipulated a sacrificial pasture to maximize the amount of time livestock are outdoors and grazing pasture, and the fencing of all streams and other bodies of water to protect water quality. In the PR, the NOP sought comments on the impact of this standard, including the effects upon production and consumer prices, feed supplies and costs, the extent to which producers would have to change practices to comply, and whether the proposed information collection would be sufficient to verify compliance with the new provisions.

Over 26,000 written comments were submitted in response to the proposed rule. In addition, 121 persons delivered oral comments during 5 public listening sessions. Comments were received from producers, retailers, handlers, certifying agents, consumers, trade associations, organic associations, animal welfare organizations, consumer groups, state and local government entities, and various industry groups. More than 20,000 commenters commended efforts to add greater specificity for an enforceable standard and expressed support for the metrics as attainable and/or consistent with market expectations for organic production. These commenters endorsed that ruminant animals intake not less than 30 percent DMI from grazing pasture during grazing rather than growing season, a period which must be 120 days at minimum.

The provisions which generated the strongest objection were sacrificial pasture and fencing of water bodies. Comments from producers and state and local regulatory agencies, warned that installation and maintenance costs would be exorbitant, and that in certain agro-systems these features would ultimately be detrimental to soil and water quality.

Despite extensive public discussions about access to pasture, practice disparities within the livestock sector remain. At the time of publication of this rule, AMS has received a total of 14 complaints requesting enforcement actions for alleged violations of the pasture provisions of the NOP livestock standards. There is discontent that operations without the land base to afford grazing pasture for the entire herd throughout period of pasture growth exceed temporary confinement exceptions. The NOP is using information provided by commenters to the proposed rule and public comments at NOSB meetings, and the experience of administering the NOP since 2002, to make clarifications to the NOP standards regarding pasture provisions. Absent greater specificity in the regulations, we expect the inconsistent application of pasturing practices to continue. While we recognize that the majority of organic producers adhere to practices consistent with the intent of the regulations, they face a disadvantage when consumers perceive dilution of organic standards due to the publicity given to operations that skirt the margins of the regulations.

Regulatory Objective

The purpose in amending the NOP regulations is to make clear what access to pasture and grazing mean under the NOP. A stated purpose of the OFPA (7 U.S.C. 6501) is to assure consumers that organically produced products meet a consistent and uniform standard. This action is being taken to facilitate and improve compliance and enforcement and satisfy consumer expectations that ruminant livestock animals are grazing pastures and that pastures are managed to support grazing throughout the grazing season. Sufficient specificity and clarity will bring uniformity in application of the livestock regulations and enable certifying agents and producers to assess compliance. The amendments set minimal objectives which align with consumer expectations and producer perspectives. Producers can select measures suitable to the conditions of their operation, regardless of size or location, to meet and exceed the requirements.

Alternatives Considered

Alternatives to this rulemaking are to: (1) Make no changes to the existing regulations; (2) adopt a stocking rate of 3 ruminants per acre; or (3) adopt a minimum pasturing period, such as 120 days as recommended by the NOSB and supported by many public comments.

Alternative one is make no changes to the existing regulations. This option would result in continued dissatisfaction and confusion among consumers, producers, and certifying agents in the organic community and would not resolve the inconsistent application of pasture practices. This option would also continue to pose difficulty in enforcement of the existing regulations by certifying agents who are seeking greater regulatory certainty in these pasture provisions. This rulemaking was requested by consumers, producers, and certifying agents to provide uniformity in application of livestock regulations by requiring that all organic ruminant livestock graze pasture throughout the grazing season. Support for enforceable standards with greater clarity for the role of pasture in organic livestock production strongly outweighed opposing views.

Some commenters stated that the amendments, or portions of, are too prescriptive and that the current regulations have sufficient detail for compliance and enforcement. Some advised introducing specifications via guidance. However, guidance is not an effective resolution because it leaves certifiers without a firm basis to defend legitimate adverse certification decisions. The number of complaints calling for enforcement actions resulting from the current inconsistent application of the pasture provisions among the ACAs is evidence of the need for regulations to facilitate enforcement. We believe that the public rulemaking process is the proper means to add the expected specificity to the regulations. The current livestock provisions need additional specificity to assist ACAs with assuring the consistent standard purpose of the OFPA.

A second alternative is to adopt a 3-ruminants-per-acre stocking rate measure as suggested by some commenters. Commenters suggested regulatory language that would set pasture stocking rates of no more than and preferably less than, three ruminants per acre, in order to meet combined feed intake and ecological goals that would be easily verifiable. Some commenters suggested a set ratio for animal units/acre, and some suggested that the ratio on an individual operation be determined by the operation and certifying agent.

Neither stocking rate nor animal units/acre would achieve the goal of ensuring that ruminants graze pasture at a level sufficient to provide an average of not less than 30 percent of each animal's daily dry matter needs during the growing season. Nor would it assure that ruminants graze pasture throughout the growing season. These comments do

not appear to consider what would be the appropriate stocking rate for the diverse species of ruminants (e.g., buffalo, bison, cattle, goats, or sheep).

The provisions of this rule inherently require that each operation maintain an appropriate stocking rate for equilibrium between pasture quantity, quality and grazing animals. Due to the broad range of pasture types and grazing strategies available to producers, stocking rates will vary from pasture to pasture and within pastures and must be determined in the context of each operation. A mandatory nationwide stocking rate has significant drawbacks. Prescribing 3 ruminants per acre stocking rate, or any set stocking rate, will result in overgrazing of poor quality pastures, erosion and nutrient runoff. If pasture and grazing management is poor, ruminants will not obtain any significant amount of feed intake from pasture. Further, a stocking rate would be detrimental to operations where pastures are managed to support a higher grazing density without adverse ecological consequences.

The producer, in cooperation with the ACA, has the discretion to determine the stocking rate to conform to the carrying capacity of the pasture. The requirements to manage pasture as a crop in compliance §§ 205.202, 205.203(d) and (e), 205.204, and 205.206(b) through (f), will prevent operations from exceeding carrying capacity.

Further, the NOP standard is a global standard, and producers can apply for certification to this standard in any country for which they may be eligible to comply and achieve certification. Even if we could set an ideal stocking rate suitable for terrain in the United States, such rate would unlikely be suitable on a global scale.

A third alternative is to adopt the 120 day minimum pasturing period as recommended by the NOSB. This recommendation was the culmination of NOSB discussion on access to pasture, which began prior to the publication of the NOP final rule and was developed with public input. The NOSB recommendation also advised that each OSP maximize pasture, setting a target of not less than 30 percent DMI from grazed feed on an average daily basis during the pasturing period. The choice of 120 days was based on producer knowledge of the minimum period when pasture is actively growing and suitable for grazing. The 30 percent DMI was based upon the metric by which a dairy operation would qualify as a grazing system in several traditional dairy production areas in the United States.

The proposed rule expanded the NOSB recommendation by inserting the requirement for year-round access to pasture. Due to the number of comments that convincingly explained how this could jeopardize animal welfare and threaten soil and water quality, we have withdrawn that requirement. This final rule aligns closely to the NOSB recommendation in terms of the amount of time on pasture and minimum DMI, but is more thorough in delineating the exceptions to those provisions.

The NOSB recommendation also attempted to identify under what conditions temporary confinement would be permitted. This final rule stipulates all of the circumstances that would permit confinement or shelter. These narrow exceptions consider, foremost, the health and welfare of the animals as well as the production needs that are unique to certain types of ruminants. The specifications permit ACA and producer discretion, but will prevent abuse of exceptions especially for inclement weather and stage of life.

This final rule incorporates the NOSB recommended exception authorizing temporary confinement (up to 120 days) for the finish feeding of organic slaughter stock. However, we added an additional requirement to that exception to prohibit confinement without access to pasture during the finishing period. Without such an additional criterion, the finishing period for organic slaughter stock would permit practices that consumers have adamantly opposed. We acknowledge that finish feeding necessitates the use of a yard, feeding pad, or feedlots to provide the finish feed ration, but are also aware that the term feedlot may be thought of in a pejorative sense. Therefore, we have included an additional criterion to enable these features to be used in a manner that is consistent with organic production.

Baseline

The 2007 Census of Agriculture (Census) provides a glimpse into official data on the U.S. organic sector, which is to be followed up in 2010 with more detailed reports. In addition, we have data provided by a 2005 Agricultural Research Management (ARM) survey of ACAs conducted by the Economic Research Service (ERS), specifically related to the organic dairy sectors. We also have some data reported to the NOP from certifying agents, as ACAs must annually report certain information concerning the operations they certified in the previous year, but the database created from this information is not yet fully queriable beyond its ability to tell us the total number of certified operations.

According to the Census, in 2007, there were approximately 2.6 million acres in organic production on over 20,400 farms. Of this total, approximately 1.3 million acres were used for crop production and the rest was either in pasture or being converted to pasture. The total number of farms raising pasture or converting land to certified pasture was reported at 19,601 out of the 20,400 farms—clearly, most farms are engaged in using land for both crops and pasture according to the Census. Farms reporting organic crop production totaled 16,778, which aligns closely with numbers reported by ACAs to NOP for annually certified operations.

Also according to the Census, farms reporting production of organic livestock and poultry totaled just under 2,500 and 90 percent of those had sales below $50,000; there were around 250 farms with sales above $50,000. Farms reporting value-added products of organic livestock and poultry totaled nearly 3,200 in 2007 and almost 40 percent (approximately 1,264) of these farms reported sales above $50,000 from livestock and poultry value-added product sales. According to ERS, however, dairy farmers comprised approximately half of the livestock and poultry farmers with value-added sales—at 1,617 of these farms.[2] The Census did not break out the total livestock and poultry farms further, so we have no easy way of knowing exactly how many of these farms are engaged solely in beef ruminant slaughter production, poultry production, or both. Therefore, we cannot draw a detailed baseline about ruminant slaughter producers because of a lack of data on farm numbers and their distribution. Nor do we know how many dairy farmers there are who sell milk only to a processor, with no on-farm value-added sales production.

Data from the 2005 ARM survey also shows that there were 36,113 organic beef cows, 87,082 organic dairy cows, 58,822 unclassified cows and young stock, and 4,471 sheep and lambs. Not broken out in this data is the number of organic goats, buffalo, and bison which were lumped with other animals.

[2] Census report specially tabulated for research conducted by ERS, November 2009. Value-added product sales include the production and sale of meats, milk, cheeses, etc. and sold directly by producers to consumers, retailers, restaurateurs, CSAs, or some other final buyers. McBride, William D., and Catherine Greene. *Characteristics, Costs, and Issues for Organic Dairy Farming,* USDA, Economic Research Service (ERS), ERR–82, (November 2009).

The ARM survey reported that 86 percent of organic dairies and 62 percent of the organic milk cows are located in the Northeast and Upper Midwest. Seven percent of organic dairies and organic milk cows are found in the Corn Belt. By contrast, 7 percent of organic dairies were located in the West, but these operations held a third of the organic milk cows. Nationally the average size of an organic dairy is 82 cows based on the ARM survey, with an average in the Northeast of 53 cows, 64 in the Upper Midwest, and 381 in the West.

The ARM Survey also reported that organic dairies averaged about 13,600 pounds of milk per cow or a daily average of 45 pounds of milk per cow. Using a pay-price of $22 per hundredweight (cwt), based on the ARM Survey, each cow would generate approximately $2,992. Based on the Small Business Administration (SBA) definition of what constitutes a small agricultural producer (annual receipts up to $750,000), a small dairy is one with fewer than 251 cows. Therefore, on average, all organic dairy farms are small producers, but based on regional distributions of operations from the ARM survey, approximately 93 percent of all organic dairies—located in the Northeast, Upper Midwest, and Corn Belt, are small producers. On average, organic dairy producers in the West do not fit into this small producer category. This likely reflects costs and land available to all operations—there is more land available at lower costs in the West, hence operations tend to be larger than in the East.

In the ARM survey, producers were asked to define a pasture-based feeding program. They responded that a pasture-based feeding program provides at least half of the forage fed to milk cows during the grazing months, and they reported an average grazing period for 6.5 months. The survey also reported that more than 60 percent of producers provided their animals with pasture that provided more than 50 percent of forage needs throughout the grazing season; almost 90 percent of operators provided at least 25 percent of animals' pasture needs through forage. But this also means that potentially, approximately 10 percent of operators may need to make adjustments—to increase the amount of time animals spend on pasture to meet the 30 percent DMI during a grazing season of at least 120 days required by this final action.

Benefits to the Final Rule

This final rule brings uniformity in application to the livestock regulations; especially as they relate to the pasturing of ruminants. This uniformity will create equitable, consistent performance standards for all ruminant livestock producers. Producers who currently operate based on grazing will perceive a benefit because these producers claim an economic disadvantage in competing with livestock operations that do not provide pasture. This final rule would also bring uniformity in application of the livestock regulations. This uniformity in application will allow the ACAs and AMS to administer the livestock regulations in a way that reflects consumer preferences regarding the production of organic livestock and their products. An additional benefit is that with uniform application of the NOP livestock regulations there should be a near elimination of violations of the pasture regulations. This will eliminate the filing of complaints regarding the pasturing of ruminants.

Commenters have clearly stated that they expect organic ruminants to graze pasture and receive not less than 30 percent of their dry matter needs from grazing averaged over the grazing season. This final rulemaking is intended to reflect consumer expectations and producer perspectives. This action makes clear what access to pasture means under the NOP. We note that organic livestock and dairy producers have long been required to provide their livestock with access to pasture for grazing. This final rule is the result of a long discussion in implementing that requirement. This action should not take organic producers unawares and includes a 16-month implementation period.

This action will ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and ACAs to efficiently administer the NOP and to facilitate and improve compliance and enforcement. This specificity and clarity is expected to assure that ACAs and producers know what constitutes compliance and will satisfy consumer expectations that ruminant livestock animals graze pastures during the grazing season. This rule also adds 2 new regulatory provisions, which many ruminant livestock producers already comply with. New regulatory provisions include: (1) The requirement that pastures be managed for grazing throughout the grazing season per § 205.237(c)(2), (the pasture system must provide all ruminants under the OSP with an average of not less than 30 percent of their DMI from grazing throughout the grazing season); and (2) the requirement that for the grazing season, producers provide not more than an average of 70 percent of a ruminant's DMI from their total feed ration minus grazed vegetation rooted in pasture or residual forage per § 205.237(c)(1). These 2 new regulatory provisions will ensure that ruminants spend more time on pasture and that they receive a significant portion of their daily feed intake, during the grazing season, from grazing vegetation rooted in pasture or residual forage. Inconsistency in the application of the livestock regulations by producers and ACAs has resulted in the filing of consumer complaints under the NOP complaint procedures. This action provides more information which will contribute to producer and certifying agent understanding which will in turn eliminate the current inconsistent application of livestock regulations under the NOP. Further, since the NOP regulations were implemented in October 2002, we have found that producers need to improve their description of the practices and procedures they employ to comply with the livestock regulations in general and the pasture requirements in particular. Accordingly, this final rule provides greater detail about acceptable and required practices related to organic livestock and pasture management that will result in more thorough organic system plans (OSPs). The OSP commits the producer to a sequence of practices and procedures resulting in an operation that complies with every applicable provision in the regulations.

By eliminating the current inconsistent application of livestock regulations under the NOP and improving OSPs, consumers will have the assurance that the organic label is applied according to clear, consistently implemented, standards. These standards will provide for the grazing of ruminants on pasture throughout the grazing season such that ruminants obtain feed value from the grazing of pasture and residual forage. This will in turn satisfy consumer expectations that ruminant livestock animals graze pastures during the grazing season. Eliminating the current inconsistent application of livestock regulations is expected to greatly reduce or end the filing of complaints which will, in turn, end the generation of negative press which has damaged the image of organic milk and milk products. This is anticipated to lead to an improved image for organic milk and milk products which should increase consumer confidence and result in increased markets for organic livestock products.

Costs of Final Rule

This final rule will increase the cost of production for producers who currently do not pasture their ruminant animals and those producers who do not manage their pastures at a sufficient level to provide at least 30 percent DMI. New regulatory provisions include: (1) The requirement that pastures be managed for grazing throughout the grazing season per § 205.237(c)(2), (the pasture system must provide all ruminants under the OSP with an average of not less than 30 percent of their DMI from grazing throughout the grazing season); and (2) the requirement that for the grazing season, producers provide not more than an average of 70 percent of a ruminant's DMI from their total feed ration minus grazed vegetation rooted in pasture or residual forage per § 205.237(c)(1).

The costs associated with complying with this rule would vary based on the livestock producer's current practices and the degree to which they conform to the amended livestock regulations. Organic dairy operations that confine cows and rely upon high energy feeds, but do not have adequate land base to pasture their livestock in accordance with this rule, are expected to experience increased production costs to come into compliance with these requirements. Likewise, organic finish feeding operations which continuously confine the animals, maintain yards/feeding pads/feedlots which are not accessible to pasture, and have a finish feeding period that typically exceeds 120 days would be expected to experience a rise in production costs to come into compliance with this rule. Ruminant slaughter producers will need to accommodate finish feeding in ways that still provide animals with access to pasture. This may require adjustments on their part as they adapt their operations to provide grain outside of a confined feeding operation in order to meet the requirements of this regulation.

However, we do not expect that many organic operations will incur significant costs in implementing this final rule. A report by USDA's Economic Research Service (ERS) finds: (1) More than 60 percent of organic milk producers reported that at least half of their total forage ration came from pasture during the grazing months (an average of 6.5 months per year); and (2) nearly 90 percent of organic dairies sourced at least 25 percent of their total forage ration from pasture.[3] Therefore, we expect that a large majority of organic dairy producers will be able to comply with this regulation without modification to their operation, especially as the more costly requirements in the proposed rule—fencing of water bodies and sacrificial pasture—have been eliminated. Moreover, according to the Federation of Organic Dairy Farmers (FOOD Farmers) most ruminant livestock producers pasture their animals and many maximize the use of pasture. FOOD Farmers is a national dairy producer organization representing over 1,200 of the approximately 1,800 U.S. organic dairy producers. A comment submitted by an ACA included the results of a survey which the ACA distributed to its certified livestock—predominantly dairy producers. Of the 161 survey respondents, 96 percent indicated they currently comply or would be able to comply with the requirements for 30 percent dry matter intake from grazing during the grazing season of 120 days minimum. Therefore, while some ruminant livestock producers have not been providing pasture, or have insufficient pasture to support the size of their herd, and may need to obtain pasture to comply with the new regulatory provisions, we estimate that the number of producers who may need to obtain pasture to comply with the new regulatory provisions is well under 100. This estimate is based on our understanding that almost all of the estimated 1,800 ruminant livestock producers are currently providing at least some pasture and that only a few currently lack sufficient pasture to graze all of their animals enough to achieve the 30 percent DMI level.

Ruminant livestock operations currently pasturing their animals may see minimal increased costs, if any. Some who already pasture their animals may need to improve the quality of their pastures to provide sufficient vegetation for grazing throughout the grazing season to meet the average 30 percent DMI level. The potential costs include land and seed for pasture. Costs associated with providing sufficient vegetation for grazing throughout the grazing season would include the time (labor) spent seeding the pastures, fuel for equipment used in seeding, and the cost of seed.

Costs of pasture vary depending on location. USDA's *Agricultural Statistics,* 2008, show 2007 pasture land values per acre ranging from $12,100 (NJ), $2,820 (CA), $2,180 (WI), $1,370 (TX), $800 (CO), to $300 (ND). Costs would likely be higher for certified organic pasture. USDA's *Agricultural Statistics,* 2008, show 2007 pasture land cash rents per acre ranging from $40 (WI), $14 (CA), $8.30 (TX), $5.50 (CO) to $2 (NM). Again, costs would likely be higher for certified organic pasture. Per acre rental rates would also vary based on pasture quality factors. The higher the pasture quality, the more the producer may pay per acre, but the fewer the acres needed to comply with the regulations. On the other hand, some producers may not require more pasture at all, but instead may shift to using intensive rotational grazing, which is becoming the standard for grazing today. Under intensive grazing, producers use the same or fewer acres of land to graze the same or greater numbers of animals.

Geographical location, current year growing conditions, and pasture conditions will influence the need for seeding. Productive well managed perennial grass pastures would likely not require annual seeding. Poor producing and poorly managed perennial grass pastures would require annual seeding. It is anticipated that some producers will need to annually plant annual crops for grazing to provide sufficient vegetation for grazing throughout the grazing season. This would be especially true for those periods during the grazing season when perennial grass pastures are dormant.

Seed costs will vary depending on what is to be grown and how many acres are to be grown. As an example, if organic fescue is to be grown, the seed will cost approximately $120–130 per acre at 2009 prices.[4] If organic festulolium is to be grown the seed will cost approximately $73 per acre at 2009 prices.[5] Certified organic orchardgrass would cost approximately $65 per acre at 2009 prices.[6] Certified organic ryegrass would cost approximately $76–$85 per acre at 2009 prices.[7] Such costs may be offset by the benefits of using improved pasture, which include a lower cost of purchased feed (grains and forages) per hundredweight of milk or

[3] McBride, William D., and Catherine Greene. *Characteristics, Costs, and Issues for Organic Dairy Farming,* USDA, Economic Research Service (ERS), ERR–82, November (November 2009).

[4] The seed prices were obtained from 2 commercial seed suppliers because USDA does not track prices of organic seeds. Based upon an application rate for organic Laura Meadow fescue of 25 lbs/acre and seed price of $240–$260/50 lbs. (as priced by Albert Lea Seed House and Welter Seed and Honey Company).

[5] This is based on an application rate for organic spring green festulolium of 25 lbs/acre and seed price of $145/50 lbs. (Albert Lea Seed House and Welter Seed and Honey Company).

[6] Based upon an application rate for organic Niva orchardgrass of 10 lbs/acre and seed price of $325/50 lbs. (Welter Seed and Honey Company).

[7] Based upon an application rate for organic Calibra perennial ryegrass of 25 lbs/acre and seed price of $152–$170/50 lbs. (Welter Seed and Honey Company and Albert Lea Seed House).

meat produced, reduced forage harvest costs, and reduced veterinary costs.[8]

At the retail level, there may be increased consumer prices. For organic slaughter stock producers, an increase in costs might result in a greater volume of slaughter animals, at least in the short term, entering the market driving down prices. Longer term these increased costs could result in increased consumer prices unless the increased costs are offset by reductions in other costs of production. Other costs of production that could be expected to go down are costs associated with producer harvest and purchase of feed and the cost of herd health.

Dairy producers not currently pasturing their animals and those not managing their pastures at a level sufficient to provide at least 30 percent DMI are also expected to experience increased costs. This increased cost could, at least in the short term, lead to a reduced organic milk supply. Increased costs combined with a reduced milk supply might be followed by an increased pay-price to producers. Milk and milk product processors would be motivated to increase the pay-price so as to both maintain existing supplies and to encourage expanded supplies. With increased consumer prices accompanied by increased pay-price to producers, some organic producers would be expected to expand production and additional conventional producers would be expected to transition to organic production. An increased pay-price to producers would surely result in increased consumer prices. Longer term increased costs should be offset, at least in part, by reductions in other costs of production.

Some producers may see an overall reduction in production costs as a result of this rule. Operations which have an adequate land base, but are not optimizing the use of pasture may experience reduced feed costs. According to an ERS report, "Average feed costs per cow declined as pasture use for dairy forage increased." As measured in that publication, organic dairies that relied on pasture for 25–49 percent of for forage fed had feed costs of $500 less per cow than organic dairies that relied on pasture for 0–24 percent forage fed.[9] In addition, for feed from grazing (according to the 2005 ARM Survey), costs per hundredweight of milk sold were eight times less expensive than home-grown harvested feed and ten times cheaper than purchased feed on organic farms.[10] The cost savings from the substitution of pasturing for purchased feed will fluctuate with the price of feed. When the proposed rule was issued in December 2008, organic producers were experiencing tight feed supplies and high costs. According to AMS' National Organic Grain and Feedstuffs Report for October 22, 2009, the price of organic yellow feed corn was $5.15–$6.85/bushel, in comparison to $10.14 in October 2008. The price of organic feed grade soybeans was $17.00–$19.00/bushel compared to $21.92/bushel one year prior. Other costs of production that could be expected to go down are costs associated with producer harvest (if perennial forage crops are established) and purchase of feed and the cost of herd health.

Livestock producers can participate in various Federal, State, and Local conservation programs that may assist producers with the costs of complying with portions of this rule. For example, certified organic producers and producers transitioning to organic production may be eligible to apply for financial and technical assistance through the Environmental Quality Incentive Program's National Initiative to support organic and transition to organic production systems. EQIP is administered by the NRCS.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this action on small entities. Small entities include producers and agricultural service firms, such as handlers and ACAs. AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

AMS notes that several requirements to complete the RFA overlap with the Regulatory Impact Analysis (RIA) and the Paperwork Reduction Act (PRA). For example, the RFA requires an analysis of a final rule's costs to small entities. The RIA provides an analysis of the benefits and cost of a final rule. Further, the RFA requires a description of the projected reporting and recordkeeping requirements of a final rule. The PRA provides an estimate of the reporting and recordkeeping (information collection) requirements of a final rule. In order to avoid duplication, we combined some analyses as allowed in section 605(a) of the Act. The RIA in the Access to Pasture final rule provides summary information on the size of the domestic organic crop and livestock sector especially as it applies to ruminant producers who are the entities affected by this rulemaking action. It also provides information on potential costs to livestock producers who elect to produce organically. The RIA and PRA should be referred to for more detail.

Small agricultural service firms, which include handlers and ACAs, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,949 certified organic crop and livestock operations. These operations reported certified acreage totaling just over 2 million acres of organic farm production of which approximately 790 thousand acres were pasture and rangeland. Data on the numbers of certified organic handling operations (any operation that transforms raw product into processed products using organic ingredients) were not available at the time of survey in 2001; but they were estimated to be in the thousands. U.S. sales of organic food and beverages have grown from $1 billion in 1990, to an estimated $12.2 billion in 2004 and $13.8 billion in 2005 and nearly $17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In addition, USDA has 100 ACAs who provide certification services to

[8] For an example of data on reduced veterinary costs *see* page 76 of Knoblauch, Wayne A., Putnam, Linda D., and Karszes, Jason. *Dairy Farm Management Business Summary New York State 2004.* Ithaca, New York: Cornell University, November, 2005.

[9] McBride, William D., and Catherine Greene. *Characteristics, Costs, and Issues for Organic Dairy Farming,* USDA, Economic Research Service (ERS), ERR–82, (November 2009).

[10] McBride, William D., and Catherine Greene, "A Comparison of Conventional and Organic Milk Production Systems in the U.S.," Selected Paper prepared for presentation at the AAEA, Portland, Oregon, 2007.

producers and handlers. A complete list of names and addresses of ACAs may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* ACAs are required to monitor the operations which they certify for compliance with the NOP rule, and may incur costs for educating and training staff to enforce this final rule. We expect these costs to be minimal as certifying agents are already enforcing the NOP livestock provisions and should have the expertise to apply the more specific provisions of this rule. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. AMS estimates that most of these entities would be considered small entities under the criteria established by the SBA. AMS believes that the impact of this rule, if any, on small agricultural service firms will be minor. Further, this final rule is not expected to have an impact on a substantial number of small agricultural producers.

The 2007 Census of Agriculture (Census) provides a glimpse into official data on the U.S. organic sector, which is to be followed up in 2010 with more detailed reports. In addition, we have data provided by a 2005 Agricultural Research Management (ARM) survey of ACAs conducted by the Economic Research Service (ERS), specifically related to the organic dairy sectors. We also have data reported to the NOP from certifying agents, as ACAs must report annually certain information concerning the operations they certified in the previous year, but the database created from this information is not yet fully queriable beyond its ability to tell us the total number of certified operations.

According to the Census, in 2007, there were approximately 2.6 million acres in organic production on over 20,400 farms. Of this total, approximately 1.3 million acres were used for organic crop production and the rest was either in certified organic pasture or being converted to pasture. The total number of farms raising pasture or converting land to certified pasture was reported at 19,601 out of the 20,400 farms—clearly, most farms are engaged in using land for both organic crops and pasture according to the Census. Farms reporting organic crop production totaled 16,778—which aligns more closely with numbers reported by ACAs to NOP for annually certified operations.

Also according to the Census, farms reporting production of organic livestock and poultry totaled just under 2,500 and 90 percent of those had sales below $50,000; there were around 250 farms with sales above $50,000. Farms reporting value-added products of organic livestock and poultry totaled nearly 3,200 in 2007 and almost 40 percent of these farms (approximately 1,264) reported sales above $50,000 from livestock and poultry value-added product sales. According to ERS, however, dairy farmers comprised approximately half of the livestock and poultry farmers with value-added sales—at 1,617 of these farms.[11] The Census did not break out the total livestock and poultry farms further, so we have no easy way of knowing exactly how many of these farms are engaged solely in beef ruminant slaughter production, poultry production, or both. Therefore, we cannot draw a detailed baseline about ruminant slaughter producers because of a lack of data on farm numbers and their distribution. Nor do we know how many dairy farmers there are who sell milk only to a processor, with no on-farm value-added sales production.

Data from the 2005 ARM survey also shows that there were 36,113 organic beef cows, 87,082 organic dairy cows, 58,822 unclassified cows and young stock, and 4,471 sheep and lambs. Not broken out in this data is the number of organic goats, buffalo, and bison which were lumped with other animals.

The ARM survey reported that 86 percent of organic dairies and 62 percent of the organic milk cows are located in the Northeast and Upper Midwest. Seven percent of organic dairies and organic milk cows are found in the Corn Belt. By contrast, 7 percent of organic dairies were located in the West, but these operations held a third of the organic milk cows. Nationally the average size of an organic dairy is 82 cows based on the ARM survey, with an average in the Northeast of 53 cows, 64 in the Upper Midwest, and 381 in the West.

The ARM Survey also reported that organic dairies averaged about 13,600 pounds of milk per cow or a daily average of 45 pounds of milk per cow. Using a pay-price of $22 per hundredweight (cwt), based on the ARM Survey, each cow would generate approximately $2,992. Based on the Small Business Administration (SBA) definition of what constitutes a small agricultural producer (annual receipts up to $750,000), a small dairy is one with fewer than 251 cows. Therefore, on average, all organic dairy farms are small producers, but based on regional distributions of operations from the ARM survey, approximately 93 percent of all organic dairies—located in the Northeast, Upper Midwest, and Corn Belt, are small producers. On average, organic dairy producers in the West do not fit into this small producer category. This likely reflects costs and land available to all operations—there is more land available at lower costs in the West, hence operations tend to be larger than in the East.

In the ARM survey, producers were asked to define a pasture-based feeding program. They responded that a pasture-based feeding program provides at least half of the forage fed to milk cows during the grazing months, and they reported an average grazing period of 6.5 months. The survey also reported that more than 60 percent of producers provided their animals with pasture that provided more than 50 percent of forage needs throughout the grazing season; almost 90 percent of operators provided at least 25 percent of animals' pasture needs through forage. In addition, according to the Federation of Organic Dairy Farmers (FOOD Farmers), most ruminant livestock producers pasture their animals and many maximize the use of pasture.

But this also means that potentially, approximately 10 percent of operators may need to make adjustments—to increase the amount of time animals spend on pasture to meet the 30 percent DMI during a grazing season of at least 120 days required by this final action.

This final rule brings uniformity in application to the livestock regulations; especially as they relate to the pasturing of ruminants. This uniformity will create equitable, consistent, performance standards for all ruminant livestock producers. Producers who currently operate based on grazing will perceive a benefit because these producers claim an economic disadvantage in competing with livestock operations that do not provide pasture. This final rule would also bring uniformity in application of the livestock regulations. This uniformity in application will allow the ACAs and AMS to administer the livestock regulations in a way that reflects consumer preferences regarding the production of organic livestock and their products. Commenters have clearly stated that they expect organic ruminants to graze pasture and receive not less than 30 percent of their dry matter needs from grazing averaged over the entire grazing season. This final rulemaking is intended to reflect consumer expectations and producer perspectives. This action makes clear

[11] Census report specially tabulated for research conducted by ERS, November 2009. Value-added product sales include the production and sale of meats, milk, cheeses, etc. and sold direct by producers to consumers, retailers, restaurateurs, CSAs, or some other final buyers.

what access to pasture means under the NOP. We note that organic livestock and dairy producers have long been required to provide their livestock with access to pasture for grazing. This final rule is the result of a long discussion in implementing that requirement. This action should not take organic producers unaware especially due to the extended implementation period.

This action will ensure that NOP livestock production regulations have sufficient specificity and clarity to enable AMS and ACAs to efficiently administer the NOP and to facilitate and improve compliance and enforcement. This specificity and clarity is expected to assure that ACAs and producers know what constitutes compliance and will satisfy consumer expectations that ruminant livestock animals graze pastures during the grazing season. This proposed rule also adds 2 new regulatory provisions, which many ruminant livestock producers already comply with. New regulatory provisions include: (1) The requirement that pastures be managed for grazing throughout the grazing season per § 205.237(c)(2), (the pasture system must provide all ruminants under the OSP with an average of not less than 30 percent of their DMI from grazing throughout the grazing season); and (2) the requirement that for the grazing season, producers provide not more than an average of 70 percent of a ruminant's DMI from their total feed ration minus grazed vegetation rooted in pasture or residual forage per § 205.237(c)(1). These 2 new regulatory provisions will ensure that ruminants spend more time on pasture and that they receive a significant portion of their daily feed intake, during the grazing season, from grazing vegetation rooted in pasture or residual forage. Inconsistency in the application of the livestock regulations by producers and ACAs has resulted in the filing of consumer complaints under the NOP complaint procedures. This action provides more information which will contribute to producer and certifying agent understanding which will in turn eliminate the current inconsistent application of livestock regulations under the NOP. Further, since the NOP regulations were implemented in October 2002, we have found that producers need to improve their description of the practices and procedures they employ to comply with the livestock regulations in general and the pasture requirements in particular. Accordingly, this final rule provides greater detail about acceptable and required practices related to organic livestock and pasture management that will result in more thorough organic system plans (OSPs). The OSP commits the producer to a sequence of practices and procedures resulting in an operation that complies with every applicable provision in the regulations.

By eliminating the current inconsistent application of livestock regulations under the NOP and improving OSPs, consumers will have the assurance that the organic label is applied according to clear, consistently applied, standards. These standards will provide for the grazing of ruminants on pasture throughout the grazing season such that ruminants obtain feed value from the grazing of pasture and residual forage. This will in turn satisfy consumer expectations that ruminant livestock animals graze pastures during the grazing season. Eliminating the current inconsistent application of livestock regulations is expected to end the filing of complaints which will, in turn, end the generation of negative press which has damaged the image of organic milk and milk products.

Costs associated with providing sufficient vegetation for grazing throughout the grazing season would include the time (labor) spent seeding the pastures, fuel for equipment used in seeding, and the cost of seed. Seed costs will vary depending on what is to be grown and how many acres are to be grown. Examples of 2009 certified organic seed prices, per acre, include approximately $120–130 for fescue, $73 for festolium, $65 for orchardgrass, and $76–85 for ryegrass.

Costs of pasture vary depending on location. USDA's *Agricultural Statistics,* 2008, show 2007 pasture land values per acre ranging from $12,100 (NJ), $2,820 (CA), $2,180 (WI), $1,370 (TX), $800 (CO), to $300 (ND). Costs would likely be higher for certified organic pasture. USDA's *Agricultural Statistics,* 2008, show 2007 pasture land cash rents per acre ranging from $40 (WI), $14 (CA), $8.30 (TX), $5.50 (CO) to $2 (NM). Again, costs would likely be higher for certified organic pasture. Per acre rental rates would also vary based on pasture quality factors. The higher the pasture quality, the more the producer may pay per acre, but the fewer the acres needed to comply with the regulations. On the other hand, producers may not require more pasture at all, but instead may shift to using intensive rotational grazing, which is becoming the standard for grazing today. Under intensive grazing, producers use the same or fewer acres of land to graze the same or greater numbers of animals. Costs associated with providing pasture should only increase for those producers who currently do not pasture their animals at all (e.g., producers not in compliance with the current regulations) and those producers who do not manage their pastures at a sufficient level to provide at least 30 percent DMI.

For those producers who do not provide sufficient pasture for their animals, the costs associated with providing sufficient pasture will vary not just on the location and quality, but also on the size of the herd. Large operations that do not provide adequate pasture may require large amounts of additional pasture, whereas small operations may require small amounts of additional pasture. According to the 2005 ARM survey, geographic areas with higher land costs (such as the Northeast) have smaller livestock operations and areas with lower land costs (such as in the West) have larger livestock operations. Based on this data, those producers who do not have adequate pasture and are located in areas with high land costs will likely require smaller amounts of pasture compared to those producers who do not have adequate pasture and are located in areas with low land costs.

AMS believes that the costs incurred by producers in complying with this final action would be offset by a stronger marketplace for organic livestock products including dairy products. Implementation of this final rule will ensure that consumer expectations are met, and improve the image of organic milk and other organic livestock products, both of which in turn will lead to a robust market for these organic products. AMS believes that, over the long run, the economic impact on producers of not implementing this final rule would be greater than the economic impact of this final rule.

D. Paperwork Reduction Act (Including the Information Collection Burden)

In accordance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act (44 U.S.C. 3501–3520) (PRA), the current information collection requirements associated with the NOP have been previously approved by OMB and assigned OMB control number 0581–0191. A new information collection package is being submitted to OMB for approval of 9,200 hours in total burden hours to cover this new collection and recordkeeping burden of paragraph 205.237(d) of this final rule. Upon OMB's approval of this new information collection, we will merge this collection into currently approved

OMB Control Number 0581–0191. The total burden hours to cover this new collection and recordkeeping burden of § 205.237(d), is 9,200 hours. In accordance with 5 CFR Part 1320, we have included below a description of the collection and recordkeeping requirements and an estimate of the annual burden on organic ruminant producers who would be required to maintain information under this final rule. Authority for this action is the Organic Foods Production Act of 1990, as amended.

Title: National Organic Program.

OMB Control Number: 0581–0252.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New collection.

Abstract: The information collection and recordkeeping necessitated by new § 205.237(d) is essential for verification that ruminants obtain not less than 30 percent of dry matter intake from grazing pasture, averaged over the grazing season, 120 days minimum (dry matter grazed includes only residual forage and vegetation rooted in pasture). This action requires that producers document: a description of the total feed ration for each type and class of animal, including pasture, feed supplements and additives; the amount of each type of feed fed; and, the method for calculating dry matter demand and dry matter intake.

The proposed rule specified mandatory formulas to calculate daily dry matter demand and daily dry matter intake for each class of animal. It also stipulated that producers perform and record these calculations monthly. Some commenters who supported the requirement that ruminants receive no more than 70 percent of dry matter intake from dry matter fed, conveyed that stipulating formulas was overly prescriptive. Commenters also asserted that the fixed variable of 3 percent body weight within the dry matter demand formula was not universally suitable to accurately estimate the nutritional needs of all animals. Alternatively, we received proposals that producers document the total daily feed rations for each class of animal, any changes to those rations, and select a method for calculating dry matter demand and dry matter intake with the consent or assistance of the certifying agent.

We accepted the proposal that producers and certifying agents should determine what method(s) are suitable to use for calculating dry matter demand and dry matter intake in the context of the certified operation. This action is consistent with commenters proposals for minimizing the information collection burden. Recordkeeping is a core pillar of the organic program and an important tool for producers to demonstrate, and certifying agents to verify, compliance with the regulations. We believe that the discretion granted to the producers and certifying agents, in lieu of prescribed formulas and frequency of calculations, will minimize additional recordkeeping burden and preserve a reliable means to verify compliance with the livestock feed provisions.

According to FOOD Farmers (a dairy farmer organization representing over 1,200 of the approximately 1,800 U.S. organic dairy farmers), accredited certifying agents and organic ruminant producers currently determine the daily DMI need of their animals and establish feed rations (which identify the percentage of dry matter for each ingredient) as a part of their good business and livestock management practices. Moreover, most of these organic ruminant producers already document and maintain feed ration records. We concur that many organic livestock producers already record the data that will enable dry matter intake calculations.

For those operations that do not currently calculate dry matter demand or dry matter intake, there are numerous resources on the various calculation methods. Certifying agents may also direct producers to resources that will enable compliance with this information collection requirement. As producers become accustomed to additional recordkeeping requirements, we expect this information collection burden to decrease in subsequent years.

Based on the number of certified operations reported by certifying agents in comments to the proposed rule, AMS estimates that there are approximately 1,800 certified dairy operations and 500 other ruminant livestock operations in the U.S. that will be subject to the provisions of § 205.237(d). This final rule requires that ruminant producers document: (1) Total feed ration for each type and class of animal, describing all feed produced on-farm, all feed purchased from off-farm sources, the percentage of each type of feed in the total ration, and a list of all feed supplements and additives; (2) amount of each type of feed actually fed to each type and class of animal; (3) changes made to all rations throughout the year; and, (4) the method for calculating dry matter demand and dry matter intake. To minimize disruption to the normal business practices of the affected producers, producers will be permitted to develop their own format for documenting the requirements of § 205.237(d).

The PRA also requires AMS to measure the recordkeeping burden. Under the NOP (§ 205.103) each producer is required to maintain and make available upon request, for 5 years, such records as are necessary to verify compliance with the NOP. These records will enable producers to provide the best evidence of compliance with the requirement that for the grazing season, producers of organic ruminants provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since most organic ruminant producers already document and maintain feed ration records additional annual costs will be nominal.

This information collection is only used by the organic ruminant producer; authorized representatives of USDA, including AMS, NOP staff; and USDA accredited certifying agents. Organic ruminant producers and USDA accredited certifying agents are the primary users of the information and AMS is the secondary user.

Information Collection Burden

Estimate of Burden: Public reporting burden for collection of information is estimated to be 3 hours per year. Several commenters asserted that the estimated information collection burden in the proposed rule was too low. That assertion, however, was mostly attributed to requirements which have been omitted from this final rule, particularly, calculating dry matter intake and dry matter fed for each type and class of animal on a monthly basis in accordance with specified formulas. We have not changed the estimated reporting burden, based upon the premise that producers, having the discretion to determine the method and frequency of dry matter calculations, will choose an efficient and readily adaptable means.

AMS estimates that the provisions in this final rule that require producers to document information on feed rations, feed intake and pasture management requirements will cost each affected producer $55.65 annually. This estimate is based on an estimated 3 labor hours per year at $18.55 per hour for a total salary component cost of $55.65 per year. The source of the hourly rate is the National Compensation Survey: Occupational Wages in the United States, June 2006, published by the Bureau of Labor Statistics. The rate is the mean hourly wage for first line supervisors/managers of farming, fishing and forestry workers. This

classification was selected because the individual(s) responsible for the compliance of a certified operation must have the skills to manage the operation.

Respondents: Organic ruminant producers.

Estimated Number of Respondents: 2,300.

Estimated Total Annual Burden per Respondent: 3 hours.

Estimated Total Annual Burden on Respondents: 9,200 hours.

Total Cost: $170,660.

Recordkeeping Burden

Estimate of Burden: Public recordkeeping burden is estimated to be 1.0 hour per year per respondent at $18.55 per hour for a total salary component cost of $18.55 per year.

Respondents: Organic ruminant producers.

Estimated Number of Respondents: 2,300.

Estimated Number of Responses per Respondent: 1 (per year).

Estimated Total Annual Burden on Respondents: 2,300 hours.

Total Cost: $42,665.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

E. Civil Rights Impact Analysis

AMS has reviewed this final rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis (CRIA), to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, AMS has determined that this rule would only impact the organic practices of livestock producers and that this rule has no potential for affecting livestock producers in protected groups differently than the general population of livestock producers. This rulemaking was initiated by the organic community and by small livestock producers in particular.

Protected individuals have the same opportunity to participate in the NOP as non-protected individuals. The NOP regulations prohibit discrimination by certifying agents, specifically, § 205.501(d) provides that "No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of the NOP to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status." Paragraph 205.501(a)(2) requires "certifying agents to demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart" including the prohibition on discrimination. The granting of accreditation to certifying agents under § 205.506 requires the review of information submitted by the certifying agent and an on-site review of the certifying agent's operation. Further, if certification is denied, § 205.405(d) requires that the certifying agent notify the applicant of their right to file an appeal to the AMS Administrator in accordance with § 205.681. These regulations provide protections against discrimination, thereby permitting all livestock producers, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status, who voluntarily choose to adhere to the proposed rule and qualify, to be certified as meeting NOP requirements by an accredited certifying agent. This final rule in no way changes any of these protections against discrimination.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR Part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR Part 205 continues to read:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.2 is amended by revising the definitions of "crop" and "livestock" and adding 15 new terms in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Class of animal. A group of livestock that shares a similar stage of life or production. The classes of animals are those that are commonly listed on feed labels.

* * * * *

Crop. Pastures, cover crops, green manure crops, catch crops, or any plant or part of a plant intended to be marketed as an agricultural product, fed to livestock, or used in the field to manage nutrients and soil fertility.

* * * * *

Dry lot. A fenced area that may be covered with concrete, but that has little or no vegetative cover.

Dry matter. The amount of a feedstuff remaining after all the free moisture is evaporated out.

Dry matter demand. The expected dry matter intake for a class of animal.

Dry matter intake. Total pounds of all feed, devoid of all moisture, consumed by a class of animals over a given period of time.

* * * * *

Feedlot. A dry lot for the controlled feeding of livestock.

* * * * *

Graze. (1) The consumption of standing or residual forage by livestock.

(2) To put livestock to feed on standing or residual forage.

Grazing. To graze.

Grazing season. The period of time when pasture is available for grazing, due to natural precipitation or irrigation. Grazing season dates may vary because of mid-summer heat/humidity, significant precipitation events, floods, hurricanes, droughts or winter weather events. Grazing season may be extended by the grazing of residual forage as agreed in the operation's organic system plan. Due to weather, season, or climate, the grazing season may or may not be continuous. Grazing season may range from 120 days to 365 days, but not less than 120 days per year.

* * * * *

Inclement weather. Weather that is violent, or characterized by temperatures (high or low), or characterized by excessive precipitation that can cause physical harm to a given species of livestock. Production yields or growth rates of livestock lower than the maximum achievable do not qualify as physical harm.

* * * * *

Livestock. Any cattle, sheep, goats, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals for the production of food, fiber, feed, or other agricultural-based consumer products.

* * * * *

Residual forage. Forage cut and left to lie, or windrowed and left to lie, in place in the pasture.

* * * * *

Shelter. Structures such as barns, sheds, or windbreaks; or natural areas

such as woods, tree lines, large hedge rows, or geographic land features, that are designed or selected to provide physical protection or housing to all animals.

* * * * *

Stage of life. A discrete time period in an animal's life which requires specific management practices different than during other periods (e.g., poultry during feathering). Breeding, freshening, lactation and other recurring events are not a stage of life.

* * * * *

Temporary and Temporarily. Occurring for a limited time only (e.g., overnight, throughout a storm, during a period of illness, the period of time specified by the Administrator when granting a temporary variance), not permanent or lasting.

* * * * *

Yards/Feeding pad. An area for feeding, exercising, and outdoor access for livestock during the non-grazing season and a high traffic area where animals may receive supplemental feeding during the grazing season.

■ 3. Section 205.102 is amended by revising paragraph (a) to read as follows:

§ 205.102 Use of the term, "organic."

* * * * *

(a) Produced in accordance with the requirements specified in § 205.101 or §§ 205.202 through 205.207 or §§ 205.236 through 205.240 and all other applicable requirements of part 205; and

* * * * *

■ 4. Section 205.237 is amended as follows:

■ A. Revising paragraphs (a), (b)(5), and (b)(6);

■ B. Adding new paragraphs (b)(7), (b)(8), (c) and (d) to read as follows:

§ 205.237 Livestock feed.

(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP, except as provided in § 205.236(a)(2)(i), except, that, synthetic substances allowed under § 205.603 and nonsynthetic substances not prohibited under § 205.604 may be used as feed additives and feed supplements, *Provided,* That, all agricultural ingredients included in the ingredients list, for such additives and supplements, shall have been produced and handled organically.

(b) * * *

(5) Feed mammalian or poultry slaughter by-products to mammals or poultry;

(6) Use feed, feed additives, and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act;

(7) Provide feed or forage to which any antibiotic including ionophores has been added; or

(8) Prevent, withhold, restrain, or otherwise restrict ruminant animals from actively obtaining feed grazed from pasture during the grazing season, except for conditions as described under § 205.239(b) and (c).

(c) During the grazing season, producers shall:

(1) Provide not more than an average of 70 percent of a ruminant's dry matter demand from dry matter fed (dry matter fed does not include dry matter grazed from residual forage or vegetation rooted in pasture). This shall be calculated as an average over the entire grazing season for each type and class of animal. Ruminant animals must be grazed throughout the entire grazing season for the geographical region, which shall be not less than 120 days per calendar year. Due to weather, season, and/or climate, the grazing season may or may not be continuous.

(2) Provide pasture of a sufficient quality and quantity to graze throughout the grazing season and to provide all ruminants under the organic system plan with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season: *Except,* That,

(i) Ruminant animals denied pasture in accordance with § 205.239(b)(1) through (8), and § 205.239(c)(1) through (3), shall be provided with an average of not less than 30 percent of their dry matter intake from grazing throughout the periods that they are on pasture during the grazing season;

(ii) Breeding bulls shall be exempt from the 30 percent dry matter intake from grazing requirement of this section and management on pasture requirement of § 205.239(c)(2); *Provided,* That, any animal maintained under this exemption shall not be sold, labeled, used, or represented as organic slaughter stock.

(d) Ruminant livestock producers shall:

(1) Describe the total feed ration for each type and class of animal. The description must include:

(i) All feed produced on-farm;

(ii) All feed purchased from off-farm sources;

(iii) The percentage of each feed type, including pasture, in the total ration; and

(iv) A list of all feed supplements and additives.

(2) Document the amount of each type of feed actually fed to each type and class of animal.

(3) Document changes that are made to all rations throughout the year in response to seasonal grazing changes.

(4) Provide the method for calculating dry matter demand and dry matter intake.

■ 5. Section 205.239 is amended as follows:

■ A. Revising paragraph (a), introductory text, and paragraphs (a)(1) through (3);

■ B. Revising paragraph (b), introductory text, and paragraphs (b)(2) through (b)(4);

■ C. Redesignating paragraph (c) as (e);

■ D. Revising newly designated paragraph (e); and

■ E. Adding new paragraphs (a)(5), (b)(5) through (b)(8), (c), and (d) to read as follows:

§ 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with §§ 205.239(b) and (c). Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of § 205.237, except as provided for in paragraphs (b), (c), and (d) of this section.

(3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i),

and, if applicable, organically handled by operations certified to the NOP.

* * * * *

(5) The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

* * * * *

(2) The animal's stage of life: Except, that lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this regulation;

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);

(6) Sorting or shipping animals and livestock sales: *Provided,* that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;

(7) Breeding: Except, that, bred animals shall not be denied access to the outdoors and, once bred, ruminants shall not be denied access to pasture during the grazing season; or

(8) 4–H, Future Farmers of America and other youth projects, for no more than one week prior to a fair or other demonstration, through the event and up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event.

(c) The producer of an organic livestock operation may, in addition to the times permitted under § 205.239(b), temporarily deny a ruminant animal pasture or outdoor access under the following conditions:

(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;

(2) In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: *Provided,* That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;

(3) In the case of fiber bearing animals, for short periods for shearing; and

(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location: Except, that, yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed simultaneously without crowding and without competition for food. The finishing period shall not exceed one-fifth (1/5) of the animal's total life or 120 days, whichever is shorter.

(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

■ 6. Section 205.240 is added to subpart C to read as follows:

§ 205.240 Pasture practice standard.

The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture.

(a) Pasture must be managed as a crop in full compliance with §§ 205.202, 205.203(d) and (e), 205.204, and 205.206(b) through (f). Land used for the production of annual crops for ruminant grazing must be managed in full compliance with §§ 205.202 through 205.206. Irrigation shall be used, as needed, to promote pasture growth when the operation has irrigation available for use on pasture.

(b) Producers must provide pasture in compliance with § 205.239(a)(2) and manage pasture to comply with the requirements of: § 205.237(c)(2), to annually provide a minimum of 30 percent of a ruminant's dry matter intake (DMI), on average, over the course of the grazing season(s); § 205.238(a)(3), to minimize the occurrence and spread of diseases and parasites; and § 205.239(e) to refrain from putting soil or water quality at risk.

(c) A pasture plan must be included in the producer's organic system plan, and be updated annually in accordance with § 205.406(a). The producer may resubmit the previous year's pasture plan when no change has occurred in the plan. The pasture plan may consist of a pasture/rangeland plan developed in cooperation with a Federal, State, or local conservation office: *Provided,* that, the submitted plan addresses all of the requirements of § 205.240(c)(1) through (8). When a change to an approved pasture plan is contemplated, which may affect the operation's compliance with the Act or the regulations in this part, the producer shall seek the certifying agent's agreement on the change prior to implementation. The pasture plan shall include a description of the:

(1) Types of pasture provided to ensure that the feed requirements of § 205.237 are being met.

(2) Cultural and management practices to be used to ensure pasture of a sufficient quality and quantity is available to graze throughout the grazing season and to provide all ruminants under the organic system plan, except exempted classes identified in § 205.239(c)(1) through (3), with an average of not less than 30 percent of their dry matter intake from grazing throughout the grazing season.

(3) Grazing season for the livestock operation's regional location.

(4) Location and size of pastures, including maps giving each pasture its own identification.

(5) The types of grazing methods to be used in the pasture system.

(6) Location and types of fences, except for temporary fences, and the location and source of shade and the location and source of water.

(7) Soil fertility and seeding systems.

(8) Erosion control and protection of natural wetlands and riparian areas practices.

■ 7. Section 205.290 is amended by revising paragraph (a) introductory text to read as follows:

§ 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§ 205.203 through 205.207, 205.236 through 205.240 and 205.270 through 205.272 may be

established by the Administrator for the following reasons:

* * * * *

■ 8. In § 205.690, the number "0581–0181" is removed and "0581–0191" is added in its place.

Dated: February 9, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–3023 Filed 2–12–10; 4:15 pm]

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H.R. 1817/P.L. 111–128

To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building". (Jan. 29, 2010; 123 Stat. 3487)

H.R. 2877/P.L. 111–129

To designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office". (Jan. 29, 2010; 123 Stat. 3488)

H.R. 3072/P.L. 111–130

To designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building". (Jan. 29, 2010; 123 Stat. 3489)

H.R. 3319/P.L. 111–131

To designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building". (Jan. 29, 2010; 123 Stat. 3490)

H.R. 3539/P.L. 111–132

To designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building". (Jan. 29, 2010; 123 Stat. 3491)

H.R. 3667/P.L. 111–133

To designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building". (Jan. 29, 2010; 123 Stat. 3492)

H.R. 3767/P.L. 111–134

To designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building". (Jan. 29, 2010; 123 Stat. 3493)

H.R. 3788/P.L. 111–135

To designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building". (Jan. 29, 2010; 123 Stat. 3494)

H.R. 1377/P.L. 111–137

To amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes. (Feb. 1, 2010; 123 Stat. 3495)

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H.R. 4508/P.L. 111–136

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 29, 2010; 124 Stat. 6; 1 page)

S. 692/P.L. 111–138

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances. (Feb. 1, 2010; 124 Stat. 7; 1 page)

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