



## Accredited Certifiers Association, Inc.

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December 23, 2008

Richard Matthews  
Chief Standards Development and Review Branch  
National Organic Program  
Transportation and Marketing Programs  
USDA-AMS-TMP-NOP  
1400 Independence Avenue, SW  
Room 4008 South, Ag Stop 0268  
Washington, DC 20250

Re: Docket Number AMS-TM-06-0198; TM-05-14

Dear Mr. Matthews:

The Accredited Certifiers Association (ACA), representing 41 USDA accredited certifying agencies, is providing the following comments regarding the Proposed Access to Pasture Rule.

The ACA would like to thank the National Organic Program for the publication of this proposed rule. We appreciate the effort expended on the part of the Program to publish this rule. We hope the review of public comments will be expedited and a Final Rule published soon. ACA requests that while NOP is analyzing public comments, redrafting language, and following through the legislative process to produce a Final Rule, that the National Organic Program continues vigorous enforcement of the current Rule.

The ACA is providing the following general comments. We have also supplied our suggested language revisions, including the addition of several new definitions, at the end of this document.

1. Many of our recommended language revisions are based on our belief that the Proposed Rule contains excessively prescriptive regulations that will result in additional burdensome paperwork requirements for both producers and certification agencies. This proposed rule does not follow our current rule in its reliance on and reference to the Organic System Plan. The Organic System Plan must be agreed upon by the certifier and the producer and forms the basis of the operation management and verification of the management. The organic system plan defines how a producer will comply with the regulations, and along with well-trained certifiers, can ensure best practices are achieved no matter the geographic location and the unique idiosyncrasies of each individual operation. The NOP should return to an Organic System Plan as the basis of the national rule and forego this prescriptive type of rule.

In addition, the inclusion in the Proposed Rule of detailed calculation requirements for dry matter intake does not recognize that there may be several methods of calculation that will arrive at the same outcome. Producers should be supplied with guidance and resources for assistance with the calculation, but the information should not be contained in the Final Rule.

2. The ACA also believes that the revisions contained in the Access to Pasture Proposed Rule pertaining to §205.236 Origin of Livestock must be omitted from a Final Access to Pasture Rule. The proposed two-track system is discriminatory and there needs to be a more careful consideration of issues related to source and status of replacement livestock. We request that the provisions of the current rule remain in place. We urge the NOP to work diligently to publish a proposed rule on Origin of Livestock as soon as possible that will clearly prohibit the continuous transition of conventional animals as dairy replacements. ACA is willing to assist the NOP by providing suggested language for improvement of §205.236.
3. The ACA does not support the requirement of continuous, year-round management on pasture for ruminants. This requirement would result in damage to soil and water quality and is detrimental to the health of livestock, due to the variation in weather conditions. We very strongly support the requirement that ruminants be managed on pasture during the *grazing season* (we have provided a definition of *grazing season* in our detailed comments), and have also identified allowances for temporary confinement.
4. The ACA believes that as written the Proposed Rule would eliminate the production of grain-fed organic beef. We believe that there must be an allowance for this type of production; indeed it is currently being done by many organic livestock producers. We believe an exemption from the 30% DMI requirement during the finishing period, not to exceed 120 days, should be permitted.
5. The ACA welcomes the clarification in §205.237 (a) Livestock Feed regarding the requirement that all agricultural ingredients in such additives and supplements must be produced and handled organically.
6. ACA requests an implementation time frame of 18 months from the publication date of the Final Rule. The extended implementation time is necessary since accredited certifying agents will be required to revise their quality system including organic system plans, inspector forms, and review and evaluation documentation. Time will also be necessary to provide producers with information on the requirements, and to implement the requirements through the various certification cycles of producers.

Again, thank you for the publication of this proposed rule and the opportunity to provide our comments.

Sincerely,



Patricia Kane  
Coordinator

The following are ACA's specific recommendations for revision of the Proposed Pasture Rule. Underlined text is recommended addition to Proposed Rule. ~~Strikeout~~ text is recommended for removal from Proposed Rule.

## § 205.2 Terms defined.

ACA recommends several revisions of existing definitions and the inclusion of additional definitions that we believe will provide clarification for various rule sections.

ACA recommends inclusion of a definition for *Class of animal*. The term *class of animal* is used in the rule, and our definition provides clarity regarding what "class" refers to.

*Class of animal.* The segment of a herd or flock of livestock that shares a similar stage of life or production. As examples, for dairy animals: calves, youngstock, lactating animals, dry stock; for slaughter stock: calves, youngstock, stockers, finishing stock; for poultry: chicks, pullets, broilers, layers.

ACA recommends that *sod* be deleted from the *Crop* definition. We believe that this will lead to the certification of organic sod for use in lawns. As long as *pasture* is included in the *Crop* definition the intent is covered.

~~*Crop.* Pastures, *sod*, cover crops, green manure crops, catch crops, and 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.~~

ACA recommends the inclusion of definitions for *Dry matter demand* and *Dry matter intake*.

*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 in a 24 hour period.

ACA recommends the revision of §205.239 Livestock Living Conditions, which eliminates the terms *Dry lot* and *Feedlot*, thus the definitions are no longer required.

~~*Dry lot.* A confined area that may be covered with concrete, but that has no vegetative cover.  
*Feedlot.* A confined area for the controlled feeding of ruminants.~~

ACA recommends deleting the definition of *Growing Season* and the inclusion of a definition of *Grazing Season* as it can be better defined to take into account the reality of grazing seasons in different areas. Because of the vast differences in climatic conditions across livestock production areas, the growing season can not merely be defined by last and first frosts. The proposed definition does not account for areas, such as arid or hot climates, where part of the time period between frosts is actually a time of limited or no growth which is not suitable for grazing, or areas that experience intense periods of rain that are unsuitable for grazing because of likely damage to pasture stands and soil and water quality. We suggest that wherever the word "growing" is used in the proposed rule, that the word "grazing" be substituted.

**Grazing Season.** The grazing season is when standing forage that provides nutritive value is available for ruminants to graze. The grazing season may vary due to weather conditions. Due to weather, season, or climate the grazing season may or may not be continuous.

ACA recommends revision of the ***Inclement weather*** definition. Having the bar for inclement weather so high that the trigger is potential animal death or permanent damage is not only anathema to the good animal husbandry practices of producers but also ignores the animal welfare concerns of consumers and citizens. We also believe that lower production yields or growth rates should not constitute physical harm, and have included this clarification in the definition.

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

ACA recommends deleting the definition ***Killing frost*** as this is unnecessary with the deletion of Growing Season.

ACA recommends revision of the ***Livestock*** definition by deleting references to “bees” and “fish used for food”, until such time as a Final Rule is enacted establishing standards for the organic production of such species and systems.

***Livestock.*** 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.

ACA recommends deleting the definition of ***Sacrificial pasture.*** The use of sacrificial pastures is a pasture management practice that intends to increase livestock access to pasture during wet periods and the non-grazing season and can be incorporated on some operations that have the proper soil resources, environmental conditions, and access for livestock. However, not all operations have soils suitable to be used during wet conditions. A sacrificial pasture should not be a mandatory requirement.

ACA recommends the inclusion of a definition for ***Stage of Life*** since the term is used in the Proposed Rule.

**Stage of Life.** A discrete time period in an animal’s life which requires specific management practices different than during other periods; such as calves, chicks, etc. Lactation, breeding and other recurring events are not a stage of life.

ACA recommend the inclusion of a definition for ***Yard / feeding pad.*** We suggest the addition of a definition for an area where livestock can be fed, exercised and be provided with outdoor access during the non-grazing season which will be appropriate for both locations that do not need shelter in the non grazing season and for those locations that do need the use of barns and other shelter. We also recognize that livestock may need supplemental feeding during the grazing season and this definition for a yard/permanent feeding pad meets all the requirements of good manure handling and land management. The yard/feeding pad will often be the most efficient

and environmentally sound way to provide a cost effective way to feed livestock a balanced ration.

*Yard / feeding pad.* 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.

## §205.236 Origin of Livestock

**ACA General Comments:** ACA believes that the Origin of Livestock section should remain as it is in the current rule. While comments on this section could be considered, no changes should be made until formal rulemaking for Origin of Livestock is undertaken. We do not agree with the new language proposed by the NOP as it does not provide a balanced playing field. This requirement should not be implemented.

ACA submitted comments to the NOP in October, 2008, regarding the Origin of Livestock issue and we stated at that time that ACA members support the intent of the regulatory language as stated in the Federal Register, Dec. 12, 2000 on page 80570, which is very clear regarding two primary concerns:

- that the allowance for conversion of non-organic animals should be permitted only for initial herd conversion, to provide fair access to organic production to all who wish to convert.
- after initial conversion, it is consistent with consumer expectations and basic organic principles to require organic management of young animals, produced either on or off the dairy farm.

We believe that the May 14, 2003 National Organic Standards Board Recommendation for regulatory change is a good basis for revision of §205.236 Origin of Livestock, updated to include the revised language from Congress removing the 80/20 feed allowance. It should be revised to include the following objectives:

- a) The allowance for conversion of non organic animals to an organic dairy herd must be a one-time event per certified operation, and
- b) Uniform standards for replacement animals, both raised and purchased, must be adopted that are applied fairly to all operations, regardless of how or when the operation converted to organic production.

Provided the conversion of animals to organic is strictly limited to a one-time event per certified operation, the sale of certified transitioned dairy animals as replacement animals to other certified operations could be permitted. There is concern this provision could be abused, but if the regulation is clear that operators may not continually transition animals, and this point is enforced through the accreditation process, we believe this could be implemented fairly.

## 205.237 Livestock Feed

ACA believes that an organic livestock production system should be a pasture-based system and there are many ways to manage pasture while ensuring livestock maximize grazing time and nutrition uptake. The inclusion in the proposed rule of a specific calculation formula for dry matter is one example of a measuring tool. There are many different methods available to determine this number. We believe that the inclusion of the formula in the rule is overly prescriptive. We recommend that this calculation, along with additional resources to determine dry matter, be supplied to aca's and operators in the form of guidance. We also believe that the requirement to document the feed ration on a monthly basis is overly burdensome. ACA further proposes to allow an exemption from the 30% DMI requirement for ruminant slaughter stock that are grain finished, not to exceed 120 days. NOP should specifically request information from organic beef producers regarding the best mechanism to permit this while supporting the intent of the pasture requirement.

The ACA supports the clarification in §205.237 (a) Livestock Feed regarding the requirement that all agricultural ingredients in such additives and supplements must be produced and handled organically.

We recommend that the Proposed Rule sections §205.237(c)(1 – 4) be removed and replaced with additional language, as the Proposed Rule language is overly prescriptive and does not allow for alternative DMI calculation methods. In addition, we propose the addition of new section (d).

ACA convened an Access to Pasture Working Group, representing not only the majority of certifiers actively certifying dairy and livestock operations, but also widely differing geographical areas, and diverse farm plans. During discussion of the requirement for 30% DMI within our Working Group, our members were equally split between those supporting the inclusion of the 30% DMI requirement and those recommending elimination of the specific percentage dry matter figure from the proposed rule. Therefore, we are presenting two recommendations regarding the 30% DMI.

### **General Comments in support of inclusion of the 30% DMI requirement:**

Members supporting the inclusion of a 30% DMI requirement believe that this will, along with the definitions of *grazing season* and *stage of life* provide an effective enforcement tool to determine compliance with the NOP. We believe that it is already required that organic livestock operations provide their certifiers with complete information on rations for all livestock groups; feed raised, sold and purchased; and that, based on the provided information (confirmed by audit trail and inspection) certifiers should have the expertise to determine whether or not 30% DMI is provided to the various livestock groups during the grazing season of the particular area, which should not be less than 120 days. It is believed that many dairy farmers currently utilize some form of a dry matter calculation in developing their feeding program, and that this will not be a burden. However, it is important that the certifiers maintain the responsibilities for verification of dry matter requirements and calculation of dry matter provision for their clients, and provide the resources to their clients to enable them to calculate dry matter requirements and provision as needed.



We also note that a large number of dairy farmers from different regions of the country are in support of this metric as an achievable baseline. Although no metric is perfect, we believe that it is necessary to have at least one objective measurement to determine the percentage of intake from pasture. Otherwise, reliance on visual inspection of operations to determine ability to provide pasture will not in itself be sufficient to verify that animals are actually receiving a significant portion of their diet from pasture. Animals can be well fed in the barn before being turned out to fields which then do not appear overgrazed or overstocked. If a farm is deemed noncompliant by slightly failing to meet the 30% requirement, then the farmer has the opportunity to rebut the noncompliance by amending the organic system plan so that there is adequate improvement in subsequent seasons. By comparing the animals' rations when they are on pasture, to rations when they are not on pasture, it will not be difficult for certifiers to make an accurate estimate of the difference, the percentage of the diet that comes from grazing.

**General Comments in support of removing the 30% DMI requirement:**

Members supporting the elimination of the 30% DMI requirement believe that enforcement of the 30% DMI requirement will be problematic and will likely result in many noncompliance notices due to producers falling slightly below the 30% level of DMI. In addition, we believe that the basis for the dry matter calculation appears to be on estimated variables that rely on assumptions about such numbers as animal weight, and the amount of dry matter in feed. Certifiers will have a difficult time proving that an operation did not meet the requirement because any nutritionist, consultant or lawyer can manipulate animal weights and dry matter content of feed.

Members supporting the elimination of the 30% DMI requirement from the proposed rule believe that the following tools will enable certifier determination of compliance with the concept of a pasture based rule:

1. the definition of *grazing season*
2. the requirement of daily grazing during the grazing season [revised §205.239(a)(2)]
3. specific requirements for temporarily denying a ruminant animal access to pasture [revised §205.239(c)]
4. requirement to include pasture management in the organic system plan [§205.237(d)]
5. evidence at inspection of a grazing system to include gates, laneways, paddocks, watering system, etc., being incorporated into the organic system plan.

The following table provides our recommendations for §205.237.

A. Recommendation in support of the inclusion of the 30% DMI requirement	B. Recommendation in support of removing the 30% DMI requirement
1. The ACA supports the clarification in §205.237 (a) Livestock Feed regarding the requirement that all agricultural ingredients in such additives and supplements must be produced and handled organically.	The ACA supports the clarification in §205.237 (a) Livestock Feed regarding the requirement that all agricultural ingredients in such additives and supplements must be produced and handled organically.
2. §205.237(b) The producer of an organic operation must not: (1- 7) No changes (8) Prevent, <del>withhold, restrain, or otherwise restrict</del> ruminant animals from actively obtaining feed grazed from pasture during the <del>growing grazing</del> season, except for conditions as described under § 205.239(c).	§205.237(b) The producer of an organic operation must not: (1- 7) No changes (8) Prevent <del>withhold, restrain or otherwise restrict</del> ruminant animals <u>from accessing pasture during the grazing season(s), except as provided for in § 205.239(b) or (c). 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.</u>
3. §205.237 (c) 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 that meets all requirements of §§ 205.200 - 205.239.  [The above section was moved from §205.240.]	§205.237 (c) 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 that meets all requirements of §§ 205.200 - 205.239. Producers shall:
4. <del>During the growing season, 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 vegetation rooted in pasture). Producers shall, once a month, on a monthly basis:</del>  <u>During the grazing season, producers shall provide not more than 70 percent of a ruminant's dry matter demand from feed other than pasture grazed. This shall be calculated as an average over the entire grazing season for each type and class of animal. The grazing season must be no less than 120 days per year. Due to weather, season or climate, the grazing season may or may not be continuous.</u>	



<p style="text-align: center;"><b>A.</b>  <b>Recommendation in support of the inclusion of the 30% DMI requirement</b></p>		<p style="text-align: center;"><b>B.</b>  <b>Recommendation in support of removing the 30% DMI requirement</b></p>
<p>5.</p>	<p><u>§205.237(c)(1) Except that, ruminant slaughter stock that are typically grain finished may be exempt from the 30% pasture DMI requirement during the finishing period, not to exceed 120 days, but must not be denied access to pasture during that period.</u></p>	<p><u>§205.237(c)(1) Describe the total feed ration for each species and class of animal. The description must include:</u></p> <ul style="list-style-type: none"> <li><u>(i) All feed produced on-farm;</u></li> <li><u>(ii) All feed purchased from off-farm sources;</u></li> <li><u>(iii) The percentage of each feed type, including pasture, in the total ration; and,</u></li> <li><u>(iv) A list of all feed supplements and additives.</u></li> </ul>
<p>6.</p>	<p><u>§205.237(c)(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.</u></p>	<p><u>§205.237(c)(2) Document the amount of each type of feed actually fed to each species and class of animal.</u></p>
<p>7.</p>	<p><u>§205.237 (d) Producers shall as part of the Organic System Plan:</u></p> <ul style="list-style-type: none"> <li><u>(1) Describe the total feed ration for each type and class of animal;</u></li> <li><u>(2) Document changes that are made to all rations throughout the year in response to seasonal grazing changes;</u></li> <li><u>(3) Provide sufficient documentation to certifiers to verify that the feeding requirements of 205.237(c) are being met.</u></li> </ul>	<p><u>§205.237 (d) The organic system plan required in section §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.</u></p>

### §205.238 Livestock health care practice standard.

ACA recommends one change to this section for clarification that producers may use non synthetic substances listed on §205.604, as well as the synthetic substances listed on §205.603 of the National List.

- (b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer nonsynthetic substances provided they are not prohibited under §205.604. In addition a producer may administer synthetic medications: *Provided*, That, such medications are allowed under §205.603. Parasiticides allowed under §205.603 may be used on:

No additional changes.

### §205.239 Livestock living conditions.

ACA supports the concept of this standard to identify livestock living conditions that accommodate the health and natural behavior of the animals. However, we believe that there are many areas of this standard that are overly prescriptive, appear in other parts of the rule, and will result in an increase in paperwork on the part of producers. Much of this information is covered in the Organic System Plan.

In §205.239(a) our suggested deletion is consistent with the deletion in §205.237(b)(8) as this text is overly prescriptive. We have added: as suitable to the species, its stage of life, and the environment to the overall section requirements, as this would pertain to all sections.

In section (a)(1) we recommend deletion of *indoors and outdoors* as this is overly prescriptive and in winter it is likely water is not available outdoors. Clean drinking water should be provided.

In section (a)(2), again we do not support continuous year round management on pasture, due to varying climatic conditions and animal welfare concerns. We do believe a daily requirement for grazing is consistent with the intent of the rule.

As section (a)(3) was written, it would appear that producers would be *required* to provide bedding to animals. As this is a variable relative to each operation and species, we have amended this with *as necessary*. We have removed the various types of bedding, as there may be other types available, and if not included, may be understood as not being required to comply with §205.237.

In §205.239(b) we recommend that *non ruminant* be deleted, as *all livestock* should be permitted to be denied access to the outdoors for these conditions. We also recommend the addition of (5) and (6) relating to preventive healthcare procedures and discrete management situations such as weaning, branding, shearing, milking and shipping of animals.

In §205.239(c) we recommend that this section be clarified that these allowances for denial to access to pasture are *in addition* to the section (b) allowances for denial to access to the outdoors.

In section (c)(1) we have removed *the various life stages* reference, as the definition of stage of life specifies that lactation is not a stage of life. We do support the specific reference that lactation is not an illness or injury.

In section (c)(2) we believe the requirement for a specific time frame prior to parturition is overly prescriptive, and unrealistic. In many cases a producer does not know when one week prior to parturition would be, and thus would not be in compliance with the requirement. The general intent of *for brief periods* will permit more flexibility and reduce noncompliance issues.

In section (c)(3) we recommend the addition of *dairy* to describe the newborns to clarify that this pertains to dairy stock and not meat stock. The term *dairy* will also address sheep and goat newborns used for dairy production.

We recommend the deletion of (c)(4 and 5) as these have been included in §205.239(b)(6).

In section (c)(6) [renumbered to (4)] we support the intent to clarify the allowance of denial to access to pasture for milking, but we believe there is not a need to reiterate the 30% DMI requirement. We recommend adding *meet the requirements of §205.237(c)*.

We recommend the deletion of section **§205.239(d)** as the section is overly prescriptive, and in some specific type of production, i.e. rangeland production of livestock, the requirement for shade could not be met. We have addressed the need for clean water in section §205.239(a)(1).

We recommend combining sections (e) and (f) to be the new §205.239(d), however we recommend the deletion of the specific requirements regarding the use of fences and buffer zones. These requirements are overly prescriptive, and in addition many producers participate in soil and water conservation programs which address these issues. In addition, fencing of water sources in western areas will also eliminate wildlife from accessing the water source.

ACA recommends the deletion of §205.240 the Pasture Practice Standard, with the exception of the 1<sup>st</sup> paragraph, which we have moved to §205.237(c). We believe that all of these issues are addressed in the Organic System Plan and livestock plan. As pasture is now defined as a crop, producers would be required to detail their pasture management practices in the Organic System Plan. The detail presented in this section would be more useful as a guidance document for producers. Again, the inclusion of a mandatory sacrificial pasture will eliminate some producers from organic production and does not preserve soil and water quality.

ACA's specific recommendation for §205.239 Livestock Living Conditions follow.

**§205.239(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 those listed in paragraphs (a)(1) through (a)(3) of this section. Further, producers shall not prevent, ~~withhold, restrain, or otherwise restrict~~ animals from being outdoors, except as otherwise provided in paragraph (b) and (c) of this section. Producers shall also provide as suitable to the species, its stage of life, and the environment:

(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking (~~indoors and outdoors~~) and direct sunlight. ~~suitable to the species, its stage of life, the climate, and the environment.~~

(2) For all ruminants, ~~continuous year-round~~ management on pasture, and daily grazing during the grazing season except as otherwise provided in paragraph (c) of this section. ~~for~~

(i) ~~Grazing throughout the growing season; and~~

(ii) ~~Access to the outdoors throughout the year, including during the non-growing season. Dry lots and feedlots are prohibited~~

(3) Appropriate clean, dry bedding when necessary. When ~~hay, straw, ground cobs, or other~~ crop matter typically fed to the animal species is used as bedding, it must comply with the feed requirements of § 205.237.

(4) No revisions

**§205.239 (b)** The producer of an organic livestock operation may temporarily deny a ~~non-ruminant~~ animal access to the outdoors because of:

(1) Inclement weather;

(2) The animal's stage of life;

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

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures; or

(6) Discrete management situations such as weaning, branding, shearing, milking and shipping of animals.

**§205.239(c)** In addition, the producer of an organic livestock operation may temporarily deny a ruminant animal pasture under the following conditions:

(1) When the animal is segregated for treatment of illness or injury; (~~the various life stages, such as lactation, are~~ is not an illness or injury);

(2) For brief periods ~~One week~~ prior to parturition (birthing), parturition, and ~~up to one week~~ after parturition;

(3) In the case of dairy newborns for up to six months, after which they must be on pasture and may no longer be individually housed;

~~(4) In the case of goats, during periods of inclement weather;~~

~~(5) In the case of sheep, for short periods for shearing; and~~

~~(4)(6) 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 meet the requirements of §205.237(c). provide each animal with an average dry matter intake from grazing of not less than 30 percent throughout the growing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.~~

~~§205.239 (d) Ruminants must be provided with:~~

~~(1) A lying area with well-maintained clean, dry bedding, which complies with paragraph (a)(3) of this section, during periods of temporary housing, provided due to temporary denial of pasture during conditions listed in paragraphs (c)(1) through (c)(5) of this section;~~

~~(2) Yards and passageways kept in good condition and well-drained;~~

~~(3) Shade and in the case of goats, shelter open on at least one side;~~

~~(4) Water at all times except during short periods for milking or sheering—such water—must be protected from fouling;~~

~~(5) Feeding and watering equipment that are designed, constructed, and placed to protect— from fouling—such equipment must be cleaned weekly; and~~

~~(6) In the case of newborns, hay in a rack off the ground, beginning 7 days after birth,— unless on pasture, and pasture for grazing in compliance with § 205.240(a) not later than six months after birth.~~

**205.239(d)(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; ~~(f) The producer of an organic livestock operation and~~ must manage outdoor access areas, including yards, feeding pads and pastures, in a manner that does not put soil or water quality at risk; ~~this includes the use of fences and buffer zones to prevent ruminants and their waste products from entering ponds, streams, and other bodies of water. Buffer zone size shall be extensive enough, in full consideration of the physical features of the site, to prevent the waste products of ruminants from entering ponds, streams, and other bodies of water.~~

**§205.240 Pasture Practice Standard.**

ACA believes that this section should be removed, with the exception of the 1<sup>st</sup> paragraph which we have included in §205.237(c), as these requirements are covered in the Organic System Plan and livestock plans that are required to be submitted by the operators. Annual reviews of the organic system plan address any changes or updates in the management plan of the operation.

In addition, the specificity regarding sacrificial pasture requirements is too prescriptive, and would likely eliminate some existing operators from certification. Operators are required to explain in the Organic System Plan how livestock are managed during times when pasture is not available, or in inclement weather.