

UNITED STATES OF AMERICA

+ + + + +

DEPARTMENT of AGRICULTURE

+ + + + +

NATIONAL ORGANIC STANDARDS BOARD

+ + + + +

"ACCESS TO PASTURE"  
LISTENING SESSION

+ + + + +

OCTOBER 28, 2008

+ + + + +

The above entitled listening session was convened in the Owasco Room, Holiday Inn, 75 North St., Auburn, NY, at 9:13 a.m.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

P-R-O-C-E-E-D-I-N-G-S

(9:13 a.m.)

MR. MATHEWS: Thank you Ed. And, first I want to express my appreciation to Ed for all of the help that he has given -- every time I've called him up and said -B Ed, what about this? What about that? Can you get me some data over here. Ed's always there to try to help out. And I appreciate the help that he has given and I also appreciate the invitation to come here. I was invited regardless of whether or not the Rule got out. It was a real treat that we were able to get it out in time for me to come up.

First thing I want to say is that I seem to be wired here. I've got wires in the front, wires in the back, so I'd appreciate it if you would all drink the water right now. OK. You can say whatever you want. You can do whatever you want. Just please don't throw water.

OK, Ed. You said this would click.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Ed comes to the rescue again.

2 OK, the first thing I want to say  
3 is that we've got the livestock provisions,  
4 the origin of livestock, livestock feed,  
5 livestock health care practice standard,  
6 livestock living conditions that are already  
7 in the regulations.

8 Now, when it comes to the existing  
9 regulations, in my opinion, pasture is already  
10 addressed. We have pasture mentioned under  
11 livestock feed. We have pasture mentioned  
12 under livestock health care practice  
13 standards. There it talks about having  
14 pasture suitable to control disease and  
15 parasites. And then we have livestock living  
16 conditions where it talks about pasture and  
17 access to the out -- you know, access to  
18 pasture. What isn't showing up there is the  
19 definitions section where we also define  
20 pasture.

21 So right now you have Regulations  
22 that say, the animals are supposed to be on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pasture, they're supposed to be feeding on  
2 pasture. You got a definition of pasture that  
3 says that it provides food. And you've got  
4 healthcare practices saying that you have to  
5 control for parasites and disease. So pasture  
6 is already there.

7 Now what we have done in this  
8 massive docket is nothing more than flesh out  
9 what is already there with three exceptions.  
10 Those exceptions are: 30% DMI from pasture.  
11 Second, no more than 70% DMI from non-pasture.

12 And the third difference, new provision, is  
13 the requirement under this pasture practice  
14 standard that we've added that provides for a  
15 sacrificial pasture. So again, there's only  
16 three new provisions. Everything else is  
17 already in the regulations. We have done  
18 nothing but flesh it out. OK?

19 OK, we'll start out with 237  
20 Livestock feed. 237 has a few changes. 239  
21 has a lot of changes and then of course, 240  
22 is all brand new. Now what we've done is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we've taken the livestock feed provision and  
2 we've added the words, by operations certified  
3 to the NOP, except as provided in  
4 205.236(a)(ii) -- and that's the provision  
5 that allows for the whole herd conversion B-  
6 by operations certified to the NOP. So, why  
7 did we add that language?

8 We added that language because  
9 there are people out there who are trying to  
10 feed product that they call organic that is  
11 not certified organic. OK? So you get some  
12 people who are buying hay that they said was  
13 organic that was not from a certified  
14 operation. And then we have got the  
15 exception, except that nonsynthetic substances  
16 and synthetic substances allowed under 205.603  
17 may be used as feed additives and supplements.

18 Now we've changed that but it's really just  
19 the repositioning of the wording.

20 Some people thought that  
21 nonsynthetic substances and synthetic  
22 substances allowed under 205.603 went

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 together. So we've really reversed that. So  
2 it says that synthetic substances allowed  
3 under 205.603 and nonsynthetic substances may  
4 be used as feed additives and supplements. So  
5 it's just a clarification that you won't find  
6 nonsynthetics in 205.603.

7 Then here's a biggie, provided that  
8 all agricultural ingredients in such additives  
9 and supplements shall have been produced and  
10 handled organically. All agricultural  
11 products in livestock feed are required to be  
12 organic as it states up right at the very  
13 beginning.

14 As we move into 237(b), there's  
15 really no changes in the first several items.

16 This -- this text here is just what's already  
17 there. So, the producer of an organic  
18 operation must not, so we've added two. But  
19 again, these are just clarifications. Number  
20 seven is new language but it is not a new  
21 provision, provide feed or forage to which  
22 anyone, at anytime, has added an antibiotic.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           As we all know, antibiotics are  
2 prohibited in organic livestock production.  
3 But we have found through some compliance  
4 cases that antibiotics have been showing up in  
5 the feed. So this is a clarification that you  
6 cannot do that. Number eight is: prevent,  
7 withhold, restrain or otherwise restrict  
8 ruminant animals from actively obtaining feed  
9 grazed from pasture during the growing season,  
10 except for conditions as described under  
11 205.239(c). So that's not really a new  
12 provision either.

13           We've written a whole new section  
14 or paragraph within the section to better  
15 describe the requirements. And the first of  
16 those three new provisions shows right up here  
17 in (c): during the growing season, producers  
18 shall provide not more than an average of 70%  
19 of a ruminant's dry matter demand from dry  
20 matter fed, dry matter fed does not include  
21 dry matter grazed from vegetation rooted in  
22 pasture. Producers shall, once a month, on a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 monthly basis go on and document this.

2           So the document for each feed  
3 ration, for each type of animal, each class of  
4 animals intended daily diet showing all  
5 ingredients, daily pounds of each ingredient  
6 per animal, each ingredient's percentage of  
7 the total ration, the dry matter percentage  
8 for each ingredient, and the dry matter pounds  
9 for each ingredient. Now we believe that you  
10 guys already do that. We believe that you  
11 already know what your feed rations are.

12           You also have to document the daily  
13 dry matter demand of each class of animal  
14 using the formula, average weight divided by  
15 the animal pounds times .03 equals the pounds  
16 dry matter per head per day times the number  
17 of animals equals the total dry matter demand  
18 in pounds per day. So we want you to know  
19 what your dry matter demand is for all -- for  
20 your animals as a whole.

21           Then you would document how much  
22 dry matter is fed daily to each class of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 animal and then you would document the  
2 percentage of dry matter fed daily to each  
3 class of animal using the formula, dry matter  
4 fed divided by the matter demand in pounds per  
5 day times 100 which would give you the percent  
6 of dry matter fed. So, we've designed this so  
7 that you're going to figure out what your 70%  
8 is and then you're out grazing them for the  
9 rest of it.

10 Okay, from there move on to 239.  
11 As you noticed we didn't make any changes to  
12 238. We've moved for more clarification  
13 indicating that the producer of an organic  
14 livestock operation must establish and  
15 maintain, we've inserted the words, year-round  
16 livestock living conditions which accommodate  
17 the health and natural behavior of the  
18 animals, including those listed in paragraphs  
19 (a)(1) through (a)(3) of this section.

20 Further, producers shall not  
21 prevent, withhold, restrain, or otherwise  
22 restrict animals from being outdoors, except

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as otherwise provided in paragraph (b) and (c)  
2 of this section.

3 Producers shall also provide, now  
4 this is for year-round access for all animals  
5 to the outdoors, shade, shelter, exercise  
6 areas, fresh air, and we've added in water for  
7 drinking indoors and outdoors. We saw some  
8 cases where people weren't providing water  
9 when they had the animals outdoors. And  
10 direct sunlight, suitable to the species, its  
11 stage of life.

12 Now the important part there is  
13 that used to say stage of production and we  
14 had people who were saying well lactation is a  
15 stage of production which justifies not  
16 putting lactating cows on pasture because they  
17 have to be under such scrutiny by the  
18 veterinarians that they couldn't let them go  
19 out to pasture. And so the Board had  
20 recommended changing stage of production to  
21 stage of life and we've put that in there.  
22 The climate and the environment.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Now within 239 there's the access  
2 to pasture for ruminants. That's all it said.

3       As we all know, that was very loosely  
4 interpreted and so what we've done is we've  
5 proposed to some new language to replace those  
6 five short words. So now we are saying for  
7 all ruminants, continuous year-round  
8 management on pasture, except as otherwise  
9 provided in paragraph (c) of this section for:  
10 (i) grazing throughout the growing season and  
11 (ii) access to the outdoors throughout the  
12 year, including during the non-growing season.

13           And we say that dry lots and  
14 feedlots are prohibited. They've never been  
15 allowed. Okay? Dry lots and feedlots were  
16 never allowed. Especially the feedlots.

17           In fact, the NOSB had recommended  
18 as one of its suggested changes to the  
19 Regulations that we allow feedlots. Commoners  
20 were opposed to that and we've reinforced that  
21 here saying that the feedlots are not allowed.

22           Okay, here's 239 that talks about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 appropriate clean dry bedding if the bedding  
2 is typically consumed by the animal species,  
3 it must comply with the feed requirements.  
4 Believe it or not, we had people manipulating  
5 the phraseology of this section. And their  
6 basic position was -- okay, well, I know that  
7 they'll eat that, but my cows are so well fed  
8 they won't eat their bed. Well, we've fixed  
9 that problem too. Appropriate clean, dry  
10 bedding.

11 When hay, straw, ground cobs or  
12 other crop matter typically fed to the animal  
13 species is used as bedding, it must comply  
14 with the feed requirements of 205.237. And as  
15 we know, that means the agricultural product  
16 has to be organic. So the people who were  
17 manipulating the wording of (3), under the  
18 proposed change, would no longer be able to  
19 perform that little manipulation of  
20 phraseology.

21 This language remains the same  
22 about shelter designated to provide for and --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to allow for. Then we go on to (b) and we  
2 have The producer of an organic livestock  
3 operation may provide temporary confinement  
4 for an animal because of. We've split this.  
5 And now we're proposing that the producer of  
6 an organic livestock operation may temporarily  
7 deny a non-ruminant access --animal access to  
8 the outdoors because of: inclement weather,  
9 the animal's stage of life that shows up  
10 again.

11 Remember I told you it used to say  
12 production. Conditions under which the  
13 health, safety and welfare --well-being of the  
14 animal could be jeopardized, or risk to soil  
15 or water. That now only applies to non-  
16 ruminant.

17 We've added a new paragraph that  
18 addresses the ruminants. The producer of an  
19 organic livestock operation may temporarily  
20 deny a ruminant animal pasture under the  
21 following conditions: When the animal is  
22 segregated for treatment of illness or injury,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the various life stages, such as lactation,  
2 are not illnesses or injury.

3 And as I stated earlier, we had  
4 people who were treating lactation as if it  
5 was an illness. (2) One week prior to  
6 parturition -- for people like me who  
7 originally didn't know quite what Hugh  
8 Karreman was talking about as birthing. Of  
9 course, all you guys know that. And I kind of  
10 had a hint myself.

11 During parturition, and up to one  
12 week after parturition; In the case of  
13 newborns for up to six months after which they  
14 must be on pasture and may no longer be  
15 individually housed. (4) In the case of goats,  
16 during periods of inclement weather. In the  
17 case of sheep, for short periods for shearing  
18 and finally, (6) In the case of dairy animals,  
19 for short periods daily for milking. And then  
20 we go on to say that milking must be scheduled  
21 in a manner to ensure sufficient grazing time  
22 to provide each animal with an average dry

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 matter intake from grazing of not less than  
2 30%. And as you recall, I said that's one of  
3 the three new provisions throughout the  
4 growing season. Milking frequencies or  
5 duration practices cannot be used to deny  
6 dairy animals pasture.

7 Then we've added another new  
8 paragraph within the reg. And it's ruminants  
9 must be provided with a lying area with well-  
10 maintained clean, dry bedding, which complies  
11 with paragraph (a)(3) of this section, during  
12 periods of temporary housing, provided due to  
13 temporary denial of pasture during conditions  
14 listed in paragraphs (c)(1) through (c)(5) of  
15 this section.

16 Ruminants must be provided with  
17 yards and passageways kept in good condition  
18 and well-drained. They have to be provided  
19 with shade and in the case of goats, shelter  
20 open on at least one side. Water at all times  
21 except during short periods for milking or  
22 shearing, such water must be protected from

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fouling.

2 Feeding and watering equipment that  
3 are designated or -- constructed and placed to  
4 protect from fouling such equipment must be  
5 cleaned weekly. And in the case of newborns,  
6 hay in a rack off the ground, beginning seven  
7 days after birth, unless on pasture, and  
8 pasture for grazing in compliance with  
9 205.240(a), which is a new provision, or it's  
10 -- it's a new section of the regs, but it's  
11 really old provisions -B not later than six  
12 months after birth.

13 Now, I just show you this because  
14 there -- there was formerly a pasture -- or a  
15 passage that was labeled as (c), we've now  
16 labeled it as (e) because we've added the new  
17 (c) and (d). And then we've added another  
18 paragraph (f): The producer of an organic  
19 livestock operation must manage outdoor access  
20 areas, including pastures, in a manner that  
21 does not put soil or water quality at risk.

22 This includes the use of fences and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 buffer zones to prevent ruminants and their  
2 waste products from entering ponds, streams,  
3 and other bodies of water. Buffer zone size  
4 shall be extensive enough, in full  
5 consideration of the physical features of the  
6 site, to prevent the waste products of  
7 ruminants from entering ponds, streams, and  
8 other bodies of water.

9           Again, this is not a new  
10 requirement. You've always had the  
11 requirement that you had to protect the crops,  
12 the soil and the water from contaminants.

13           Now we've got 240. This is the  
14 pasture practice standard that we've added to  
15 better clarify what is required. As you'll  
16 recall, there is a requirement for an organic  
17 systems planner. This is going to help you  
18 better tell us the operation that you are  
19 performing and provide your certifying agent  
20 with the details that are necessary for the  
21 certifying agent to know whether or not you  
22 are in compliance.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           The producer of an organic  
2 livestock operation must, for all ruminant  
3 livestock on the operation, demonstrate  
4 through auditable records in the organic  
5 systems plan, a functioning management plan  
6 for pasture that meets all requirements of  
7 Sections 205.200 through 205.240. Pasture  
8 must be managed as a crop in full compliance  
9 with 205.200 through 205.206.

10           The producer must develop and  
11 annually update a comprehensive pasture plan  
12 for inclusion in the producer's organic system  
13 plan. When there is no change to the previous  
14 year's comprehensive pasture plan the  
15 certified operation may resubmit the previous  
16 year's comprehensive pasture plan. The  
17 comprehensive pasture plan must include a  
18 detailed description of crops to be grown in  
19 the pasture and haymaking system. Cultural  
20 practices, including but not limited to  
21 varying the crops and their maturity dates in  
22 the pasture system, to be used to insure

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pasture of a sufficient quality and quantity  
2 is available to graze throughout the growing  
3 season and to provide all ruminants under the  
4 organic systems plan with an average of not  
5 less than 30% of their dry matter intake from  
6 grazing throughout the growing season.

7           So you can see we've raised the 30%  
8 DMI issue once again. The plan also has to  
9 detail the haymaking system. It needs to  
10 detail the location of pasture and haymaking  
11 fields, including maps showing the pasture and  
12 haymaking system and giving each field its own  
13 identity.

14           This really isn't new. You're  
15 already doing that for crops. And pasture is  
16 a crop. The types of grazing methods to be  
17 used in the pasture system, the location and  
18 types of fences and the location and source of  
19 shade and water, the soil fertility, seeding,  
20 and crop rotation systems, the pest, weed, and  
21 disease control practices, The erosion control  
22 and protection of natural wetlands, riparian

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 areas, and soil and water quality practices,  
2 pasture and soil sustainability practices, and  
3 restoration of pasture practices. Those are  
4 all the things that need to be in your organic  
5 systems plan.

6 Now this is the third of the new  
7 items. The pasture system must include a  
8 sacrificial pasture for grazing to protect the  
9 other pastures from excessive damage during  
10 periods when saturated soil conditions render  
11 the pastures too wet for animals to graze.  
12 Why were we concerned with that? Because  
13 there are actually producers out there who  
14 were using just about any amount of water  
15 falling from the sky as an excuse not to put  
16 their animals on pasture. And they were  
17 saying -- well that was too wet for the  
18 pasture.

19 Now, the sacrificial pasture must  
20 be sufficient in size to accommodate all  
21 animals in the herd without crowding. Needs to  
22 be located where soils have good

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trafficability, well drained, there's a low  
2 risk of soil erosion, there is a low or no  
3 potential of manure runoff, surrounded by  
4 vegetated areas and easily restored. Managed  
5 to provide feed value and maintain or improve  
6 soil, water and vegetative resources.  
7 Restored through active pasture management.  
8 In addition to the above producers must manage  
9 pasture to comply with all applicable  
10 requirements of the remaining sections -- or  
11 the other sections of the livestock provisions  
12 which are 205.236 through 205.239.

13 Now, with all these changes we felt  
14 there needed to be some changes in the  
15 definitions. The first one is for crop. It  
16 used to say a plant or part of a plant  
17 intended to be marketed as an agricultural  
18 product or fed to livestock. We had  
19 certifying agents who had actually agreed with  
20 their clients or who had told their clients,  
21 one or the other that this definition of crop  
22 enabled them to not have to have organic seeds

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for cover crops because of the way the seed  
2 provisions are written in the Regulations.

3 So what we did to clarify that  
4 pasture is a crop, that sod is a crop that  
5 cover crops, green manure crops are all, and  
6 catch crops are all crops -- we've added them  
7 to the definition. So it would now read  
8 pastures, sod, cover crops, green manure  
9 crops, catch crops, and any plant or part of  
10 the plant intended to be marketed as an  
11 agricultural product, fed to livestock, or  
12 used in the field to manage nutrients in soil  
13 fertility. So that closed the loophole that  
14 some were trying to use.

15 Okay, we felt we needed to define  
16 dry matter. So we've added the definition of  
17 dry matter the amount of a feedstuff remaining  
18 after all the free moisture is evaporated out.

19 We felt we needed to define dry lot. We've  
20 defined that as a confined area that may be  
21 covered with concrete, but that has no  
22 vegetative cover.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Feedlot, a confined area for the  
2 controlled feeding of ruminants. And as I  
3 said earlier, that's not allowed. Never has  
4 been allowed.

5           Graze, the consumption of standing  
6 forage by livestock, to put livestock to feed  
7 on standing forage.

8           And grazing is defined as to graze.

9           We've defined growing season, the  
10 period of time between the average date of the  
11 last killing frost in the spring to the  
12 average date of the first killing frost in the  
13 fall or early winter in the local area of  
14 production. This represents a temperature  
15 threshold of 28°F, 3.9°C or lower at a  
16 frequency of five years in 10. Growing  
17 seasons may range from 121 days to 365 days.  
18 You'll recall that the Board had recommended  
19 120 days and that was based on people like  
20 yourselves saying that there had to be at  
21 least 120 days grazing.

22           We've gone one better by defining

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it as the growing season. Otherwise you would  
2 have had parts of the country where they could  
3 have housed the animals for 245 days out of  
4 the year, but only had to put them out for  
5 120. So we've defined it as a growing season  
6 rather than going with the 120 days.

7 Also, there was never a definition  
8 for inclement weather. Now we are proposing  
9 that the definition of inclement weather read,  
10 weather that is violent or characterized by  
11 temperatures, high or low, that can kill or  
12 cause permanent physical harm to a given  
13 species of livestock.

14 And because growing season refers  
15 to the killing frost, we've defined killing  
16 frost, a frost that takes place at  
17 temperatures between 25° and 28°F, -2.2 and -  
18 3.3°C for a period sufficiently severe to end  
19 the growing season or delay its beginning.

20 Now this definition of sacrificial  
21 pasture is essentially the same as the  
22 language that's in the regulatory text itself

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the new section 240. Sacrificial pasture,  
2 a pasture or pastures within the pasture  
3 system of sufficient size to accommodate all  
4 animals in the herd without crowding, where  
5 animals are kept for short periods during  
6 saturated soil conditions to confine pasture  
7 damage to an area where potential  
8 environmental impacts can be controlled. This  
9 pasture is then deferred from grazing until it  
10 has been restored through active pasture  
11 management.

12 Sacrificial pastures are located  
13 where soils have good trafficability, are well  
14 drained, have low risk of soil erosion, have  
15 low or no potential of manure runoff, are  
16 surrounded by vegetative areas, and are easily  
17 restored. A sacrificial pasture is land used  
18 for livestock grazing that is managed to  
19 provide feed value and maintain or improve  
20 soil, water and vegetative resources. It is  
21 not a dry lot or feedlot.

22 Now, we also have had lots of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions in the past about what is temporary,  
2 what is temporarily. So we've added the  
3 definition of what is temporary and  
4 temporarily. That's occurring for a limited  
5 time only for example, overnight throughout a  
6 storm, during a period of illness, the period  
7 of time specified by the administrator --  
8 that's the administrator of the AMS -- when  
9 granting a temporary variance. It's not  
10 permanent or lasting.

11 Okay, the definition of livestock  
12 does not currently coincide with the  
13 definition of livestock that's in the Organic  
14 Foods Production Act of 1990. And that's  
15 because the old definition excludes bees and  
16 it also excludes aquatic species. The problem  
17 with the definition in the regs as it is is  
18 that we've always said that you can have  
19 organic honey. And if you're gonna have  
20 organic honey, you gotta have organic bees.  
21 So, we have brought or are proposing to bring  
22 the definition of livestock in line with the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Organic Foods Production Act.

2           Livestock, any bee, cattle, sheep,  
3 goats, swine, poultry, equine animals used for  
4 food or in the production of food, fiber,  
5 feed, or other agricultural based consumer  
6 products. Fish used for food, wild or  
7 domesticated game, or other non-plant life.  
8 That's how it appears in the Organic Foods  
9 Production Act.

10           Okay, the only change here is that  
11 it used to say in the second line there, where  
12 it says, at the very end, through 2000 --  
13 205.240. That used to say 205.239. Any time  
14 that we make changes in the regulations that  
15 affect the numbering system, we have to go  
16 through the regs to make sure we update the  
17 numbering system that may occur someplace  
18 else. And this section -- this paragraph here  
19 was always intended to reference all of the  
20 livestock provisions. And so by adding new  
21 section 240, we had to change the 239 to a  
22 240.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           This one is a controversial issue  
2           which if I had known back in the summer of  
3           2006 when I first started writing this, that  
4           it would take this long to get it out, I would  
5           not have included it. Because I think the  
6           issue has died down. But it had to do with a  
7           clarification for (iii) once-- the section--  
8           section 236 was amended because of the Harvey  
9           lawsuit.

10           So this really doesn't have any  
11           impact on pasture, but it does have an impact  
12           as far as the origin of livestock. And that  
13           impact is that it's really no impact because  
14           we are working on a separate rule on origin of  
15           livestock. But this will give you an  
16           opportunity if you would like, to provide us  
17           with some comments and preferably data related  
18           to origin of livestock. Okay?

19           Now what-- what this says and it's  
20           intended just as a clarification of the old  
21           language. Once an operation has been  
22           certified for organic production using the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exception in paragraph (a)(2)(i) or (ii) of  
2 this section, all dairy animals brought onto  
3 the operation shall be under organic  
4 management from the last third of gestation.  
5 It continues the two-track system. Okay? It  
6 was just a clarification that the two-track  
7 still exists.

8 But again, I emphasize we are  
9 working on separate rulemaking to address this  
10 issue. So, don't get too excited about it --  
11 other than the fact that I acknowledge along  
12 with you that the rulemaking process takes  
13 entirely too long.

14 And with that, I've gone through  
15 all of the slides I had, and so at this point  
16 I'll -- I'm going to just make a couple of  
17 additional comments and then I'll turn it over  
18 to all of you. First of all, we have a court  
19 reporter here who has been recording this and  
20 he'll record all of your comments. We need to  
21 make sure that everybody who is here has  
22 signed in. So if you have not signed in,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 please do so. When you come up to the  
2 microphone to speak, please clearly state your  
3 name. And I would also like for you to tell  
4 me what is your connection to organic  
5 dairying.

6 If you are a certifying agent, tell  
7 me you are a certifying agent. If you are a  
8 dairy farmer, tell me about the fact that you  
9 are a dairy farmer. I'm not going to put a  
10 time limit on your presentation. But, not  
11 knowing how many people are going to want to  
12 speak, we should probably all be aware of the  
13 fact that I was the only one giving a speech  
14 today. Okay?

15 But, I won't cut you off unless you  
16 really get kind of carried away and say that  
17 we've got -- you know, if we've got 15 people  
18 in line, we want to give everyone an  
19 opportunity. The other thing is that this  
20 runs until 12 o'clock. Well, not for me.  
21 Okay? If you want to stay beyond 12 o'clock  
22 in order to give everybody an opportunity to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 speak, we'll stay beyond 12 o'clock. The  
2 court reporter is prepared to stay all day.  
3 I'm prepared to stay all day. Lisa may not  
4 want us to stay all day. But we're prepared  
5 to stay all day.

6 So we will stay until everybody has  
7 had their opportunity to speak. Okay? And Ed  
8 tells me this is a bad idea, but at about  
9 10:30, we will take a 10 minute break. Okay?

10 Because we all need to move around. We're  
11 not getting much access to the outdoors, and  
12 we may have to take care of some business. So  
13 I'm going to give everybody a 10 minute break.

14 But when I say a 10 minute break, I mean a 10  
15 minute break. We will start without you.  
16 Okay? With that, have at it. Just, again, no  
17 water please.

18 AUDIENCE MEMBER: Richard, where is  
19 the sign-up sheet?

20 MR. MALTBY: For those attendants of  
21 one of the Field Days, they're already signed  
22 up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MATHEWS: So you--

2 MR. MALTBY: There is a sign-up  
3 sheet over by the microphones, and there is  
4 also one just out here where Nora is sitting  
5 in registration. So you'll have time to sign-  
6 up either when you go up to make a comment, or  
7 outside here on the registration table. But  
8 for those NODPA registered, you're already  
9 signed in.

10 MR. MATHEWS: I can't believe that.  
11 Alright, we got Henry coming up. Come on up  
12 there Henry. Are you signed in Henry?

13 MR. MALTBY: Yes.

14 MR. PERKINS: Why of course.

15 MR. MATHEWS: OK, the sign-up  
16 sheets that you did for NODPA need to get to  
17 our court reporter as well. A copy of them  
18 please. The other thing is that when you tell  
19 me you are a dairy farmer, maybe you can give  
20 me a little indication of the size of your  
21 dairy farm, that would be very helpful.

22 MR. PERKINS: Ready? I'm Henry

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Perkins I am a dairy farmer from the state of  
2 Maine. I milk about 60 cows and I have  
3 recently become President of NODPA, so I  
4 assume that it's my place to tell you how  
5 gratified we are to have you work on this  
6 rule. We knew that you were trying to plug  
7 some serious loopholes in the -- in the  
8 operation.

9 And I was advised to be very, very  
10 careful on what I said. So I'm going to be  
11 very, very vague and just say there are some  
12 areas of improvement that we would like to  
13 see, but we have not studied them in depth  
14 enough to -- I haven't got any specific things  
15 right now, but I'm sure that there are others  
16 that are following me that will get a little  
17 bit more specific. Thank you.

18 MR. MATHEWS: Anybody else?

19 MS. GRIFFIN: My name is Siobhan  
20 Griffin. Is this the right mic?

21 MR. MATHEWS: It's working for the  
22 court reporter and the--

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. GRIFFIN: Okay.

2 MR. MATHEWS: -- and the video  
3 people.

4 MS. GRIFFIN: I'm an organic dairy  
5 farmer and I'm very happy that this Rule has  
6 been passed. I think -- and I'd like to thank  
7 Mr. Mathews for all his work on it. The rule  
8 makes it clear that organic dairy cows should  
9 be on pasture and that is what my consumers  
10 want. I do not think that the 30% dry matter  
11 requirement will be a hardship for any organic  
12 dairy.

13 My cows, right now, we -- during a  
14 120 day growing season in a summer, our cows  
15 are getting 60 to 80% of their dry matter from  
16 pasture and then -- there is an additional two  
17 months at either end of the growing season  
18 where it goes down to 30%, so we are well --  
19 easily in the ballpark. I've been doing the  
20 organic for 10, 11 years, my 11th growing  
21 season has just finished, so I can tell you  
22 that achieving the 30% dry matter won't be an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 economic hardship because we spent less than  
2 3% of our total farm expenses on fencing  
3 materials, plumbing for the pastures.

4 And all the labor to put that fence  
5 up came from my on-farm labor which would have  
6 otherwise been busy spreading manure and  
7 feeding cows on tractors. And we took the  
8 time involved to do those chores and added it  
9 to expanding the fencing program because the  
10 cows were on pasture and spreading their own  
11 manure and getting fed. So, that was a wash.

12  
13 In the last several years we've won  
14 milk quality awards every year and I attribute  
15 that to the pasture because the cows get a  
16 clean pasture every 12 hours during the  
17 grazing season. They come in for milking with  
18 spotless udders, or very clean udders. And I  
19 believe that is why we've achieved our high  
20 milk quality. It is worth, on my farm, with  
21 our 80-100 cows, it is worth between \$8000 and  
22 \$10,000 a year. Which more than covers the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cost of putting the whole pasture system up  
2 and running.

3 I believe it is the grazing system  
4 on my farm that makes my farm profitable in  
5 the organic system. I know for a fact, my  
6 farm has never made money in the winter,  
7 because the cows are not on pasture. So, I'm  
8 all for the pasture rule. I've also  
9 considered the sacrifice pasture and I feel  
10 that if you have a good grazing program in  
11 place, you already have pastures that you can  
12 use in bad weather, they're your dryer  
13 pastures. I have several that we can use and  
14 I don't think that will be a problem. So, I  
15 support the rule. Thank you.

16 MR. MATHEWS: Anyone else?

17 MR. NELSON: Ed, is there any way  
18 that we can have a mic so we can hear the  
19 soft-spoken more clearly?

20 MR. MATHEWS: I tell you what, I'll  
21 hand mine off. Thank you for the suggestion.

22 MR. BENSON: If I wasn't nervous

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 already, I am now. My name is Fay Benson. I  
2 was an organic dairy farmer from 1997 to 2003.

3 At that time, I started working for Cornell  
4 extension as a grazing educator. And I now  
5 manage New York's organic dairy initiative --  
6 or New York Organic Dairy Initiative. I just  
7 had a question, and I hope I didn't miss this  
8 when-- before I got here. But on paragraph  
9 205.237, it's quite a lengthy description that  
10 would now read, the producer of an organic  
11 livestock operation must provide livestock  
12 with a total feed ration composed of  
13 agricultural products, including pasture and  
14 forage, that are organically produced by  
15 operations certified to the NOP, except as  
16 provided in 205.236, and if applicable,  
17 organically handled by operations certified by  
18 the NOP.

19 Now Richard, do I need to continue  
20 reading that -- my question is it's -- it goes  
21 on to -- a little bit, it confuses me in how  
22 it's written.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MATHEWS: You're in 237. You're  
2 talking 237(a), correct?

3 MR. BENSON: Yes.

4 MR. MATHEWS: Well, basically what  
5 this -- the changes here are to -- you're  
6 always -- always have been required to feed  
7 organic agricultural products 100% to your  
8 livestock. But it has allowed feed additives  
9 and feed supplements to go along with it. And  
10 the language was that nonsynthetic and then  
11 also synthetic and it referred to a section  
12 number. And what we did was we reversed that  
13 language because there was confusion that some  
14 people thought that the non-synthetics were  
15 also in 205.603, and there are no non-  
16 synthetics in 205.603, they're all synthetics.

17 So we reversed the language there to clarify  
18 that. The other thing that we did was that --  
19 hey Ed, can you get me back to that slide?

20 Okay. Part of the problem as I  
21 mentioned before, was that there are some  
22 people who were buying, for example, hay from

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people who claimed to be producing organically  
2 and then they were feeding that to their  
3 livestock. Well, if you are not certified as  
4 organic, you -- those animals can't get that  
5 feed, because you can't buy that. You can  
6 only buy feed for your animals from certified  
7 operations. And so we had to put in some  
8 language there to clarify that it has to come  
9 from a certified operation. Now does that  
10 help? Or do we need more?

11 MR. BENSON: I guess -- it was the  
12 ending of that, that all agricultural  
13 ingredients in such additives and supplements  
14 shall have been produced and handled  
15 organically -- removing the word or -- we  
16 propose amending -- I'm trying to get to the  
17 part that -- the new paragraph would prohibit  
18 producers from providing feed or forage to  
19 which anyone, at anytime, has added an  
20 antibiotic.

21 MR. MATHEWS: Okay.

22 MR. BENSON: I mean, that needed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clarification?

2 MR. MATHEWS: Okay. Unfortunately,  
3 yes. I see where you are going now. It's the  
4 next slide down. There we go. Yes,  
5 unfortunately that did need clarification  
6 because we have actually had some cases  
7 involving chickens, where we -- where it was  
8 detected that there was antibiotics in the  
9 chickens. Okay? It tested positive for  
10 antibiotics. When we went out and  
11 investigated, we found that the producer had  
12 not given his chickens any antibiotics. What  
13 it turned out to be was that the antibiotics  
14 came from the feed that the organic farmer had  
15 purchased. And so we felt, or at least I did  
16 -- I felt that it was important to say that,  
17 you know, antibiotics are prohibited including  
18 in the feed. Does that help?

19 MR. BENSON: That helps.

20 MR. MATHEWS: Okay. Again a lot of  
21 these little changes that you are seeing,  
22 little clarifications, they're related to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compliance cases that we've had in the past.  
2 And we've included them here in the Pasture  
3 Rule for clarification.

4 Next?

5 MR. MALTBY: That mic works.

6 MR. MATHEWS: Oh, it does?

7 MR. MALTBY: Yes.

8 MR. MATHEWS: Okay.

9 MS. PITTFIED: Hello. My name is  
10 Liz Pittfield and I'm from The Weston A. Price  
11 Foundation. We have -- we're setting up a  
12 table in the foyer. It's so nice to hear the  
13 voice of a friend. We are serious proponents  
14 of traditional farming, grass fed. And it's  
15 nice to see someone working so hard on a  
16 document that's helping. So I just wanted to  
17 say thank you.

18 MR. MATHEWS: Anyone else? You can  
19 line up, by the way.

20 MR. MORRISON: Hi, I'm Steve  
21 Morrison, an organic dairy farmer from Maine.  
22 We milk about 65 cows and we are hugely

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 satisfied to see the -- the proposed rule here  
2 on pasture to clarify the one time vague  
3 pasture requirement for organic dairy cows.  
4 The improvement in the rule, hopefully, that  
5 this -- that this proposed Rule will represent  
6 will -- will be a huge benefit to the  
7 consumers' trust in the integrity of the  
8 organic -- the organic seal that the USDA has  
9 on organic products nationwide. And I think  
10 that the economic benefit to us as organic  
11 producers will be tremendous as a result of  
12 this rule. And I appreciate it very much.  
13 Thank you.

14 MR. MALTBY: And just as a  
15 reminder, feel free to go up to the mic and  
16 ask questions -- clarifying questions. If  
17 Richard doesn't think that he should answer  
18 them because of ex parte. Richard is not shy  
19 about saying what he can and can't answer. But  
20 questions are good. And it's not often that we  
21 get a somebody out of D.C. to come out and  
22 speak directly to us. He doesn't bite.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MATHEWS: No, but Mary Howe's  
2 cows do eat the pigs. And by the way, she's  
3 no longer organic. Hey, I've had plenty of  
4 antibiotics in my life. This one had my hand  
5 in its mouth up to my wrist. She was a  
6 sweetheart. That was Chrissy? Okay. Go  
7 ahead Emily.

8 MS. BROWN-ROSEN: My name is Emily  
9 Brown-Rosen, and I work with Pennsylvania  
10 Certified Organics, so I'm a certifier, the  
11 policy director. Anyway, I have some  
12 questions. I think echo the sentiment here  
13 that we are extremely glad to see this rule  
14 published after so much hard work and it's  
15 obviously needed, so -- questions or just,  
16 trying to get at what, you know, we are  
17 actually are talking about here and we all  
18 will probably be contributing to try and clean  
19 up a few points we think could be, of course,  
20 improved. But, we are generally very happy.

21 Okay, so my question is about  
22 inclement weather. It seems to say that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's no longer an exception for ruminant,  
2 you know, animals, for cows to be held inside  
3 for inclement weather. It also says that cows  
4 must have continuous year-round access to  
5 pasture, on managed pasture and it also  
6 requires sacrificial pastures. It also says  
7 that dry lots are prohibited and feedlots are  
8 prohibited. So the question is, what happens  
9 when we've got 3 feet of snow, we've got ice -  
10 - we have NRCS -- like we saw yesterday an  
11 NRCS funded barnyard that's, you know, well  
12 designed, well drained with concrete gravel,  
13 people have gone to a lot of effort to protect  
14 their streams and waterways, are those now  
15 forbidden? Is that the plan?

16 MR. MATHEWS: Well the regs would  
17 prohibit feedlots and dry lots. Yes.

18 MS. BROWN-ROSEN: So what about  
19 barnyards? Is that comparable --

20 MR. MATHEWS: Are they part of a  
21 pasture?

22 MS. BROWN-ROSEN: No, in the winter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they might be the only outdoor access though,  
2 for a lot of farmers.

3 MR. MATHEWS: Well, we would  
4 probably look at that as a dry lot. We are  
5 intending from these regs for the cows to be  
6 outdoors year-round. Essentially 24 hours a  
7 day except for the provisions that are there  
8 for bringing them in on a temporary basis.

9 MS. BROWN-ROSEN: That's what I  
10 thought. Thank you.

11 MS. BAWDEN: Hi, my name is Liz  
12 Bawden and I'm a dairy producer. My family  
13 and I have a small herd and we milk about 60  
14 cows, plus the young stock in northern New  
15 York. We are enthusiastic supporters of the  
16 pasture policy and -- and think that this is a  
17 wonderful tool and a wonderful thing that it  
18 finally clarifies what the original rule  
19 stated, in essence, years ago. We've been  
20 certified since 2000 with NOFA New York, and  
21 actually because NOFA interpreted the original  
22 Rule much the same way, this does not really

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impact our operation as it stands-- in the way  
2 in which we pasture and feed our animals.

3 My question for clarification  
4 actually is similar to Emily's. We are in far  
5 northern New York-- from a gardening or crop  
6 perspective, they call it a zone three. So,  
7 zone three means the minimum temperature is  
8 about 40 below zero in the wintertime. And he  
9 can get that cold. So, I too looked at  
10 section 205.239, Section (c) where it does not  
11 seem to allow any temporary restriction of  
12 outdoor access due to inclement, extreme  
13 weather conditions. And I'm wondering if I'm  
14 missing something or if that is actually the  
15 intent?

16 MR. MATHEWS: That's the intent.  
17 That they be outside at all times.

18 MS. BAWDEN: Okay, well I suppose  
19 my comments would be that there -- that there  
20 perhaps should be an exclusion for temporarily  
21 -- and I understand where these things can be  
22 so misused, but, in our case that would be an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important issue in our farm. Thank you.

2 MR. MATHEWS: Okay, I think what I  
3 would say if you want inclement weather for  
4 the ruminants, you need to help us understand  
5 what inclement weather is -- in the case of  
6 the rules. I know that there will be people  
7 concerned about temperature and humidity.  
8 There will be people concerned about cold.  
9 But the real challenge there is putting the  
10 fence, so to speak, around what does qualify  
11 and how long will they be in? So, if you can  
12 comment on that --

13 MR. BAERWOLF: Hi, my name is James  
14 Baerwolf. I dairy in --

15 MR. MATHEWS: Technical  
16 difficulties. But back on the previous  
17 commenter, you got comments on that, please  
18 submit them to us. And give us the details as  
19 to what you think it should be. And why it  
20 should be the way that you are proposing. Go  
21 ahead sir.

22 MR. BAERWOLF: All right. My name

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is James Baerwolf. I dairy in Wisconsin. We  
2 have 120 cows. I feel that the pasture  
3 ordinances are very important and they  
4 continue to become more important as dairying  
5 changes to keep pace with what consumers are  
6 interested in. In our case, we just built a  
7 milk bottling plant and since May I currently  
8 have 12 part-time and full-time employees.  
9 So, now, no longer does just my family and our  
10 livelihood rely on the fair playing field for  
11 all organic dairies, but also my employees.  
12 And anybody -- any other employees from  
13 farmers that are interested in doing value  
14 added projects related to dairy, it becomes  
15 increasingly important as well.

16 MR. JOHNSON: My name is Dave  
17 Johnson, I have an organic dairy in north  
18 central PA. Milking somewhere between 50 and  
19 100 cows, depending on how ambitious I am. I  
20 actually started dairying back in 2000 and a  
21 pasture based system was the only way that I  
22 thought it was financially feasible to enter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the dairy business at this time. And I think  
2 my experience to date using managed pasture  
3 has proven to me, beyond a shadow of a doubt,  
4 that pasture based production reduced material  
5 handling. It is not only environmentally  
6 friendly and economically makes a lot of  
7 sense, but I really think it is the future of  
8 our nutrition and our food system.

9 I wanted to just thank you,  
10 Richard, for an awful lot of hard work. I  
11 look at this Regulation and I can see at least  
12 a little bit of understanding why it took so  
13 long to get out. I can't totally see that,  
14 but, I understand you have spent a lot of time  
15 and a lot of effort to try to carefully define  
16 what is meant by pasture. Fortunately, I have  
17 been working with a certifier all along that  
18 knew what pasture was, so I don't see any  
19 major changes in my operation in utilizing  
20 pasture. So, I really appreciate what you've  
21 done in terms of trying to clarify this and to  
22 really make the playing field level for all of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 us. That is so important that when a consumer  
2 buys something that's certified organic that  
3 they know that it's been produced according to  
4 the rules and it's an equivalent product to  
5 something else that says certified organic on  
6 it.

7 In terms of the rules, and there is  
8 an awful lot to digest here, you know, I --  
9 the thing that specifically came to mind that  
10 I was scratching my head on is this definition  
11 or understanding of a sacrificial pasture.  
12 Because I look at that and I envision in my  
13 environment that a sacrificial paddock in a  
14 couple days could turn into the definition of  
15 a dry lot or feedlot, under saturated soil  
16 conditions. And then I could move to the next  
17 sacrificial paddock and in a matter of a  
18 couple of months with the wrong weather  
19 patterns, I would have my whole farm turned  
20 into a sacrificial paddock.

21 And I look at the sacrificial  
22 paddock portion of the rule and I'm also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 looking at the whole context of the organic  
2 rule that seems to emphasize the well-being of  
3 the soil, the environment and the livestock.  
4 And I see a little incongruity with those two  
5 things. Especially in light of all of the  
6 efforts that NRCS and our soil and water  
7 conservation folks have been encouraging us to  
8 do to try to come up with a high use area that  
9 doesn't impact the environment in a negative  
10 way.

11 So, from climate conditions, to me  
12 it seems like we need to try to strike that  
13 right balance between providing the animals  
14 access the pasture, and by the way, I live in  
15 a northern climate and the weather is severe.

16 My animals are outside 365 days a year. And  
17 they are on pasture probably at least 300 plus  
18 of those days. So, the areas that I have used  
19 exclusively with no pastures has been very,  
20 very limited. But I still scratch my head and  
21 wonder how can I meet the requirements of  
22 continuous pasture, 365 days a year, without

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 creating that dry lot/feedlot condition that  
2 seems to be prohibited.

3 So, I think we have some challenges  
4 ahead in trying to understand and define what  
5 that means with the whole spirit and intent of  
6 the law. And I think it would maybe be  
7 something to consider of allowing some -- a  
8 little more understanding of the -- the  
9 certifier's and working with the whole organic  
10 system plan to come up with an appropriate  
11 system for that particular farm and climate in  
12 light of the whole organic system plan for  
13 protecting the environment and soil and the  
14 well-being of the animals. Again, thank you  
15 very much for your work.

16 MR. MATHEWS: Okay. And Dan, I  
17 would encourage you to follow up your comments  
18 with maybe some written comments that tell us  
19 how to do what you're asking us to do. Next?

20 MS. SODER: I'm Kathy Soder with  
21 the USDA Ag Research Service. I am an animal  
22 scientist conducting pasture based dairy and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 livestock research. And looking over it,  
2 you've done a lot of wonderful things. I've  
3 been following this for a long time. My one  
4 concern is with the dry matter intake  
5 calculation with the 3% across-the-board. And  
6 now I would suggest that not all of these  
7 animals are eating 3% of their body weight.

8 If you look at the NRC and other  
9 research, a 1000 pound growing large frame  
10 Wolstein type heifer is not consuming the same  
11 amount per bodyweight -- pound per bodyweight  
12 as 1000 pound dry animal versus a 1000 pound  
13 lactating animal. And then we can even go  
14 further saying a 30 pound of milk versus a 50,  
15 but anyway, I think there may need to be some  
16 differentiation there because you can raise  
17 from 2% to 3.5% of bodyweight, which easily  
18 gets more than 10% total change in the dry  
19 matter intake, which could put people if  
20 they're thinking they're at 30-- and I realize  
21 people should go over that, but if somebody  
22 thinks they're providing 30-35% dry matter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from pasture and suddenly they're at 25% and  
2 getting themselves in trouble, but I think  
3 maybe we need some differentiation there. If  
4 nothing else, maybe referring back to a  
5 standard like the NRC for that class  
6 bodyweight production stage of that animal.  
7 But just for some clarification on that point.

8 MR. MATHEWS: Okay. And again, I  
9 would say follow that up with a written  
10 comment, and directions to where to go.

11 MR. SNYDER: This will be easy  
12 after that. I'm Jerry Snyder from Alfred  
13 Station, New York. I've been a dairy farmer  
14 since 1978. I graduated from Alfred State  
15 College. I've always pastured my cows. We  
16 have a hill farm. Grass and hay is what I've  
17 fed them since 1978. When the organic milk  
18 market came, I converted to organic in 2002.  
19 We continued to graze our cows. I would like  
20 to thank you for what you've done in  
21 clarifying the pasture rule. My cows love  
22 grass. They're happy. We have very few

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 problems. It's the natural way. As a matter  
2 of fact, before the organic term, before  
3 organic food became popular, so to speak, this  
4 was the way my grandfather farmed. This was  
5 the way all farmers farmed. And it's good to  
6 see us getting back to our roots. It's good  
7 to see the cows getting back on grass. We  
8 milk about 50 cows. My wife and I have seven  
9 children who are running the farm right now.  
10 We're venturing into raw milk. We have a  
11 store on the farm where we sell our own grass  
12 fed organic beef, organic maple syrup, apples  
13 and cider and walnuts. I see good things in  
14 store and I just want to thank you for your  
15 work on this. It makes our product have the  
16 integrity that it needs. Thank you.

17 MR. MATHEWS: Surely there must be  
18 more. Okay.

19 MR. BENSON: Fay Benson, again.  
20 Just a couple comments more. I'm wondering if  
21 maybe, I understand the problem in that this  
22 sacrifice pasture rule. If we were to look at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the livestock pasture rule as only taking  
2 place during the growing season, that would  
3 make it a little simpler. Is that how the  
4 pasture rule is looked at? That it does --  
5 it's not concerned with the part of the season  
6 that's not the growing season?

7 MR. MATHEWS: The intent is to have  
8 the animals outside 365 days out of the year.

9 I mean, before it was access to the pasture,  
10 but they were required to have access to the  
11 outdoors as well. And so, we've written it so  
12 that they have access to pasture for grazing  
13 throughout the growing season and access to  
14 the pasture for the remaining part of the year  
15 as well. The idea is for the girls to be  
16 outdoors.

17 MR. BENSON: Right. And I think  
18 that's always was in the certification  
19 standards that I've followed. It is during  
20 that winter, when there're only able to say  
21 outside for two to three hours before it  
22 becomes, you know, a hardship for the animal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       So that if maybe the dry lot, the feedlot  
2 rule was not in place during the non-growing  
3 season, it would help follow these rules  
4 easier for the farmers and the girls.

5               MR. MATHEWS: Okay. I would ask you  
6 to flesh that out a little bit more--

7               MR. BENSON: Okay.

8               MR. MATHEWS: -- and send it into  
9 us through regs.gov.

10              MR. BENSON: Okay. The other  
11 comment or question actually is, have you  
12 looked at what the impact if this rule is  
13 enacted, what's the impact going to be on the  
14 supply of organic milk?

15              MR. MATHEWS: We're hoping you'll  
16 tell us.

17              MR. BENSON: Because I assume  
18 everybody in this room, we're expecting that  
19 there's going to be thousands of cows that are  
20 going to be removed from the organic dairy  
21 market. Has that been discussed at all?

22              MR. MATHEWS: No.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BENSON: Okay. Thank you.

2 MS. ENGELBERT: Hi, my name is Lisa  
3 Engelbert. I am the Dairy program  
4 administrator for NOFA New York Certified  
5 Organic in Binghamton, New York. Working with  
6 about 225 Dairy farms. Also, a certified  
7 organic dairy producer with my husband Kevin  
8 and our three sons in Nichols. Milk 120 cows.

9 First of all, we know as producers  
10 how much we've been pulling our hair out over  
11 the last three or four years. I can't imagine  
12 the headaches you've had going through this  
13 process. Thank you, very much. For what  
14 you've done. All in all, as a farmer, I think  
15 it's a very good rule. I am concerned about  
16 the inclement weather. I think there's going  
17 really need to be a provision in there where  
18 ruminant animals can be confined when the  
19 welfare of those animals is in danger.

20 I know in New York State, we have  
21 got so many different areas where -- in the  
22 southern tier where we are, we won't have a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 problem meeting this rule at all. But in the  
2 north country and in the snow belt areas, it's  
3 going to be dangerous for cows to be outside  
4 in certain times of the year. There's no  
5 doubt about that. I know up in the north  
6 country, as Liz said, they get down to, you  
7 know, sometimes 40 below zero with pretty  
8 nasty winds that could put the wind chill down  
9 pretty low. You're going to have frozen teats  
10 on cows.

11 It's going to really -- their  
12 energy levels -- you're going to have to feed  
13 them additional energy sources to, you know,  
14 keep their body temperature up in a situation  
15 like that and to keep any kind of milk  
16 production up. So we're going to have to  
17 probably tweak that a little bit.

18 I'm thrilled to see the  
19 clarification on bedding. We've always  
20 required organic bedding. They're quite a few  
21 certifier's operating within New York and  
22 there have been a couple that haven't, and our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 producers have hammered us on that. Well they  
2 don't have to have organic bedding, how come  
3 we do? I'm thrilled with that, so thank you  
4 for that.

5 The origin of livestock thing, I'd  
6 kind of like to have that not included in this  
7 and not even have the wording changed from  
8 what it is, while you hash out the other  
9 thing. That's the next really, really, really  
10 big issue that we're going to be dealing with.

11 So hopefully that won't take as long as this  
12 one did. So I guess that's all I have. Just  
13 thank you very much to you and to the other  
14 people at the NOP for all the work that has  
15 gone into this.

16 MR. MATHEWS: Okay. With the  
17 inclement weather, please do send in further  
18 comment on that. And it just dawned on me  
19 that we actually had addressed snow and ice at  
20 one point and I don't really remember why  
21 that's not in there. I think it may have been  
22 an accidental deletion. But we had intended

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 originally to provide that when it's too much  
2 snow or ice that the animals would be able to  
3 come in. So, I don't know where we lost that  
4 along the line.

5 MS. ENGELBERT: Well, the new  
6 definition of inclement weather does include  
7 highs and lows in weather extremes. Or  
8 temperature extremes. I kind of have felt  
9 that might cover it a little bit, but--

10 MR. MATHEWS: It's only mentioned  
11 for non-ruminants.

12 MS. ENGELBERT: We've always  
13 required outdoor access in the winter. But we  
14 have allowed them to confine animals if it was  
15 going to be dangerous for the animals to be  
16 out.

17 MR. MATHEWS: Yes.

18 MS. ENGELBERT: So.

19 MR. MATHEWS: And in all honesty, it  
20 didn't dawn on me while giving the  
21 presentation, but we originally had some  
22 language in there about icy conditions. When

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's ice on the pasture or whatever, and I  
2 don't recall why that's not there. So, you  
3 can tell us that we need to put it in.

4 MS. ENGELBERT: Thank you.

5 MR. MATHEWS: Okay.

6 MS. SHEA: Kelly --

7 MR. MATHEWS: It's 10:30 a.m.

8 MS. SHEA: Just, fast.

9 MR. MATHEWS: Okay. Ms. Shea says  
10 she'll be fast.

11 MS. SHEA: Yes.

12 MR. MATHEWS: If you don't want to  
13 take a break, we don't have to take a break.  
14 But, right after Kelly we're going to take a  
15 break.

16 MS. SHEA: Okay.

17 MR. MATHEWS: We've got some people  
18 who need a break.

19 MS. SHEA: Okay.

20 MR. MATHEWS: Okay. Go ahead.

21 MS. SHEA: So, Kelly Shea with  
22 Horizon Organic Dairy, milk buyer and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 processor. So, thank you very, very much USDA  
2 for this long-awaited rule. I actually want  
3 to ask two questions about next steps. So, I  
4 actually was glad to see the clarification on  
5 origin of livestock in this rule because I  
6 thought it might give us, as a community, the  
7 opportunity to kickstart the next rulemaking  
8 that we so much want to see come out on origin  
9 of livestock. So, two questions for you  
10 Richard.

11 Question number one, could you talk  
12 a little bit about process and how people can  
13 provide comments in this pasture rule on the  
14 origin of livestock issue that would help  
15 expedite getting the next rulemaking out? So  
16 what information would be helpful for people  
17 to provide? What kind of comments would be  
18 able to be provided that would expedite  
19 rulemaking on origin of livestock? That's one  
20 question.

21 And then the second question is,  
22 we're very, very grateful for the listening

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 session here today, and wondering if USDA  
2 could talk about possibly intentions to hold  
3 further listening sessions, maybe in the  
4 Midwest, say Minnesota, Wisconsin and also on  
5 the West Coast, maybe in Northern California?

6 MR. MATHEWS: Okay. I'll answer  
7 the second one first. We plan to do two more  
8 sessions before the end of the comment period  
9 which is December 23<sup>rd</sup>. One will be in the  
10 upper Midwest someplace. Another one will be  
11 out on the West Coast. We do not have dates  
12 or venues for that at this time. But we do  
13 plan to have two more listening sessions.

14 Now as to the first question, the  
15 origin of livestock issue is rather complex.  
16 The Board has recommended that we amend  
17 paragraph (iii), and that will not do the job.

18 And the reason for that, and it'll get kind  
19 of confusing without props, but you have a  
20 requirement in the origin of livestock  
21 provisions that say all animals have to be  
22 organic from the last third of gestation,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       except, and then there's an exception for  
2       poultry and then there's an exception for  
3       dairy animals.       Within that exception for  
4       dairy animals, there is a further exception.  
5       And that exception takes us down to the point  
6       where we had the problem.   Okay?

7                       The first exception talks about how  
8       you can convert an animal for 12 months to  
9       make them organic.       The second exception  
10      provides for how you feed that animal.   So you  
11      ended up with a two-track system because  
12      people who didn't take the second exception  
13      were allowed to keep bringing animals in.   So  
14      you don't solve the problem by changing (iii)  
15      of the feed provision.   So in reality, there  
16      has to be a wholesale rewrite of 236(a)(2).   I  
17      mean, it just has to be rewritten.

18                      And in working this up, I've got  
19      about a hundred questions as to things like B-  
20      all right, if you're going with last third of  
21      gestation for all animals, can a dairy farmer  
22      who is conventional, who goes to organic, once

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they become organic, they have to have all  
2 animals last third of gestation. But could  
3 that dairy farmer buy another farm and convert  
4 it in the same way that he had done for his  
5 farm? And the questions go on and on, the  
6 nuances along those lines.

7           There's also the issue of breeders  
8 stock. Okay? Right now you can bring in  
9 breeders stock that could be converted, if you  
10 wanted to. There's breeders stock you might  
11 keep, there's breeders stock you might not  
12 keep. But if you have a requirement that all  
13 animals be last third of gestation after the  
14 date that you get certified, does that apply  
15 to breeders stock? The Board hasn't addressed  
16 that.

17           So, there's all kinds of things in  
18 there that have not been addressed and I could  
19 probably stand up here and talk about that  
20 question for about an hour. So, if you want  
21 to comment on the origin of livestock one, I  
22 would think that you would want to think and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 comment beyond what the Board has recommended,  
2 because there's a lot of nuances out there.  
3 It's not going to be solved by changing (iii).

4 It's just not going to be.

5 Thoughts that I have is, the feed  
6 provision needs to go to the feed section.  
7 Okay? The feed provision was originally in  
8 the feed exception, in the feed section. What  
9 happened was that the whole herd conversion  
10 was in the first proposal. Commoners didn't  
11 want the whole herd conversion, so it came out  
12 of the second proposal. Then we heard from  
13 people who said, yes, we have to have the  
14 whole herd conversion. So it went into the  
15 final Rule. But the first proposal had the  
16 feed provisions in the feed section. And  
17 things got messed up, when the feed provision  
18 got added to the origin of livestock section.

19 So that's what messed it up to begin with.  
20 So one of the things that's going to have to  
21 happen is that's going to have to come out and  
22 go to the feed section.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Another question I would raise is,  
2 all right, responsibly connected parties, and  
3 I touched on this a little bit, can  
4 responsibly connected parties of an operation  
5 go out and start more dairies and use the 12-  
6 month provision? I think that has to be  
7 considered. Okay?

8           So think outside the box. Think  
9 beyond what the Board has recommended. Look  
10 at the regulations as they relate to the herd  
11 conversion. Also look at the breeders stock  
12 provision and then go ahead and tell us what  
13 you think needs to be done with origin of  
14 livestock. Because those comments would be  
15 valuable as we go ahead and develop the rule  
16 for origin of livestock, which is a separate  
17 rulemaking. And it's been done before. The  
18 pasture rule when we weren't looking for  
19 comments on pasture. When we were doing  
20 Harvey, we got plenty of comments on pasture,  
21 and we considered those as well. Okay?

22           All right, let's take a break. 10

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 minutes please. Then come on back and  
2 hopefully we'll have lots of additional  
3 comments and questions.

4 (Brief recess.)

5 MR. MATHEWS: All right, we're  
6 ready to get started with round two of  
7 comments. And so, it's all yours. There's a  
8 microphone over there someplace for you to  
9 use. And again, I remind everybody that we  
10 need everybody signed in. The court reporter  
11 needs that, especially for checking the  
12 spelling of names.

13 MS. DEHNE: Well thanks, my name is  
14 Nicole Dehne and I coordinate the  
15 certification program for Vermont organic  
16 farmers. And I did want to start by thanking  
17 the USDA staff and Richard specifically for  
18 putting out this long awaited rule. And  
19 ultimately we're very happy with it. And the  
20 strength of the document is definitely that it  
21 requires dairy animals to be out on pasture  
22 and graze. So, I want to thank you for that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I don't want to be repetitive, but  
2 I do think it's an important point, although  
3 it seems like you started to address it a  
4 little bit or you know, you mentioned that you  
5 may have forgotten to put some stuff in about  
6 snow and ice. But we're definitely concerned  
7 about the potential prohibition of barnyards  
8 during the winter months. So, I'm just  
9 imagining, you know, telling our farmers in  
10 Vermont that we're prohibiting barnyards in  
11 the winter. And I do feel like, in doing so,  
12 we're going create a conflict in the Rule  
13 where we're requiring producers to minimize  
14 risk to soil and water quality. So we would  
15 definitely recommend adding inclement weather  
16 allowances for ruminants. So we can work on,  
17 as you're suggesting, providing language to do  
18 that.

19 But I just was imagining  
20 sacrificial pasture used all winter in Vermont  
21 with cows up to their knees -- and you know,  
22 creating kind of knees in mud and creating a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 health and safety issue and also a soil and  
2 water quality/nutrient management issue.

3           And then there are just a few parts  
4 of the Rule that might seem a little  
5 prescriptive, from a certifier's perspective  
6 as far as regulations. So, you know, for some  
7 of the parts where the producer is required to  
8 clean their water troughs on a weekly basis,  
9 and how do we verify that? And then, you  
10 know, from a pregnant woman's perspective on  
11 due dates and dry cows being in, you know, a  
12 week before and after birth, I mean, I guess  
13 we can base it on the due date, but, you know,  
14 I can give birth at anytime, so at this point,  
15 and it could be two weeks past my due date,  
16 so, you know, just kind of keeping those  
17 things in mind from a certifier's perspective  
18 on how to verify but -- I need to get confined  
19 immediately. But, thanks.

20           MR. JODARSKI: Good morning. My  
21 name's Guy Jodarski. I'm a veterinarian and I  
22 work with organic producers primarily, also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some grazers throughout the country. And I've  
2 had the privilege to travel from Maine to  
3 California and see organic dairies throughout  
4 the country. And I thank you for getting the  
5 rule this far. And I know a lot of people in  
6 this room were instrumental in pushing this  
7 along and so I want to thank all of you folks  
8 to for what you've done. And, you know, the  
9 difficulty now is in the interpretation and  
10 the enforcement. And I don't really envy the  
11 certifying agencies when going through this.

12 And, so I'd like to delve into a  
13 couple of these little rules that'll, I'm  
14 sure, will be hashed out further. But Dr.  
15 Kathy Soder's point was very good about the  
16 dry matter intake. And I'd just like to  
17 expand on that a little bit. It's very  
18 difficult to measure directly, if not  
19 impossible, dry matter intake from pasture.  
20 And so we do that calculation by difference,  
21 in most cases.

22 And so, what we are asking for here

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is a -- we're only allowing a maximum of 70%  
2 of the dry matter to be fed not non-pasture.  
3 And the difficulty here is with using a  
4 straight figure of 3%, the .03 in 205.237  
5 Sections (c) Section (2). When you document  
6 the dry matter demand of each class. This is  
7 at the .03 times the bodyweight is 3% dry  
8 matter intake. Now, cows that are producing  
9 milk, to any extent, will exceed that. And so  
10 4% would be real easy. Some good cows will be  
11 a lot higher than 4% of bodyweight. And so,  
12 in effect, I just want to make you aware of  
13 what you are doing here by setting this at 3%  
14 is you're actually making a more stringent  
15 rule than what it states explicitly.

16 Now let me explain that. What I  
17 mean is, if you have a cow, let's just take  
18 that 30%. Let's take a 1000 pound cow, let's  
19 take a Jersey cow that's milking. So we're  
20 saying that she's eating 30 pounds of dry  
21 matter. If in fact she's producing milk, she  
22 may be eating 4% or 40 pounds of dry matter.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So if we're doing the calculation based on a  
2 30 pound dry matter intake, we're going to  
3 limit her to 21 pounds fed feed. If in  
4 actuality she needs 40 pound to support her  
5 milk production, she's going to have to eat 19  
6 pounds of pasture, not 9 pounds of pasture.  
7 So, in effect, you're making the pasture rule  
8 much more stringent. It's pushing it closer  
9 to 50%.

10 Now that may be okay. And for most  
11 grazers it's fine. They're in the 70% or more  
12 during the grazing season. But there are a  
13 lot of people that are on the edge of this  
14 that really push to the 30% edge. And so, I  
15 think Dr. Soder's suggestion of going to a  
16 table, looking at production bodyweights,  
17 expanding it beyond just 3% is probably a good  
18 idea.

19 And then the other issue in the  
20 rulemaking that I'd like to address is the  
21 inclement weather. And that comes down to,  
22 there is a bit of a, let's say, a competition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 between dairymen around the country, between  
2 small dairymen and large dairymen. A lot of  
3 it's a mindset. In fact we do have one  
4 marketplace, but there is the idea, a lot of  
5 family size operations that I've worked with  
6 have the idea that if we could just stop the  
7 larger dairies, the large organic dairies, our  
8 markets going to improve. We need to look at  
9 this Rule very closely because this -- the way  
10 this is written right now there are a lot of  
11 small family dairies that house their cattle  
12 in stall barns in the winter that will no  
13 longer be allowed to do that.

14 And so, if the intention was just  
15 to shut off big dairies in the West, it's also  
16 going to make us in the northern climates get  
17 our cattle out more. Now having said that, it  
18 is possible to out-winter cattle. And I see  
19 it more and more. I'm from Wisconsin and even  
20 in far northern Wisconsin people can keep  
21 dairy cattle out through the winter. It does  
22 take wind breaks. It does take bedding. It

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 does take some management but there are a lot  
2 of people that just put their cows out after  
3 milking to clean the barn for an hour or two  
4 everyday. And so this is a big issue for the  
5 small family farms that are pushing for this  
6 rule. They need to know go into this with  
7 their eyes open that the way it's stated right  
8 now, it's no longer going to be allowed.

9 So, my proposal would be, and I'll  
10 do a written comment on this, but on 205.239  
11 (c) number (4), to me the easiest would be,  
12 instead of just saying in the case of goats,  
13 saying in the case of lactating dairy cattle  
14 and goats during periods of inclement weather.

15 It would give the exception to lactating  
16 dairy cows. Thank you.

17 MR. KARREMAN: Hugh Karreman,  
18 veterinarian in Lancaster County. I work with  
19 about 80 or so certified organic dairy herds.

20 I'm glad to see one of my guys is here today.  
21 And I'm also on the National Organic  
22 Standards Board. Chair of the livestock

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 committee, although my comments here today are  
2 not part of the official comments from the  
3 committee. We hope to have one maybe by the  
4 meeting in November. Anyway, I just wanted to  
5 say thank you Richard for all the hard work  
6 you've done. If I could give you an honorary  
7 Ph.D. in pasture regulation management, you  
8 got it man. Job well done. I just think  
9 everyone's comments so far really are accurate  
10 and I want to echo them.

11 I think Dr. Jodarski's last  
12 comments were very on the mark, totally. And  
13 I just want to add on that as far as the  
14 animals in the wintertime in the tie stalls,  
15 that's most of my farmers in my area, they're  
16 going to have some readjusting to do if this  
17 goes into effect as is. And so I would  
18 suggest that perhaps, you know, some of the  
19 farmers do put their cows out a lot, out on  
20 the ground when its frozen and whatnot if it's  
21 good weather, down in southern Pennsylvania  
22 and that's great. But perhaps there should be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 also allowance for barnyards with improved  
2 management of barnyards. Just so maybe the  
3 cows aren't, as your intent is so that they're  
4 outside, but maybe not out on the pasture  
5 itself in that bad weather, but at least not  
6 tied in 22 hours a day like Dr. Jodarski  
7 mentioned and I agree with. Although that  
8 does give very good individual cow care, I  
9 must say.

10 The other thing is I really like  
11 the Regulation in there, the calves getting  
12 hay. You say from day seven. I've already  
13 heard from one person I know just privately,  
14 he said, well why not day five or day 10?  
15 Kind of arbitrary. Just do it from birth.  
16 Just do it from birth. It's a forage, so they  
17 get used to forage right off the bat when they  
18 have to be pastured at six months of age.

19 The other oh, back just for a  
20 moment to the barnyard thing and the inclement  
21 weather. I don't know what the EU regulations  
22 say, but perhaps we should look to them

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because I think they have something happening  
2 in 2010 regarding confinement and whatnot with  
3 their herds.

4 Also, someone mentioned to me  
5 privately, as well, would dry matter intake  
6 be, can you also calculate that or use that  
7 after the killing frost? Because cows do  
8 graze after the killing frost. After your  
9 technical growing season is done, would they  
10 be allowed to consider that as part of their  
11 feed ration. That was someone from the West  
12 that asked me that on the phone.

13 And then the stream bank fencing I  
14 think is excellent. I always push for that.  
15 That's great. And it does, some people would  
16 say, well, you know, what if the EQIP program  
17 doesn't have money for the subsidization of  
18 stream bank fencing? So many farmers just put  
19 up a simple single wire. It works just fine.

20 So, perhaps that could somehow be put in  
21 there, even a simple single wire, instead of  
22 referencing EQIP, while although that's good,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but they might not have funding.

2 But in general, I just want to say  
3 that I think this whole document is great,  
4 even if you had to keep it exactly as it is.  
5 I think it just needs some tweaking around the  
6 edges. I think everyone here is very grateful  
7 to your very hard work and it will create a  
8 very bright line between organic and  
9 conventional, and that's exactly what we need.

10 Thank you.

11 MR. GARDINER: Jim Gardiner,  
12 average size dairy farmer. What I find when I  
13 travel across this country is that whether  
14 you're milking 3000 cows conventional or  
15 organic, or 50 cows, usually takes one person  
16 per 50 cows. So I'm an average farmer; in  
17 organics. I do want to thank you very much  
18 for doing a really good job on this. And I  
19 agree with Hugh on the fact that there should  
20 be some kind of reward or label placed upon  
21 you for the ultimate specialist on all the  
22 research you've had to do to get this rule

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 into place.

2 A few of the comments I would have,  
3 I do agree with, you know, like placing your  
4 calves on forage as soon as possible. To  
5 monitor a rule where they always have their  
6 hay, you know, above up in a hay rack, that's  
7 a little bit more specific I think than what  
8 should be able to be patrolled possibly.  
9 Okay? I know there's a lot of people that try  
10 to do a good job and they do a good job  
11 without having to have hay racks. Okay. For  
12 whatever that's worth.

13 And, okay as far as allowing the  
14 animals out -- I'll give you a little scenario  
15 of what we do on our farm, okay. We live in a  
16 northern climate. During the wintertime --  
17 during the summertime our cows B their --  
18 their ration is pasture and molasses and  
19 minerals. So, their dry matter intake, other  
20 than a small portion for the dry matter that's  
21 in molasses, which is 75% dry matter, comes  
22 from pasture. So it is a very doable Rule

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you have written here as far as focusing  
2 on pasture, that's good. During the  
3 wintertime when the weather changes, which it  
4 looks like it's starting to change for us  
5 right now outside, you know, it's getting  
6 cooler and it's rainy, our cows, during the  
7 daytime, are able to go out after milking and  
8 they stay out all day. But they eat outside  
9 all day. We feed them balage outside. They  
10 are on a sacrificial, you know, piece of land  
11 that we use predominantly for that. It's  
12 receded back and provides for vegetation and  
13 actually allowed to rest during the growing  
14 season, so that that ground can aerate itself  
15 and be brought back to life, you know, before  
16 it's used again during the winter season.

17 But when they go outside, they stay  
18 out all day long whether it's cold, snowy,  
19 rainy. And they really enjoy it. We've had  
20 great success with production, with animal  
21 condition. The health of the animals has been  
22 fantastic. That practice has been taking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 place for about 12 years on our farm.

2 We find that by feeding the balage  
3 outside their intake is fantastic. When they  
4 come in at night, and some of the points were  
5 already made as far as the inclement weather,  
6 especially at night if you notice the  
7 activity, the natural inclination for cows,  
8 during the day their activity is higher,  
9 during the night their activity has a tendency  
10 to be lower anyway and bringing them into a  
11 stall barn at night, where it's dry, cool, you  
12 know, clean and lots of good, as Lisa said,  
13 organic bedding, okay, it really provides for  
14 a good environment where they can utilize all  
15 the feedstuffs they've taken in during the  
16 day.

17 But what we have tried to do during  
18 the winter is emulate what is going on in the  
19 summer, only it is from a stored feed source  
20 instead of a fresh feed source, Okay. So, a  
21 good rule. A little tweaking on the rules  
22 there for having your animals in for a little

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 longer period of time would be good.

2 As far as the streams, I'm in total  
3 agreement, you know, with havingXhaving, you  
4 know, no feces material in the streams or  
5 anything like that. But I guess my question  
6 would be in the writing, would it be listed as  
7 an approved soil and water, you know our soil  
8 and water districts do a lot of work on  
9 helping people set up stream crossings and  
10 things like that. And lots of times they may  
11 not be elevated or anything like that, but  
12 they are allowed to cross in order to get  
13 through. You know, so to have them totally  
14 out of a stream 100% of the time, that would  
15 take out of a lot of grazing areas. And so,  
16 if-- if that could be included, that we would  
17 have, you know, an approved crossing in-- in  
18 the writing, I think that would be very  
19 beneficial.

20 MR. MATHEWS: Okay. If you would  
21 allow me to --

22 MR. GARDINER: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MATHEWS: That's a good comment.

2 Our intention was not to eliminate stream  
3 crossings. It's more to eliminate them from  
4 actually grazing right up to and passing  
5 through the streams on a regular basis. I  
6 mean it's intended for the stream that runs  
7 through the pasture, more than moving them  
8 from one pasture to another. Okay?

9 MR. GARDINER: Okay.

10 MR. MATHEWS: Okay? So, I would  
11 recommend that you flesh set out in additional  
12 comments and send that our way.

13 MR. GARDINER: Okay, very good.  
14 Let's see, I've got that one taken care of.  
15 Your origin of livestock, of course, I realize  
16 you're going to be working on that. The  
17 points you made are very interesting, and I  
18 know as much as the pasture rule has been an  
19 object of improvement, and I think you've gone  
20 a long ways to really improving it, it's very  
21 impressive.

22 The livestock Rule, or origin, I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sure, like you said is going to be a tough one  
2 to tackle, but I do believe that if common  
3 sense prevails and I believe that this rule  
4 here that you've gotten out shows a lot of it,  
5 I'm confident that the process, hopefully,  
6 through what we learn in this one, would be a  
7 shorter process. That would be a huge key for  
8 all of us in the organic industry. Thank you.

9 MR. MATHEWS: I'm hoping so. On  
10 that origin of livestock, it just passed  
11 through my head, another example of a problem,  
12 if you've got somebody who has converted, and  
13 everything has to be from last third of  
14 gestation to be brought onto your farm, one of  
15 the other things that you might want to  
16 consider is what happens if your neighbor  
17 decides to go out of organic production and  
18 your neighbor's cows were converted using the  
19 12 month. You can't buy them. Do you intend  
20 to do that? Just a question.

21 Because at that point, they're not  
22 last third of gestation. You can only bring

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on last third of gestation. He's got  
2 perfectly good, I guess, organic cows. I mean  
3 the milk's been going into the organic  
4 consumer's refrigerator. But under that  
5 proposal, the way it's been made, you can't  
6 buy your neighbors cow that was converted.  
7 And that may be what you want. I don't know.

8 But it's another one of those 100 different  
9 questions that I have on origin of livestock.

10 Next speaker please.

11 MR. MORRISON: Steve Morrison  
12 again. I'd just like to echo the idea that in  
13 section 205.239 --

14 MR. MATHEWS: Please come back up to  
15 these mics because --

16 MR. MORRISON: Yes. Okay.

17 MR. MATHEWS: -- that's where the  
18 court reporter's getting his data.

19 MR. MORRISON: I'd like to echo the  
20 comment in reference to 205.239 (c), which  
21 includes that ruminants may be temporarily  
22 denied access to pasture during periods of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 inclement weather, which applies currently to,  
2 in this proposal, to goats. Maybe that could  
3 be amended to include goats as well as cows,  
4 lactating dairy cows. I think that's an  
5 important exemption especially in areas where  
6 the likelihood of dangerously inclement  
7 weather is high, such as in the Northeast.

8 MR. KARREMAN: Hugh Karreman again.

9 And actually, as Chair of livestock at OSB,  
10 can I ask you, is the NOP going to give NOSB  
11 guidance or input upon what you would like to  
12 see towards an origin of livestock rule. Or  
13 is that totally up to us, from the public as a  
14 sounding board. And, the other thing is if  
15 the NOSB does not come up with another origin  
16 of livestock proposal as we have, which we  
17 thought was okay, but hearing your reasons  
18 today makes a lot of sense. To keep that new  
19 rule coming along, you don't have to get  
20 something new from us amending our first  
21 position, do you?

22 MR. MATHEWS: No, we don't have to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 get anything new from the Organic Standards  
2 Board. But you guys are more than welcome to  
3 take another look at the recommendation and  
4 submit us something else if you would like.  
5 Our plan is to just try and move forward with  
6 it. But, I would love to have some additional  
7 thought put into it by the Board and have the  
8 Board submit us an amended recommendation.

9 MR. KARREMAN: Does that help your  
10 behind the scenes work, which obviously you've  
11 done a lot of with the OMB and SBA and all  
12 that, to have a Board recommendation that  
13 perhaps reflects a little more of what's been  
14 discussed here?

15 MR. MATHEWS: Well, the Board has  
16 already made a recommendation. And what I  
17 would do is, I would explain within the  
18 regulation that we got the Board's  
19 recommendation and while we appreciate the  
20 Board's recommendation, we see some issues  
21 that are the result of that. And what we  
22 would do is recommend how we think that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 achieve the intent of the Board. Because we  
2 know what your intent is. Or at least we  
3 think we know what your intent is.

4 But when we go and try to put it  
5 into rulemaking, that intent impacts other  
6 provisions within the Regulations. And so  
7 that's what we would be looking at. And we  
8 would come up with a proposal that addresses  
9 such things as moving the 80/20, we would  
10 remove it. Because it's obsolete. For the  
11 other feed, I would move it to the feed  
12 provision. I would take a very hard line on  
13 what you've recommended. Which means that  
14 every animal from the future would be last  
15 third of gestation because that's what you've  
16 told us, as the Board. And so that's the  
17 interpretation that we would take. So we  
18 would do a wholesale rewrite of the 236(a)(2),  
19 plus we would do a rewrite on the breeders  
20 stock. Which would say only organic breeders  
21 stock could be brought onto the farm.

22 MR. KARREMAN: And would it be--

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 should it be only on ruminants or also poultry  
2 and other species? You know, to have it  
3 across-the-board, last third of gestation --

4 MR. MATHEWS: Well, across-the-board  
5 last third of gestation applies to everything  
6 except for poultry and dairy. So it already  
7 applies to everything. So the only thing that  
8 we're really doing is that we're tightening  
9 the rule on dairy. So that's what you would  
10 be doing. So we're only addressing it from  
11 the dairy side, because other than chickens,  
12 from the second day after hatching, dairy is  
13 the only livestock that is allowed to be  
14 transitioned into organic.

15 And what we would be doing, based  
16 on what the Board has recommended is saying,  
17 this is a one-time deal. If you are a  
18 conventional farmer and you want to become  
19 organic, we'll let you convert your land and  
20 your animals. Now, other factors that come  
21 into that Hugh, okay, he's got his animals,  
22 some animals are born onto the farm. Can he

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 buy animals and bring them onto the farm  
2 during the transition period? Those are the  
3 kinds of things that need to be answered.

4 And so, what my interpretation  
5 would be, any animal that is on the farm at  
6 the time that the transition starts, any  
7 animal born on the farm during the transition  
8 would be good to go. But the farmer would not  
9 be able to buy animals and bring them on  
10 during the transition period. So, I mean,  
11 those nuances have to be considered as well.  
12 So, I mean, just to reinforce that there's a  
13 lot of things to think about when you go to  
14 change a Regulation. Yes sir?

15 MR. STOLTZFOOS: I'm Roman  
16 Stoltzfoos from Lancaster, Pennsylvania. I've  
17 been in organic dairy since 1990. Certified  
18 since '95. We have a family farm and we  
19 greatly appreciate the effort that has been  
20 put forth to protect what the true spirit and  
21 meaning of organic pasturing is. And we very  
22 much appreciate the effort that you have put

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1       forth Richard and whoever works with you.

2                       And the only thing I would like to  
3       say is I would like to see all farmers rally  
4       behind this and be willing to change and think  
5       outside of the box and do what's right for  
6       livestock and soil.   And I really appreciate  
7       what has been happening here because I think  
8       it will answer a lot of the issues.   There  
9       will be small farms in my area that will not  
10      comply to this, I'm sure of that.   And I think  
11     now is as good a time as any to exit.   Don't  
12     you?   I mean, we obviously have more supply  
13     than we need.   We would like to grow this  
14     industry but I think we need to grow it right,  
15     and not fast.

16                      MS. ARNOLD:   I'm Kathie Arnold.   My  
17     husband, brother-in-law and I have a farm  
18     about an hour east of here.   And I have to say  
19     that Thursday was a day that I've been looking  
20     forward to for years.   To actually go to the  
21     computer and read what work had been done over  
22     the last several years and put into this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposed rule. So, thank you for bringing it  
2 to that point. And, I do feel it's just  
3 wonderful to see that the 30% minimum dry  
4 matter intake is in here. That has to be  
5 maintained throughout the growing season and  
6 like so many people have said, you know, that  
7 will just add so much to the integrity of  
8 organic dairy and allow our consumers to know  
9 that, what they expect is truly what they will  
10 be receiving.

11 I'm very glad to see the  
12 clarifications you've done on the issues  
13 around bedding and agricultural products in  
14 feed additives and supplements. I guess I  
15 also want to just tell you a little bit about  
16 our farm. We have 130 cows and we graze them  
17 for 200 days, at least 200 days a year. Our  
18 animals from birth on up through lactating dry  
19 cows are all out on pasture and the the dry  
20 cows, bred heifers, breeding age heifers and  
21 yearlings, their diet is 100% pasture during  
22 the growing season. And so, you know, during

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the growing season, our animals are, you know,  
2 intensively managed on pasture.

3 But, I do have concern about  
4 continuing to manage on pasture during the  
5 non-growing season. And I know for a number  
6 of farms, from Oregon where they have an  
7 extensive or rainy season, to northern  
8 climates where, because of topography or  
9 because of the farm is on clay soils, low-  
10 laying clay soils, that meeting the definition  
11 and intent of the sacrificial pasture may be  
12 impossible on some farms and may be abrogating  
13 their nutrient management plans.

14 And certainly I will be working  
15 with many others to submit very constructive  
16 comments. But overall, I'm just so very  
17 pleased with the intent that has been so  
18 clearly put out in this rule. I do have one  
19 other question. There's not really any  
20 mention of drought. And what are your  
21 thoughts in terms of, you know, if farms,  
22 where they normally don't have drought and so

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 they don't have irrigation equipment, come  
2 into a period of drought. How could that be  
3 handled?

4 MR. MATHEWS: Well, first of all, I  
5 think that the organic systems plan should be  
6 designed so that you are growing throughout  
7 the growing season. So, you need to be  
8 alternating crops and you should be looking  
9 for some crops that can withstand the August  
10 heat and provide food value to the animals.  
11 The other provision, there is a situation in  
12 there where if there was a drought that was  
13 declared by the Secretary of Agriculture as a  
14 natural disaster, we would take that into  
15 consideration. And the regs already provide  
16 for those extreme situations, so that, you  
17 wouldn't get out of feeding organic feed, but  
18 you could be exempted from the 30% DMI.

19 MS. ARNOLD: Okay. Great. Thank  
20 you. And thanks for so much for all your hard  
21 work.

22 MR. MATHEWS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. PERRY:     My name is Robert  
2 Perry.     I work for NOFA New York as an  
3 inspector, enforcer of the rule.   I also work  
4 as a dairy educator for transitioning to  
5 organic dairy farms.   I'll try not to get  
6 started here, but, I've been involved in  
7 organic for over 25 years and I've got a very  
8 vivid imagination.     And, 365 day a year  
9 pasture is stretching my imagination.   I go  
10 out and enforce the rule as an inspector.   I  
11 stretched the rule in some cases, due to the  
12 circumstances at the farm on any given day.

13                   I guess since we're talking about  
14 pasture, livestock, maybe we should reconsider  
15 bagbalm as a medication, because if we're  
16 going to graze cows in the winter in the  
17 Northeast, bagbalm and Dr. Naylor, some of  
18 these products were invented in the North  
19 country for a reason.   And, actually will be  
20 good for Hugh Karreman and some other  
21 veterinarians because udder health and herd  
22 health will certainly put them back on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 road in the winter dealing with downed cows  
2 and frozen teats and other things.

3 The other question I have is, if  
4 the NOP would provide guidance to the  
5 certifiers about the audit trail for  
6 enforcement of this Pasture Regulation. I  
7 know there's a clause in one of the sections  
8 about maintaining an audit trail for nutrient  
9 management on a daily, weekly, monthly basis.

10 I really have to struggle with many of the  
11 farmers to provide an audit trail of purchased  
12 feeds on a yearly basis, much less bringing it  
13 down to a daily basis.

14 Maybe we could use Google Earth and  
15 just do digital imaging of our farms to see if  
16 in fact they do have those cows out on any  
17 given day. It's interesting, we recently had  
18 a field day and a representative from, I  
19 believe, Cornell cooperative extension  
20 presented a program about a new RMA program  
21 where you can get crop insurance for your  
22 pastures. And this might be a program that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our farmers might look into because certainly  
2 grazing on some of these pastures, a lot of  
3 them have a hard time recovering by April or  
4 May of the following year, much less  
5 recovering of all. So that's just something  
6 that hopefully we can insert some language  
7 there that will help that.

8 MR. MATHEWS: Could I interrupt for  
9 a minute?

10 MR. PERRY: Absolutely.

11 MR. MATHEWS: With regard to having  
12 trouble recovering, what's the cause of that?

13 MR. PERRY: Compaction, erosion,  
14 just you know, environmental stress. Rocks,  
15 clay.

16 MR. MATHEWS: Are the animals on  
17 there all the time?

18 MR. PERRY: Well, I mean --

19 MR. MATHEWS: I mean, are they  
20 rotating them across different pastures?

21 MR. PERRY: Well, we are proposing  
22 a sacrificial pasture and --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MATHEWS: Right.

2 MR. PERRY: And I guess my-- my  
3 interpretation of many of the pastures that I  
4 see is it's-- it's been a sacrificial pasture  
5 from day one. It's not good for anything  
6 else.

7 MR. MATHEWS: I think that we've  
8 addressed that in the Regulation that the  
9 pasture has to be managed as if it was a crop.

10 And so you would look at the crop provisions  
11 and it talks, you would have to be seeding.  
12 And I mean, you shouldn't be overgrazing your  
13 pasture.

14 MR. PERRY: I understand that.

15 MR. MATHEWS: I mean, they need to  
16 have good pasture practice standards. And  
17 that's what we are asking them to delineate  
18 within their organic systems plan.

19 MR. PERRY: But, you also have to  
20 take into consideration that some of these  
21 farms have been in the family for 100 years or  
22 more and, well, my family farm's been in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 family since 1794. I have a family cemetery  
2 down the road that I'm the president of the  
3 cemetery association. And I go down there and  
4 just imagine digging these graves by hand.  
5 There's boulders and cobbles in there that  
6 will choke a backhoe. And I used to ask my  
7 dad, how come we never moved? How come you  
8 didn't move to Yates County, or somewhere  
9 where there's good soil? And, you know,  
10 that's what tradition is. And, unlike some of  
11 our new New Age farms coming on, farming is a  
12 tradition. It's a lifestyle that people are  
13 stuck too. You know, they are stuck to this  
14 land and, you know, you got a boulder patch  
15 and stream out in back of the barn, that  
16 pasture is harder to come by than you can  
17 imagine.

18 The other issue is, are we going to  
19 provide shade in the winter? Water in the  
20 pasture? Many of the pastures use streams for  
21 watering. Without going out there with an ax,  
22 I have a pond it can easily freeze 18 to 20

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 inches deep in the winter. Those are just  
2 issues that we have to deal with. I also,  
3 before I sit down, I look around the room here  
4 and I just see some pioneers in organic and  
5 dairy. Pat Kane over here is one of the  
6 foundations of NOFA, and I don't know how we  
7 got this complicated. But, all I can say is  
8 good luck for the next 20 years. Thank you.

9 MR. MATHEWS: Your comments  
10 reminded me of one thing that we've included  
11 in there that you have to fence off the water.

12 But we've also asked for data on the impact  
13 of that. And the reason why I mention this is  
14 that throughout the preamble, we talk about  
15 what we see as the economic impact or the  
16 regulatory impact or the paperwork burden of  
17 these changes. And we've asked for the public  
18 to give us feedback on that. So, I encourage  
19 you to read the preamble. Look for where  
20 we've asked for data and to also provide that  
21 in your comments. Yes sir.

22 MR. STOLTZFOOS: I'm John

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Stoltzfoos from Whitesville, New York. If you  
2 talk about cold-weather, if you look at a seed  
3 map, we're that little dot right in the  
4 Pennsylvania-New York border. So we're very  
5 cold there. I have some concern about this  
6 with cold weather and cows outside in freezing  
7 temperature with freezing tits. But, in the  
8 meantime, we're also, on our farm, we are  
9 making a pen pack down in our woods this year.

10 We had intended to do this during the summer.

11 So our cows are going to be out 24-7, 365  
12 days. We kind of thought, maybe, when a cow  
13 freshens and right after she's fresh, we might  
14 have to keep her in like a week or so in a  
15 little bit warmer climate until her udder  
16 smoothes up again.

17 But overall, I think it looks real  
18 good for us. I know that's going to be a big  
19 issue about frozen teats in the North country.

20 We might have to deal with it a little bit  
21 too on ours. But I thank you very much for  
22 what you did for our pasture issues.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   MR. JOHNSON:    Dave Johnson again.  
2                   I'm not a goat farmer and I'm not sure how the  
3                   goat farmers managed to get such clout.  But  
4                   how did the rule come about that only goats  
5                   have the privilege of being excluded from  
6                   pasture during inclement weather?

7                   MR. MATHEWS:  Goats are nowhere near  
8                   as hearty as a cow.

9                   MR. JOHNSON:       Okay, and second  
10                  question I have is, when I look at the  
11                  definition of inclement weather, I can picture  
12                  some places in the United States that have  
13                  inclement weather 365 days a year.  So I'm  
14                  really concerned about the goat farmers in  
15                  Alaska.

16                  MR. MATHEWS:  I would recommend that  
17                  you put your comments with regard to inclement  
18                  weather into writing and send them to us.  If  
19                  you've got a better definition, let us know.

20                  MR. NELSON:     Ed, this one doesn't  
21                  work, right.  Can I take it away?

22                  MR. MATHEWS:    It's connected to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -- that microphone is connected to -- nobody?

2 MR. NELSON: This one.

3 MR. MATHEWS: Okay.

4 MS. ZUCK: Doesn't look like it's  
5 connected to anything. Thanks. Hello. I'm  
6 Leslie Zuck and I didn't sign up yet, but I  
7 will, promise. It's Z-U-C-K. I'm the  
8 director of Pennsylvania Certified Organic and  
9 -- closer to the mic -- there we go. I have  
10 to see too, how do I do that? So, I was  
11 looking at -- we will definitely submit some  
12 very constructive comments. We'll start on  
13 those right away.

14 And I have some concerns about the  
15 changes to the temporary confinement part of  
16 the rule. And I think that's what you're  
17 hearing a lot today as well. No surprises  
18 there. But I was wondering when you did that,  
19 split it out between the ruminants versus non-  
20 ruminants, if you did give some consideration  
21 to how that new definition of inclement  
22 weather might affect the other species.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Particular, I'm concerned about poultry,  
2 right now. And if, you know, you have  
3 considered that great, if you want comments on  
4 that we'd be happy to provide some.

5 I suspect that the poultry  
6 operations, now we would consider cold-  
7 weather, rainy weather, those types of things  
8 to be allowed to bring those birds inside  
9 because it does affect their health. It may  
10 not kill them. It may not cause permanent  
11 damage, but it is a concern for causing  
12 illness and such.

13 And then, the other question I have  
14 regarding the ruminants not being allowed to  
15 be confined, being allowed to be confined for  
16 those specific reasons. I was wondering as  
17 far as -- I was trying to think of things that  
18 we do get requests for confining animals. And  
19 one of them is predator problems. Now, those  
20 are usually temporary, but if they do have  
21 some predator issues on the farm and they need  
22 to take care of them, whether it's by trapping

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or other means of dispatch, they will want to  
2 keep those animals in. Outbreaks of  
3 contagious diseases in the region, that's  
4 another concern. And then, maybe I missed  
5 this, but, are you -- I think what you're  
6 saying is that you also don't want the animals  
7 to be, the cows to be inside at night, just  
8 because it's night. So they should be outside  
9 all the time. So, those are my questions.

10 MR. MATHEWS: Yes. The animals  
11 outside all day, every day --

12 MS. ZUCK: And night?

13 MR. MATHEWS: -- except for -- yes.  
14 24 hours a day.

15 MS. ZUCK: Okay.

16 MR. MATHEWS: And you're welcome to  
17 comment on that. But, yes, the intent is that,  
18 except for those times listed, the animal  
19 would be outside.

20 MS. ZUCK: And so the inclement  
21 weather change in that definition, well I  
22 shouldn't say change, but the clarification

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because it really wasn't defined before,  
2 affect on the other species of livestock, is  
3 that something you would also request comments  
4 on or is that not negotiable?

5 MR. MATHEWS: You are free to  
6 comment on anything in there. So, if you  
7 believe that the definition has impacts in  
8 other places, please let us know.

9 MS. FLACK: I'm Sarah Flack from  
10 Vermont. And I've been an organic inspector  
11 for maybe 15 years or so. And I'm also a  
12 grazing consultant and have helped a lot of  
13 farmers come up with grazing plans to meet the  
14 pasture requirements. And I have three areas  
15 that haven't been covered in a lot of detail  
16 yet, in the comments yet.

17 First of all let me say, thank you.

18 And to have the 30% in there, and have it not  
19 be a stocking rate was really excellent. And  
20 that it covers the whole grazing season also,  
21 the whole growing season is great. I'm  
22 wondering how to get the cows bred if you're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 doing AI and you need to leave the cow locked  
2 in the barn for the day when the breeder  
3 comes. So I think that maybe could get added  
4 in there under illness or something like that.

5  
6 Generally, you tie the cow up or  
7 put it in a pen in the free stall, and the  
8 breeder shows up sometime during the day and  
9 then you let her out at night. So it's a very  
10 short temporary confinement. But I thought it  
11 could be overlooked in here.

12 The other is, I wanted to say  
13 something else about sacrifice pastures,  
14 because I've worked with farmers who have  
15 tried sacrifice pastures in the northern  
16 climates before, in the winter. And these  
17 were the, you know, the cutting edge grazers  
18 who were going to do the 365 day a year  
19 grazing. And they turned out into various  
20 soil types and conditions all over the  
21 northeast in the northern climates and some of  
22 them did really well and continued to leave

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the cows out for the whole year in those  
2 climates. And some found that they had soil  
3 conditions and cow health conditions that  
4 didn't allow them to continue to do that.

5 And so, particularly the farmers  
6 who had nutrient management issues, that  
7 really put their soil and water resources at  
8 risk due to the, you know, location of their  
9 farm and the fact that the winter conditions  
10 are, you know, four to six months of the year.

11 They couldn't come up with enough land to  
12 rotate through these sacrifice pastures, as is  
13 described in the rule as it's currently  
14 written -- the new proposed rule. And so,  
15 they were able to go to NRCS and say hey look  
16 we've created a big nutrient management  
17 problem, what do you think that we should do?

18 And NRCS has gone to those farms,  
19 and all over the North, we've got really great  
20 working relationships with NRCS, who have  
21 cost-shared to build really nice barnyards  
22 with good nutrient management and manure

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 containment systems, so that their soil and  
2 water resources are no longer at risk. And I  
3 would really hate to see them being forced to  
4 go back to the sacrifice pastures that have  
5 been replaced with, you know, USDA and NRCS  
6 cost-sharing to allow them to have these, now  
7 really nice systems to keep the manure out of  
8 the water.

9 I also want to say that the way the  
10 dry matter demand is being calculated in the  
11 current rule, it's already been mentioned by  
12 two or three folks, that would definitely need  
13 to be adjusted so that it is a lot easier for  
14 the certifiers to come up with an accurate  
15 number of, you know, this is the amount of dry  
16 matter that a cow or a sheep or a beef animal  
17 is currently eating. The 3% of bodyweight  
18 just doesn't work across the board. And  
19 there's a lot of good information out there  
20 that'll show very scientifically valid ways of  
21 calculating what that demand should be.

22 So, but, thank you for the rule.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thank you for making it so strict, and for  
2 really listening to our concerns as farmers  
3 and the consumer concern about pasture.

4 MR. MATHEWS: Just one comment on  
5 the DMI issue. Keep in mind that I'm not  
6 saying that what we've got is perfect. But  
7 what we also want to take into consideration  
8 is that we need to make it easy for the farmer  
9 to be able to come up with the answers to  
10 that. So any comments that we receive, I  
11 would hope that they would flush out in  
12 greater detail what you think it should be.  
13 But do that in consideration of the farmer as  
14 well. So that we're doing something that  
15 isn't overburdening the farmer as far as  
16 trying to calculate these things out. Okay?

17 MS. COEHOORN: Hi, I'm Darlene  
18 Coehoorn, a Midwest dairy farmer. My husband  
19 Dan and I milk about between 50 and 60 cows.  
20 My comments -- I want to thank you first, you  
21 know, for getting this rule out. At least  
22 getting us this far. I, too, have concerns

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with the increment weather, but my perspective  
2 on that comes from a little different angle.

3 I am concerned about what our  
4 consumers will think of me if I leave my  
5 cattle out when it is too cold and too  
6 miserable for them to be there. From an  
7 animal welfare standard, I mean, much of what  
8 we do is because of what the consumer  
9 perceives that we should be doing. And, I  
10 don't think, I mean, they do appreciate and  
11 they really want them on pasture, but we don't  
12 have a 365-day growing season. There is no  
13 benefit to them to being out there on pasture  
14 when there is no pasture. And, I really feel  
15 it's important that we consider the health and  
16 welfare of that animal as well.

17 Another point, we had a question  
18 where you to change the definitional of  
19 livestock to include any bee, cattle, sheep,  
20 goat, swine, poultry, equine animals used for  
21 food or in the production of food, fiber, feed  
22 or other agricultural based consumer products.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Fish used for food, wild or domesticated game  
2 or other non-plant life. Is that to include  
3 the draft forces that our Amish farmers would  
4 use to produce feed? Because, now, I mean, as  
5 it stands right now, I am assuming that they  
6 are not required to feed organic feed to those  
7 horses. And the horses are not intended for  
8 food. So are they also subject to this  
9 Regulation, because they are producing feed  
10 for organic production.

11 MR. MATHEWS: That part of the  
12 definition has not changed. And so for horses  
13 for the production of food, I guess it would  
14 depend on how you interpret the production of  
15 food, so I would recommend that you send in  
16 comments on how we're supposed to interpret  
17 that.

18 MS. COEHOORN: I don't have any  
19 horses --

20 MR. MATHEWS: But, right now a  
21 strict interpretation of that would be that  
22 yes, the horses on that organic farm should be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fed organically. They should be managed  
2 organically.

3 MS. COEHOORN: We just thought the  
4 question should come up because I don't  
5 believe we have any Amish--

6 MR. MATHEWS: Yes.

7 MS. COEHOORN: --presence and they  
8 may, but --

9 MR. MATHEWS: Because that's not a  
10 new addition to the definition.

11 MS. COEHOORN: Right, but these  
12 horses truly are not certified organic.

13 MR. MATHEWS: Right.

14 MS. COEHOORN: They're --

15 MR. MATHEWS: I understand.

16 MS. COEHOORN: I mean that would be  
17 the same as if-- I would probably have to  
18 certify my tractor.

19 MR. MATHEWS: I understand that.  
20 And so, I guess what we need to do is to  
21 receive your comments because that can be  
22 interpreted two ways. And so, it'd be good if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you gave us some comment on that as well.

2 MS. COEHOORN: Can I just ask you  
3 further, if you could elaborate why equine  
4 would be included in there as it is not an  
5 animal that is allowed to be slaughtered in  
6 this country?

7 MR. MATHEWS: Because it's in the  
8 statute. Yes, and as Leslie says, this is  
9 applied worldwide and there are horses in some  
10 countries that are used for food. And, if we  
11 develop pet standards, we could have horses in  
12 pet food. So, it's always been in the  
13 standard and so --

14 MR. PERKINS: Henry Perkins again.  
15 If we are going to have to certify that our  
16 horses are used in production of food, then I  
17 have occasionally hired people, do I have to  
18 certify that they are too? And this is sort  
19 of facetious. You don't have to answer that.

20 MR. MATHEWS: Well Henry, the  
21 answer I would give is that definition does  
22 raise some questions. It's not a new

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provision. It's in the statute. And if we  
2 need further clarification on that, by all  
3 means, please submit your comments and we'll  
4 look at how we might be able to provide  
5 further clarification.

6 MS. SHIVERA: Hi, I'm Diane Shivera  
7 and I work for Maine Organic Farmers and  
8 Gardeners Association. I'm the organic  
9 livestock specialist. I've been there about  
10 10 years working with the dairy farmers and  
11 other livestock farmers too. So I'd also from  
12 MOFGA like to thank you for the rule. I know  
13 our farmers have been anxious for this for a  
14 long time. So they really appreciate it.  
15 And, I have to voice all the concerns that all  
16 the other people are having too, so, just to  
17 reiterate all the information about the  
18 inclement weather and everything. And the  
19 managing for 3% is going to be difficult, and  
20 isn't really very realistic.

21 The other thing, just a little odd  
22 one that I've noticed and maybe I'm reading it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wrong but in 205.239 (f), it says that  
2 ruminants aren't allowed to pollute. I think  
3 maybe you mean that to say all livestock,  
4 because you really don't want the non-  
5 ruminants out there polluting their  
6 environment either. So, just an odd little  
7 bit. So, that's it. Thank you very much.

8 MR. MATHEWS: Anyone else?

9 MS. KEEFE: Hi, I'm Sally Keefe  
10 from with the Royal Organic Dairy. We are an  
11 organic dairy producer. We operate five dairy  
12 farms in Colorado and Texas. We also are an  
13 organic dairy processor. We handle all the  
14 milk from our farms in our own processing  
15 plant in Colorado. Thank you very much for  
16 getting the Rule out and for your perseverance  
17 through what I think we could all agree was a  
18 very long process.

19 I noticed during your speech that  
20 you mentioned that a voluminous docket had  
21 been assembled. And yesterday, I actually  
22 tried to find an electronic or actual reading

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 room where people could review the materials  
2 that you relied on for putting the proposal  
3 together. Like the 3% that's been coming up  
4 today and things like that. I wasn't able to  
5 find such a place. I think you would be very  
6 helpful to the community as we consider our  
7 comments over the next couple of months and  
8 was wondering about how that information would  
9 be made available?

10 MR. MATHEWS: I guess I'm not  
11 following. This is what is published. And  
12 it's got umpteen pages of preamble. And  
13 that's what I meant by the docket.

14 MS. KEEFE: Okay. Well  
15 specifically, I'm wondering about the  
16 administrative record. When I called  
17 yesterday to request the administrative  
18 record, I was referred to an NOSB web site.  
19 And I believe that the program should have an  
20 administrative record available for the  
21 review. Thank you.

22 MR. MATHEWS: And for further

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clarification, what do you mean by  
2 administrative record? I mean, the Board's  
3 recommendations that are mentioned in here are  
4 all on the web site. And so the comments --

5 MS. KEEFE: Within the preamble and  
6 also --

7 MR. MATHEWS: Yes.

8 MS. KEEFE: -- and also within the  
9 rule, for example, there's -- there's not  
10 information provided on the justification for  
11 why you picked 3% on the DMI and things like  
12 that. And so I was just hoping --

13 MR. MATHEWS: You mean 30% for the  
14 dry matter --

15 MS. KEEFE: Sorry, 3% for the  
16 bodyweight for the calculation in the dry  
17 matter fed. And so that was the type of  
18 information I was hoping to better understand  
19 your reasoning, so as --

20 MR. MATHEWS: Out of this. Out of  
21 this.

22 MS. KEEFE: And so, are you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 planning to put a reading room together that  
2 includes all of those different sources or do  
3 you --

4 MR. MATHEWS: No.

5 MS. KEEFE: Okay.

6 MR. MATHEWS: I mean, it would be  
7 next to impossible for me to go back and pull  
8 out every document that I read, you know over  
9 several months as I was preparing to develop  
10 this pasture rule, because as Hugh pointed  
11 out, I had to go to school. I had to go to  
12 school to learn about pasture. I know I was  
13 at a meeting one time with Henry Perkins and  
14 I'm sure he'll verify this. Where are you  
15 Henry? You're over there. Henry Perkins, I  
16 remember telling the dairy farmers, now, you  
17 got to really tell us what you want us to do  
18 because we're bureaucrats in Washington, we're  
19 not dairy farmers. And so, I went to school  
20 and I read voluminous stuff and did a  
21 searching and picked out stuff. And, there's  
22 nothing in there that isn't already published

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 someplace else. So, I don't know --

2 MS. KEEFE: Okay, thank --

3 MR. MATHEWS: I don't know if I  
4 could recreate it for you.

5 MS. KEEFE: Thank you again, thank  
6 you for your perseverance and all your time in  
7 school.

8 MR. MATHEWS: Okay. Babak's telling  
9 me that I guess that file drawer that I have,  
10 if you had specific questions on a specific  
11 section, send me a freedom of information  
12 request and I'll go through the file cabinet  
13 and pull it out and I'll send it to you.

14 MS. BROWN-ROSEN: OK, thanks. I'm  
15 Emily Brown-Rosen again --

16 MR. MATHEWS: Wait a minute --

17 MS. BROWN-ROSEN: You want to add  
18 to that?

19 MR. MATHEWS: She wants to say  
20 something again.

21 MS. BROWN-ROSEN: Okay.

22 MR. MATHEWS: Please go to the other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mic as well, please.

2 MS. KEEFE: Hi, it's Sally Keefe  
3 again. My reading room suggestion was frankly  
4 an attempt to avoid a voluminous -- I know  
5 that the Freedom Of Information Act request  
6 can be very burdensome on the program and so  
7 that was part of my suggestion was to avoid  
8 that type of burden on the program.

9 MR. MATHEWS: Yes, well, just let me  
10 know what you want. And, I'll go through -- I  
11 know that I printed it out most of this stuff  
12 and I'll start searching for the document that  
13 is applicable to what it is you're asking for.

14 MS. BROWN-ROSEN: Hi Richard, I  
15 have one more question, just to be clear on  
16 the calculations that we're expecting on the  
17 30% DMI. It says during the growing season,  
18 producers shall provide not more than average  
19 of 70% demand from dry matter blah, blah,  
20 blah, and then you go on to give specific  
21 requirements for monthly recordkeeping, as  
22 well as it mentions that the farmers are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 supposed to have daily recordkeeping.

2 The point is it averaged over the  
3 whole growing season or is it a monthly  
4 calculation that we're looking at? Which gets  
5 back to the drought question. I mean, if  
6 their monthly average is not 30%, are they,  
7 you know, subject of noncompliance?

8 MR. MATHEWS: No, what we're asking  
9 for them to do is to document their feed  
10 ration on a monthly basis. So, say the first  
11 of each month, they would document what the  
12 ration is for that month. The dry matter is  
13 averaged over the total grazing season. Okay?

14 It's not a daily 30%. So, you can have 90%  
15 one-day, 10% another. Or zero on a given day  
16 because of drought or whatever.

17 But, it's the average over the  
18 entire grazing season. And as far as daily is  
19 concerned -- the only thing you're documenting  
20 is -- on a daily basis, you should be  
21 documenting that your animals are out on  
22 pasture. We're not looking for a lot of daily

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recordkeeping beyond which you already do, I'm  
2 saying that my animals were out on pasture  
3 this day.

4 MS. BROWN-ROSEN: Okay. Thanks.  
5 It does say document how much dry matter is  
6 fed daily to each class of animal. So, that's  
7 what led me to think that it was daily.

8 MR. MATHEWS: Yes. You're talking  
9 about the 70% part? Is that where you're  
10 coming from?

11 MS. BROWN-ROSEN: Well, it's in the  
12 feed section under --

13 MR. MATHEWS: OK.

14 MS. BROWN-ROSEN: --(c)(2). So--

15 MR. MATHEWS: Yes.

16 MS. BROWN-ROSEN: It's (2)--

17 MR. MATHEWS: Yes. Okay.

18 MS. BROWN-ROSEN: Yes, 237(c)--

19 MR. MATHEWS: Yes.

20 MS. BROWN-ROSEN: 237(c)(2) and  
21 (3). And (4).

22 MR. MATHEWS: You're documenting

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the--

2 MS. BROWN-ROSEN: Document the  
3 percentage.

4 MR. MATHEWS: Yes, but you don't  
5 have to do that on a daily basis. I mean,  
6 that's the daily dry matter need that's in  
7 your feed ration.

8 MS. BROWN-ROSEN: Okay, that's a  
9 good clarification.

10 MR. MATHEWS: Now, I'm not saying  
11 that you go out and calculate it every day. I  
12 mean, you've got -- you go out and once a  
13 month you do your feed ration and figure out  
14 what the daily need will be during that month  
15 and that is what you use at one time.

16 MS. GRIFFIN: Hi, Siobhan Griffin.

17 A lot of us Northeast producers are worried  
18 about the fact that the cows have to be out in  
19 the winter. Often conditions are not suitable  
20 for the cows to be out. I know there are  
21 consumers in my area that have called animal  
22 welfare because some of my neighbors have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their cows out in cold windy conditions. And  
2 I don't think it's the intent of this pasture  
3 rule to have animals put in jeopardy in bad  
4 weather. In fact, Mr. Mathews suggested that  
5 there had been the intent to have inclement  
6 weather provisions to cover that. I consider  
7 myself a pretty hard-core hardcore grazer. We  
8 have made mistakes over the last 19 years  
9 since I've been grazing. Mostly in the  
10 winter, by pushing the issue on having the  
11 cows out and then finding out it was not  
12 appropriate for the health of the animal.

13 I get 35 below, actual temperature,  
14 on my farm sometimes in the winter. Also, my  
15 pastures are open to the wind. So, on a daily  
16 basis in the winter, I use my judgment and  
17 experience as a farmer to decide if my lane  
18 ways and my pastures are too icy or not. A  
19 lot of times I can sand my lane way and get  
20 the cows up to the pasture for their access to  
21 outside. But, if the wind and the cold  
22 combines, so that, I take off my hat and my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 hood, and my ears literally hurt being out in  
2 the wind, that temperature and combination  
3 will freeze the tits off a cow.

4 One year, by mistake my hired guy  
5 left cows out while I was at a NOFA  
6 conference. Let them out too long in those  
7 conditions and I lost 10 cows to a terrible  
8 death. Their ends of their teats froze and  
9 then subsequently fell off. And once a cow  
10 does not have that teat sphincter to keep the  
11 bacteria out of her udder, she will die of E.  
12 coli or some environmental thing. Within a  
13 week, 10 cows were dead or on a truck. It was  
14 terrible.

15 And I've learned the hard way in my  
16 19 years with grazing, there's things we can  
17 do, like having cows in a sheltered woods  
18 where the wind is less of an issue. Things  
19 like that can be done. In my situation, I  
20 need to have access to the shelter of my barn  
21 in those conditions for my cows or it will be  
22 an animal welfare issue. And, I love my cows.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       They put a roof over my head and in exchange  
2       I take care of them the best I can. It  
3       involves lots of pasture. But if I have to do  
4       extra work and have them indoors protected  
5       from the wind, we need to do that.

6               And I think, I want to submit  
7       specific recommendations to the NOSB on what  
8       temperatures and wind combinations would  
9       require that. And that's going to be  
10      different on my farm than everybody else's  
11      farm because every farm is different. And I  
12      urge everybody to submit conditions where it  
13      is not to the benefit of your cows and their  
14      health and well-being to be outdoors. And  
15      this will be an exemption for inclement severe  
16      weather in the winter. And I think they need  
17      to be specific and and then the NOSB can come  
18      up with something that is going cover at least  
19      most of us, hopefully all of us, and protect  
20      our cows. Thank you.

21              MR. MATHEWS: Okay. Anyone else?  
22      Everybody looks like they're ready to fall

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 asleep. Arden.

2 MR. NELSON: Think we have enough  
3 time? My name is Arden Nelson. I'm a  
4 veterinarian and a dairy producer from  
5 Colorado. My comments today come to you on  
6 behalf of my wife and partner, Dr. Meg Catell,  
7 and myself only. I'm vice-president of the  
8 Western Organic Dairy Producers Alliance, but  
9 our comments will be forthcoming shortly, as a  
10 group. First of all, Richard Matthews, thank  
11 you. NOP, thank you. We've needed this a  
12 long time. The pasture rule is I think a huge  
13 step, but I remind you the first step, in a  
14 leveling the playing field for certified  
15 organic dairymen across this country.

16 Consumers should have renewed faith  
17 in our integrity of producing milk underneath  
18 this new addition to the organic rule. The  
19 second part of accomplishing what we really  
20 need in the industry, comes with enforcement.

21 And I would urge all of us as producers to  
22 look on our concerns and suggestions from the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 certifier's standpoint and the ultimate goal  
2 of having this law enforced. Thank you,  
3 Richard Matthews. It's sorely needed. It's an  
4 ending and a beginning. Surprise, Ed.

5 MR. MATHEWS: Anyone else? Let's  
6 not be bashful. Mr. Engelbert, you were  
7 rubbing your hands together --

8 MR. ENGELBERT: Yes.

9 MR. MATHEWS: He looked like he was  
10 just getting ready to pounce.

11 MR. ENGELBERT: My name is Kevin  
12 Engelbert, I'm a certified organic dairy  
13 farmer from upstate New York. One of the  
14 longtime dairymen that Robert has referred to;  
15 we've been in the organic for about 30 years  
16 now. And, I wasn't going to speak. I don't  
17 need to hear myself talk and I just wanted to  
18 say thank you for all you've done. I know  
19 it's a big step forward. The one point that  
20 hasn't been addressed is, and I hadn't  
21 understood this myself when I read the rule,  
22 this requirement of 365 days a year for all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 animals over six months of age.

2 Young calves that are six months  
3 old are about the size of a goat. And to  
4 require them to be outside on pasture in  
5 upstate New York or in a lot of northern  
6 conditions, excuse me, probably won't be --  
7 you know, that definitely will be the animal  
8 welfare issue that also needs to be addressed.

9 But again, I thank everybody for all their  
10 hard work and I'm glad we've gotten to this  
11 point, and I look forward to the  
12 implementation and enforcement of this rule.

13 MR. MATHEWS: Okay. Again, please  
14 put any of those issues into writing to us and  
15 submit them to regs.gov. This gentleman over  
16 here was going to say something.

17 MR. SEGALLA: My name is Rick  
18 Segalla. I'm from Connecticut. I have a 100  
19 cow dairy in Connecticut. My concern with  
20 this, I'd like to say, I'm glad we've got the  
21 pasture rule coming out now. But, my concern  
22 is in the wintertime when -- at my operation,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I normally -- after milking in the morning, we  
2 move the cows from the barn. They go out into  
3 pasture area and they're allowed to come in  
4 when they want to during the day. And what  
5 I'm asking is, is it access to pasture or do  
6 we lock them all out in the pasture. If they  
7 want to come in and lay down inside or come  
8 back and eat out of the feed bunk, which is in  
9 the barn, do we have to provide them with a  
10 feeding systems outside or can they come back  
11 in the barn and go back out when they want to?

12 MR. MATHEWS: At what time of day  
13 are you talking about? What time of the year?

14 MR. SEGALLA: This is during the  
15 wintertime. In the summertime, they'll be out  
16 on pasture, but in the winter -- I mean,  
17 basically the operation is we open the gates,  
18 chase them out into the snow in the  
19 wintertime, except for when it's icy where the  
20 cow's going to get out there and do one of  
21 them numbers and end up split into a compost  
22 pile because of that. I'd like to be able,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you know, have the rule so that they have  
2 access to pasture, you know, during the day in  
3 the wintertime.

4 At nighttime, conditions can change  
5 so much during the night and you could get a,  
6 say a snowstorm that turns to ice in the  
7 middle of the night. So, I don't know whether  
8 it's in the welfare of the animal to lock them  
9 outside during the night or -- you know, where  
10 they're going to come in and be injured in the  
11 process in the morning trying to bring them  
12 in. Or during the night. I think the intent  
13 of the rule is to give the animals access to  
14 fresh air and sunlight and that could be  
15 accomplished in a lot of ways. I mean,  
16 you put them on pasture in the wintertime, and  
17 the ground is frozen, it's basically a  
18 barnyard anyway. They're not getting anything  
19 from it except exercise. And if they have  
20 outside access and exercise, I think it's very  
21 good for them, but I'm worried that if we're  
22 required to lock them outside at night, we're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to have so many deaths -- you know,  
2 unnecessary deaths to the animals and reduce  
3 the lifespan of these animals' productive  
4 lives.

5 MR. MATHEWS: Okay, it's not our  
6 intent to create unsafe conditions for the  
7 animals. So, I would encourage you and  
8 others, to make additional comments on that.  
9 Under the regulations, you are supposed to  
10 provide for the health and safety of your  
11 animals. So, if we've propose something that  
12 you feel is detrimental to the health and  
13 safety of the animal, let us know. Tell us  
14 how to fix it.

15 MR. SEGALLA: Thank you.

16 MS. SHEA: Kelly Shea again, with  
17 Horizon Organic Dairy. Richard, I just want  
18 to clarify something. So, I hear you  
19 frequently say to the farmers that are  
20 standing up here B- well, if you would submit  
21 that to us in writing, or clarify that in  
22 writing. And I'm assuming that you mean

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clarify or submit in writing specific  
2 suggested changes to the regulations.

3 Because just to clarify, one of the  
4 reasons that we so heavily pushed for USDA to  
5 do these listening sessions is so that farmers  
6 voices could be represented by farmers. Not  
7 by activists saying they represented farmers  
8 or by processors saying they represented  
9 farmers. So, I just want to clarify that USDA  
10 is going to take all the comments made by  
11 farmers today, they will be submitted into the  
12 record with equal weight of written comments  
13 and be judged that way, as opposed to farmers  
14 needing to, once again, turn around and submit  
15 in writing, the same comments. Because, we  
16 believe that's a burden and that's why we  
17 asked for the listening sessions.

18 MR. MATHEWS: Yes, what -- what I'm  
19 getting at is that B- okay, let me step back.

20 Everything that is said here today is being  
21 recorded. And a transcript will be developed  
22 and it will be put on the website and it'll go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 into regs.gov as a comment. So, everything  
2 that's transpiring here now, is going to be on  
3 the record. It's a comment.

4 What I'm getting at is that when I  
5 hear expressions of concern, I want to  
6 internalize that and be able to come up with  
7 some specific language on how I fix what your  
8 concerns are. So, if you send me some ideas  
9 as to how that can be fixed, that's better  
10 than for me to stand or sit at my desk and  
11 say, okay, this is what their concerns are,  
12 here's how I think it should be fixed to  
13 address the concerns of the farmers.

14 And so, I know I'm asking you to do  
15 another step and maybe you can work that out  
16 through your organizations. But we need to be  
17 told how do we fix it from your perspective,  
18 not just from my perspective as to what it is  
19 you're asking me to do. Okay? I'm not  
20 trying to create more work for you and I do  
21 want to hear from the dairy farmers. And this  
22 may be the only way that we hear from a lot of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dairy farmers, is coming to meetings like  
2 this. And that's why we're holding the  
3 listening sessions. But again, if I interpret  
4 your intent, I may not get it exactly right.  
5 And the next step is a final rule. So, if  
6 you've got some specifics on how I fix that  
7 language -- some suggested rewording of that  
8 language, it would be greatly appreciated.  
9 Okay? Yes sir.

10 MR. GARDINER: Jim Gardiner again,  
11 dairy farmer, small businessman. I have a  
12 question for you. When you brought up the  
13 point of, you know, with replacement issues.  
14 You need data to, you know, help your judgment  
15 to get through to understand the last third of  
16 gestation. The data you use, does that have  
17 to come from a university or doctor's book or  
18 anything like that, or could that be can that  
19 be verified through, you know, applied  
20 research from farmers?

21 MR. MATHEWS: It could be your own  
22 experiences. Just tell us what your own

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 experience is.

2 MR. GARDINER: Okay, well, that --

3 MR. MATHEWS: I mean all sources  
4 are welcome.

5 MR. GARDINER: Okay.

6 MR. MATHEWS: But it could be just  
7 your anecdotal -- as your experience on your  
8 farm.

9 MR. GARDINER: OK, being that, when  
10 you have the last third of gestation, you  
11 know, when you look at that Rule, I know you  
12 made a comment, do we look at a fellow who is  
13 transitioning and part way through his  
14 transitioning, he needs to buy more animals  
15 before he's finished, does he buy organic or  
16 does he buy transitional. You know, or does  
17 he buy, you know, conventional animals and put  
18 them into the system?

19 MR. MATHEWS: Just to interrupt  
20 you, that somebody who is transitioning, that  
21 they're buying organic, they're no longer  
22 organic.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GARDINER: Right. They'd be  
2 considered that transitional period again.

3 MR. MATHEWS: Right.

4 MR. GARDINER: Right. Okay, but--

5 MR. MATHEWS: No, they wouldn't be  
6 going through a new transition --

7 MR. GARDINER: They'd have to --  
8 yes, you'd have to state stay stationary

9 MR. MATHEWS: Once they're organic  
10 and they come out of organic B-

11 MR. GARDINER: Okay.

12 MR. MATHEWS: -- they're no longer  
13 organic.

14 MR. GARDINER: Right. Okay.

15 MR. MATHEWS: So, you cannot take a  
16 organic livestock animal off of an organic  
17 farm and put it on to another farm where the--

18 MR. GARDINER: They're not  
19 certified.

20 MR. MATHEWS: -- operation is not  
21 certified as a livestock handler.

22 MR. GARDINER: Right, well,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       pertaining to that, now that we have a pasture  
2       rule that's coming of age and coming into  
3       fruition.    The experience I have had, being  
4       around other farmers and being on my own farm,  
5       has been that the cull rate of the cattle on  
6       pasture, once they've got into where the  
7       ruminant, you know, functions have adjusted,  
8       that the cull rate actually starts to  
9       decrease.    And the amount of heifer raising  
10      and the amount of replacement animals actually  
11      starts to supersede what the farm needs and  
12      there he is a general sale or ability to sale  
13      of, you know, extra animals for dairy purposes.

14                So with that, you know, I would  
15      submit to you that part of the ongoing study  
16      which is from all organic farmers that you  
17      would consider in the last third of gestation  
18      that if these folks are short of animals and,  
19      you know, that instead of transitioning new  
20      animals, you know in 12 months, that it would  
21      be a last third no matter what.    And then, on  
22      the exception, of the people who are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 transitioning if they're coming in that's one  
2 little area. You're right, you can't bring an  
3 organic animal into that, but there are  
4 animals available once they get to their end  
5 of their time where they can be certified.

6 MR. MATHEWS: You give him one  
7 opportunity and he wants another one.

8 MR. ENGELBERT: Just one quick one,  
9 Richard. One thing that hasn't been addressed  
10 is what do you see happening now? We've got a  
11 comment period that's going to end December  
12 23. There's some controversial issues in here  
13 that don't really deal with pasture, such as  
14 the origin of livestock. Will that be pulled  
15 out and the Pasture Rule written and then  
16 posted?

17 And what kind of timeframe are you  
18 -- do you think we're looking at for that?  
19 When will this rule actually become effective?

20 Will there be any type of, like in the Harvey  
21 case, where they were given a year to adapt,  
22 will that be part of this new rule when it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 finally written, do you think? I mean, we're  
2 a patient group, but we'd still like to know  
3 what we're looking at as far as when this is  
4 gonna actually be on the books? Thank you.

5 MR. MATHEWS: I knew that question  
6 was going to come up, I just didn't know who  
7 was going to ask it. The real answer to that  
8 Kevin is that I really don't know how soon  
9 that it'll be out. I mean, there's going to  
10 be a lot of factors that play into this. It  
11 was hard getting the rule out to begin with  
12 and it wasn't because of the regulatory  
13 language that was in the rule, it was because  
14 of all the ancillary things, like the economic  
15 impact analysis, the regulatory flexibility  
16 act analysis, the paperwork burden analysis.  
17 So it's going to depend in large extent on how  
18 many comments we get. What kind of comments  
19 we get. And I think we're going to get a lot  
20 of comments.

21 I've heard a lot of issues here  
22 today, where people are going to want to have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this thing tweaked a little bit. Tweaking  
2 probably won't take a long time. The real  
3 challenge will be going back and addressing  
4 the data issue again. So that's why I  
5 emphasize that if you've got some data on what  
6 this means to you, please send that into us.

7           There's still lots of steps that it  
8 has to go through. I mean, the comment period  
9 will end on December 23<sup>rd</sup>. We'll get to work  
10 right away analyzing those comments. We'll  
11 get to work right away tweaking the  
12 regulations where they need to be tweaked.  
13 But it'll still have to go through all of the  
14 normal clearance processes. The advantage  
15 that we have is that with this rule having  
16 taken so long the first time, that we've been  
17 able to educate people in the office of Budget  
18 and Policy Analysis about organic. We've been  
19 able to educate the office of the Chief  
20 Economist. We've educated with the Small  
21 Business Administration. So we've been able  
22 to educate people on pasture and what it means

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to the dairy farmers. So, we shouldn't have  
2 to plow that ground all over again. Okay?  
3 So, it should not take anywhere near as long.

4 But to give you a date certain, I don't know.

5 As far as when would it start?  
6 Personally, I'd like to see it finalized as  
7 soon as possible, so that maybe, the spring of  
8 in 2010 everybody has to be in compliance.  
9 And that sounds like a long time because we're  
10 in 2008, but it won't be until spring/summer,  
11 probably under ideal conditions, that we have  
12 a final rule. And so, I'm sure that the  
13 economists will tell us that we have to give  
14 some time for people to come into compliance.

15 So, if we take it down a growing season, I  
16 would think that it would probably be fully  
17 implemented sometime early 2010. Now, that  
18 doesn't mean people should wait.

19 I think that you all have a good  
20 idea what it's going to be. And we're talking  
21 about tweaking it. And so, everybody should  
22 be planning that it's going to be pretty close

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to what we've got right now. And so, you can  
2 start making your adjustments now. Okay? But  
3 again, I can't give you exact dates. And, I  
4 don't know what they're going to require of me  
5 as far as the full implementation date. All I  
6 can tell you is that we'll work pretty  
7 steadily to get it out.

8 Anything else? Anybody else? Look  
9 at that Kevin, you had almost the last word.

10 MR. MALTBY: I would like to thank  
11 you very much Richard and I think we should  
12 show a great appreciation.

13 (Applause.)

14 MR. MATHEWS: Thank you. Look at  
15 this.

16 MR. MALTBY: Yes, you had the time  
17 just right. It's now just after 12 o'clock.  
18 We should have been out of here about 30  
19 minutes ago. I would ask as you leave, you  
20 take your discussions out the hallway or into  
21 the restaurant, but don't stop and discuss  
22 stuff in here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 All of this information is going to  
2 be on the NODPA web site within 24 hours,  
3 www.nodpa.com. NODPA and the other groups  
4 across the country will be working on comments  
5 and thank you all for coming and safe trips  
6 home.

7 (Whereupon, the above-entitled  
8 matter was concluded at 12:20 p.m.)  
9  
10  
11  
12

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701