



National Milk Producers Federation

National Milk Producers Federation • 2101 Wilson Blvd., Arlington, VA 22201 • 703-243-6111; FAX 703-841-9328

August 11, 2008

General Services Administration
Regulatory Secretariat (VPR)
1800 F Street, NW Room 4035
Washington, DC 20405
ATTN: Laurieann Duarte

RE: FAR Case 2007-013

Dear Sir or Madam:

I am Jerry Kozak, President and Chief Executive Officer of the National Milk Producers Federation (NMPF). I submit this statement as a public comment to the proposed rule (FAR Case 2007-013) published in the Federal Register on June 12, 2008.

The National Milk Producers Federation, based in Arlington, VA, develops and carries out policies that advance the well being of dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. Our industry is one of the largest and most robust of the US agricultural sector. Nearly 60,000 commercial dairy farmers produced 185 billion pounds of milk in 2007, worth \$35.5 billion. This had an economy-wide impact of more than \$140 billion in economic activity and 1.2 million jobs. Many of our members have contracts to provide milk through federal contracts, including school lunch programs, military installations, USAID projects and other government programs

It is generally acknowledged that shortages of agricultural labor have increased over the years. The importance of immigrant workers in the United States agricultural sector cannot be overstated. The dairy industry simply could not operate without immigrant workers. The dairy industry has consistently been seeking employees from local communities, at highly competitive wages, but local workers are simply not available or not interested in working on dairy farms. Independent estimates indicate that at least fifty percent of the U.S. dairy farm workforce is comprised of foreign-born workers from Mexico and Central America.

While we appreciate the need for the federal government to uphold and enforce immigration law, the proposed rule seems overly broad, and may be highly disruptive to our operations. With our reliance on immigrant labor, we fear that mandatory E-Verify enrollment may disproportionately burden our farmer members.

Jerry Kozak, President/Chief Executive Officer

Charles Beckendorf, Chairman

Furthermore, we are having difficulty identifying our members' obligations and roles under the proposed rule. We seek clarification on several points of the proposed rule. Our goal is to be able to continue to provide our members' products pursuant to federal contracts and subcontracts without a dramatic increase in cost and regulatory action. We request that implementation of this rule be delayed until the issues raised in this comment can be addressed.

Definition of subcontractor

As is common practice in the dairy industry, our cooperative members are made up of many individual dairy farms. If a cooperative has a contract to supply products to a federal government program, are their member-dairies considered subcontractors for the purposes of the proposed rule? We strongly believe that our cooperative members and their member farms should be viewed as separate legal entities (in both directions) for the purpose of the proposed rule. We believe significant case law and regulatory history justifies this viewpoint (see *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755 (1949) and *Sariol v. Florida Crystals Corp.*, 490 F. 3d 1277, 1282 (11th Cir. 2007)).

Additionally, the proposed rule "Requires inclusion of the clause in subcontracts over \$3,000 for services or construction." Does this mean that only subcontracts for services or construction are required to insert this clause and thus be subject to mandatory enrollment in E-Verify? Are suppliers of agricultural products to federal contractors exempt from this rule, as they are furnishing neither services nor construction? Would a third party transportation firm, which brings the agricultural product to the contractor, be subject to the rule as a services subcontractor? Please clarify the definition of subcontractor for these purposes.

Concerns with the administration of the proposed rule

We are very concerned that the administration of the proposed rule will be disruptive to our workforce and production schedules. The proposed rule requires that upon receipt of a tentative non-confirmation from E-Verify, the worker has eight federal government work days to visit a Social Security Administration, SSA, office or call United States Citizenship and Immigration Services, USCIS, to "try to resolve the discrepancy". The proposed rule offers no guidance on how to actually attempt to resolve the discrepancy or what constitutes resolution. It simply thrusts the employee into the already overburdened and enormous bureaucracies of SSA and USCIS. We feel this will add mayhem and unworkable volume to an already over-extended system.

Furthermore, we believe eight days is simply not enough time for an employee to deal with a discrepancy. Like most agricultural producers, our members' facilities are primarily located in rural areas, where there is no SSA office nearby. It will represent a significant burden for their employees to travel long distances for multiple trips to an SSA office. It may disrupt their production schedules and lead to a drop in overall productivity. We believe 30 days is a reasonable period of time to attempt to resolve the aforementioned discrepancies.

Additionally, we feel that there should be a significant transition period, allowing us ample time to formulate a system for complying with the proposed rule. Finally, we request that the proposed rule only apply to enterprises with at least 75 full-time employees, as very small enterprises will not have the administrative capacity to properly comply.

We thank you for the opportunity to comment on the proposed rule. We eagerly await the publication of the final rule and clarification on the important issues raised in this public comment.

Sincerely,

A handwritten signature in black ink that reads "Jerry Kozak". The signature is written in a cursive style with a large, prominent "J" and "K".

Jerry Kozak
President/CEO
National Milk Producers Federation