



National Milk Producers Federation

2107 Wilson Blvd., Suite 600, Arlington, VA 22201 | (703) 243-6111 | www.nmpf.org

Agri-Mark, Inc.
Associated Milk
Producers Inc.
Bongards' Creameries
Cooperative Milk
Producers Association
Cortland Bulk Milk
Producers Cooperative
Dairy Farmers of
America, Inc.
Ellsworth
Cooperative Creamery
FarmFirst Dairy
Cooperative
First District Assoc.
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk
Producers
Maryland & Virginia
Milk Producers
Cooperative Association
Michigan Milk
Producers Association
Mid-West
Dairymen's Company
Mount Joy Farmers
Cooperative Association
Northwest Dairy Assoc.
Oneida-Madison Milk
Producers Cooperative
Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto County
Cooperative Milk
Producers' Association
Select Milk
Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative
Creamery, Inc.
Swiss Valley Farms
Tillamook County
Creamery Association
United Dairymen
of Arizona
Upstate Niagara
Cooperative, Inc.
Zia Milk
Producers, Inc.

August 13, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable R.D. James
Assistant Secretary of the Army (Civil Works)
U.S. Department of the Army
108 Army Pentagon
Washington, DC 20310

Re: Definition of "Waters of the United States"—Recodification of Preexisting Rules (EPA-HQ-OW-2017-0203; FRL-9980-52-OW)

Dear Acting Administrator Wheeler and Assistant Secretary James:

The National Milk Producers Federation (**NMPF**), established in 1916 and 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 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies.

NMPF and its members are committed to protecting U.S. waterways through voluntary efforts, as well as through regulatory compliance with the Clean Water Act (**CWA**). Clean water is central to healthy ecosystems, secure water supplies for human and animal consumption, and to the production of milk and other dairy products. For this reason, we applaud the continued efforts of the U.S. Environmental Protection Agency (**EPA**) and U.S. Army Corps of Engineers (**COE**) to keep our waters clean. We are committed to working with the EPA and COE to finding effective ways to achieve these important goals.

Because of the extensive efforts of our members to manage the natural resources on which they depend for their livelihoods, NMPF has a strong interest in the proposed rule *Definition of "Waters of the United States"—Recodification of Preexisting Rules* (**WOTUS**; EPA-HQ-OW-2017-0203; FRL-9980-52-OW). The dairy industry and all of agriculture need a WOTUS rule with certainty that complies with the Supreme Court decisions.

NMPF supports the Agencies' proposal to rescind the Definition of WOTUS and re-codify the preexisting rules. This is an important first step in a two-step process intended needed to review and revise the definition of WOTUS. This is consistent with the Executive Order signed on February 28, 2017, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule."

We understand the Agencies must first rescind the definition of WOTUS in the Code of Federal Regulations and re-codify the definition of WOTUS which currently governs administration of the Clean Water Act. The Agencies need to apply the definition of WOTUS as it is currently being implemented, that is informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding practice. Re-codifying the regulations that existed before the 2015 Clean Water Rule will provide continuity and certainty for dairy farmers, other regulated entities, the States, agency staff, and the public.

In a second step, the Agencies will need to pursue notice-and-comment rulemaking in which the Agencies will conduct a substantive re-evaluation of the definition of WOTUS. This second step is important to correct the regulatory uncertainty from the 2015 Rule's lack of clarity on key terms and definitions, such as "adjacent", "floodplain", and "significant nexus." The Agencies forthcoming notice-and-comment rulemaking needs to provide dairy farmers with certainty as to what constitutes navigable waters of the United States by clearly complying with the Supreme Court decisions.

With respect to the July 12, 2018, Supplementary Notice of Proposed Rulemaking, NMPF does not believe there was any ambiguity in the July 27, 2017, Notice of Proposed Rulemaking which called for the repeal of the 2015 rule and the restoration of the text that existed prior to the 2015 rule. NMPF believes that unequivocally, the 2015 Rule should be repealed and, for absolute clarity, done so permanently. We believe the 2015 rule failed to provide regulatory certainty and consistency and exceeded the Agencies' legal authority under the CWA. We further support the Agencies' decision to add a February 6, 2020 applicability date to the 2015 rule.

Thank you for the opportunity to comment on this important issue. NMPF continues to see a need for clarification of WOTUS and agrees that the proper course is to rescind the definition of "Waters of the United States" in the Code of Federal Regulations, re-codify the definition of "Waters of the United States" that currently governs administration of the Clean Water Act, and finally pursue a new notice-and-comment rulemaking which actually provides certainty for dairy farmers and complies with the Supreme Court Rulings. As shown earlier, dairy farmers have a vested interest in the outcome of this rulemaking and its potential impact on their operations. We look forward to working with you in the future for the proper clarity that dairy farmers need on WOTUS to continue to meet our shared commitment to clean water.

Sincerely,

A handwritten signature in purple ink that reads "Jamie Jonker". The signature is written in a cursive, flowing style.

Jamie Jonker
Vice President
Sustainability & Scientific Affairs