



## National Milk Producers Federation

2101 Wilson Blvd., Suite 400, Arlington, VA 22201  
703.243.6111 • www.nmpf.org

*"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"*

October 4, 2011

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Arkansas Dairy Cooperative Association  
Associated Milk Producers, Inc.  
Continental Dairy Products, Inc.  
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Dairy Farmers of America, Inc.  
Dairymen's Marketing Cooperative, Inc.  
Dairylea Cooperative Inc.  
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First District Association  
Foremost Farms USA  
Just Jersey Cooperative, Inc.  
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Southeast Milk, Inc.  
Swiss Valley Farms, Co.  
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United Dairymen of Arizona  
Upstate Niagara Cooperative, Inc.

Honorable Charles Schumer  
Chairman  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Honorable John Cornyn  
Ranking Member  
United States Senate Judiciary Committee  
Subcommittee on Immigration, Refugees and Border Security  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Cornyn:

Thank you for the opportunity to express the views of the dairy industry on the urgent situation regarding foreign agricultural labor and the unique labor issues facing the dairy industry. We greatly appreciate your efforts in bringing these issues to the forefront of the legislative process. With the possibility of the E-Verify program becoming mandatory for the agricultural sector, it has become more important than ever for our immigration system to provide a legal, reliable and accessible foreign workforce to the dairy industry through a rational and efficient guestworker program. We agree that proposals to simply legalize the undocumented workforce will not work and will not provide a lasting solution to agriculture's labor needs.

The National Milk Producers Federation (NMPF), based in Arlington, VA, develops and carries out policies that advance the well being of our nation's dairy producers and the cooperatives they own. The members of NMPF's 31 cooperatives, representing over 40,000 farms, 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 U.S. agricultural sector. Nearly 55,000 commercial dairy farmers produced 192.8 billion pounds of milk in 2010, worth \$ 31.4 billion. This had a conservative economy-wide impact just between milk production and milk processing of nearly \$800 million in economic activity and 1.15 million jobs.

Preserving a vibrant dairy producer community in America is essential to maintaining the economic health of rural communities across the country, and is critical to ensuring the continued availability of wholesome, fresh, safe, American-produced foods for the American people. Reliable and timely access to legal foreign labor when there are insufficient U.S. workers available to a specific sector of the economy like dairy is a critical element in pursuit of this goal.

**Jerry Kozak, President/Chief Executive Officer**

**Randy Mooney, Chairman**

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## **There is a Persistent Shortage of U.S. Workers in the Dairy Industry**

It is generally acknowledged that shortages of domestic labor in all agricultural sectors have increased over the last two decades. The importance of immigrant workers in the United States agricultural sector, and the dairy industry in particular, cannot be overstated. 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. Because of the U.S. Department of Labor's refusal to include dairy workers in the H-2A temporary agricultural worker program and due to the general unavailability of permanent work authorization for foreign workers, many dairy operations around the country likely, but unknowingly employ workers who are not properly authorized to work.

The dairy industry today simply cannot operate without immigrant workers. As our economy has become more service-oriented, our producers have found it harder and harder to hire Americans to work on their farms. Even in this time of high unemployment, our dairy farmers universally report an inability to find enough American workers to fill dairy worker jobs even if they offer better pay than other jobs. Dairies all around this country consistently seek American workers from their local communities, at highly competitive wages, but sufficient numbers of local workers are simply not available or not interested in working on dairy farms. The challenge of hiring workers in 2011 is no different than in 2008, when NMPF conducted a survey to quantify the workforce hiring practices of dairy farms. That survey found that U.S. dairies employed 138,000 full-time equivalent workers, of which an estimated 57,000, or 41%, were foreigners. That survey is available here: [www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf](http://www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf)

The same is true for virtually all of agricultural labor. There is abundant and conclusive evidence that most Americans these days are just not willing to engage in agricultural work. Such evidence is frequently dismissed by those whose arguments reside in outdated notions of a rural American of days gone by. The persistent shortage of domestic labor has left many farmers unable to expand their operations, which would enable them to compete more aggressively with foreign competitors.

## **The Dairy Industry is Excluded from the H-2A Program**

The dairy industry has some unique qualities that set it apart from other sectors of the agricultural industry. Dairy production is typically a seven-day-a-week, year-round endeavor. Our cows require constant, daily care and handling. Unlike most other agricultural production, there is no "season" in dairy production. Unfortunately, this nation's single agricultural visa program, the H-2A program, focuses on a seasonal or temporary need for workers, and generally excludes dairy farms from participation. See 8 U.S.C. 1101(a)(15)(H)(ii)(a) (performing agricultural labor or services "of a temporary or seasonal nature"). Although the Department of Labor has made exceptions to this seasonal requirement for others in agriculture, such as sheepherders, the Department refuses to provide a similar accommodation for dairy.

Therefore, the dairy industry is facing the same shortage of domestic workers that is faced by the rest of agriculture, but with one glaring difference: we are unable to utilize the H-2A agricultural worker visa program to hire legal foreign workers. While we believe the current H-2A program is deeply flawed, our exclusion from the only option for hiring legal foreign workers, brings heightened business and legal risks for our member farms. The fact that an agency of the U.S. Government consciously treats one sector of agriculture differently is simply and fundamentally unfair. America's dairy farmers need and deserve the same access to legal foreign workers as other sectors of the agricultural industry.

Unfortunately, it appears that this injustice is not fully remedied in several of the agricultural guestworker visa bills currently under consideration in Congress. Several of these bills (S.1384; H.R. 2847; H.R. 2895) specifically state that dairy work would be eligible for the agricultural guest worker program, but they fail to allow for full-year employment. Only S.852; H.R. 1720; and H.R. 3024 would permit full-year dairy employment through a guest worker program, which is essential for American

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dairy farms to succeed and effectively compete in the global marketplace. NMPF strongly believes that when Congress considers establishing or reforming an agricultural guestworker visa program, that program must enable year-round work for dairy workers. NMPF cannot support any visa program that treats dairy in the same manner that it treats a seasonal agricultural industry.

### **E-Verify without an Effective Agricultural Guestworker Program will Decimate the Agricultural Sector**

The agricultural sector, and the dairy industry in particular, faces unique challenges in meeting its workforce needs. In addition to the general unwillingness of American workers to engage in farm labor, we deal with a highly perishable product that must be quickly processed and sold or it is worthless. These challenges are inherent to all of agricultural production, but are especially critical to dairy, and must be accommodated through an effective guestworker program in order for America's farmers to continue to lead the world in agricultural production.

Simply stated, the majority of our agricultural workers are already foreign-born. Even in these times of elevated unemployment, there still is a shortage of domestic workers willing to work in agriculture.

The dairy industry would have fewer concerns with mandatory E-Verify and increased worksite enforcement if the Congress would also provided us with an effective guestworker program to meet our labor needs, including a path to provide current undocumented workers with a possibility to apply for any new work program. Without an effective guestworker program, the stability of the entire agricultural sector is at risk and we could experience a severe disruption in our domestic food supply at a time of dramatically rising food prices worldwide.

A disruption in domestic production will likely result in a significant amount of agricultural production being shifted abroad, where there is an abundant and stable work force. Our nation will grow increasingly dependent on imported food, thousands of American farms will fail due to misguided U.S. policy, and a failure to provide a guestworker program that meets our labor needs. In addition, many farm-dependent jobs will be lost, severely damaging rural communities throughout the United States. Reliable sources estimate that for every agricultural job lost, four farm-dependent jobs primarily filled by US-born workers will be lost as well.

There is a simple alternative to rising food prices, a loss of domestic production, a loss of farm income, a loss of on-farm and farm-dependent jobs, diminished economic activity, and increasing reliance on foreign nations to feed the American people. Congress needs to address the persistent labor shortages faced by agriculture. If Congress is going to enact a nationwide E-Verify requirement, then it also needs to provide agriculture with a workable guestworker program to meet our future needs and a means to allow those who are currently working in undocumented status to be eligible for that guestworker program. The failure to do so risks severely damaging the economic vitality of the nation's entire agriculture sector.

### **NMPF Recommendations for Agricultural Worker Immigration**

NMPF appreciates the opportunity to present the Subcommittee with a set of principles that our immigration taskforce has formulated over the past several years.

**Current Undocumented Workers:** Fairness and economic reality dictate that there should be a meaningful waiver of inadmissibility for current undocumented agriculture employees. NMPF recommends that these individuals be permitted to change their status inside the United States and be able to participate in any future agricultural guestworker visa program. Our workers possess skills and training that make them essential to the proper functioning of our dairy farms. There is simply no replacement workforce available to dairy farms, and the loss of the majority of our current workforce would decimate our industry.

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### **Future Flow of Workers/Elements of an Agricultural Guestworker Program:**

In order to avoid in the future a repeat of the workforce situation we now face, the future flow of workers must be addressed through a rational agricultural guest worker program. NMPF believes that the current H-2A program is deeply flawed, and must be reformed or replaced. We believe any agricultural guestworker program should adopt the following principles:

- **Seasonality:** Dairy producers must be included without regard to the seasonal or temporary nature of employment. Legislation must explicitly provide that dairy farms are eligible without having to show a need for workers to engage in jobs that are "temporary or seasonal in nature."
- **Duration:** The initial term of admission of any agricultural guestworker visa for dairy workers should be for at least three years with unlimited renewals of three years. As previously stated, dairy farms require a stable, year-round workforce. Forcing our employees to leave for two months each year will greatly disrupt operations and make any visa program virtually useless to dairy farms.
- **Labor Attestation instead of Labor Certification:** We advocate a simpler attestation-based application process like that proposed in the prior AgJobs legislation and in the short-lived 2008 Bush administration H-2A regulations, rather than the currently onerous labor certification process. The current Department of Labor application, recruitment and certification process is overly cumbersome and produces few in any measurable benefits. These needless and time consuming bureaucratic obstacles should be eliminated.
- **No 50% Rule:** We support eliminating the current burdensome H-2A requirement that forces employers to hire any worker who applies during the first half of the contract period even after the employer has paid to bring guest workers to the farm. This counterproductive rule forces employers to fire highly productive and experienced foreign workers to make room on the payroll for a new hire, who often quits the job after a few days.
- **No "Touch Back" Requirement:** Once a guest worker receives a visa, the employee should not be required to leave the U.S. for a period of time before he/she is eligible to return and work. Currently, a worker with an H-2A visa can theoretically remain in the U.S. continuously for three years by working at a series of different jobs, but the worker must then return home for six months before being eligible for another H-2A visa.
- **Replace the Current Adverse Effect Wage Rate (AEWR):** Any required wage in the program should be an actual market-based wage. For example, the program could require a local prevailing wage or some modest premium above the state or federal minimum wage. AEWR wage rates are usually significantly higher than actual local prevailing wages and can significantly increase from year to year.
- **No 3/4 rule:** We do not believe that the employer should have to guarantee a right to work for  $\frac{3}{4}$  of the contract period. Dairies need to be able to reassess workforce needs based on market conditions.

- **No Housing Requirement:** Employers should not be required to provide housing for workers. No other visa program requires housing to be supplied by the employer.
- **Association Filings to Minimize Farmers Paperwork:** Any guest worker program should specifically prescribe that agricultural organizations or associations will have the right to file all of the paperwork required by the Government agencies necessary to obtain foreign labor for their member farms. Additionally, the association or organization should have the right to file for multi-state, multiple unnamed workers in a single application.
- **Transportation Fee:** Any employer should only be required to pay transportation fees if the employee's position is terminated prior to completion of the agreed contract. This is in congruence with the H-1B program.
- **Process for Additional Rules:** Any additional rules regarding an agricultural foreign worker program should be promulgated through a federal rule-making process that addresses the concerns of the agricultural workers.
- **Family Relationship Status:** A guest worker should have the opportunity to bring his/her immediate family on the same timeline as the guest worker visa. Immediate family should relate only to their spouse and all children under the age of 21.
- **Guest Worker Job Flexibility:** If an employee is terminated prior to the end of his/her visa, that employee should have the opportunity to apply to work with another dairy farm -upon notice to the Government.

### Conclusion

In conclusion, NMPF recognizes that the situation regarding foreign agricultural labor is at a critical juncture. An enforcement-only regime, without a rational guest worker program and a process that allows the undocumented to participate in that guest worker program, will devastate the dairy industry, the agriculture sector and rural America.

We appreciate the efforts of the Subcommittee in its recognition of these problems and the potential catastrophic effects on agriculture if a solution is not formulated. While these problems are quite urgent and complex, NMPF is confident that working together we can solve these long-standing issues.