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**Statement on Behalf of the
American Farm Bureau Federation
AmericanHort
National Council of Agricultural Employers
National Council of Farmer Cooperatives
National Milk Producers Federation
United Fresh Produce Association
USA Farmers
U.S. Apple Association
Western Growers
Western United Dairymen**

**Submitted to the
Senate Appropriations Subcommittee on Homeland Security
United States Senate**

Regarding the

Department of Homeland Security, H-2A Program

April 1, 2016

Chairman Hoeven, Ranking Member Shaheen, and members of the Subcommittee, thank you for your continued leadership and support for U.S. agriculture. The above signed steering committee members of the Agriculture Workforce Coalition appreciate this opportunity to submit our views regarding the FY 2017 Homeland Security appropriations bill, and respectfully requests this statement be made part of the official hearing record.

The labor situation in agriculture has been a concern for many years, but is moving towards a breaking point. Today, large segments of American agriculture face a critical lack of workers, a shortage that makes our farms and ranches less competitive with food from abroad and that threatens the abundant, safe and affordable domestic food supply American consumers enjoy today.

Repeated evidence over the past decades has shown that there are some jobs in agriculture that Americans simply do not want to do. Although many of these jobs offer wages competitive with similar, non-agricultural occupations, they are physically demanding, conducted outdoors in all seasons and weather, and are often seasonal or transitory. It is for this reason that farmers have grown to rely on foreign workers to perform this work.

The overarching challenge to workforce stability in agriculture is the widely acknowledged lack of authorized work status by a large number of agricultural workers despite the prevalence of documentation presented by workers to the contrary. The only option for farmers and ranchers to legally find the workers they need is the H-2A temporary work visa program, a program that has not worked for many agricultural employers.

The H-2A program's basic framework is overly restrictive and difficult to maneuver. Furthermore, the H-2A program is only accessible for producers with seasonal needs; excluding the year-round needs of many producers such as dairy, livestock, mushrooms, and other crops. In recent years the program has become even more bureaucratic, burdensome and costly to use. But, each year, more and more farms have to turn to the H-2A program for legal foreign labor to meet their workforce needs.

The demand on the program is increasing as producers have nowhere else to turn; yet the administrative weight of the program cannot keep up. H-2A employment has doubled in the past four years and will double again in the next two years or less. Even at current levels, capacity and infrastructure issues at the Departments of State, Homeland Security and Labor are leading to greater processing delays than ever before. This means bureaucratic red tape and delays in the program result in workers showing up at the farm well after the date they were needed to be there, and millions of dollars in agricultural production is lost in the interim.

To improve access to the H-2A program, we seek the following as part of the FY2017 Homeland Security Appropriations bill:

Dairy et al Participation in H-2A

Except in rare instances, the dairy industry along with other year-round agricultural sectors have been excluded from obtaining critically needed workers under the only existing program that allows for temporary admission of foreign workers to work in agriculture, H-2A. While in existence since enactment of the Immigration and Nationality Act of 1952, as a largely regulatory program, the Immigration Reform and Control Act of 1986 established a statutory framework for the program that included definitions of eligibility and procedures for employer participation. To meet the criteria of H-2A, a worker must be coming temporarily to the United States to perform agricultural services or labor of a "temporary or seasonal nature." 8 USC 101 (a)(15)(H)(ii)(a). While the Act gives final authority to the Department of Homeland Security (DHS) over the admission of nonimmigrants, it provides a role for the Department of Labor (DOL) and the U.S. Department of Agriculture (USDA) in implementation of the program.

DOL has assumed the largest role through its labor certification process and has traditionally denied sectors like dairy (as an example) from participating on the grounds that those operations are not "seasonal." DOL has defined seasonal as less than 10 months and rejects dairy out of hand because it believes the need is year round. In very limited circumstances, DOL has

approved a certification for dairy, generally as applied to the care of pregnant and birthing animals. But dairy as a whole is met with immediate skepticism at DOL.

When Congress last revised the H-2A program in the 1986 reform bill (IRCA P.L. 99-603), it very specifically envisioned a role for USDA in the implementation and operation of the H-2A program. The Immigration and Nationality Act states that the “question of importing any alien as a nonimmigrant under subparagraph (H)... shall be determined by the Attorney General after consultation with appropriate agencies of the Government...” 8 U.S.C. 1184 (c)(i). Section 301(b) of IRCA amended that provision clarifying that, “for the purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term “appropriate agencies of Government” means the Department of Labor and includes the Department of Agriculture. Section 301(e) of the bill clarified that “the Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a).”

The legislative history accompanying IRCA is very clear that a statutory role was added for USDA in order to provide a balance between the various agency constituents: DOL for U.S. worker protection and USDA for agricultural workforce protection.

That said, there are several options using the FY 2017 appropriations process to direct DHS to take action, providing access to legal workers for year round agricultural sectors when they have no domestic workers to hire.

Agency: Department of Homeland Security

Proposal: Amend Immigration and Nationality Act (INA) to allow additional agricultural/employment as eligible for H-2A (*as amended below by the additional language in italics*).

- **8 USC 1101(a)(15)(H)(ii)(a)** having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121 (g) of title 26, agriculture as defined in section 203 (f) of title 29, the pressing of apples for cider on a farm, *the milling of sugar cane, the cultivation of mushrooms, and dairying, of a temporary or seasonal nature, provided that dairying and mushroom cultivation employment of up to 11 continuous months shall be considered temporary or seasonal.*

Proposal (alternative or in addition to the above): Add to General Provisions: For the purposes of admission under 8 U.S.C. 1101(a)(15)(H)(ii)(a) and an application pursuant to 8 U.S.C. 1188, work performed by workers on agricultural operations defined in 7 U.S.C. 9051(5) shall be considered seasonal and workers shall be eligible for admission for a period of time of not more than twelve months.

Housing Allowance

Housing requirements remain one of the key impediments to entering the H-2A program. Permitting a housing allowance would provide greater flexibility to employers and workers within the H-2A program. The housing allowance could be based on HUD fair market rental rates for a two bedroom dwelling occupied by four individuals.

Agency: DHS U.S. Citizenship & Immigration Services and USDA Rural Development Housing and Community Facilities Programs Office

Program: H-2A Program

Proposal: 8 USC 1188(c)(4) is amended as follows: Provided further that an employer may provide a housing allowance unless the Secretary of USDA determines insufficient community based housing exists.

Commuter Housing

For operations along the southern border, workers commute daily from their homes in Mexico. Required housing that is provided to these workers goes unused and is therefore an unnecessary cost imposed on employers.

Agency: DHS U.S. Citizenship & Immigration Services and DOL Wage and Hour Division

Program: H-2A Program

Proposal: 8 USC 1188(c)(4) is amended as follows: the housing requirement for H-2A workers is waived when the job site is within 50 miles of the border and the worker's place of residence is within normal commuting distance.

We remain steadfast in our pursuit of broader immigration reform that meets both the short- and long-term workforce requirements of all of agriculture—both those producers with seasonal labor needs, and those with year-round needs. Yet we recognize such reforms may not come to fruition in the near term.

Left with no other alternative, we seek your support for the inclusion of these modest adjustments as you prepare FY2017 appropriations legislation.

Thank you again, and members of the Subcommittee, for the opportunity to share our views.