

March 13, 2023

Carol Cribbs
 Deputy Chief Financial Officer
 U.S. Citizenship and Immigration Services
 Department of Homeland Security
 5900 Capital Gateway Drive
 Camp Springs, MD 20746

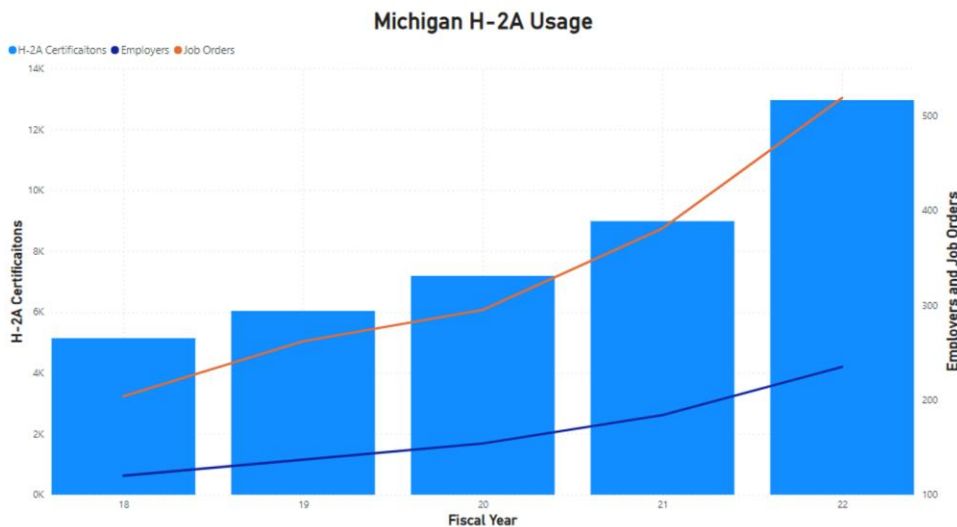
RE: Docket No. USCIS–2021–0010, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Deputy Cribbs:

Michigan Farm Bureau (MFB) appreciates the opportunity to comment on the U.S. Citizenship and Immigration Services’ (USCIS) proposal to adjust the fee schedule and make other changes to current immigration requests, including the H-2A and H-2B programs.

MFB is the state’s largest agricultural grassroots organization representing over 40,000 farming families throughout Michigan. With a documented shrinking domestic workforce, Michigan farmers are relying now, more than ever, on the H-2A program to provide our workforce needs. The number of H-2A certifications has grown from roughly 5,000 five years ago to roughly 13,000 in 2022. The chart below shows growth in the number of certifications over time (blue bars), in addition to the growth we have experienced in the number of employers using H-2A (dark blue line) and the number of job orders (orange line).

Michigan Guest Worker Demand



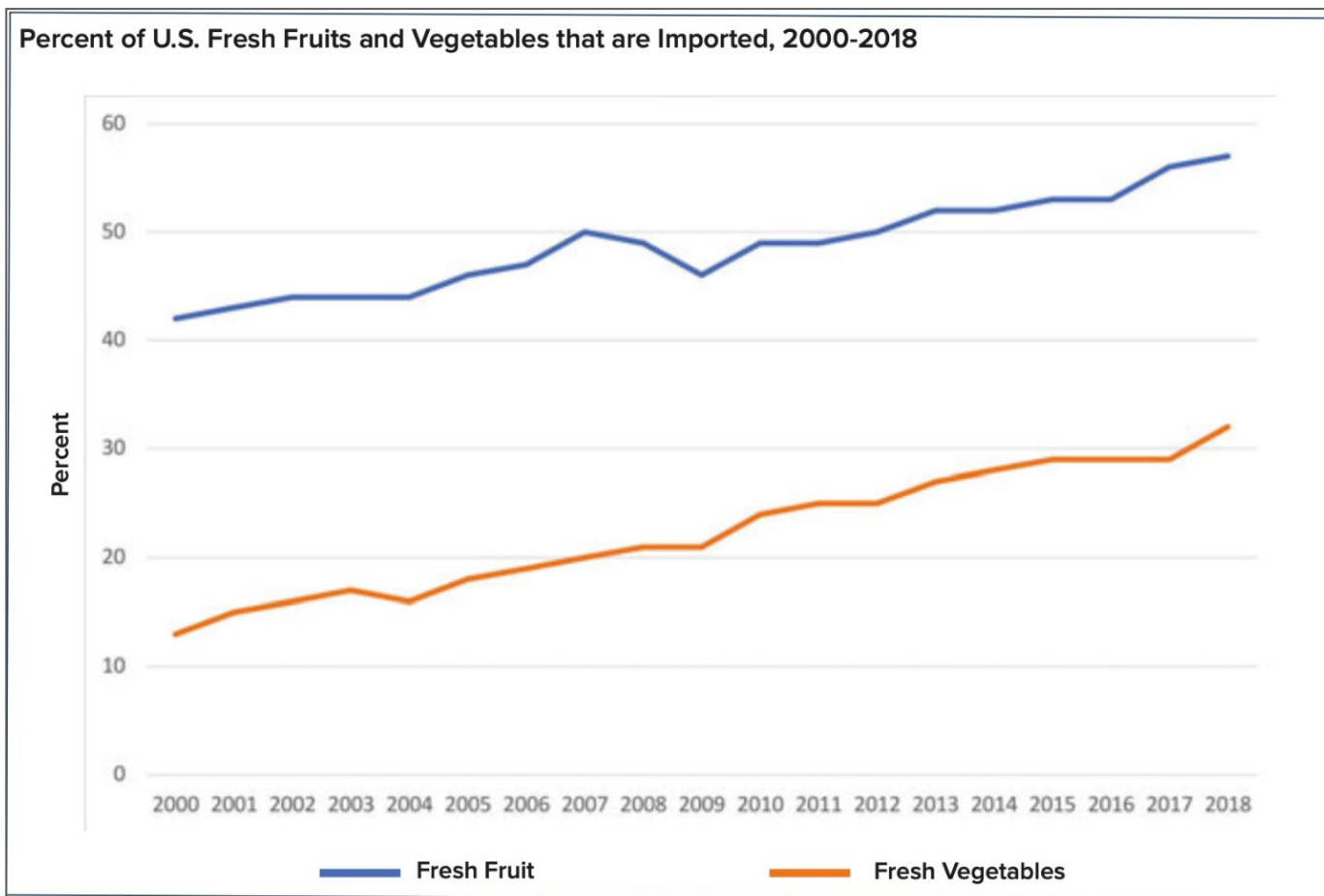
General Comment

The U.S. employed 2.4 million agricultural workers on America's farms and ranches in 2017, according to the USDA's Census of Agriculture. The next Census will be developed this year and will reflect updated data. Too few domestic workers applied for available agricultural positions, and given the relatively low unemployment rate, H-2A workers are a lynchpin protecting American agricultural employers from having crops rot in the fields.

The H-2A program is a critical part of the nation's national security profile as a nation that is unable to feed itself is at considerable risk.

U.S. farmers and ranchers face challenging times in the global marketplace. The relative cost of agricultural production in various locations outside our borders hinders U.S. competitiveness. Consequently, today more than half (65%) of the fresh fruit and a third (35%) of the fresh vegetables consumed in America are produced somewhere else per USDA.

The chart below presents data through 2018. If the data for 2019 through 2021 were added, it would reflect an additional explosion of foreign production serving U.S. markets due in no small part to the already cumbersome and costly Temporary H-2A Agricultural Employment Program. This proposed rule would significantly impact the cost profile of the program and exacerbate the food production flight to our foreign competition.

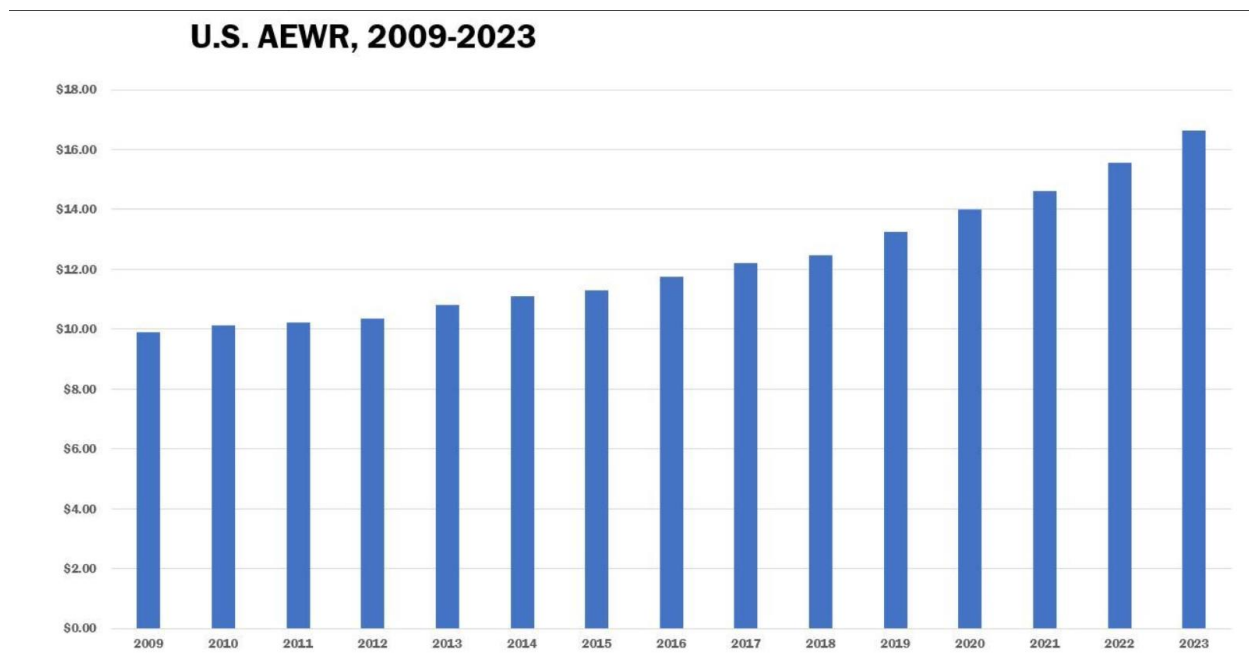


Even though American agriculture is nonpareil, the lack of a domestic agricultural workforce willing to plant, harvest and cultivate crops for the domestic market has forced American farmers and ranchers to augment their labor needs with temporary foreign workers under the H-2A program. Of course, relatively low U.S. unemployment likewise spurs the shortage of domestic workers interested in short term seasonal labor.

The H-2A program, like many government programs, is not the simplest to navigate. Some of the regulations and the costs associated with them deter or prevent farmers and ranchers from participating. However, as difficult as the program is to work with, many agricultural employers have no other choice but to use the program so that their legacy family operations do not shutter.

American farmers and ranchers will often point to the added costs participation in the program imposes on their operations. Agricultural operators and competitors in Canada and Mexico (the sources of much of America's imported food) face much lower costs for agricultural labor than we do in our swath of North America.

The agriculture sector continues to absorb unpredictable cost increases outside of their control. In addition to foreign competition, input costs continue to climb, inflationary pressures remain persistent and labor costs are continuing to rise at unsustainable levels. The Adverse Effect Wage Rate (AEWR) for Michigan farmers grew at an astonishing 12.8% from 2022-2023, nearly a \$2.00 increase. In the last five years, Michigan's AEWR has grown by a staggering 32.77%. The chart below shows national AEWR trends from 2009 to 2023. On average, AEWRs climbed 7.5% nationwide in 2023.



Source: DOL, USDA NASS

The significant added costs for H-2A Temporary Agricultural Workers proposed in this rulemaking further jeopardizes the sustainability of U.S. farms and ranches as will be discussed below.

The Proposed Fees are Arbitrary and Capricious and an Abuse of Discretion

Presently, the U. S. Citizenship and Immigration Services (USCIS) fee for an I-129 petition for H-2A Temporary Agricultural Workers (H-2As) is \$460. This fee applies to petitions for both named and unnamed beneficiaries.

The proposed fees contained in this regulation would increase the cost of each petition dramatically and add a new \$600 “Asylum Program Fee” to each petition as well. Curiously, the proposed regulation would also “penalize” employers who have developed often longstanding good relationships with their workers who annually will choose to leave their families in their home countries and legally enter the U.S. to work at the same operation year after year, by limiting each petition for named beneficiaries to 25 individuals. These costs are further compounded when workers are transferred to a new contract or, perhaps due to an Act of God, such as floods, hurricanes, drought, torrential rains, untimely freezes, or excessive heat, an employer seeks to extend a worker’s stay.

The following examples of these significant costs will use round numbers for simplicity and illustration.

For instance, an employer who has had the same 100 farmworkers working on his operation for the last 10 years files a petition to have the workers return in the coming season. The source country for these workers is not presently on the approved country list. Presently the I-129 fee for this petition is \$460.

The proposed new fees for these same named 100 workers would increase from the present cost of \$460 to \$6,760 (new \$1,090 I-129 fee plus \$600 asylum fee = \$1,690 multiplied by 4 petitions). This stunning 1,470% increase in fees ($\$6,760/\$460 = 14.6956$) is a cost the agricultural employer will never be able to recover. They are simply added costs of doing business negatively impacting the viability of the enterprise because, of course, the agricultural employer has no means of recouping any added costs.

One of the unintended consequences of this regulation is that it perversely adds additional fees for returning workers who have been previously vetted by USCIS rather than to those of an employer who recruits new unnamed workers not previously vetted.

Last fiscal year, 44% of the H-2A jobs that were certified by the Department of Labor’s Office of Foreign Labor Certification (DOL OFLC) were for Farm Labor Contractors (FLCs). The expanded use of FLCs in U.S. agriculture is likely to continue to grow as more and more small family operations simply do not have the capital, housing, and/or human resource expertise, to recruit, transport, house, and feed, H-2As. However, they still must have workers in order for their businesses to survive and perhaps be passed along to the next generation.

These fees negatively impact FLCs as well as the FLC’s clients.

Suppose an FLC files a petition for 100 unnamed H-2A workers. The present fee is \$460. The new fee for this petition would be \$1,130 (new \$530 I-129 fee plus \$600 asylum fee = \$1,130).

After conclusion of the initial contract, the FLC moves on to the next client and a new contract with the same workers. The FLC’s present I-129 fee is \$460. The FLC’s new fees to move these workers onto the next contract is \$6,760 (new \$1,090 I-129 fee plus \$600 asylum fee = \$1,690 multiplied by 4 petitions).

Once again, the perverse unintended consequence of this proposed fee increase rears its head as it would be more economical to send the workers already here home and to recruit 100 new unnamed beneficiaries.

Taxing Agricultural Employers to Pay the Cost of an Asylum Program is Arbitrary and Capricious and an Abuse of Discretion

The fact that many individuals living in foreign lands see the land of the free and the home of the brave as a safe and secure shelter to the too often unspeakable horror they may face at home is a testament to the beacon that the United States represents. We should be rightfully proud of that fact and that reputation.

However, taxing agricultural employers to fund the mechanisms for providing secure shelter is arbitrary and capricious and an abuse of discretion. The costs for any asylum program should be appropriated through Congress and paid out of the Treasury instead of piggybacked upon a rulemaking undertaken by the Executive Branch.

H-2A Program Impacts

As the agency action proposes, USCIS wishes to impose a 137% fee increase on H-2A petitions, both named and unnamed.

The proposed action goes a step further by limiting petitions to no more than 25 individuals per petition. This produces a multiplier effect on the fees proposed by the Agency.

Furthermore, the Agency recommends an “Asylum Program Fee” amounting to \$600 per petition. Even more disconcerting than the precipitous climb in the fee structure is the Agency’s rationale for doing so. Its justification in its determination is “that the Asylum Program Fee is an effective way to shift some costs to requests that are generally submitted by petitioners who have more ability to pay, as opposed to shifting those costs to all other fee payers.” On what basis does the Agency legitimize this claim? America’s farmers and ranchers can only receive this additional cost as illogically punitive. Because agricultural employers are complying, under extraordinary cost and administrative burdens, with the requirements of a guest worker program, why should they be responsible for funding this unrelated program for which they have no connection?

While Farm Bureau supports and advocates for legal immigration and enforcements, as well as reforms to the system to strengthen both areas, it cannot condone the financing of these efforts as USCIS has done - on the backs of America’s farmers and ranchers. It adds insult to injury for our indispensable farmers and ranchers who work daily to provide for their families and feed a growing population.

H-2B Program Impacts

The H-2B program will also experience similar increases, should this proposed rule become finalized. Under the program, a fee increase of 135% (\$460 to \$1,080) for named beneficiaries and 26% (\$460 to \$580) for unnamed beneficiaries is suggested. Though categorized as a non-agricultural temporary visa program, the agricultural sector relies on a strong H-2B program for crucial processing functions in certain supply chains. For instance, seafood processors heavily depend on H-2B workers. The landscaping and nursery industries utilize the program to source labor for their temporary seasonal needs as well. The policy will have cost and market implications for agricultural goods and services.

Conclusion

America’s farmers and ranchers, and the workers under their employ, are the lifeblood of rural America. They sustain the nation’s food supply, and feed much of the world. They consistently deliver a quality

product to consumers that is safe, nutritious, and free from pest and disease. They preserve the natural resources of this country, leaving the soil and water cleaner than they found it. They cannot provide these benefits, and others, without the ability to be sustainable as a business. This proposal, if implemented, will compromise that essential task.

As we continue to place more burdens on a quickly diminishing and increasingly important segment of our nation, we only accelerate the diminution of their work, and of their numbers. The U.S. government must prioritize the health and vitality of its agriculture to ensure the same of its people and its security, lest we accede to our reliance upon a foreign power's food supply. It prioritizes none of the above with this proposal.

In summary, Michigan Farm Bureau opposes the fee structure as proposed and encourages USCIS to revisit a solution appropriate to the challenges they seek to address.

Thank you again for the opportunity to comment on these proposed changes.

Respectfully,

A handwritten signature in black ink, appearing to read "John Kran". The signature is fluid and cursive, with a large initial "J" and "K".

John Kran
National Legislative Counsel