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September 23, 2019

Submitted via regulations.gov

Ms. Adele Gagliardi
Administrator, Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5641
Washington, DC 20210

Re: Temporary Agricultural Employment of H-2A Nonimmigrants in the United States
RIN 1205-AB89

Dear Ms. Gagliardi,

Slow Food USA submits these comments regarding the proposed changes to the H-2A temporary foreign agricultural worker program. The proposed regulations would decrease farmworker wages and reduce their net incomes and erode their assurance of decent, employer-provided farmworker housing.

Slow Food USA is the national, not-for-profit organization dedicated to a food chain that is good, clean, and fair for all with equity, inclusion, and justice at every link, including farm labor. To put food on our tables, our nation relies on about 2.5 million farmworkers, mostly foreign born, with more than half lacking legal status. Presently, well more than 1 million farmworkers, many long-time residents with families, live and work in fear of harassment, detention, family separation, and deportation. Our farmworkers are entitled to fair compensation, decent working conditions, peace of mind, and dignity. The proposed rule changes are not the way to go as our nation faces a critical lack of farm labor that reduces food production and farm revenue at a time when farm families are facing the unpredictable and devastating effects of changing climate and volatile markets.

Any credible, and just, reform to our policies regarding farmworkers must: retain H-2A provisions regarding compensation, housing, and transportation; strengthen protections against employer harassment and unfair practices, including wage theft, particularly focusing on H-2A labor contractors; provide H-2A farmworker access to courts regarding legal grievances against employers, like wage theft and harassment; and establish a significantly altered program that provides for flexible work stay duration, the ability to change agricultural employers, and the full integration of presently undocumented farmworkers, including a path to permanent legal status, including the option of citizenship. While some of these issues are beyond the Constitutional purview of the Department of Labor (DOL), the presently proposed rules regarding some of the issues are regressive, indeed, making matters worse. They are evocative of the discredited, discontinued Bracero Program that suppressed farmworker wages for decades.

Our comments appear below.

- **Adverse Effect Wage Rate**

The proposed rule will likely decrease farmworker wages. The present Adverse Effect Wage Rate (AEWR) is intended to ensure that hiring seasonal H-2A farmworkers does not undermine the wages of domestic farmworkers. Under the present proposal, the methodology for the calculation of the AEWR would change, resulting in an undermined wage standard. The intention of the present AEWR methodology continues to be a valid – to limit the adverse effect of H-2A wages on the wages of domestic farmworkers. DOL should withdraw this proposed rule.
- **Travel Reimbursement**

The presently proposed rule would transfer some transportation costs from H-2A farmworkers' home country points of origin from the responsibility of U.S. farm employers to H-2A farmworkers. The proposed DOL rule must be withdrawn and present rules regarding H-2A farmworkers' point-to-point transportation costs must be retained. Not addressed by DOL in the proposed rule changes are farm labor contractor recruitment fees and transportation loans, which are another assault on H-2A farmworker net wages that contribute to farmworkers' vulnerability and fear of seeking redress against unfair practices of labor contractors.
- **Housing**

The proposed rule would allow farmworker housing to be provided without benefit of annual inspection by local government agencies. While California and New York are meticulous in farmworker housing inspection, many states are not. Under the proposed rule, if a state workforce agency (SWA) cannot conduct timely inspections of farm employer provided housing, DOL would allow 24-month housing certifications during which extended time farm employers could "self-inspect" and certify the suitability of the housing they provide. Given the high incidence of H-2A housing violations, it is unconscionable that DOL would subject H-2A farmworkers to the risk of housing that has not been inspected annually by a responsible government entity. DOL should withdraw this proposed rule or, at least, in the absence of a timely SWA certification, perform housing inspections and delay H-2A start dates until housing has been inspected.
- **Surety Bonds**

An increase in the surety bond amount required of H-2A labor contractors, as provided in the present proposal, is a modest improvement as many H-2A labor contractors are undercapitalized and unable to compensate farmworkers for labor violations. Farm labor contracting can be a method by which some farmers seek to lower labor costs and evade responsibility and accountability for the treatment of farmworkers. While DOL has recognized the need for higher surety bonds, the increases are insufficient as greater capacity is essential to helping more farmworkers seek redress for violations they have suffered.

Thank you for this opportunity to comment on this incredibly complicated and important issue.

The answer to our need for an ample supply of agricultural workers is not to make income and working conditions worse. We must strive for equity and justice in our policies that will serve both farmworkers and farmers.

Sincerely,

A handwritten signature in cursive script that reads "Anna Mulé".

Anna Mulé
Executive Director