

FAIR FOOD PROGRAM

REPORT, 2011-2013

Comprehensive, Verifiable and
Sustainable Change for U.S. Farmworkers
and the Agricultural Industry



ABOUT FFSC

MISSION

The mission of the Fair Food Standards Council (FFSC) is to monitor the development of a sustainable Florida tomato industry that advances both the human rights of farmworkers and the long-term interests of growers through implementation of the Fair Food Program. The work of the FFSC today is producing a replicable, scalable model for expansion of the Fair Food Program beyond the Florida tomato industry in the years ahead. For more information, visit www.fairfoodstandards.org.

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Judge Laura Safer Espinoza is a recently retired New York State Supreme Court Justice who served in New York and Bronx Counties for twenty years. She was Deputy Supervising Judge for five years. Justice Safer Espinoza helped to design and became the first presiding judge of Bronx Treatment Court, an innovative alternative to incarceration for non-violent offenders.

Justice Safer Espinoza has an extensive history of work with government, human rights and legal organizations in the U.S. and Latin America. She has taught and lectured extensively on judicial transparency in Latin America, working with numerous organizations – including the U.S. Department of State, the Conference of Western Attorney Generals, law schools, universities, governments and non-governmental organizations – to support law reform efforts by training advocates in more transparent legal systems. From 2009 through 2011, she designed and directed trainings for thousands of judges and attorneys in Mexico. Judge Safer Espinoza has also helped to launch and advise treatment courts in Chile and Brazil. She authored the keystone chapter of Chile's first book on alternative courts in 2006.

Justice Safer Espinoza received her B.A. from Barnard College and her J.D. cum laude from New York Law School. She is a recipient of the City University of New York's Women in the Law Award.

FAIR FOOD PROGRAM PARTICIPANTS



PARTICIPATING BUYERS

Aramark

Bon Appétit
Management Co.

Burger King

Chipotle Mexican Grill

Compass Group

McDonald's

Sodexo

Subway

Trader Joe's

Whole Foods Market

Yum Brands

PARTICIPATING GROWERS

Ag-Mart

Alderman Farms

DiMare Homestead

DiMare Ruskin

HarDee/Diamond D

Triple D

DiMare Immokalee

Gargiulo

Gulfstream Tomato Packers

Hagan Farms

MED Farms

Harllee Packing

Hunsader Farms

Palmetto Vegetable Company

South Florida Tomato Growers

Kern Carpenter Farms

Lady Moon Farms

Lipman Produce

Michael Borek Farms

Pacific Tomato Growers

Taylor and Fulton Packing

Grainger Farms

Taylor Fulton Growers

Utopia Farms

Tomatoes of Ruskin

Artesian Farms

Diehl and Lee Farms

Frank Diehl Farms

TOR Farms

West Coast Tomato/McClure Farms



photo: Scott Robertson

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FOREWORD

This is the inaugural report of the Fair Food Standards Council on the state of the Fair Food Program. As such, it includes an assessment of the implementation of the Fair Food Program in the Florida tomato industry, covering a two-year period that began in November 2011. Unlike future annual reports, it also contains contextual information on the origins, objectives, and structure of the Program. This information, which goes beyond the typical purview of an annual report, is necessary for understanding the progress of the past two seasons and those that lie ahead.



EXECUTIVE SUMMARY

For decades, most farmworkers in the U.S. have experienced sub-standard wages and working conditions. Today, this reality is changing for many, thanks to the Fair Food Program (FFP).

The Fair Food Program, which grew out of the Coalition of Immokalee Workers' (CIW) Campaign for Fair Food, brings together workers, consumers, growers and corporate buyers in support of fair wages and humane labor standards in the agricultural industry. The FFP is a pathfinding collaboration premised on risk prevention, supply chain transparency, and the verifiable, market-enforced protection of workers' rights, monitored by the Fair Food Standards Council (FFSC).

Since November 2011, the Fair Food Program has begun to bring about many far-reaching reforms across the \$600 million Florida tomato industry, including:

- Over \$11 million in Fair Food Premiums paid by Participating Buyers to improve workers' wages;
- Industry-wide implementation of a 24-hour worker complaint hotline and a rapid, effective complaint investigation and resolution process;
- A worker-to-worker education process conducted by the CIW on the farms and on company time to ensure that workers understand their new rights and responsibilities;
- Enforceable zero-tolerance policies for forced labor, child labor, violence, and sexual assault; and
- Industry-wide monitoring by the FFSC.

These reforms have been monitored through an intensive, multi-faceted process with significant reach throughout the industry. Through the Fair Food Program:

- Workers have brought forth over 300 complaints;

- FFSC auditors have conducted nearly 60 comprehensive audits, visited 45 farm locations, and interviewed 4,000 workers to assess Participating Growers' implementation of FFP standards; and
- The CIW has conducted 161 worker-to-worker education sessions, attended by well over 14,000 workers.

As expected in this initial period of implementation, the Program's success was tempered by incomplete compliance with several Fair Food Code of Conduct provisions among a minority of growers. Those compliance issues – which include challenges encountered in establishing Health and Safety Committees and the continued use of unregistered workers to pick vine-ripe tomatoes – are detailed in the report and will form the basis of the Points of Emphasis for Participating Growers and monitors in the coming season.



photo: Forest Woodward

Despite the continuing need for improvement on those issues, on the whole the FFP is achieving dramatic concrete change and demonstrating a replicable, scalable model for expansion. Above all, that model rests on a strong commitment to empower workers, through education and access to a protected complaint mechanism, to form the first line of defense against labor abuse and to supplement these efforts with independent audits of Participating Growers' operations.

The success of the Fair Food Program has not gone unnoticed by experts in the fields of human rights and corporate social responsibility. The

Roosevelt Institute awarded the CIW its 2013 Freedom from Want Medal, describing the FFP as “a sustainable blueprint for worker-driven corporate social responsibility . . . and freedom from forced labor, sexual harassment, and violence in the workplace...”¹ President Jimmy Carter echoed this conclusion in a public letter to the CIW from July 2013, stating, “You have formed innovative partnerships to find common ground between diverse interests, including some of the poorest workers in the United States

EXECUTIVE SUMMARY, contd.

and their employers, supply chain companies, retailers, consumers and law enforcement. My hope is that this will become a model for social responsibility within the agricultural industry.”² Moreover:

- In June 2013, after a year-long investigation into sexual assault in the fields from California to Florida, PBS’s Frontline declared the Fair Food Program to be the single most effective prevention program in the U.S. agricultural industry.³
- In May 2013, a delegation from the United Nations Working Group on Business and Human Rights toured the U.S. on a mission to “explore practices, challenges and lessons relating to efforts on implementing the UN Guiding Principles (‘GPs’) on business and human rights.” The delegation visited with several Fair Food Program stakeholders as part of its broader investigation. While the Working Group found numerous shortcomings in the response of U.S. businesses generally to human rights issues, it left “impressed” with the Fair Food Program specifically, praising the FFP for

“innovatively address[ing] core worker concerns” and “governance gaps relating to labour issues” through “market incentives for participating growers” and an “independent and robust enforcement mechanism.”⁴

- In March 2013, the President’s Advisory Council on Faith-Based and Neighborhood Partnerships singled out the Fair Food Program in a major new report as one of the “most successful and innovative programs” in the world today to uncover and prevent modern-day slavery.⁵

In recent months, the Fair Food Program has taken the first steps toward expansion beyond Florida, completing its first audit of a tomato farm outside the state and resolving multiple out-of-state worker complaints for Participating Growers. These developments are not only evidence of the inherent scalability of the program but also of the mutually beneficial collaborations between workers and their employers that can take root as consumer and retail demand for produce grown and harvested under verifiable labor standards continues to grow.



Workers at an Immokalee area farm review the Fair Food Program rights booklet during a 2011 worker-to-worker education session.

photo: Laura Emiko Soltis

INTRODUCTION



Workers line up to punch their time cards at a Fair Food Program participating grower. Time clocks are a critical requirement of the Fair Food Code of Conduct.

photo: Laura Emiko Soltis

BACKGROUND

For decades, most farmworkers in the U.S. have experienced sub-standard wages and working conditions. Well-documented challenges in the work environment have included physical and verbal abuse, sexual harassment, racial discrimination, and high fatal and non-fatal injury rates.⁶ Farmworkers have also faced endemic wage theft, resulting in widespread violation of minimum wage laws.⁷ The Department of Labor has described farmworkers as “a labor force in significant economic distress,” citing workers’ “low wages, sub-poverty annual earnings, [and] significant periods of un- and underemployment.” The DOL further noted that while “production of fruits and vegetables has increased . . . agricultural worker earnings and working conditions are either stagnant or in decline.”⁸ More recently, the U.S. Department of Agriculture reported that farmworkers “remain among the most economically disadvantaged working groups in the United States,” and that “poverty among farmworkers is more than double that of all wage and salary employees.”⁹

In the extreme, farmworkers have faced situations of modern-day slavery – according to the definition of forced labor and high standard of proof required under federal law. In these instances, workers have been held against their will, with the threat or actual use of violence, and forced to work for little to no money. Several of these cases have been successfully prosecuted by the Department of Justice over the

past decade. In one example, two men were each sentenced to twelve years in federal prison after they “pleaded guilty to beating, threatening, restraining and locking workers in trucks to force them to work as agricultural laborers . . . [They] were accused of paying the workers minimal wages and driving them into debt, while simultaneously threatening physical harm if the workers left their employment before their debts had been repaid.”¹⁰

Today, this reality is dramatically changing for many farmworkers, thanks to the Fair Food Program (FFP). The FFP brings together workers, consumers, growers and corporate buyers in support of fair wages and humane labor standards in the agricultural industry. The Program is a path-finding collaboration premised on risk prevention, supply chain transparency, and the verifiable, market-enforced protection of workers’ rights. After two years of implementation across the Florida tomato industry, the FFP is achieving concrete change and producing a replicable, scalable model for expansion.

In recognition of these efforts, the Roosevelt Institute awarded its 2013 Freedom from Want Medal to the Coalition of Immokalee Workers, the principal architect of the Fair Food Program. In the words of the Roosevelt Institute, the Program is today, “a sustainable blueprint for worker-driven corporate social responsibility . . . and freedom from forced labor, sexual harassment, and violence in the workplace . . .”¹¹ President Jimmy Carter echoed this conclusion in a public letter to the CIW from July 2013, stating,

“You have formed innovative partnerships to find common ground between diverse interests, including some of the poorest workers in the United States and their employers, supply chain companies, retailers, consumers and law enforcement. My hope is that this will become a model for social responsibility within the agricultural industry.”¹²

FORGING STRUCTURAL CHANGE

Formed in 1993, the Coalition of Immokalee Workers (CIW) is a worker-based human rights organization internationally recognized for its achievements in the fields of corporate social responsibility, community organizing and sustainable food. The CIW is also a leader in the movement to end human trafficking due to its groundbreaking work to combat modern-day slavery and other labor abuses common in agriculture. The Fair Food Program emerged from the CIW’s successful Campaign for Fair Food, a campaign to affirm the human rights of tomato workers and improve the conditions under which they labor.

The high degree of consolidation in the food industry today means that multi-billion dollar brands on the retail end of the industry are able to leverage their volume purchasing power to demand ever-lower prices, which has resulted in downward pressure on farmworker wages and working conditions.¹³ The Fair Food Program reverses that process, enlisting the resources of participating food industry leaders to improve farmworker wages and harnessing their demand to reward growers who respect their workers’ rights.

In 2005, Yum Brands (parent of Taco Bell, Pizza Hut and KFC) became the first corporate buyer to sign a Fair Food Agreement with the CIW. This agreement established several crucial precedents for farm labor reform, including:

- The first-ever direct, ongoing payment by a food industry leader on behalf of farmworkers in its supply chain to address sub-standard wages;

- Market incentives for agricultural suppliers willing to respect their workers’ human rights, even when those rights are not guaranteed by law; and
- 100% transparency for tomato purchases in Florida.

The CIW has since expanded and incorporated these principles, including a worker-driven Code of Conduct, into ten subsequent Fair Food Agreements with corporate buyers. Today, Participating Buyers, in the order they joined, include: Yum Brands (2005), McDonald’s (2007), Burger King (2008), Whole Foods Market (2008), Subway (2008), Bon Appétit Management Company (2009), Compass Group (2009), Aramark (2010), Sodexo (2010), Trader Joe’s (2012), and Chipotle Mexican Grill (2012).

The Fair Food Program provides an opportunity for these corporations to bring their considerable resources to the table – their funds and market influence – to help forge a structural, sustainable solution to a human rights crisis that has persisted on U.S. soil for generations. As just one example, Participating Buyers have paid over \$11 million in Fair Food Premiums to improve farmworker wages since February 2011. In the process, the Fair Food Program helps build the foundation for a stronger agricultural industry that can differentiate its product in produce aisles and restaurants on the basis of a credible claim to social responsibility and so better weather the challenges of an increasingly competitive marketplace.

From 2009 to 2011, the Fair Food Program operated as a pilot with a total of five Participating Growers in Florida. In November, 2010, the CIW and the Florida Tomato Growers Exchange signed a historic agreement to expand the program statewide to nearly all of Florida’s \$600 million tomato industry, to launch as quickly thereafter as possible.¹⁴ With over 30,000 acres under cultivation, Florida produces

effectively all of the fresh-market, field-grown tomatoes in the U.S. from October through June, and accounts for 50% of all fresh tomatoes produced domestically year round.¹⁵ Over 30,000 workers are needed to hand-harvest the crop,

“My hope is that this will become a model for social responsibility within the agricultural industry.”

—PRESIDENT
JIMMY CARTER

The Fair Food Program is the only industry-wide social responsibility program in U.S. agriculture.

and, given turnover, the number of workers employed by the industry annually far exceeds this figure. Today, the Fair Food Program is the only industry-wide social responsibility program in U.S. agriculture.

Operationally, the Fair Food Program is rooted in the Fair Food Code of Conduct. The Code itself was born in discussions among farmworkers, shared with consumers in churches and schools across the country, shaped in negotiations with Participating Buyers, and honed into the working document it is today in an intensive loop of implementation, feedback and modification with Participating Growers. After years of development, the Code and Guidance Manual that accompanies it are today the heart of the Fair Food Program and the basis for real – and realistic – agricultural reform.

Under the Fair Food Program, Participating Growers have agreed to:

- A *wage increase* supported by the Fair Food Program Premium, or “penny per pound,” that Participating Buyers pay for their tomatoes;
- Compliance with the human rights-based *Fair Food Code of Conduct*, including zero tolerance for forced labor, child labor, violence and sexual assault;
- Worker-to-worker *education sessions* conducted by the CIW on the farms and on company time to ensure that workers understand their new rights and responsibilities;
- A worker-triggered *complaint resolution mechanism* leading to investigation, corrective action plans, and, if necessary, suspension of a farm’s Participating Grower status, and thereby its ability to sell to Participating Buyers;
- *Health and safety committees* on every farm to give workers a structured voice in shaping a safer, more humane work environment;
- Concrete *changes in harvesting operations* to improve workers’ wages and working conditions, including an end to the age-old practice of forced overfilling of harvesting buckets (a practice which effectively denied workers pay for up to 10% of the tomatoes harvested), the provision of shade in the

fields, and the use of time clocks to record and count all compensable hours accurately; and

- Ongoing *audits* of Participating Growers’ operations by the Fair Food Standards Council to ensure compliance with each element of the program.

The investments made in monitoring and enforcing the Fair Food Code of Conduct are second to none among domestic social responsibility programs. The FFP is administered by the Fair Food Standards Council, a separate non-profit organization whose sole function is oversight of the program. Under the directorship of a former New York State Supreme Court Justice, the FFSC is responsible for auditing growers’ compliance with the Code and enforcing corrective action plans; for staffing a 24-hour worker complaint hotline; for investigating and resolving credible complaints that arise; and for otherwise helping growers and buyers comply with program requirements.

Additionally, the FFSC monitors Participating Buyer payments of the Fair Food Premium to Participating Growers, where it is distributed as a line-item bonus on workers’ paychecks. The FFSC also audits growers’ payrolls to ensure that workers are properly compensated and that timekeeping systems are functional and used for minimum wage calculations. Lastly, the FFSC reviews supply chain records to ensure that Participating Buyers only source Florida tomatoes from Participating Growers in good standing, thereby upholding the market incentives that drive grower compliance.

A delegation from the United Nations Working Group on Business and Human Rights ... left “impressed” ... with the Fair Food Program ... and its “independent and robust enforcement mechanism.”

One of the CIW’s primary roles in the Fair Food Program is to educate the workers as to their rights and mechanisms for redress under the Code. This worker-to-worker education is done on company time and property. It also includes written materials and a video developed by the CIW that workers receive and view at the point of hire. These educational efforts, coupled with point-of-hire distribution of FFP educational materials and the Program’s protected complaint process, empower workers themselves to form a round-the-clock first line

of defense against labor abuses. The CIW also receives and investigates complaints in collaboration with the FFSC, negotiates with prospective Participating Buyers, manages relations with existing Participating Buyers, and sets policy

with Participating Growers through the Fair Food Program Working Group.

THE ROAD AHEAD

The Fair Food Program has already enjoyed unprecedented success, and that success has not gone overlooked by experts in the fields of human rights and corporate social responsibility. A Labor Day 2012 op-ed by the International Justice Mission in the Washington Post described the FFP as a “brilliant model” and “one of the great human rights success stories of our day.”

Likewise, in May 2013, a delegation from the United Nations Working Group on Business and Human Rights toured the U.S. on a mission to “explore practices, challenges and lessons relating to efforts on implementing the UN Guiding Principles (‘GPs’) on business and human rights.” The delegation visited with several Fair Food Program stakeholders as part of its broader investigation. While the Working Group found numerous shortcomings in the response of U.S. businesses generally to human rights issues, it left “impressed” with the Fair Food Program specifically, praising the FFP for “innovatively address[ing] core worker concerns” and “governance gaps relating to labour issues” through “market incentives for participating growers” and its “inde-

pendent and robust enforcement mechanism.”¹⁷

In the past months, the Fair Food Program has taken the first steps toward expansion beyond Florida, completing its first audit of a tomato farm outside the state and resolving multiple out-of-state worker complaints for Participating Growers. These developments are not only evidence of the inherent scalability of the program but also of the mutually beneficial collaborations between workers and their employers that can take root as consumer and retail demand for produce grown and harvested under verifiable labor standards continues to grow.

Beyond the confines of the U.S. agricultural industry, the FFP’s worker-centered, market-enforced model holds many lessons for – and tremendous promise for effective application in – other industries where social accountability efforts have been either ineffective in bringing about significant human rights progress or absent altogether. The FFP’s unique approach has drawn attention from workers facing harsh labor conditions around the world, and FFP representatives have consulted on projects involving a wide range of industries, from brick makers in Nepal to agricultural workers in Morocco. The FFP model stands to serve as an example for a new kind of social accountability program tailored to the information age, a 21st-century solution to the age-old problem of low-wage labor exploitation and abuse.



Representatives of the CIW and the Florida Tomato Growers Exchange sign an agreement to extend the Fair Food Program to 90% of the Florida tomato industry, November, 2010.

PROCESS



photo: Scott Robertson

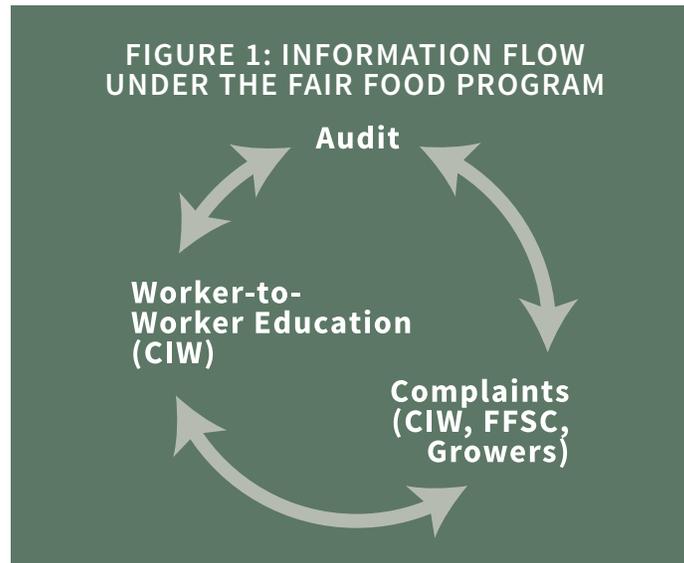
THE FAIR FOOD PROGRAM MODEL

The value of the Fair Food Program stems from both the *standards* outlined in the Fair Food Code of Conduct, which go well beyond the requirements of law, and the multi-layered approach to *monitoring and enforcing* compliance with those standards. Prior to the FFP, no governmental or non-governmental entity has had sufficient resources to undertake anything but sporadic labor enforcement efforts in agriculture. The Fair Food Program therefore represents a qualitative leap forward. The package of advanced, innovative standards and rigorous enforcement underlies the most comprehensive, verifiable and sustainable social responsibility program in U.S. agriculture.¹⁸

COMPREHENSIVE

The Fair Food Program combines four essential tools of

social responsibility, all of which are necessary and none of which is sufficient on its own, into one holistic program for ensuring the transparency of labor conditions in the fields and compliance with the Fair Food Code of Conduct. This approach to safeguarding human rights goes well beyond the traditional audit-only system of workplace monitoring that has recently been exposed as not just inadequate, but, in most cases, aimed more at the protection of a brand image than worker rights.¹⁹



1. Worker-to-Worker Education – The CIW is responsible for a program of worker-to-worker education that takes place on the farm and on the clock, paid at an hourly rate. The curriculum, which is developed and delivered by CIW farmworker staff, informs workers of their

rights and responsibilities under the Code as well as mechanisms for redress should a potential Code violation occur.

Additionally, at the point of hire, all workers receive the “Know Your Rights and Responsibilities” booklet and watch the Fair Food Program training video. The

booklet was written by the CIW and revised with feedback from the FFP Working Group; it is made available in English, Spanish and Haitian Creole. The video, which is in Spanish, was produced by the CIW in collaboration with an award-winning documentary film company. To reach low-literate English- and Haitian Creole-speaking workers, the CIW also recorded audio versions of the “Know Your Rights and Responsibilities” booklets.

Both the on-site and point-of-hire trainings are essential to providing workers with the knowledge necessary to help identify abusive supervisors and potentially dangerous practices, and allow growers to address those risks before they become entrenched problems with potentially wide-ranging consequences. In other words, the Fair Food Program harnesses the power of 30,000 trained and motivated monitors on the ground every day.

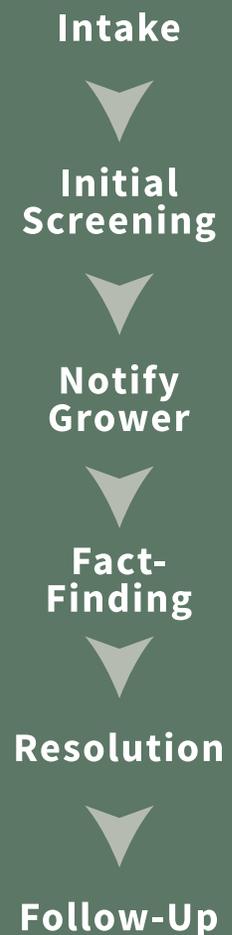
2. **Complaint Hotline, Investigation and Resolution** – Open lines of communication between workers in the fields and growers overseeing vast operations from the office are essential to the FFP. When workers encounter a potential Code violation, the FFP provides them protected access – with strict consequences for retaliation – to a fast, effective and proven complaint process. The complaint procedure is essential to managing risks before they become bigger problems, and the growers who have truly embraced the Fair Food Program understand this benefit.

The toll-free complaint line is answered by a bilingual FFSC investigator, 24 hours a day, 7 days a week. Complaints are investigated and resolved by the FFSC, normally in collaboration with Participating Growers. The FFP requires both Participating Growers and FFSC to report all complaints received to each other, within two working days. Whenever possible and appropriate, complaint resolutions include an educational component, consisting of meetings with relevant supervisors and crews, so that workers can see that complaints are heard and responded to, without retaliation, and supervisor conduct can be effectively modified. All steps in the complaint process are documented in the FFSC database, resulting in an important compilation of information on the conduct of individuals, as well as company practices.

3. **Audits** – Because workers may not be aware of every possible problem or, for that matter, may not always be willing to trust the complaint system, in-depth audits are a necessary complement to the complaint process. With access to company records at the farm office level and access to the fields to observe harvesting operations and talk to workers first-hand, FFSC auditors are able to achieve still greater transparency into Participating Growers’ farms to ensure that they have the systems in place to make compliance possible.

The FFSC audit process includes interviews conducted with very large percentages of workers – normally over half a company’s workforce, which is well over traditional auditing sample sizes. These interviews

FIGURE 2: FFSC COMPLAINT PROCESS



take place in the field and off-site, at worker housing, on the buses that transport workers, and at morning pick-up spots. Additionally, the FFSC interviews all levels of management, from senior officers to field supervisors, and reviews company policies and logs to assess implementation of the Code. Auditing also includes on-site review of the company's payroll records to ensure that workers are properly compensated, that timekeeping systems are functional and used for minimum wage calculations, and that the Fair Food Premium is accurately distributed as a line-item bonus on workers' paychecks.

Following the conclusion of an audit the FFSC generates reports for Participating Growers and drafts corrective action plans, which serve as detailed roadmaps to full compliance and serve as the launch point for the next round of audits. At the request of some growers, the FFSC has assisted in drafting model company policies and training company supervisors on program-related policies.

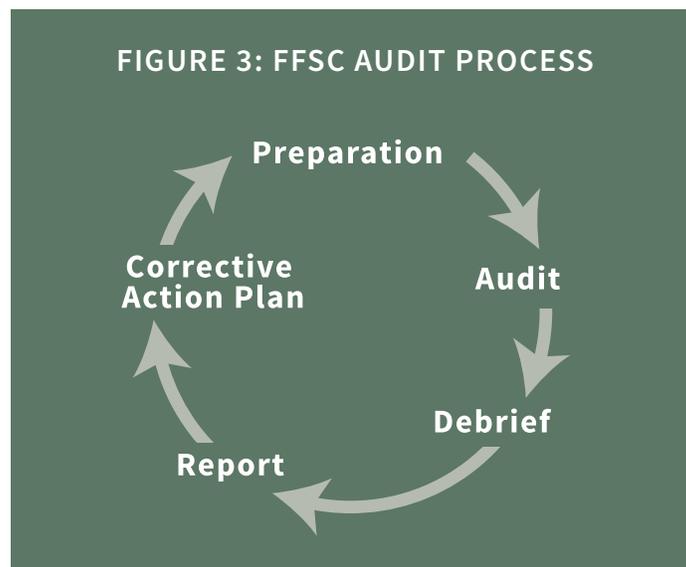
4. **Enforcement through Market Consequences** – The Fair Food Program is an enforcement-focused approach to social accountability, and enforcement ultimately needs teeth to work. Growers who fail to comply with the Code lose business. Those market consequences – built into the program through the CIW's Fair Food Agreements with Participating Buyers – are the heart of the program. Towards this end, the FFSC reviews monthly supply chain records to ensure that Participating Buyers only source Florida tomatoes from Participating Growers in good standing, thereby upholding the market incentives that drive grower compliance.

specialized and continuously deepening information base concerning relevant actors and practices gathered through audits and the complaint process. With a team of nine field and financial investigators, and under the directorship of a former New York State Supreme Court Justice, the Fair Food Standards Council's existence sets a new standard for accountability in the field of social responsibility.

SUSTAINABLE

The Fair Food Program is based on the notion that social responsibility – if it is to be truly sustainable – is a job that simply cannot be kicked down the supply chain, but rather must be shared, from retailers at the top to workers at the bottom. As such, the FFP is built to draw on the unique strengths and resources of every level of the supply chain without creating an unreasonable burden on any single level.

- **Retailers** – The FFP draws on retailers' volume purchasing power to create real and compelling incentives for compliance by growers, and on their resources, through the small but powerful Fair Food Premium, to help alleviate the economic hardship faced by farmworkers for decades. Social accountability cannot coexist with sub-poverty wages, as workers will be too vulnerable to be useful partners in rooting out abuse.
- **Growers** – The FFP draws on participants' power and resources to eliminate bad actors and dangerous practices from their operations and on their interest in keeping pace with an ever more competitive marketplace; however, it does not demand that growers bear the entire cost of change.
- **Workers** – The FFP draws on workers' knowledge of the day-to-day reality in the fields and their desire for a more modern, more humane workplace.



- **Consumers** – The FFP harnesses consumers' growing demand for the highest ethical standards and employs that demand as the engine that ultimately drives the entire program.

VERIFIABLE

The clearest reflection of the FFP's investment of time and resources in monitoring compliance with the Code is the development of the Fair Food Standards Council. The FFSC is the only indigenous, dedicated monitoring organization of its kind in U.S. agriculture, its sole task being to oversee compliance with the Fair Food Program. The FFSC brings a



photo: Forest Woodward

IMPLEMENTATION TIMETABLE

The timeline below summarizes the stages of implementation of the Fair Food Program in the Florida tomato industry.

- **Pilot (2009-2011)** – A total of five growers participated at different points during the pilot phase. Audits and financial monitoring were conducted by Verite, a non-governmental organization that promotes and monitors fair labor practices across the globe. Verite also helped train FFSC staff in workplace auditing methodologies. During this period, the complaint process was launched, and one grower was suspended from the Program for failure to cooperate with the investigation of a sexual harassment complaint against one of the farm's longtime crewleaders.
- **Season One (2011-2012)** – In November 2011, the FFP expanded to cover the Florida tomato industry statewide – from south of Miami to the Florida-Georgia border, 450 miles north – and the Fair Food Standards Council assumed responsibility for monitoring the program. The FFSC conducted baseline assessments – including company questionnaires and announced audits – to measure growers' initial level of implementation. Corrective action plans were subsequently drafted to help establish management systems that would facilitate Code compliance. The complaint process was also expanded statewide during this period.
- **Season Two (2012-2013)** – Building on the knowledge base from its inaugural season, the FFSC conducted announced and unannounced audits to measure compliance with the previous season's corrective action plans. Compliance with corrective action plans varied, sometimes widely. As a result, some Participating Growers were placed on probation for failure to pass remedial audits, and one grower was suspended from the program. This season also saw the beginning of voluntary program expansion, initiated by Participating Growers, through engagement with the FFSC in complaint resolution for their operations outside of Florida, as well as the FFSC's first out-of-state audit.

OUTCOMES



photo: Forest Woodward

OVERVIEW

Since November 2011, implementation of the Fair Food Code of Conduct has begun to bring about many far-reaching reforms across the Florida tomato industry. While the degree of change remains uneven from grower to grower, in the span of just two years:

- Workers have brought forth 304 complaints under the Fair Food Program;
- Fair Food Standards Council auditors have conducted nearly 60 comprehensive audits, visited 45 farm locations, and interviewed 4,000 workers to assess Participating Growers' compliance with the Code;
- The Coalition of Immokalee Workers has conducted 161 worker-to-worker education sessions, attended by well over 14,000 workers; and
- Participating Buyers have paid more than \$11 million in Fair Food Premiums to improve workers' wages.

The President's Advisory Council on Faith-Based and Neighborhood Partnerships singled out the Fair Food Program in a major new report as one of the "most successful and innovative programs" in the world today to uncover and prevent modern-day slavery.

Beyond the numbers, an even more remarkable story is unfolding. Before proceeding to a detailed breakdown of Code implementation, three accomplishments merit further discussion.

Ten years ago, in the aftermath of several major federal prosecutions of Florida farm labor slavery operations, a Justice Department official labeled the industry "ground zero for modern slavery."²⁰ Since that time, the CIW has worked closely with law enforcement to bring additional farm labor slavery operations to justice. Remarkably, in three seasons under the FFP, there have been no cases of slavery uncovered at Participating Growers' operations. This absence of slavery cases has held despite the fact that the FFP has provided investigators significantly more access to workers – and workers significantly more access to information on their rights and to an effective complaint

mechanism – than during the two decades preceding the FFP's implementation that generated the "ground zero" label. Taking note of this achievement, in March 2013, the President's Advisory Council on Faith-Based and Neighbor-

hood Partnerships singled out the Fair Food Program in a major new report as one of the “most successful and innovative programs” in the world today to uncover and prevent modern-day slavery.²¹ The Fair Food Program is setting the gold standard for prevention of forced labor in U.S. agriculture.

Additionally, the Fair Food Program has made significant strides in addressing endemic sexual harassment in the fields.²² Participating Growers’ supervisory staff are accepting proactive responsibility to discourage hostile environments and to respond effectively to complaints of sexual harassment. As detailed below, three long-time supervisors were terminated for sexual harassment as a result of FFSC investigations, and notification of their two-season ineligibility for reemployment within the FFP was sent to all Participating Growers. Sexual harassment is also a major point of emphasis in worker interviews during the audit process. These developments have not gone unnoticed. In June 2013, after a year-long investigation of sexual assault in the fields from California to Florida, PBS’s Frontline declared the Fair Food Program to be the single most effective prevention program in the U.S. agricultural industry.²³



Lastly, there is evidence that many Participating Growers have begun to view the FFSC as a useful partner and risk-prevention resource. Most Participating Growers have adopted a cooperative attitude towards jointly resolving worker complaints with the FFSC. In the last year alone, the FFSC has helped draft company policies and provided on-site supervisor training for several Participating Growers on issues ranging from sexual harassment to progressive discipline. This summer, the FFSC audited one Participating Grower’s out-of-state tomato farms for compliance with the Code and helped resolve six out-of-state complaints for three Participating Growers. Clearly, many growers are embracing the opportunities and benefits of the Fair Food Program.

CODE REQUIREMENTS

In order to assess the progress made thus far, and the gaps that remain, this section offers definitions of key Code provisions, and then assesses their level of implementation, highlighting illustrations of impact and best practices.

WORKERS SPEAK

In conversation with an FFSC auditor, an older worker described the frequent physical and verbal abuse and wage theft that used to be a routine part of life as a farmworker and how, little by little, he has seen things improve. Today, he feels that while there are still problems, it is a much better work environment than the one he found himself in as a young man. When asked why he thought things had changed and were changing, he credited the work of the CIW over the years. He expressed both praise and support for the accomplishments of the Fair Food Program. (February 2012)

In another instance, an FFSC auditor rode on the bus with a crew on the way to the fields. A worker sitting at the back of the bus made these statements during their conversation: “I have been in the fields all my life. I have seen boys become men in the tomato fields. I have seen a great deal. And now I see that things are better. Now I see that we are not treated like dogs. I am grateful to people like you. You are welcome here.” (March 2012)

FFSC AUDITING

All Participating Growers have agreed to auditing by the Fair Food Standards Council. The commitment to transparency is a fundamental requirement of the Fair Food Program, and failure to cooperate with auditing procedures, including intimidation or coaching of workers, is grounds for probation or suspension from the program.

Assessment of Implementation

Auditing by the FFSC includes unannounced visits when specified triggers, set forth in the Code, are present. FFSC auditors have been provided with access to all levels of management at Participating Growers, from company owners and officers to farm managers and crewleaders. Auditors are able to interview workers in the fields, on buses and at company housing. Participating Growers have provided relevant documents, including company policies, payroll records and documentation related to Fair Food Premium distribution.

The result has been unprecedented levels of analysis of Participating Growers' management and payroll systems as well as field operations. This level of detail and integrity in fact-finding has enabled FFSC to draft Corrective Action Plans that are effective roadmaps to full implementation of the Code. Documentation requirements for accurate monitoring of the Fair Food Premium have been clarified to all Participating Growers and compliance with those requests has been achieved.



At a minority of Participating Growers, improvement is still needed to achieve compliance with the Code's transparency and cooperation requirements. Interference with auditors' interactions with workers and field-level management, in the form of intimidation or coaching, is strictly prohibited. In some instances, auditors have experienced interference from field-level supervisors and upper management. In the case of obstacles caused by upper management, expedited corrective actions were required (backed by the prospect of suspension from the Program for failure to comply), including meetings with company owners, followed by meetings led by FFSC and company representatives with workers, to reaffirm the grower's commitment to the Fair Food Program. Workers were assured of their ability to speak freely and confidentially with auditors, free from fear of retaliation. Corrective action plans for the 2013-2014 season at several Participating Growers

include trainings for field-level management on transparency and cooperation, led by the FFSC, with participation and support by company owners or their representatives.

Other issues that have been addressed with some Participating Growers concern behavior by supervisors or staged procedures on audit dates that are not reflective of standard company practices. When such incidents have occurred, FFSC auditors have detected them through multiple mechanisms built into the monitoring structure, including statements made during interviews with management and workers, information provided by workers through the FFSC's complaint line, review of documents and auditors' own observations in the field.

Best Practice

Full cooperation and transparency with audits, including scheduling dates; assistance with logistics; and unimpeded access to records, management personnel and workers. No interference, intimidation or coaching of workers' or supervisors' responses.

Upper management affirms commitment to the FFP and instructs supervisors to cooperate with FFSC audits. Violation of FFP requirements for transparency and cooperation with audits is subject to disciplinary action under the company's written disciplinary policy.

Illustration of Impact

A worker told FFSC auditors, "We see you everywhere . . . Things are better since you are at the farms – you must keep coming back." (April 2013)

DIRECT HIRING

Another fundamental provision of the Code requires Qualifying Workers* to be hired and paid directly by Participating Growers. Historically, growers have paid farm labor contractors (crewleaders) who were the direct employers of farmworkers. Under those circumstances, forced labor, wage theft, transportation in dangerous vehicles and other abuses often went undetected or unaddressed. Even legal strategies such as establishing "joint employer" status, whereby the responsibilities of employment are shared by the grower and contractor, often require litigation, and efforts to achieve accountability through the courts are not consistently successful. Instead, under the Fair Food Program, ensuring that workers become employees of Participating Growers means that growers undertake the important responsibility of guaranteeing proper compensation and working conditions for farmworkers who labor on their property.

Assessment of Implementation

All Participating Growers have agreed to hire Qualifying Workers and to pay them directly, on company payroll.

Of the thousands of workers interviewed during the 2012-2013 season, auditors confirmed only three instances, with a total of five Qualifying Workers, who were found to be working while not registered on Participating Growers' payrolls. While any level of non-compliance with this fundamental provision is unacceptable and must be addressed through corrective action, these findings represent a tremendous advance against conditions under which cases of slavery and other abuses have arisen in the past.

The sole exception to this rule of the uniform registration of workers has been a subset of the Participating Growers' continued use of traditional "pinhooker" crews to harvest the 5-10% of their crops that ripen ahead of, or after, the rest and which are marketed as vine-ripe tomatoes. Pinhooker crews are a highly informal, under-capitalized sector of farm labor that is the source of rights violations at a rate disproportionate to its size. Several growers – of very different scales – have found ways to comply with the Code and regularize their vine-ripe harvest by registering, educating, and paying the pinhooker crews as they do their regular harvesting employees, or by using their regular crews to do vine-ripe harvesting. However, others have been slower at absorbing those workers and affording them the same protections as their traditional in-house labor

* According to the Fair Food Code of Conduct: "Qualifying Workers are non-supervisory workers performing the following tasks related to growing tomatoes for a Participating Grower: harvesting, irrigation, planting, laying plastic, staking, tying and miscellaneous work of a similar nature that does not involve the operation of vehicles or machinery. Field walkers and dumpers are not Qualifying Workers."

DIRECT HIRING, contd.

Assessment of Implementation

crews. The successful inclusion of vine-ripe harvesters in the protections under the FFP that has taken place on the majority of farms provides the road map for the remaining growers to follow suit, and the Working Group, after careful consideration of this issue, has determined that doing so will be a requirement for all Participating Growers beginning with the 2013-2014 season.

Remaining challenges for some Participating Growers center on tightening the time frame for completion of registration in a standardized procedure that ensures all Qualifying Workers are fully registered and provided with ID and/or time cards before starting to work in the fields. These measures eliminate the possibility that workers could work for several days and leave, without company knowledge of their presence.

Best Practice

Workers complete registration paperwork and receive company photo ID cards – necessary for attendance and timekeeping – before beginning work in the fields.

Illustration of Impact

A worker who was brought to a Participating Grower's field by a sub-contractor working with the company's crewleader – but not registered on the company's payroll as required by the Code – called FFSC when he was not compensated for his labor. He had received the "Know Your Rights and Responsibilities" booklet containing the FFSC hotline number during a CIW worker-to-worker education session that took place during the days that he was working for this grower. The company initially denied that this worker had ever been present in their fields, but the FFSC located his signature on required company training logs. Full compensation was obtained for this worker, who was invited to the company office to receive a paycheck in his name. He stated to FFSC investigators "more important than the money, which I need, was the feeling of dignity when my labor – the buckets I harvested – was recognized." Corrective actions for this grower required disciplinary action for any crewleaders who violate the requirement to register all Qualifying Workers, and suspension from the program for any future findings of unregistered workers. (March 2012)



photo: Scott Robertson

ZERO TOLERANCE FOR FORCED LABOR, CHILD LABOR, VIOLENCE AND SEXUAL ASSAULT

The Code requires termination of supervisors found to have violated the Code's zero-tolerance provisions. Any such offenders are ineligible for employment at Fair Food Program farms for two seasons to five years, depending on the offense. Re-training acceptable to the FFSC must be completed before employment eligibility at Participating Growers can be reinstated. A second offense results in a lifetime ban. Failure by a Participating Grower to impose these sanctions results in suspension from the program.

All participants in the Fair Food Program have committed themselves to the eradication of these violations, which represent the worst offenses suffered by thousands of farmworkers over many decades, up to and including recent years.

Assessment of Implementation

The Code's requirements of immediate termination and other necessary corrective action upon confirmation of violent incidents, incidents involving weapons, or sexual harassment with physical contact have been honored uniformly by Participating Growers. As a result, the industry's worst actors are being detected and eliminated.

The remaining challenge in this area for some Participating Growers is improvement of investigation procedures and prompt cooperation in joint investigations. Providing access to witnesses, concluding investigations in an expedited time frame, and transparency in sharing of findings with FFSC are critical for effectiveness.

Best Practice

Upon notification of complaints alleging violations of zero-tolerance provisions, growers facilitate FFSC investigation by providing access to witnesses, upon request, and helping to create an atmosphere for interviews that is free of intimidation or fear of retaliation. Interviews conducted by the grower are prompt and carried out under circumstances that protect confidentiality. Investigations are cooperative, not adversarial.

Illustration of Impact

- A crewleader with a decades-long history of violence, related to human trafficking, was terminated and banned from FFP farms after an FFSC-led investigation, carried out with full cooperation of the Participating Grower.

Workers had called the FFSC to report threats against workers who wanted to leave his crew, as well as those who made complaints about working conditions.

The company facilitated a visit by FFSC investigators to the field, for the purpose of interviewing workers. Field-level supervisors were removed and investigators were able to speak freely with workers. As a result of information gathered and presented to the grower, the crewleader, whose past was well-known in the farmworker community, was terminated. The agreed-upon resolution included a meeting with the workers he had supervised to explain the reason for this termination and the company's assurance that workers could maintain their employment without fear of retaliation. Most workers



photo: Scott Robertson

Illustration of Impact

remained at the company and reported working “free of fear and humiliation, without the need to look over our shoulders” and shared “very pleased surprise” at the effectiveness of the FFP. (February 2013)

- In another instance, a crewleader found to have engaged in both sexual harassment and intimidation of workers was terminated as a result of FFSC investigation in collaboration with the Participating Grower. This individual appears to have been known to law enforcement authorities as far back as 1999 for complaints of violence and forced labor. In the case investigated by FFSC, he had stalked and harassed female workers, including coming into their bedrooms while they slept and uncovering them. The complainant who contacted FFSC believed that only the fact that she was sleeping with her child had prevented a violent sexual assault. As a result of witness accounts presented by FFSC and a resulting joint investigation with the Participating Grower, this crewleader was terminated. (August 2013)

WORKER-TO-WORKER EDUCATION SESSIONS

For the first time, workers hear their rights explained by a committee of men and women who have spent their lives working in the fields, and have a deep understanding of the issues important to their audiences. This education takes place on company property, paid at an hourly rate. Company management is present to demonstrate support and commitment to the FFP. Workers can ask questions about their rights and responsibilities under the program and receive answers in terms that make sense to them, based on shared experience.

Assessment of Implementation

All Participating Growers, with one exception (impacting a maximum of 100 Qualifying Workers), scheduled and hosted CIW worker-to-worker education sessions.

Best Practice

Participating Growers contact CIW’s Worker Education Committee during each harvest cycle to ensure that all crews participate in an education session. If large groups of workers are hired after the first session, another session is scheduled. Representatives of management are present to introduce the session and convey the company’s support of the FFP. The company has a separate training payroll code, under which education sessions and other trainings are properly tracked for hourly compensation. Attendance is kept to 100 workers or less, so that constructive dialogue can take place.

Illustration of Impact

- An older worker spoke with FFSC about how it felt to be informed of his rights, by other workers and on company property. “I was so happy today to hear about all the changes. Our dignity is being restored through this program.” (April 2013)
- A worker at a community meeting in Immokalee shared how, since the education session, things had changed on the farm where he worked. He stated that in the past, dumpers normally used abusive language with harvesters if they did not bring overfilled buckets and when the crewleader was present the environment was even more abusive. Now, “Everyone speaks well. Many people are discussing the issues talked about in the session. The raise provided by the bonus is good, but for me the most important thing is respect.” (December 2010)

EDUCATION AT THE POINT OF HIRE

Upon hire, all workers must receive a copy of the “Know Your Rights and Responsibilities” booklet in English, Spanish or Haitian Creole. The booklet describes the basic protections established by the Code, as well as workers’ rights to register complaints concerning violations of the Code. Workers also view the CIW-produced FFP training video. In the video, workers see their rights and responsibilities demonstrated in realistic scenarios, portrayed by farmworker actors.

Assessment of Implementation

Distribution of the “Know Your Rights and Responsibilities” booklet and screening of the FFP training video has been incorporated in worker training by more than 85% of Participating Growers. 15% of Participating Growers have not yet effectively incorporated these materials into worker training.

The critical challenge in this area for several Participating Growers is to implement a standardized procedure in which all Qualifying Workers receive FFP training materials upon hire, and prior to starting work in the fields. At these farms, materials are distributed and the video is screened, but because implementation is not uniform, workers can be hired, work, and leave the grower’s employment without receiving training.

Best Practice

Worker training, including Fair Food Program materials, consistently takes place prior to starting work in the fields. Training is led by a bilingual trainer. The curriculum goes beyond the screening of videos. Policies are explained, with an opportunity for questions and answers.

Illustration of Impact

A worker who had worked at a Participating Grower before the FFP began spoke about the difference: “Before, they didn’t explain anything about our rights, now everything is different. We receive the booklet and see a video about our rights. Someone from the company also talks about the Fair Food Program. God bless you and your work.” (November 2012)

COMPLAINT LINE

Publicizing the right of workers to make complaints, free from fear of retaliation, and providing access to a toll-free number, answered by bilingual complaint intake staff, are examples of Participating Growers’ commitment to the program’s collaborative problem-solving approach. Channels for informing workers about the complaint process include pay slips, postings at central farm locations and on buses, as well as written materials distributed to workers during orientation and training.

Commitment to the complaint process is also motivated by recognition on the part of Participating Growers that workers are often best positioned to provide valuable risk prevention information to their employers regarding conditions in the fields. Several growers have opted to use FFSC’s complaint line, which is always answered by a bilingual FFSC investigator, while others have opted for in-house or outsourced hotlines. The efficacy of growers’ complaint lines is reviewed through the FFSC audit process.

Assessment of Implementation

All Participating Growers have either contracted with a toll-free complaint line or chosen to direct workers to the FFSC’s hotline. All but one grower prints or stamps the complaint number on workers’ pay slips, as required by the Code. At the beginning of the 2013-2014 season, that grower will be implementing a new payroll system that has the capacity to print the complaint line number. Information on the complaint line and other complaint procedures has been included in most growers’ training materials. As discussed above, the program’s “Know

Assment of Implementation

Your Rights and Responsibilities” booklet, which contains the FFSC’s complaint line information, is distributed at most Fair Food Program farms.

Best Practice

Clear explanations concerning access to the complaint line and other complaint procedures are provided during worker training at the time of hire by a bilingual trainer. The company’s policy against retaliation for making complaints is clearly stated. Company complaint procedures include the regular active participation of human resources staff – who are known and trusted by workers – in the fields.

Illustration of Impact



- A worker who suffered an eye injury when struck by a dumper, was intimidated by his crewleader, who attempted to keep him from telling company representatives about the incident. He had received the FFSC complaint line information during training, however, and made a call. Based on FFSC investigation and presentation of findings to the Participating Grower, the company terminated the dumper and provided access to medical care for the worker. The crewleader was disciplined, fined and given a final warning.

The worker stated to auditors, “I cannot believe that programs like this exist. When I called, you even came to my house to help me.” The worker stated a number of times that he had initially been very frightened, but by the end of the investigation and complaint resolution process, felt that he had become a much stronger, more confident person. (June 2013)

- A group of workers who had suffered wage theft when their checks were unlawfully cashed by a crewleader called FFSC. The workers’ fear was that they had no recourse against the crewleader, and that their much needed compensation would be lost. FFSC contacted the company and helped to clarify the situation faced by these workers. Based upon a joint investigation, the company re-issued checks to all workers and terminated the crewleader who had improperly cashed workers’ checks. Once the initial callers saw that results without retaliation were possible, word spread, and a total of seventeen workers contacted the FFSC and recovered their compensation. (August 2012)
- A group of workers contacted the FFSC when a supervisor was not permitting them to take breaks to rest or to drink water, resulting in heat stress for a number of workers. The supervisor was verbally abusive and demeaning, telling workers who were picking up trash that he wanted to “see them on their knees.” Witness accounts were presented to the company, and complaint resolution included discipline of the supervisor and re-affirmation by the company of workers’ rights to take breaks to rest, drink water and work free of verbal abuse, at a meeting with all affected workers and supervisors. (July 2012)



photo: Scott Robertson

TIME KEEPING SYSTEMS

Manipulation of the manual records of workers' compensable hours has long been a source of potential minimum wage violations in U.S. agriculture. Implementation of required timekeeping systems, in which workers control their time registration device, makes workers aware of when they are clocked in and out, and generates verifiable records. These new systems, coupled with the Code's requirement of clocking workers in upon arrival to the grower's property, and clocking workers out only after all post-field tasks are complete, ensure that all workers' compensable hours are recorded.

Enforcement of the provision against uncompensated wait time has had a dramatic impact on workers' quality of life. Many growers have changed the practice of transporting workers to the field hours before work can begin. Since the Code requires that this wait time be on the clock, to be calculated against minimum wage requirements, many growers have re-calibrated arrival times to more closely approximate work times. This allows mothers and fathers to let their children get a full night's rest and even take them to school, instead of rousing them before dawn to be left with a neighbor, often for a daily fee, while they board a bus to the fields.

Assessment of Implementation

All but two Participating Growers have purchased, installed and activated time-keeping systems required by the Code. Both growers have informed FFSC that the required timekeeping systems have been purchased and will be ready for use during the 2013-2014 season. Morning wait time at most Participating Growers has been significantly reduced, and clocking workers out only after piece-rate production tickets are counted and instructions for the next day are provided has become the norm.

Challenges remain for some Participating Growers who continue to prioritize manual records in the case of discrepancies with the Code-required timekeeping systems. Consistency in implementation of clock-in and clock-out procedures is also an area of ongoing efforts to improve at a number of Participating Growers.

Best Practice

All Qualifying Workers are clocked in consistently upon arrival to Participating Grower's property and clocked out only when all post-field administrative tasks are completed. Workers control their time registration devices. Records generated by timekeeping systems that comply with the Code are used to generate payroll, and, in case of discrepancies, are prioritized over manual records. No qualifying work is performed unless workers have been clocked in.

Illustration of Impact

- A worker explained that in the past, like all other farmworkers, he and his wife would have to get up by 4 a.m. to get to the town's central parking – the principal hiring site – to board the labor bus at 5 a.m. The crew would then wait for several hours at the field for the morning dew to dry from the tomatoes before harvesting could begin. In the past, that wait time was rarely recorded.
- Now, under the FFP, workers must be clocked in upon arrival to the grower's property and those hours are counted towards workers' weekly minimum wage threshold. Many Participating Growers have adjusted their call times, meaning that workers do not have to leave home until significantly later. This is not just a matter of more rest. As the worker, who is also a father, put it, "In the past, we had to wake our son up at 4 a.m. to get him to a home daycare where he stayed until the daycare provider took him to school. This routine had affected the child's health. Now, for the first time in the 10 years of my son's life, my wife and I are able to eat breakfast with him and walk him to school." (January 2011)

Illustration of Impact

- A worker stopped an auditor to express his gratitude for the Code provision that tickets must be counted on the clock. The worker stated, “This has saved us so much time and money – thanks to the program for including that in the agreements.” (August 2013)

BUCKET-FILLING STANDARD

In addition to the Fair Food Premium, the Code has achieved further wage increases through the elimination of “cupping.” Cupping refers to the traditional practice of requiring workers to over-fill their 32-pound buckets by heaping additional tomatoes on top (pictured below, left). Workers were not paid for those extra few pounds of tomatoes in every bucket, a practice enforced by various methods, from withholding pay for un-cupped buckets to firing workers who refused to comply. This meant that, in practice, for roughly every ten pickets picked and cupped, workers were picking, but not paid for, an eleventh bucket. For many workers, the new visual standard for filling buckets has meant an additional wage increase of up to 10% (pictured below, right).



Assessment of Implementation

40% of Participating Growers have successfully implemented the Code’s visual bucket-filling standard. Another 45% have partially implemented the visual standard. At the latter companies, upper management’s commitment to the standard has not been consistently conveyed and enforced at the level of field supervision. 15% of Participating Growers were found not to have implemented the Code’s required visual standard. Compliance with the visual standard will be a Point of Emphasis in the 2013-2014 season.

Best Practice

Farm supervisors take an active role in enforcing the visual bucket-filling standard. Workers are instructed that the company does not want either over or under-filled buckets. Dumpers and crewleaders are subject to disciplinary procedures for ongoing demands to over-fill buckets.

Illustration of Impact

In response to a worker's complaint about demands for cupping, the company convened meetings with supervisors and crewleaders to clarify enforcement of the visual standard. The worker provided feedback on the meeting and stated: "Thank you for the work you are doing. Today the company apologized for what the supervisor said to us yesterday and we had another meeting for 15 minutes. They said that we don't have to overfill the buckets. Today we worked in a calm environment, and no one was yelling at us to put so many extra tomatoes in our buckets. Tomatoes are not dropping on the ground either, and people feel better."(November 2010)

FAIR FOOD PREMIUM

Historic change in farmworkers' traditionally sub-standard pay has been achieved through the payment of over \$11 million in Fair Food Premiums into the Program since January 2011. Workers throughout the Florida tomato industry have learned about and are receiving the FFPP, which is clearly marked as a separate line item on their paychecks. In an industry where, in real value, the piece-rate has declined rapidly over the last 30 years, this is extremely significant. As a high-end example, some workers saw increases of up to \$120 in premiums in just one paycheck. These payments are ongoing, and as more buyers join the Fair Food Program, the bonuses workers receive will grow commensurately.

Date	Type	Hours	Pieces	Rate	Deductions	Earnings
04/24/2011	Subway's FFP		1	28.50		28.50
04/24/2011	McDonald's FFP		1	44.41		44.41
04/24/2011	Fair Food Payt.		1	8.81		8.81
04/25/2011	Payroll - Harvest Labor - Picking Piece Work		15	.60		9.00
04/25/2011	Payroll - Harvest Labor - Picking Hourly	11.25		7.25		81.56
04/26/2011	Payroll - Harvest Labor - Picking Piece Work		11	.60		6.60
04/26/2011	Payroll - Harvest Labor - Picking Hourly	11.50		7.25		83.38
04/27/2011	Payroll - Harvest Labor - Picking Piece Work		12	.60		7.20
04/27/2011	Payroll - Harvest Labor - Picking Hourly	12.00		7.25		87.00
04/28/2011	Payroll - Harvest Labor - Picking Piece Work		14	.60		8.40
04/28/2011	Payroll - Harvest Labor - Picking Hourly	12.25		7.25		88.81
04/29/2011	Payroll - Harvest Labor - Picking Piece Work		13	.60		7.80
04/29/2011	Payroll - Harvest Labor - Picking Hourly	9.75		7.25		70.69
04/30/2011	Payroll - Field Clean Up Piece Work	6.25	68.49	1.20		82.19
Totals:					.00	614.35

Employee: [REDACTED] Check: 94769 094769
 Id: [REDACTED] SSN: [REDACTED] Crew: PC Ck Dt: 05/06/2011
 ARN: [REDACTED] EIN: 59-2155225 From: 04/24/2011 Thru: 04/30/2011

PACIFIC TOMATO GROWERS LTD
 503 10TH ST W
 PALMETTO FL 34221

A worker's pay stub lists the Fair Food Program Premium bonuses as a separate line item.

Assessment of Implementation

All Participating Growers distribute Fair Food Premium to Qualifying Workers. Approximately 35% of growers have had some problems with implementation according to the Code (e.g. distributions did not always happen consistently at the intervals required, distributions were sometimes made to non-qualifying employees, or reports of distribution were not made promptly to the FFSC). The FFSC's financial department has worked with these growers to clarify and assist their payroll personnel with proper distribution procedures.

Best Practice

Fair Food Premium is consistently distributed on required dates, reporting is made monthly to the FFSC, and the company regularly updates its list of field-level supervisors who are not eligible to receive premium.

Illustration of Impact

- Over the past two seasons, FFSC auditors have found that most workers are aware of the Fair Food Premium, and look forward to seeing it in their paychecks.
- When asked about the premium, workers said: “The bonus is helpful and often necessary to make ends meet. We would like to receive the bonus everywhere we work.” (August 2013)

HEALTH AND SAFETY COMMITTEES

The Fair Food Program is also improving worker health and safety on the job. Under the Code, growers must assist workers in the formation of farm-based Health and Safety Committees. These worker committees represent a channel of communication between the field-level workforce and management relating to a broad range of health and safety issues, from sexual harassment to heat exhaustion to unsanitary conditions. At monthly meetings, members representing each crew present on the farm, have an opportunity to present their concerns and to find resolutions in a constructive dialogue with management.

Assessment of Implementation

20% of Participating Growers have implemented Health and Safety Committees in compliance with the Code, convening monthly meetings with workers representing each crew, and agendas that encourage workers to share their concerns with management. Another 30% of Participating Growers have started to implement Health and Safety Committees, but procedures followed do not fully comply with Code requirements. Approximately 50% of Participating Growers have not yet implemented Health and Safety Committees.

Functioning Health and Safety Committees will be a Point of Emphasis in next season’s auditing by FFSC. In addition, the CIW Worker Education Committee will be consulted by Participating Growers regarding implementation of committees that comply with the Code.

Best Practice

Health and Safety Committees consisting of at least five members, with a representative from each crew, meet monthly. Committee members are identified to all workers on their crews, and adequate notice of meetings is provided so that other workers can provide input or attend, if they wish. Feedback is provided to all crews, concerning topics discussed and resolutions reached. During harvest, committee attendance is incentivized by compensating committee members at an hourly rate that exceeds minimum wage.

Illustration of Impact

- A worker reported proudly that she had been selected to be on the Health and Safety Committee at a Participating Grower. She had some ideas for the committee and shared her plans to talk to the others on her crew in the morning to see if they had any suggestions for her to take to the committee. The company issued t-shirts to members of the committee, so other workers can identify them and express concerns freely. (March 2011)
- Workers reported that the drinking water provided by their crewleader was



photo: Scott Robertson

Illustration of Impact

extremely foul tasting and that many workers refused to drink it. After learning that local health officials had issued public warnings about this particular water source, the company dug a well and invested in a state-of-the-art water filtration system on its property. Workers now report being extremely pleased with the quality of available drinking water in the fields. (April 2012)

- The company reported that worker and crewleader training includes workers' rights to take reasonable breaks and to leave the field if they feel conditions are dangerous due to weather or pesticides. In audit interviews, Health and Safety Committee members verified these policies. A worker from this company who had also worked there before the FFP told auditors that in the past, workers sometimes had to stay in the field in the rain and lightning, or even when pesticides were sprayed. "Now, under the Fair Food Program, things are better and workers' health is considered to be important." (March 2013)



photo: Scott Robertson

SHADE IN THE FIELDS

The Code requires provision of shade for workers in the fields at all times and locations that field work is performed. In Florida, the heat index is regularly in the upper 90's and may exceed 100 degrees, as workers bend over, pick tomatoes, briskly haul 32-pound buckets, throw those buckets up to a dumper on a flatbed truck, and race back to start the cycle anew. Heat injury and illness is a leading cause of work-related death for farmworkers in the U.S., a rate nearly 20 times greater than for non-farmworkers. The provision of a safe, shaded area and the ability to access it during needed rest breaks is therefore critical to workers' health and well-being.

Assessment of Implementation

25% of Participating Growers have fully implemented the Code's requirements concerning provision of shade. Some of those growers have made significant investments in new mobile structures, while others have utilized existing farm equipment (e.g. flatbed trailers). Another 55% of Participating Growers have purchased and distributed shade structures to supervisors. However, the shade is not always made accessible to workers by supervisors responsible for that task. 20% of Participating Growers have yet to provide shade in the fields.

Best Practice

Durable, mobile shade structures, able to accommodate multiple workers at a time, are provided and made easily accessible to workers. Responsibility for provision of shade is clearly designated to supervisors. Structures include a bench for workers to rest and eat. Workers report easy accessibility and satisfaction with use of the shade unit.

Illustration of Impact



- During a visit to grower-provided housing, workers who had worked at both Participating and non-Participating Growers explained to auditors the “day and night difference” made by the FFP. Workers described how, in contrast to operations where they must take a rushed lunch next to the fields, 30 minutes of uninterrupted lunchtime in the shade is provided when working in Participating Growers’ fields. The ability to take regular breaks in the shade has meant a great deal in coping with the heat. (July 2012)
- Auditors observed that a Participating Grower has created high-quality, durable shade structures for workers. The structures include a bench and are on a wheeled frame so that they can be pulled by a pickup in the same manner as bathroom and drinking water stations. Workers reported great satisfaction with the shade structures, and auditors observed a high rate of use, particularly as workers finished their task in a given row. (February 2013)

PROGRESSIVE DISCIPLINE POLICIES

In a dramatic change, the concept of progressive discipline has been adopted by many Participating Growers. Traditionally, any worker whose production or conduct displeased a supervisor for any reason was simply not allowed to board the labor bus the next day, amounting to arbitrary and summary dismissal. Under these circumstances, complaining about working conditions was virtually impossible. Many Participating Growers now require the involvement of upper management in any decision to terminate workers. Most growers have implemented escalating disciplinary policies that require multiple warnings, verbal and written, with opportunities for re-training, prior to termination. During the past two seasons, several workers had their employment reinstated, as part of complaint resolutions.

Assessment of Implementation

40% of Participating Growers have established and effectively implemented progressive discipline policies. 40% have written disciplinary policies, however, supervisors have not been trained on those policies and they are not effectively practiced. 20% of Participating Growers have not established escalating disciplinary policies.

Best Practice

Disciplinary policies include verbal and writing warnings, with opportunities for re-training prior to termination. Terminations require involvement of upper management, rather than being left to crewleaders’ discretion. Additionally, violation of FFP policies have been incorporated into disciplinary policies and supervisors are subject to discipline for violation of those policies. Supervisor training clarifies that disciplinary measures are not to be imposed on workers for exercising their rights to complain about working conditions.

PROGRESSIVE DISCIPLINE POLICIES, *contd.*

Illustration of Impact

- A worker was fired by a crewleader who said that the worker left too many tomatoes in his row. FFSC brought to the grower's attention the fact that disciplinary policy had not been followed. The worker was reinstated and provided with training. The crewleader also received re-training on the company's disciplinary policy and a notice was placed in his file for not following proper procedures. (December 2012)
- Several Haitian workers were clocked out, transported off company property and told not to return by their crewleader, following a dispute that was complicated by language barriers, about their work while pulling plastic. FFSC discussed this complaint with the Participating Grower, which was in the process of implementing a progressive disciplinary policy. Upper management oversaw the reinstatement and re-training of these workers, as well as training of the crewleader on the company's new disciplinary procedures. (June 2013)



BY THE NUMBERS

In order to assess the progress made thus far, and the gaps that remain, this section offers definitions of key Code provisions, and then assesses their level of implementation, highlighting illustrations of impact and best practices.

AUDITS

Table 1. Grower Audits

	Pilot 2009-2011	Season One 2011-2012	Season Two 2012-2013	Totals
Management Audits	5	31	25	61
Payroll and Fair Food Premium Audits*	10	29	31	70
Operations Audits	8	26	25	59
Workers Interviewed	577	1,158	2,810	4,545
Crewleaders Interviewed	28	63	95	186
Farm Locations Visited	13	37	45	95
Company Housing Locations Visited	7	18	27	52
Corrective Action Plans	5	30	29	64

As noted earlier, Verite was responsible for monitoring compliance with program requirements during the pilot phase. Beginning in November, 2011, as the FFP expanded statewide, the Fair Food Standards Council assumed responsibility for all monitoring. Since then, FFSC auditors, logging thousands of miles on Florida’s highways and back roads, have:

- Interviewed nearly 4,000 workers, on- and off-site, and conducted nearly 160 on-site crewleader interviews to assess knowledge of Code requirements and compliance at the field level; and
- Visited 45 separate farm locations and nearly 30 company-provided housing locations;
- Issued nearly 60 comprehensive audit reports and corrective action plans, integrating on-site management, financial, and operations reviews.

The exact number of audits necessary fluctuates each season as growers join, withdraw or are suspended from the Fair Food Program. Additionally, growers with compliance issues are visited more than once, and all farm locations of each grower have now been audited at least once. The figures for the 2012-2013 season also include one voluntary, out-of-state audit requested by a Participating Grower.

*These figures include Fair Food Premium audits performed at packinghouses that pass the funds through to Participating Growers.

Table 2. Grower Suspensions and Probations

	Pilot 2009-2011	Season One 2011-2012	Season Two 2012-2013	Total
Grower Probations	0	0	5	5
Grower Suspensions	1	2	1	4

To date, four growers have been suspended, for varying lengths of time from the Fair Food Program. Five others have faced probation. In keeping with the program’s incremental implementation timeline detailed earlier in this report, suspensions have been imposed only in those instances in which fundamental Code violations were confirmed by auditors, and Participating Growers did not respond to, or begin implementation of, proposed corrective action measures. Probation has been imposed where numerous serious deficiencies in Code implementation have been confirmed, and provides a time frame for those Participating Growers to agree upon and implement expedited corrective action.

WORKER COMPLAINTS

Table 3. Worker Complaints by Outcome

	Season One 2011-2012	Season Two 2012-2013	Total
Valid, Resolution Reached	39	83	112
No Violation of Code of Conduct but Resolution Reached	8	18	26
No Violation of Code of Conduct Alleged or Not Valid after Investigation	24	41	65
Informational Only	0	7	7
Could Not Investigate	8	8	16
Participating Grower Previously Withdrew or Suspended from FFP	5	4	9
Under Investigation	0	2	2
Non-Participating Grower or Other Employer Outside the FFP	21	36	57
Total	105	199	304

Table 4. Worker Complaints from Participating Growers by Source

	Season One 2011-2012	Season Two 2012-2013	Total
FFSC	57	96	153
CIW	25	63	88
Growers	2	4	6
Total	84	163	247

The Fair Food Program has handled 247 complaints since November 2011. Of those complaints, 122 were found to be valid under the Fair Food Code of Conduct. Resolutions were successfully reached in all of these cases through a process of shared fact-finding, collaboration and negotiation with Participating Growers. Only two cases required the issuance of formal decisions by the FFSC, when resolution could not be reached by agreement. Once those decisions were issued, Participating Growers complied with corrective actions recommended by FFSC.

In 26 additional cases that did not fall under the Code, resolutions beneficial to both workers and Participating Growers were reached by mutual agreement, facilitated by FFSC. Six of those cases concerned events at farms of Participating Growers outside the state of Florida. The growers involved in those cases have expressed their commitment to the principles of the Fair Food Program and their desire to apply them to all of their farming operations, regardless of the state in which they happen to be located.

FFSC found that 65 cases were not valid, either because no Code violation was alleged, the complaint was anonymous, or because, after investigation, the complaint was found to be without merit. Of additional note:

- 16 cases could not be investigated, based on complainants' stated choice or when contact was lost with complainants;
- Nine additional cases were received concerning growers that had already withdrawn or been suspended from the Fair Food Program;
- Seven calls were made by callers seeking information only; and
- Two cases from the end of the 2012-2013 season are still under investigation.



SIGNIFICANT OUTCOMES

Through the complaint resolution process, the industry's worst actors are being exposed and terminated from Participating Growers, thereby eliminating unacceptable risk for workers and employers alike. Notably, two crewleaders with extensive histories of violence, rooted in human trafficking, have been terminated as a result of FFSC investigations. Although their histories were well-known in the worker community, these individuals had long escaped prosecution through intimidation of potential witnesses. Additionally, over two seasons, three crewleaders have been terminated for sexual harassment with physical contact, four field-level supervisors have been terminated for violence or threats of violence, and two additional crewleaders have been terminated for wage theft committed against numerous workers.

As fair and effective results are obtained without employer retaliation against complainants, other workers, particularly victims of sexual harassment, are finding the courage to speak out against conditions they had once thought of as impossible to change. The FFP resolves complaints promptly, as can be seen by the small number of open complaints cited above. This is especially important, given the nature of agricultural work and the fact that workers must often move to follow the harvest.

ISSUES ADDRESSED BY COMPLAINTS

Complaints concerning failure to provide proper compensation and/or to accurately record workers' compensable hours, and demands for over-filled buckets constituted approximately 40% of all valid complaints. Health and safety violations – including provision of adequate water, toilets, shade, ability to rest and to take days off, unsafe conditions or practices and conditions at company- or crewleader-provided housing – constituted approximately 10% of valid complaints. A wide range of other complaints concerning direct hiring, pay practices, sexual harassment, violence or threats of violence, verbal harassment, discrimination, company complaint procedures, retaliation, and disciplinary procedures were all successfully addressed through the program's complaint resolution procedures.

Complaints are normally made by one individual, or a small group of workers. However, when the conditions complained about impact many workers, resolutions have included meetings conducted by FFSC and company representatives on the farms with entire crews and supervisors to explain the protections extended by the Code of Conduct and the corrective actions implemented in response to complaints. This unique collaboration between Participating Growers, workers and the FFSC is opening a new and effective channel of communication and enforcement of Code provisions.

COMPLAINTS FROM BEYOND THE FFSC

The impact of the Fair Food Program's complaint resolution process extends far beyond the fields covered by the program itself. Since November 2011, workers on farms that have never been in the FFP have made 56 calls to the hotline. Most of these workers had previously worked at a Participating Grower and received FFP education.

Conditions described by these callers highlight the gains being made by the Fair Food Program and at the same time demonstrate how much work remains to be done to ensure basic human rights for agricultural workers. In 2012, two women who learned of their rights during a worker-to-worker education session called the hotline to report the abuses that they, their spouses, and their co-workers had suffered at a non-FFP farm. As detailed in the Opportunities section of this report, CIW's investigation has since uncovered credible witness accounts of forced labor, use of weapons to intimidate workers, and sexual assault.

Other calls from outside the Fair Food Program have involved extensive wage theft, minimum wage violations, negligent endangerment, and devastating injuries suffered by workers. A number of Participating Buyers have informed the Fair Food Standards Council that they wish to receive any such information that comes to the FFSC's attention, as it may impact their purchasing decisions outside the Fair Food Program.



photo: Scott Robertson



photo: Scott Robertson

FAIR FOOD PREMIUM

Table 5: Fair Food Premium Paid by Participating Buyers

Season	2010-2011	2011-2012	2012-2013	Total
FFPP	\$5,175,447	\$ 3,212,904.17	\$ 2,989,657.48	\$11,378,008.65

The Fair Food Program Premium, perhaps better known as the “penny per pound,” is a price premium paid by Participating Buyers on their Florida tomato purchases. It is similar in concept to the premiums long associated with imported “fair trade” commodities, most notably coffee. It is designed to help reverse the downward pressure on farmworker wages exerted by food industry leaders as an unintended consequence of consolidated, high-volume purchasing practices.

The specific rate of the Fair Food Premium varies by tomato variety, as do the Participating Buyers’ chosen payment mechanisms:

- Some Participating Buyers’ remit monthly, lump-sum premium payments directly to Participating Growers;
- Some Participating Buyers instruct their repackers and distributors to remit monthly, lump-sum premium payments to Participating Growers, and the cost is recouped by the repacker on the invoice when the tomatoes are re-sold to the Participating Buyers; and
- Some Participating Buyers incorporate the premium rates into their day-to-day purchases from Participating Growers as a line item on the invoice.

The Fair Food Premium, therefore, builds on previously existing financial channels and payment schedules within the fresh produce industry. Under no existing or potential mechanism do buyers issue payment directly to farmworkers, nor do funds pass through any entities, such as the CIW or the FFSC, that are outside the buyer’s normal supply chain.

The Fair Food Standards Council carefully monitors the supply chain to ensure that premium funds are properly flowing. Specifically, this includes reconciling and testing monthly records (which include check and invoice numbers) submitted by Participating Buyers and Participating Growers, as well as conducting audits of growers’ payrolls to ensure that 87% of premium funds are promptly and accurately distributed to workers as a line-item bonus on their paycheck according to the pro rata formula outlined in Appendix A of the Fair Food Code of Conduct Guidance Manual. Growers are permitted to retain the remaining 13% of the funds to offset increased payroll taxes and administrative costs. As one example of the need for constant vigilance, during the 2012-2013 season, the FFSC identified roughly \$500,000 that had pooled among several repackers and, working closely with the relevant Participating Buyers, ensured the money was passed through to the correct Participating Growers.

A NOTE ABOUT THE FAIR FOOD PROGRAM PREMIUM

Historically, following the CIW’s landmark Fair Food Agreement with Yum Brands in 2005, Fair Food Premium was distributed through two Florida growers for the 2005-2006 and 2006-2007 seasons. However, in the wake of the CIW’s Fair Food Agreement with McDonald’s in 2007, the Florida Tomato Growers Exchange elected to self-impose a \$100,000 penalty for any member who passed the funds through to their workers. For the next three years, FTGE member-growers declined to participate in the Fair Food Program, including the premium pass-through.

In November 2010, the CIW and FTGE reached a breakthrough agreement to expand the FFP across the Florida tomato industry, and, as a result, the Fair Food Premium resumed flowing to workers in February 2011. Participating Buyers who had purchased Florida tomatoes during the FTGE boycott had held premium funds in escrow or as accrued liabilities; these accrued funds also began to be distributed to Participating Growers in February 2011. The last of these so-called “escrow” funds were paid out by relevant Participating Buyers during the 2012-2013 season.

WORKER-TO-WORKER EDUCATION

Table 6. Worker-to-Worker Education Sessions

	Pilot 2009-2011	Season One 2011-2012	Season Two 2012-2013	Total
Education Sessions	30	73	88	161
Number of Growers	6	27	25	57
Number of Farm Locations	12	40	42	94
Workers Attended	No Data	6,595	7,702	14,297
Avg. Session Size	-	90	87	-

The CIW's Worker Education Committee has achieved significant progress since the launch of the Fair Food Program. After selecting and hiring additional farmworker-members for six staff positions, the CIW spent the pilot seasons developing the curriculum for on-site trainings, including writing and designing the "Know Your Rights and Responsibilities" booklet and developing the FFP training video for the complementary point-of-hire education process. To date, the CIW has trained over 14,000 workers at 161 sessions at Participating Growers' farms throughout the state of Florida. The average session size is less than 100 workers, and each session is approximately 45 minutes long, including time for questions and answers.



TOMATO SCHOOL

“Sitting in a room at a packing plant near Immokalee in southwest Florida with about 50 migrant laborers, I learned that I had a right to earn a minimum wage of \$7.25 an hour, and could take regular breaks in a shady area provided by the farm – including a lunch break. I was told exactly what constituted a full bucket of tomatoes when I was working on a ‘piece,’ or per-bucket basis. For some of my work, I would get an extra penny per pound for the tomatoes I picked . . . I was informed that sexual harassment would not be tolerated. And finally I received a card with the number of a 24-hour confidential help line. ‘If you see a problem, talk to someone – your friends, your boss, us, anyone, just say something,’ said Lucas Benitez, one of the members of the Coalition of Immokalee Workers (CIW), a grassroots labor rights group that was responsible for the lesson.

Until this year none of my classmates, many of whom were veteran tomato workers, had ever attended a session like this one, where their fellow workers outlined their new rights and responsibilities under the CIW’s Fair Food Code of Conduct”

– **Barry Estabrook**, James Beard Award-winning author of *Tomatoland*, April 2011²⁸



CONCLUSION



photo: Forest Woodward

CHALLENGES

While the Fair Food Program has made considerable progress in the two years since it began to be implemented across the Florida tomato industry – both in terms of concrete change in the fields and program development – much work remains to be done. First, while eleven food industry leaders have joined the FFP, and are supporting the reforms underway with their funds and market influence, many other corporate buyers of Florida tomatoes have not yet joined. Not only are these non-participating buyers continuing to exert downward pressure on farmworker wages through their traditional volume purchasing practices and refusing to shoulder their portion of the costs of safeguarding human rights in their supply chain, but they also represent a “low bar” market for growers who are unwilling to meet the high standards and rigorous enforcement of the Fair Food Program.

In other words, growers who are suspended from the FFP, or those who refuse to join in the first place, can be secure in the knowledge that a sizeable percentage of corporate buyers might still purchase their tomatoes. Growers who are making the necessary and significant investments to comply with the Code deserve to be rewarded with real and sustained commitment from a growing base of Participating Buyers. As the Fair Food Program continues to build on its unparalleled track record, and consumers take note, it is likely that many of these currently non-participating buyers

will sign Fair Food Agreements with the CIW.

Another challenge faced by the Fair Food Program – and Florida growers in general – is the explosive growth of the export agribusiness sector in Mexico. Since the implementation of the North American Free Trade Agreement (NAFTA) in 1994, Florida growers have increasingly faced the challenges of a global marketplace. The availability of Mexican imports has played a role in declining Florida tomato production over the last two decades. The development of the Fair Food Program adds an additional dynamic to this complex issue. At the same time that workers, growers and retailers are pioneering a model to ensure that the Florida tomato is the most ethically produced tomato available today, the Mexican industry remains mired in gross and largely unfettered human rights abuses.

In the summer of 2013, to cite one recent example, Mexican authorities rescued 275 workers from a slavery operation in the state of Jalisco. The workers were forced to live in squalid conditions, eat rancid food and work for very little wages; those who tried to escape were beaten by their employers and brought back to the labor camp. While it may be unavoidable, given the size of their demand, that U.S. food industry leaders source tomatoes from Mexico, price should not be the primary factor driving purchasing decisions, especially in light of the stark contrasts in human rights protection between Mexico and Florida. From this perspective, in 2013, the CIW and the Florida Tomato Growers Exchange, supported by an affidavit from FFSC’s executive director,

jointly and successfully petitioned the U.S. Department of Commerce to strengthen antidumping enforcement against imported Mexican tomatoes. However, beyond the arcane realm of trade governance, food industry leaders have a unique opportunity to support the further consolidation of an unrivaled domestic social accountability program that protects their supply chains from the sort of risks recently uncovered in Jalisco.

OPPORTUNITIES

Notable opportunities exist on the horizon for the Fair Food Program. Consumer demand for ethical products will continue to grow in the 21st century. When channeled through the Campaign for Fair Food, this energy will drive additional corporate buyers to sign Fair Food Agreements with the CIW. With every additional buyer that joins the program, farmworkers will receive greater and more consistent amounts of Fair Food Premium, and Participating Growers will enjoy the benefits and security of real commitment on the basis of human rights from the retail food industry. Such demand may also drive the deployment of a consumer-facing Fair Food label, which would further differentiate Florida tomatoes in produce aisles and restaurants across the country.

As the Fair Food Program becomes increasingly consolidated in Florida, there is evidence that Participating Growers and others will help facilitate its expansion north, beyond the Florida border. As mentioned above, in the summer of 2013, one Florida-based Participating Grower invited the Fair Food Standards Council to perform a fee-for-service audit of its tomato farms on the Eastern Shore of Virginia to assess their compliance with the Fair Food Code of Conduct. Also this summer, three Participating Growers cooperated with the FFSC to resolve out-of-state worker complaints, even though such complaints are technically beyond the scope of the Code. These resolutions provided value to the companies and helped solve very real problems faced by workers at those farms. In the future, demand for such audits and complaint resolutions will grow, and it is possible that a similar logic will propel the FFP to address crops beyond tomatoes, at the behest of growers, buyers, workers and consumers alike. In such a scenario, the FFP will benefit from greater economies of scale and directly improve the lives of hundreds of thousands of workers.

In addition, due to the ongoing working relationships with Participating Buyers, the FFP has been able to address some serious issues in crops other than tomatoes or in states other than Florida. In one example, one Participating Buyer terminated a supplier after investigators from the CIW established to the buyer's satisfaction that the supplier was engaged in

illegal and abusive practices. In another example, the FFSC was able to provide risk prevention information to several Participating Buyers after workers from one of Tennessee's largest tomato growers called the FFSC hotline to report a range of abuses, including health and safety violations and nonpayment of wages.

Another example of the Program's reach beyond the farm gates of Participating Growers was briefly mentioned in the Worker Complaints section of this report. In 2012, two women who participated in a CIW worker-to-worker education session at a Participating Grower reported abuses at a farm outside the program where they had previously been employed. It was the same farm that a CIW member had attempted to report to Department of Labor in 2010, and the DOL investigation had languished. In 2010, the worker told of toiling as the grower brandished a gun urging the workers to "work faster." In 2012, the women workers told of:

- The crewleader transporting workers in a van with his pistol and rifle in plain view;
- Working from 6 a.m. to 5 p.m. in the fields, and then from 6 p.m. to 1 a.m. in the packinghouse – 17 hour days – and being paid \$3 an hour, in cash;
- Being threatened constantly with deportation if workers spoke of the mistreatment; and
- Sexual harassment and assault of female workers.

The crewleader would also force some harvesters to drive vans, threatened one at gunpoint who sought to leave, and then ensured that the driver was arrested and thrown in jail, through an arrangement with a local bail bondsman. Moreover, when a female packinghouse employee reported being sexually assaulted by the crewleader, he was arrested by sheriff's deputies at work. However, he was released the same day when the grower bailed him out. The CIW's investigation has thus far entailed outreach to three states – Florida, Georgia, North Carolina – and three countries – the U.S., Guatemala, and Mexico.

These final examples both demonstrate the power of the Fair Food Program and serve as cautionary tales of the world outside the FFP. And while much remains to be done within the Program, Participating Growers and Buyers have clearly committed themselves to a set of standards and a process for enforcing those standards. When abuses arise, they are dealt with efficiently and collaboratively. With verifiable results after three seasons, the FFP offers a promising path forward for a previously intractable social problem – the conditions under which men and women labor in U.S. fields.

The Future of the FFP?

During an audit, a woman stopped working to share her perspective on the Fair Food Program. Although she had only been at the farm for three weeks, she told an investigator that the general working environment was good, and that she felt respected. She expressed enthusiastically how glad she was that the Fair Food Standards Council was out in the fields “defending [workers’] rights” and wanted to know when the program would be in other crops.

She spoke of her friends who work in strawberries, cucumbers, and peppers, and who daily face harsh conditions, including constant verbal abuse from supervisors. She told a particularly troubling story of how a good friend of hers had recently been working in strawberries or cucumbers when she was shoved onto the ground by a supervisor who wanted the worker to pick faster. The woman’s anecdote was a powerful reminder of the importance of the Fair Food Program in the daily lives of tens of thousands of people. (November 2012)





APPENDIX A

Efforts to Combat Slavery in our Food and Products

From Building Partnerships to Eradicate Modern-Day Slavery: Report of Recommendations to the President

By the President's Advisory Council on Faith-based and Neighborhood Partnerships

April 2013

One of the most successful and innovative programs we researched is the Fair Food Program, developed by the Coalition of Immokalee Workers (CIW) and promoted in partnerships with T'ruah (formerly Rabbis for Human Rights North America) and the International Justice Mission, among others.

Slavery and other human rights abuses are an ongoing threat in U.S. tomato fields. Chief Assistant U.S. Attorney Douglas Molloy once called Florida's tomato fields "ground zero" for modern-day slavery in the United States. Over the past 15 years, seven cases of forced labor slavery have been successfully prosecuted, resulting in more than 1,000 people freed from slavery in [Florida] tomato fields.

The Fair Food program, developed by tomato pickers themselves through CIW, establishes a zero-tolerance policy for

slavery, child labor, and serious sexual abuse on Florida's tomato farms. Companies that join the Fair Food Program agree to pay a small price increase for fairly harvested tomatoes (1.5 cents more per pound) and promise to shift purchases to the Florida tomato growers who abide by these higher standards—and away from those who will not. Major fast food companies, like McDonalds and Subway, and supermarket chains Whole Foods and Trader Joe's have already endorsed the Fair Food Program

As the Obama Administration seeks to implement the Executive Order to prevent slavery in government contracts and procurement, we encourage the Administration to look at the success of efforts like the Fair Food Program and Made In A Free World to inform their work.

BUILDING PARTNERSHIPS TO ERADICATE MODERN-DAY SLAVERY

REPORT OF RECOMMENDATIONS TO THE PRESIDENT

President's Advisory Council on Faith-based and Neighborhood Partnerships April 2013



APPENDIX B

Fair Food Program Changes the Norm: Confronting Sexual Violence and Harassment in the Fields³⁴

By the Coalition of Immokalee Workers

March 2012

“It happens so much it’s kind of normal.” – former female farmworker³⁵

Sexual violence and harassment of women in the workplace violates federal and state laws as well as fundamental principles of human rights, including the prohibition of discrimination based on sex, the duty to provide safe and healthy conditions at work, and the basic human dignity of all. Yet sexual harassment persists as a constant concern for women worldwide due in part to the difficulty – and in many cases impossibility – of enforcing whatever legal protections exist.

Female agricultural workers in the U.S. have long served as a glaring example of this reality, as they face a constant barrage of verbal abuse and sexual violence from supervisors and co-workers in an industry in which any attempt to report the abusers immediately endangers a worker’s precarious livelihood. A 2010 study among farmworker women found that 80% had experienced sexual harassment at work and described the confluence of factors – among them, extreme poverty, racial discrimination, language barriers, isolated work sites, and often complete dependence on individual men for their continued employment – that make them particularly vulnerable to sexual harassment and violence. Human Rights Watch in a recent report concludes that sexual harassment experienced by farmworkers in the United States is so common that some farmworker women see these abuses as an unavoidable condition of agricultural work. In another study of the “constant menace” of sexual harassment and violence in the fields conducted by the Southern Poverty Law Center, a female farmworker described the norm in the fields succinctly: “You allow it or they fire you.”³⁸

While such retaliation for reporting harassment is illegal, few women possess the resources to file a legal action, and dealing with the lengthy loss of employment during litigation often results, at best, in a Pyrrhic victory. As importantly, the few lawsuits against individual employers that are filed cannot begin to address the pervasive nature of the problem

throughout the industry. The cases that are pursued, however, provide a glimpse of the harassment faced daily by farmworkers across the nation. For example, a recent EEOC lawsuit charged DiMare Ruskin, Inc., a Florida-based tomato grower and produce provider, with subjecting their female employees to physical and verbal harassment by their supervisors – including unwanted touching and sexual comments – and with retaliation for assigning them to more physically demanding work and ultimately firing them after they complained. The company settled the case in July 2012 by agreeing to pay \$150,000 to two female farmworkers and establish new anti-harassment policies and trainings at its facilities nationwide. However, innumerable other cases of harassment and violence go unreported due to the vulnerability of the women farmworkers, whose families depend on their income and on the continued goodwill of employers, who often wield immense power over their lives, including their access to housing and income for other family members.

Incidents of sexual harassment reported by female farmworkers to the Coalition of Immokalee Workers (CIW) exemplify the “allow it or you’re fired” norm women have faced when they have tried to complain of harassment through company channels. For example, one woman worker was fired along with her husband and son, and lost their company housing, after complaining to the company’s human resources office of a crewleader’s uninvited visits to her trailer in the early morning after her husband had left for work, during which the crewleader would make sexually suggestive comments to her and to her children. Later, when she was invited back to work because of difficulties filling her position, she was promised that she would not have to deal with that crewleader. In fact, the harassment escalated to include groping and an attempt to change her job so she would be under his direct supervision in the fields without the protection of others. When she rejected that change, she was fired again. Throughout both periods of employment, the harassing crewleader was responsible for, and often withheld, payment of her

wages. There are also accounts of supervisors who attempt to pressure young women workers into sexual relations by offering them easier jobs, and then fire them when they refuse.

These reports underscore the reality that, in order to provide female farmworkers meaningful protection, *the norm in the fields must be changed from impunity to accountability*. There must be immediate consequences for harassers as well as for companies who allow harassment to continue unchecked. Women reporting harassment must be protected from retaliation. Only a system creating such accountability can address sexual harassment effectively when it occurs, while providing an incentive for employers to prevent such harassment in the first place, creating a safer and more dignified workplace for women.

How can the necessary structures of accountability for sexual harassment be created in an industry in which the power imbalance between workers and employers has allowed such a pernicious, abusive culture to persist? The answer lies in addressing pervasive sexual harassment as a product of the severe disempowerment and marginalization of all farmworkers and creating new structures that reflect and institutionalize farmworker empowerment throughout the industry.

The CIW's Fair Food Program is creating such new structures of accountability in the tomato industry in Florida. Along with a wage increase supported by a price premium paid by corporate purchasers of Florida tomatoes, the Fair Food Program is enforcing a human rights based Code of Conduct throughout the industry. The Fair Food Code of Conduct provides a new model for accountability in the agricultural industry generally and a new approach to sexual harassment and violence in the fields that has already proven effective.

The Code of Conduct addresses sexual harassment directly, making sexual harassment that involves physical contact an event that automatically triggers market consequences for the employer – the curtailment of purchases from participating buyers for at least a three-month period – unless the harasser is fired and other necessary corrective action is taken immediately once the incident is confirmed. Sexual harassment not involving physical contact triggers a requirement that the employer develop and implement a corrective action plan that is satisfactory to the CIW and to the participating Buyer. If the time frame set forth for full compliance is not met, purchases are curtailed until the situation is remedied.

Other provisions of the Code not directly addressing sexual harassment, such as the requirement that all workers be employed and paid by the company, not by individual crewleaders, make farmworkers less vulnerable to their supervisors and therefore better able to report abuses. The participatory

health and safety committees required under the Code create a space for workers to address sexual harassment and violence as important health and safety issues in a collaborative process with their employers. Employers must also allow the CIW to provide education to their employees on their rights under the law and under the Code, in worker-to-worker sessions conducted on the employers' premises and on company time. These trainings directly address protection against sexual harassment as an important set of rights under the code. A section of the Know Your Rights and Responsibilities booklet given to the workers focuses specifically on sexual harassment, and the video shown to workers includes a sexual harassment scenario. The entire education program is worker-to-worker: The education sessions are led by CIW members, the rights booklet was written by CIW members, and the educational video was scripted and acted by CIW members.

Importantly, employers participating in the Fair Food Program must commit to participating in a detailed complaint resolution mechanism that allows complaints to be made and investigated without fear of retribution to the complaining worker. The efficacy of this procedure – and of the Program generally – to address sexual harassment has already been proven. When one participating grower failed to respond appropriately to a complaint of sexual harassment, it was removed from the Program. Determined to continue its participation in the Program, and thereby regain its lost sales, the grower chose to engage in corrective action, including firing the crewleader, formulating a sexual harassment policy and conducting trainings. On another occasion, the grower involved didn't wait to be removed from the program. Rather it took quick action to fire the crewleader responsible for the violation and instituted changes designed to avoid similar problems in the future.

Already, the Code's strict requirements of action by employers and consequences for failure to act have created an immediate incentive for the curtailment and prevention of abuse. But the Fair Food Program seeks to create an industry-wide race toward the top, not an atmosphere of minimum compliance. It therefore strongly encourages participating buyers to purchase from employers who work to exceed the specific requirements of the Code by developing systems to prevent violations, not just address them after the fact.

Moving forward, the Fair Food Program has committed to making sexual harassment a point of emphasis in its implementation of the Fair Food Code of Conduct. In collaboration with some of the industry's leading growers through the Fair Food Program's Working Group, guidelines and benchmarks for the industry-wide implementation of the program's Code

of Conduct are being developed and constantly refined. These guidelines and benchmarks, along with the structure of the Program itself, provide models for changing the norm of

sexual harassment in other parts of the agricultural industry, as well as other industries where women face similarly widespread harassment and violence.



APPENDIX C

Fair Food Code of Conduct & Selected Guidance

OVERVIEW

Compliance with the Fair Food Code of Conduct is a fundamental requirement of the Fair Food Program. Operating pursuant to the Code helps define what it means to be a Participating Grower, which in turn makes a grower eligible to sell to the Program's Participating Buyers.

The Fair Food Code is a living document. It has been shaped through detailed negotiation and ongoing dialogue among workers, growers and buyers. As the Fair Food Program matures and evolves, so too will the Code, as it continues to serve as the primary platform upon which to build a truly sustainable tomato industry.

Because the Fair Food Code establishes mostly broad principles, it has been augmented by a more detailed Guidance Manual to assist Participating Growers in implementing the Code. In some places, the Guidance Manual merely provides detail or examples concerning Code provisions. In other instances, it sets forth alternative procedures for implementing concepts articulated in the Code.

What follows is the Fair Food Code of Conduct, supplemented where appropriate with provisions from the Guidance Manual that provide further substance, meaning or texture to the requirements of the Code.

INTRODUCTION

Buyers (i.e., companies participating in the Fair Food Program) will give purchase preference within the Buyer supply chain to tomatoes that meet its specifications supplied by Florida Tomato Growers ("Growers") who can demonstrate socially responsible practices that meet or exceed the standards in the Fair Food Code of Conduct, although a Buyer is not obligated to purchase tomatoes from every Grower that meets or exceeds these standards.

PART I: EMPLOYMENT PRACTICES AND MINIMUM REQUIREMENTS FOR PARTICIPATING GROWERS

1. Growers are required to abide by all applicable laws, codes and regulations, including but not limited to this Code, and any local, state or federal laws regarding wages and benefits, working hours, equal opportunity, and employee and product safety.

Further, Growers will follow these employment and workplace practices:

2. Growers will participate in, and comply with, the "penny per pound" premium pass through Program (hereafter Fair Food Program) and pass through to their Qualifying Workers the appropriate premium payments received under that Program. The term "appropriate premium payments" means the Qualifying Workers' portion of the "penny per pound" paid by Buyer as part of the Program.

Policy 2.1

The extra 1.5 cents per pound paid by participating Buyers [for round tomatoes, or the equivalent amount paid for other types of tomatoes] is called the Fair Food Program Premium (FFP Premium).

Policy 2.2

Qualifying Workers are non-supervisory workers performing the following tasks related to growing tomatoes for a Participating Grower: harvesting, irrigation, planting, laying plastic, staking, tying and miscellaneous work of a similar nature that does not involve the operation of vehicles or machinery. Field walkers and dumpers are not Qualifying Workers.

Policy 2.3

All tomatoes sold (either directly or through repackers) to customers participating in the Fair Food Program must come from Growers participating in the Fair Food Program. Therefore, Fair Food Program Premiums, whether paid directly by the customer or by a repacker, can only go to Growers participating in the Fair Food Program.

3. Growers will regularly reconcile wages paid, including buckets picked, to pounds harvested, and if that reconciliation indicates uncompensated pounds harvested, using a 32 pound bucket for calculation for round "gas green" tomatoes (or the appropriate standard weight and container for other types of tomatoes, if different), the Grower shall adjust the amount paid to Workers in the next payroll so that they are fully paid for the uncompensated pounds identified in the reconciliation process.

Policy 3.1

Cupping of buckets is not permitted under the Code, nor is fluffing of buckets by Qualifying Workers. A bucket is cupped if any tomato in the bucket is fully above the rim of the bucket. Fluffing is shaking a bucket to make it appear more full than it actually is. In addition, no bucket shall weigh more than 34 pounds gross. A properly filled bucket is pictured immediately below.

4. All compensable hours shall be recorded, and Growers will keep accurate hours through a system (time clock punch, card swipe or other method) in which employees control their time cards or similar time registration devices.

Policy 4.1

Clocking in all workers should be the first thing that happens after the bus arrives at the Grower's property, whether or not the place where the workers are let off the bus is the work site.

Policy 4.2

Workers who get to the fields on their own should be told, the day before, where to be the

next day and when to be there. If the Worker arrives at that time, he or she should then be clocked in at the stated arrival time, whether or not work actually begins at that time.

Policy 4.3

Workers should be clocked out just before leaving the Grower's property for the day.

Audit Measure 4.3

Workers receive pay slips that show:

- pay period
- hours worked
- wages
- Fair Food Program Premium as a separate line item
- bonuses (if applicable)
- gross earnings
- itemized deductions
- net wage
- pieces and/or units produced (if applicable)
- the telephone number to file a confidential complaint (unless it appears on the Worker's company issued identification badge)

5. Growers will hire farm workers as employees.

Policy 5.1

All Workers, whether working under the supervision of an employee of the Grower or the supervision of a crewleader (whether or not the crewleader is an employee of the Grower), are considered employees of the Grower and must have gone through the Grower's orientation process and be on the Grower's payroll.

6. Growers will pay wages and benefits directly to employees.
7. Growers, without cost to the employees, will provide employees with protective equipment adequate for its intended purpose, including shade when necessary to avoid danger from excessive heat, and provide training on company time on the use of such equipment.

8. Growers will take all necessary steps to avoid endangering the safety of employees including, but not limited to:

- Permitting individual employees who feel threatened or in danger for their health or safety to cease working (without pay) without consequences or retaliation. Growers will clearly and unequivocally educate their employees that in the event an employees feel threatened or in danger for their health or safety, they have the right to cease working without consequences or retaliation; and
- Implementing a system for work safety stoppages due to lightning, heat, chemicals, pesticides or other factors for all employees present where the potential danger exists. Calling a work stoppage shall be at the discretion of the Grower, but the reasonableness with which the Grower exercises this discretion shall be subject to the Complaint Process.

9. Growers will provide a safe and healthy working environment for their employees and, working with the Coalition of Immokalee Workers (CIW), will develop and implement a Worker Health and Safety process through which employees are able to offer the Grower their input and perspective on health and safety issues in a regular and structured manner.

10. Growers will provide plans and procedures to insure the adequate and timely treatment of workers in the event of injury or sickness that might occur anywhere on a Grower's property.

11. Growers will provide plans and procedures to insure that workers have sufficient breaks during the day, including adequate time for lunch, without unreasonably compromising the ability to earn wages.

12. Growers will provide opportunity for advancement, including the ability for qualified employees to move from fields to other types of employment with the Grower, including management positions, and will regularly communicate these opportunities to employees.

13. If housing is provided by a Grower, it must be voluntary and comply with the law, and the cost for such housing to the employee cannot reduce the employee's net wages below the minimum wage or be increased

other than to reflect increases in the cost or quality of the housing.

14. Growers will verify and provide transparency to their practices, including the pass through of the appropriate premium payments, by permitting third party monitoring by an entity chosen or accepted by Buyer and the CIW.

Growers will work with the CIW to:

15. Establish, implement, and enforce a process acceptable to the CIW for complaints to be filed by, and credible complaints* to be investigated on behalf of, employees without fear of retribution.

16. Develop a system acceptable to the CIW for informing and educating their employees, on the Grower's premises and on company time, of all applicable laws, codes and regulations, including but not limited to this Code, and any local, state or federal laws regarding wages and benefits, immigration rights, working hours, and equal opportunity.

Audit Measure 16.2

During registration of a newly hired worker, the worker receives a copy of the Rights and Responsibilities Handbook that includes a copy of the Code, written in a language workers understand.

Audit Measure 16.3

The Code is communicated to illiterate workers, if applicable. At registration, workers are shown the orientation video containing this information from the CIW.

PART II: VIOLATIONS

Violations by a Grower shall be divided into three categories – "Article I Violations," "Article II Violations" and "Article III Violations."

Article I Violations:

1. Use of forced labor of any kind.
2. Systemic use of illegal child labor as defined by Florida law or any applicable federal law.

*A credible complaint, which may be confidential but shall not be anonymous, should, through a statement of the facts, indicate how relevant laws, codes or regulations have been violated.

3. Use or threat of physical violence against employee(s) by or at the direction of either supervisor(s) directly employed by the Grower or by crewleader(s) unless the offending person(s) are fired and any other necessary corrective action is taken immediately upon confirmation of the incident.
4. Use or display of weapons of any kind (including firearms, knives, bats, etc.) at any point for the explicit or implicit purpose of intimidation, unless the offending person(s) are fired and any other necessary corrective action is taken immediately upon confirmation of the incident.
5. Sexual harassment that involves physical contact, unless the offending person(s) are fired and any other necessary corrective action is taken immediately upon confirmation of the incident.

Consequences of Article I Violations:

Buyer will not accept for use in the Buyer system tomatoes originating from Growers committing Article 1 violations and will decline to purchase tomatoes from such Growers pursuant to the following schedule and for such additional time, if any, as the Grower takes to remedy the situation to the satisfaction of Buyer and the CIW; provided that Buyer shall have a reasonable time, using reasonable best efforts, to transition purchases from that Grower to provide for a sufficient supply of tomatoes that meets Buyer quality standards.

For the first violation of Article I, at least 90 consecutive days, none of which is in the months of May through September.

For a second violation of Article I, at least 180 consecutive days, none of which is in the months of May through September.

For any subsequent violation of Article I, a period of time established by Buyer, which shall be at least one full season.

Article II Violations:

1. Racial, national origin, religious, sex or sexual preference discrimination, as evidenced by a finding of probable cause of any such discrimination by the EEOC or any similar state or federal agency, or by a finding resulting from the Complaint Process adopted by the Fair Food Program, or by such other evidence as Buyer and CIW together find sufficient to substantiate such harassment. For purposes of this paragraph, discrimination

shall include differential treatment (physical or verbal) of worker(s) of a given race, nationality, religion, sex or sexual preference, or crew(s) predominantly of a given race, nationality, religion, sex or sexual preference.

Audit Measure Art II 1.1

Grower can demonstrate that it has implemented the training and discrimination prevention protocols, including continuing education programs for workers and training for staff members assigned to receive and process workers' reports or complaints of discrimination, harassment or abuse.

Audit Measure Art II 1.2

Worker(s) from each crew used by the Grower report no conduct prohibited by this provision, Appendix E or Policy Art II 1.2, including differential treatment of crews of a particular race, nationality or sex.

2. Sexual harassment not involving violence, the threat of violence or physical contact, as evidenced by a finding of probable cause of sexual harassment by the EEOC or any similar state or federal agency, or by a finding resulting from the Complaint Process adopted by the Fair Food Program, or by such other evidence as Buyer and CIW together find sufficient to substantiate such harassment.
3. Negligent endangerment, which shall include any pesticide poisoning affecting more than two employees as a result of the same incident, two or more equipment failures in one season that harm employee(s), or one or more lightning injuries in a season, unless the Grower can demonstrate that (a) the pesticide poisoning, equipment failures or lightning injuries were not the result of negligent conduct, and (b) within the time frame set forth in Consequences of Article II Violations, Paragraph 1, steps have been taken that will prevent the pesticide poisoning, equipment failures or exposure to lightning from reoccurring.
4. Use of illegal child labor as defined by Florida law or any applicable federal law that is not widespread.
5. Wage violations on a systemic level, as evidenced by incorrect payments in any payroll period affecting a) at least 5% of all employees or b) at least 20% of all employees in any one crew.
6. Firing or threatening to fire worker(s) for defending or asserting legal rights, including protections under this Code, as established by a finding resulting from the

complaint process adopted by the Fair Food Program, or any evidence that Buyer and CIW together find sufficient to substantiate such conduct.

7. Using workers in the fields who are not treated as employees of the Grower on whose property they are working.
8. Failing to pass on or otherwise provide to all covered employees as part of each payroll any “penny per pound” or other agreed upon additional employee payment or benefit incentive.
9. Failing to comply fully with any monitoring and auditing procedures established under this Code.
10. Failing to provide adequate drinking water, field toilets or other hygiene facilities required by any applicable laws or standards.

Consequences of Article II Violations:

1. Within seven (7) days of being notified of an Article II violation, the Participating Grower must present an action plan, which includes a time frame for each corrective action. Buyer will consult with CIW (or any independent organization established by CIW to serve this function) before informing the Grower whether the action plan meets these standards. If the action plan is not satisfactory, the Grower shall adopt the amendments to the action plan suggested by Buyer after consultation with the CIW (or any independent organization established by CIW to serve this function). Growers will then set a target re-audit date, except that final corrective action shall in all cases be accomplished as quickly as feasible and in any event within 4 weeks, unless extended after consultation with the CIW (or any independent organization established by CIW to serve this function).
2. If continuous improvement and eventual full compliance are not achieved within the time frames described in Paragraph 1, Buyer will direct its distributors to cease purchasing tomatoes provided by such Growers until such time as the Grower remedies the situation to the satisfaction of Buyer and the CIW (or any independent organization established by CIW to serve this function), provided that Buyer shall have a reasonable time, using reasonable best efforts, to transition purchases from that Grower to provide for a sufficient supply of tomatoes that meet Buyer quality standards.
3. Following Buyer’s disqualification of tomatoes sup-

plied by a violating Grower, Buyer may at its sole discretion (after consulting with the CIW or any independent organization established by CIW to serve this function), resume accepting tomatoes supplied by that Grower to its distributors if an audit satisfactory to Buyer and the CIW (or any independent organization established by CIW to serve this function) demonstrating compliance with the Code is completed prior to resuming business.

Article III Violations:

1. Any violation of the Code of Conduct not listed under Articles I or II shall be an Article III violation.

Consequences of Article III Violations:

1. Within fourteen (14) days of being notified of an Article III violation, the Participating Grower must present an action plan, which includes a time frame for each corrective action. Buyer will consult with CIW (or any independent organization established by CIW to serve this function) before informing the Grower whether the action plan meets these standards. If the action plan is not satisfactory, the Grower shall adopt the amendments to the action plan suggested by Buyer after consultation with the CIW (or any independent organization established by CIW to serve this function). Growers will then set a target re-audit date, except that final corrective action shall in all cases be accomplished as quickly as feasible and in any event within 2 months, unless extended after consultation with the CIW (or any independent organization established by CIW to serve this function).
2. If continuous improvement and eventual full compliance are not achieved within the time frames described in Paragraph 1, Buyer will direct its distributors to cease purchasing tomatoes provided by such Grower until such time as the Grower remedies the situation to the satisfaction of Buyer and the CIW (or any independent organization established by CIW to serve this function), provided that Buyer shall have a reasonable time, using reasonable best efforts, to transition purchases from that Grower to provide for a sufficient supply of tomatoes that meet Buyer quality standards.
3. Following Buyer’s disqualification of tomatoes supplied by a violating Grower, Buyer may, at its sole discretion (after consulting with the CIW or any independent organization established by CIW to serve this function) resume accepting tomatoes supplied by that

Grower to its distributors if an audit satisfactory to Buyer and the CIW (or any independent organization established by CIW to serve this function) demonstrating compliance with the Code is completed prior to resuming business.

PART III: PROGRESS TOWARDS HIGHER STANDARDS

Buyer strongly encourages Participating Growers in the tomato industry to continuously improve working conditions and to provide terms and conditions that meet or exceed those provided by suppliers in other industries. Buyer will purchase to the greatest extent possible tomatoes from Participating Growers that demonstrate consistent adherence to these higher standards.

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