

# ARE FAIR LABOR LABELS TRUSTWORTHY?

## UNPACKING THE TRUTH BEHIND ETHICAL CLAIMS

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### INTRODUCTION

Food labels should help consumers make informed purchasing decisions. Some consumers will pay top dollar for organic, ethically sourced, humane foods. Others may even seek out food items produced under fair working conditions. However, not all labeling and marketing claims can be substantiated. The U.S. government does not strictly regulate food labeling claims that concern working conditions. Independent third-party certifications have emerged to fill the regulatory gap. However, it can be difficult to decipher which certifications are credible and what standards they impose on producers. This issue brief sheds light on these complexities to help consumers understand which claims mean what they expect.

Labels that make claims about a food product's environmental or ethical footprint are commonly known as *eco-labels*. Eco-labels fill the aisles of grocery stores. Some sources have documented 450 to 600 eco-labels worldwide.<sup>1</sup> Eco-labels or eco-certifications cover approximately 15 percent of bananas traded worldwide, 12 percent of wild fisheries, 10 percent of global forestry products, and seven percent of the global coffee market.<sup>2</sup> The U.S. Environmental Protection Agency (EPA) defines eco-labels as marks placed on product packaging to help consumers identify products that meet specific environmental criteria.<sup>3</sup> A broader definition, as used in this brief, encompasses government sponsored labels, first-party (or self-declared) claims, and labels or seals connected to third-party certifications that communicate the environmental attributes of a particular product to businesses and consumers.<sup>4</sup> Common examples

of eco-labels include "USDA Organic," "humane," "ethically sourced," and "sustainable."

Consumers often perceive eco-labels as indicating the ethical treatment of the environment (including animals) and the workers involved in producing the food. For example, one might assume that because a product is "Certified Humane" that the workers involved in its production are treated well, but this certification does not address labor conditions.<sup>5</sup> Other labels more clearly refer to worker treatment in their language or imagery (usually called a vignette in the context of the food label). This issue brief addresses "fair labor" eco-labels that either expressly or implicitly suggest fair treatment and working conditions for farm and food production workers.

Stakeholder interest in fair labor labels is growing. Workers and worker advocates may look to labels as a policy tool to encourage better employment practices and to hold sellers accountable for supply chain working conditions. Producers, including growers and intermediaries (i.e., aggregators), may turn to fair labor labels to strengthen their market position; labels have been shown to strengthen a company's brand, build consumer loyalty, and attract conscientious consumers willing to pay higher prices.<sup>6</sup> Buyers, including retail food stores (e.g., Walmart, Costco, etc.) and institutional food buyers (e.g., governments, universities, public schools, hospitals, etc.), may seek to purchase more sustainably or ethically produced food to meet consumer demands, to align with their brand or stated values, or to meet corporate or institutional environmental,

social, and governance (ESG) goals.<sup>7</sup> Labels can offer a means of identifying products aligned with those objectives. Finally, consumers are increasingly interested in purchasing ethically sourced products.<sup>8</sup> In particular, research has shown that “fair trade” food labels can increase consumer “liking” of a product and their willingness to pay higher prices.<sup>9</sup> However, the gap between the information conveyed on a label and the consumer’s understanding of the standard or verification affiliated with that claim may contribute to misdirected spending or diminished confidence in the information provided.

Fair labor labels may be important to stakeholders for the reasons described above and more. The remaining sections of this brief aim to fill information gaps. This issue brief will:

- Describe the relevant regulatory framework governing food labeling claims;
- Survey the existing fair labor claims on food labels and analyze several private U.S.-based certification programs present in agriculture; and
- Summarize challenges that arise for certification programs that make labeling claims concerning fair labor conditions.



# REGULATORY FRAMEWORK GOVERNING FOOD LABELING CLAIMS

A food label is “a display of written, printed or graphic material upon the immediate container of [the food].”<sup>10</sup> Food labeling can also include accompanying material even if it is not physically attached to the product.<sup>11</sup> Food labels include the name of the food, nutrient facts, and the ingredient list.<sup>12</sup> At the federal level, food labels and the claims that appear on them are regulated by a few key government actors: the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the Federal Trade Commission (FTC).

## The U.S. Food and Drug Administration

The FDA regulates a wide array of food products—including bread, dairy, seafood, produce, packaged goods, and whole eggs—to ensure food safety and proper labeling.<sup>13</sup> The FDA requires certain information to be included on a food’s label. Product labels may also feature voluntary claims. The FDA regulates some voluntary claims, particularly health and nutrition claims, by publishing rules that define those claims and when they may be used.<sup>14</sup> Claims that do not have a regulatory definition still should not be false or misleading.<sup>15</sup>

**The FDA does not currently define any claims relating to fair labor conditions.** Although such claims should not be false or misleading, a violation can be difficult to substantiate due to the lack of clear regulatory definitions or requirements.

To learn more about FDA and USDA authority over labeling and information that must appear on food labels, visit [labelsunwrapped.org/labels-101](https://labelsunwrapped.org/labels-101).

## The U.S. Department of Agriculture

The USDA regulates the safety and labeling of meat, poultry, and egg products through its Food Safety and Inspection Service (FSIS).<sup>16</sup> Like the FDA, FSIS regulates both mandatory labeling information and voluntary labeling claims.<sup>17</sup> However, FSIS conducts pre-market review of labels before the product enters the marketplace and may rely on third-party certifications to approve claims.<sup>18</sup> Although FSIS regulates a much broader range of voluntary labeling claims—and several that relate to production processes<sup>19</sup>—**it does not specifically define claims concerning working conditions.** As with the FDA, while claims cannot be false or misleading, a violation can be difficult to substantiate.

The USDA also regulates other types of labeling claims through its Agricultural Marketing Service (AMS). These include labeling requirements such as Country of Origin Labeling and the National Bioengineered Food Disclosure Standard.<sup>20</sup> AMS also oversees several voluntary USDA

certification schemes. For instance, the National Organic Program confers a USDA Organic Seal on products meeting federal standards, as verified by an accredited third party.<sup>21</sup> Despite the social values that spurred the rise of the organic movement, **the USDA’s organic standard does not include any requirements that relate to working conditions or worker welfare.**<sup>22</sup>

To learn more about other USDA labeling requirements, view these issue briefs on Labels Unwrapped:

- [What Is Country of Origin Labeling?](#)
- [Consumer’s Guide to Bioengineered Food Disclosures](#)
- [Is “Organic” Humane? The Relationship Between Animal Welfare and USDA Organic](#)



AMS also oversees the Process Verified Program (PVP), which permits producers to acquire a “USDA Process Verified” shield as verification of compliance with certain process claims.<sup>23</sup> The producer or company sets its own standard and then seeks review of compliance with that standard by AMS and a third-party auditor.<sup>24</sup> It does not appear that any claims regarding working conditions are currently included in the PVP.<sup>25</sup>



## The Federal Trade Commission

The FTC regulates and enforces laws that promote fair competition and protect consumers from deceptive advertising and business practices.<sup>26</sup> While the FTC does not directly regulate food labeling, the agency's authority over food product advertising includes ensuring that claims made in ads are truthful and not misleading.<sup>27</sup> To the extent labeling claims spill over into advertising, the FTC may play a role in oversight. However, as noted previously, **without any regulatory definitions or requirements regarding fair labor labeling claims, it can be challenging to prove that a claim is false or misleading.**

States have laws that largely replicate the federal laws discussed above. For products that move across state lines, the federal laws will apply. Additionally, most states have consumer protection statutes that parallel and supplement the Federal Trade Commission Act and further protect against unfair or deceptive business practices.<sup>28</sup> While these statutes provide an opportunity to hold companies accountable for making misleading claims, it can be challenging to meet the legal standard necessary to succeed in litigation.



# TYPES OF FAIR LABOR LABELS

Fair labor labels may appear in several forms: first-party claims (i.e., self-declared claims); government sponsored and/or required labels; and third-party certifications.

## First-Party Claims

First-party labels include many of the claims frequently seen on packaging in the marketplace, such as “ethically sourced,” “sustainable,” and “fairly traded,” among others. As discussed above, most of these claims are not defined by law. The USDA reviews some sustainability claims like “sustainably raised” and “sustainably farmed.”<sup>29</sup> However, this review focuses on “environment-related” sustainability claims, but not social and economic sustainability, which can include wages and working conditions.<sup>30</sup> Another claim that causes confusion is the phrase—and variations upon—“fair trade.”<sup>31</sup> This phrase differs from “Fairtrade” (one word, uppercase), a trademarked term used by Fairtrade International, and “Fair Trade USA” (two words, both uppercase), a trademarked term used by Fair Trade USA.<sup>32</sup> If companies do not use these protected versions, they can use variations of “fair trade” claims on their labels without following any government or third-party developed standards.



## Government Sponsored Labels

There are no government-sponsored fair labor labels. While some government sponsored labels may carry an image of fairer production practices, none impose specific requirements concerning labor or working conditions.

## Third-Party Certifications

Third-party certification schemes aim to provide consumers with verifiable information concerning fair labor conditions. Third-party certifications incorporate labor considerations to varying meaningful extents. For example, the Certified Humane Program offers a label certification to products that meet the program’s Animal Care Standards.<sup>33</sup> However, the program does not include requirements related to fair working conditions or labor protections, although it does include some worker-related provisions regarding training and competence in humane animal handling.<sup>34</sup>

B Corp Certifications have also become more prominent among companies that promote their commitment to certain environmental, social, and governance values.<sup>35</sup> The metrics used to evaluate companies seeking B Corp Certification include worker metrics and impacts (i.e., health care, benefits, etc.).<sup>36</sup> However, this evaluation is multifactorial; certification does not necessarily mean that a company has superior workplace policies and conditions or that it ensures fair working conditions throughout its supply chains. For example, B Corp Certifications came under scrutiny when a company received certification despite its documented history of reliance on child labor, wage theft, and worker abuse.<sup>37</sup>



This method of classifying different types of eco-labels is drawn from Jason Czarnezki, Andrew Homan, & Meghan Jeans’ article “Creating Order Amidst Food Eco-Label Chaos” in the *Duke Environmental Law & Policy Forum*.



# ANALYSIS OF PROMINENT THIRD-PARTY FAIR LABOR LABELS

Several third-party certification programs confer fair labor labels on food products. This issue brief focuses on a few U.S.-based programs that specifically address working conditions in agriculture. To assess these programs, the authors reviewed publicly available documents concerning each scheme and identified key elements. The analysis focuses on the following program components and questions:



## Standard Summary

What do the standards require beyond compliance with existing law?



## Standard Setting

Who is involved in developing, setting, and updating the program standards, and how prominently are workers represented?



## Worker Education

What are the mechanisms for educating workers on their rights or protections under the standards?



## Monitoring

What are the mechanisms for monitoring program compliance, and what is the role of workers in such monitoring?



## Enforcement

How does the program respond to employer noncompliance with its requirements?



## Price Premium

How does the program use any affiliated price premium?



## Challenges

What are the notable challenges to the program's approach?

Distinctions in program design may be due, in part, to differing theories of change concerning how to best elevate, represent, or integrate worker voice in governance processes as well as differences in vision for the future of work.<sup>38</sup> A deeper examination of these theories and tensions is beyond the scope of this brief.



# Worker-Driven Social Responsibility Programs

Worker-driven social responsibility (WSR) programs are initiatives in which the workplace standards are set and monitored by the workers themselves. These standards are enforced through supply-chain agreements that include market consequences (i.e., loss of business with a major buyer) for noncompliance by employers participating the program.<sup>39</sup> Through these agreements, buyers agree to prioritize purchases of the relevant goods from grower-employers participating in the program. In the U.S. food sector, there are two WSR programs: the **Fair Food Program (FFP)**, founded by the Coalition of Immokalee Workers (CIW) in 2011;<sup>40</sup> and the **Milk with Dignity Program (MD)**, founded by Vermont dairy workers with the organization Migrant Justice.



**Milk with Dignity**  
STANDARDS COUNCIL



## Standard Summary

The programs require participating employers to comply with all applicable laws at baseline, extend certain legal protections to farmworkers, and cooperate with representatives of the WSR program and the auditing body. Among other requirements, the FFP requires growers to: directly hire workers; provide sufficient breaks; allow workers to cease work if they feel their health or safety is threatened; establish a Worker Health and Safety process to receive worker input on policies and practices; provide protective equipment; protect against sexual harassment and discrimination; properly maintain employee housing; and provide advancement opportunities.<sup>41</sup> MD's Code of Conduct requires dairy farmers to provide robust health and safety training related to the many hazards of dairy work, pay workers the prevailing minimum wage, and directly hire workers.<sup>42</sup> MD prohibits interference with workers' freedom of movement to and from the farm and right to receive visitors, termination without just cause, and all forms of violence, harassment, abuse, threat, and discrimination.<sup>43</sup> It also requires employers to provide rest days, sick leave, and vacation days, workers compensation insurance or comparable coverage, and dignified housing, among other requirements.<sup>44</sup>



## Standard Setting

Both the FFP and MD grew out of worker organizing efforts. As an essential component of a WSR program, workers and worker-centered organizations design the standards and negotiate them with growers and buyers.<sup>45</sup> Each program has its own context-tailored Code of Conduct; for example, MD's Code of Conduct includes more extensive provisions related to worker housing since many dairy employees live in employer-provided housing.<sup>46</sup> Specific details regarding the composition of the standard-setting bodies and their standard revision process are not publicly available.



## Worker Education

In the FFP, workers receive know-your rights materials and watch an accompanying training video upon hire.<sup>47</sup> FFP/CIW then conducts worker-to-worker education during the season to ensure workers understand their rights and protections under the program and how to enforce them.<sup>48</sup> In MD, every worker receives up to two hours of training annually by MD representatives as well as a copy of the Milk with Dignity Rights & Responsibilities Handbook and other MD materials; the MD Code and program information are also posted at worksites and housing units.<sup>49</sup>



## Worker-Driven Social Responsibility Programs *(continued)*



### Monitoring

Each program has a Standards Council that provides regular third-party audits of participating farms.<sup>50</sup> These audits include record review, site visits, and interviews with at least 50 percent of the workforce.<sup>51</sup> MD reported that during its farm audits from 2018 to 2022, over 80 percent of workers were interviewed on each audited farm.<sup>52</sup> Additionally, workers have access to a 24/7, bilingual hotline staffed by investigators who investigate complaints or concerns raised by workers.<sup>53</sup>



### Enforcement

The supply chain agreements between FFP and large buyers (i.e., Walmart) require buyers to suspend purchases from employers who are suspended from the FFP.<sup>54</sup> The Fair Food Standards Council makes suspension determinations based on the type of violation and the grower's subsequent compliance with an approved corrective action plan or complaint resolution.<sup>55</sup> Buyers in the MD program—currently, Ben & Jerry's—agree to source their dairy from MD-participating farms. Violations of the MD Code of Conduct can result in suspension from the program and termination of business with the buyer who must look to other MD-participating dairies to meet its purchasing quota.<sup>56</sup>



### Price Premium

Growers in the FFP receive a Fair Food Premium paid by buyers, a portion of which must be passed through and distributed to qualifying workers.<sup>57</sup> In MD, buyers pay a price premium to employers that helps subsidize the cost of program compliance; the MD Standards Council monitors these payments to ensure the premium is appropriately used for Code compliance.<sup>58</sup> Payments have been used for housing improvements, raises, sick leave, and bonuses.<sup>59</sup>



### Challenges

These programs have limited market saturation. Although the FFP has recently expanded its footprint, consumers in many parts of the country do not have access to retailers or food service providers selling products from FFP farms. And, while the FFP has a certification mark that may be used for labeling products from participating growers,<sup>60</sup> MD does not—yet—have a label to identify MD products. Thus, consumer demand requires some existing awareness of the program through marketing and education. While identified as a challenge, this approach may also confer the advantage of providing consumers with a more robust understanding of the MD program than what could be conveyed through the limited space available on a food label.

# Agricultural Justice Project's Food Justice Certification

The Agricultural Justice Project (AJP) was founded in response to the failure of the USDA's National Organic Program to incorporate standards related to fair pricing for farm products or fair treatment of workers.<sup>61</sup> Several advocacy organizations—Rural Advancement Foundation International (RAFI-USA), Comité de Apoyo a los Trabajadores Agrícolas/Farmworker Support Committee (CATA), Funación RENACE, Northeast Organic Farming Association (NOFA), and Florida Organic Growers (FOG)—convened gatherings of workers, farmers, and advocates to develop ambitious standards “for fair and just treatment of the people involved in organic and sustainable agriculture.”<sup>62</sup> These organizations subsequently piloted and launched the Food Justice Certification.<sup>63</sup> Beyond working conditions, the certification includes standards for fair pricing and contracting between farmers and buyers and a commitment to organic production practices.<sup>64</sup> While this analysis focuses on the standards related to farm employers and farmworkers, AJP includes nearly identical standards for other food system workers.<sup>65</sup> AJP maintains a toolkit with guidance and resources to further support stakeholders interested in changing their business practices, regardless of certification status.<sup>66</sup> AJP paused their certification program in 2025 due to funding shortfalls and program challenges.



## Standard Summary

In addition to full compliance with the law, employers must: respect farmworker rights to freedom of association and to bargain collectively; provide living wages (or satisfy alternative criteria, including using open books management to demonstrate to workers the business's current inability to pay higher wages); commit to phasing out piece-rate wages; provide benefits (workers compensation, disability coverage, sick leave, and parental leave); commit to just-cause termination policies; ensure that work in excess of 48 hours per workweek is voluntary and pay (or work toward) an overtime wage; provide one weekly day of rest; establish conflict resolution procedures; and adhere to restrictions around hiring through farm labor contractors, among other protections.<sup>67</sup>



## Standard Setting

The AJP had strong farmworker representation at its founding and developed the original standards with input from stakeholders including “farmers, farmworkers, interns and apprentices, indigenous groups, and retail and consumer groups.”<sup>68</sup> Its committee members for the 2019 published standards included three farmworker advocates, three farmer stakeholders, one brand and Canadian organic grower stakeholder, and one retail stakeholder.<sup>69</sup> The AJP revises the standards every five years through a consensus-based process that takes about 18 months.<sup>70</sup> This approach has the advantage of bringing multiple perspectives into the standard-setting process but means the process is not fully worker-led.



## Worker Education

Upon a worker's employment, employers must conduct or provide for on-the-clock training on their legal rights and additional rights under the AJP standards.<sup>71</sup> They are encouraged to have worker organizations conduct these trainings.<sup>72</sup> Health and safety trainings are also required. Employers must provide workers with a copy of the AJP workers' rights pamphlet and must centrally post information regarding workers' rights under AJP and contact information for worker advocacy groups.<sup>73</sup>





### Monitoring

AJP relies on approved third-party certifiers to certify farm compliance with the AJP standards and other legal requirements.<sup>74</sup> Two-person inspection teams include a worker organization representative who is primarily responsible for conducting worker interviews.<sup>75</sup> Applications for certification are subject to public and stakeholder comments, as well as to feedback from an AJP approved worker organization nearest to the farm.<sup>76</sup> Farms are reevaluated each year<sup>77</sup> and must document areas of continuing improvement beyond the baseline standards.<sup>78</sup>

Workers with grievances who are dissatisfied with their employer's internal conflict resolution process can initiate an AJP Conflict Resolution Process and are directed to reach out to CATA.<sup>79</sup> AJP then assigns an investigator to look into the matter and make a recommendation on next steps.<sup>80</sup> An independent ombudsperson may be appointed to consider appeals of matters not resolved by these steps.<sup>81</sup>



### Enforcement

Certifiers identify instances of non-compliance and set a timeline for resolution.<sup>82</sup> If the instance of non-compliance is "major" ("a violation of the standard that infringes on the rights of individuals") then the certification will be denied or suspended.<sup>83</sup>



### Price Premium

AJP does not set a premium for certified products, though the organization requires certified buyers to pay farmers a price that "coverts the cost of production plus a fair margin for profit and investment and the ability to pay fair wages and other benefits[.]"<sup>84</sup>



### Challenges

Limited market saturation and participation is a major barrier. As of February 2025, only five certified farms were listed on AJP's website,<sup>85</sup> and new certification applications are on pause following the departure of the sole licensed certifying agency.<sup>86</sup> Further, while the program sets a broad range of aspirational standards, AJP's continuous monitoring mechanisms and opportunities for worker-led standard setting and oversight are limited by the organization's capacity, relying primarily on worker or farmer reporting in periods between annual inspections.

# Equitable Food Initiative

The Equitable Food Initiative (EFI) is a non-profit organization with the mission to “bring together growers, farmworkers, retailers, and consumers to transform agriculture and the lives of farmworkers.”<sup>87</sup> The program began as a collaboration between Oxfam America, United Farm Workers, and Costco Wholesale that led to a pilot with several produce suppliers in 2011–2014.<sup>88</sup> In addition to courses and workshops, the organization runs a certification program (EFI Certification) that growers can acquire for farming operations and packhouses after completing several requirements, including a Grower Mapping exercise (establishing the scope of certification), Leadership Team training, and an audit by a third-party certifying body.<sup>89</sup> Today, EFI reports 89 completed certifications.<sup>90</sup>



## Standard Summary

Farming operations seeking certification must follow the EFI Social Standards, Culture of Food Safety Standards, and Pest Management Standards.<sup>91</sup> In addition to compliance with applicable laws, EFI’s Social Standards require employers to: recognize workers’ freedom of association and right to organize;<sup>92</sup> provide workers compensation coverage and implement certain health and safety practices that exceed legal requirements (e.g., ergonomics protocols);<sup>93</sup> compensate break time (even when workers are paid the piece rate);<sup>94</sup> and develop clear policies and procedures around disciplinary actions, dispute resolution, and investigation of sexual harassment complaints,<sup>95</sup> among other protections. EFI places additional restrictions on the use of child labor<sup>96</sup> and prohibits reliance on labor by people who are incarcerated.<sup>97</sup> The standards prohibit retaliation against workers for participating in monitoring, assessment, or enforcement under the EFI standards; for reporting potential violations to government authorities; for seeking medical or legal assistance; for being pregnant, lactating, or taking maternal leave; or for joining or supporting a political party, labor union, or community organization.<sup>98</sup>



## Standard Setting

The EFI Standards Committee reviews and updates the EFI Certification standards periodically, with no set timeline or review schedule.<sup>99</sup> The last revision to the Social Standards occurred in 2019.<sup>100</sup> Members of the Standards Committee include farmworkers advocacy groups (United Farm Workers and Farmworker Justice), sustainable farming organizations, industry, and consumer interest groups.<sup>101</sup> Final decisions are made in consultation with EFI’s Executive Board, which includes three farmworker unions among the 16 current seats.<sup>102</sup> The Board also receives advice from a standing Leadership Team Advisory Group comprised of “farmworkers and production managers from certified farms” who participate in their farm’s Leadership Team.<sup>103</sup>



## Worker Education

The EFI Social Standards include several standards that require training on certain topics (e.g., specific health and safety concerns, sexual harassment awareness) and that require the provision of information to workers regarding their rights and responsibilities under the EFI Standards.<sup>104</sup> There does not appear to be a required mandatory training for all workers that covers workers’ rights generally and under the EFI Standards, though the Leadership Team receives this training. The Leadership Team is responsible for informing workers of the standards and the processes for ensuring compliance.<sup>105</sup>





### Monitoring

A certifying body certifies operations every three years following a full certification audit, with annual verification audits in the interim years.<sup>106</sup> Short-notice audits or unannounced audits may also occur at any time.<sup>107</sup> Audits include worker interviews with an EFI-specified sample of workers based on operation size (i.e., five workers when there are one to ten employees; 18 workers when there are more than 500 employees).<sup>108</sup>

Additional continuous monitoring happens through an operation's Leadership Team, which includes management and workers in non-managerial positions and any workers hired through farm labor contractors.<sup>109</sup> Although worker-representatives should represent all job categories, gender, and specific demographic interests, there do not appear to be proportional or numerical requirements for worker representation (as opposed to management).<sup>110</sup> EFI's training curriculum for the Leadership Team includes business concepts and conflict resolution.<sup>111</sup> The Leadership Team structure is meant to create opportunities for management and workers to interact as equals and to "encourage workers to raise their voice to change work practices and relationships on the farm."<sup>112</sup>

EFI also has a publicly available Complaints Management Process for receiving and addressing concerns with growers or other aspects of EFI.<sup>113</sup> Complaints are submitted through the EFI website, received by the EFI Certification Manager, and routed to the appropriate staff member for resolution.<sup>114</sup>



### Enforcement

When a certifying body finds an instance of nonconformity, the operation must develop and implement an approved corrective action plan.<sup>115</sup> Failure to meet these obligations results in the operation either not receiving a certification or having their existing certification suspended.<sup>116</sup> Certain serious nonconformities may require immediate remedial action or may result in immediate suspension or revocation.<sup>117</sup> The operation then cannot use the EFI label or claim certification and must take immediate actions to inform customers and prevent nonconforming product from entering the supply chain.<sup>118</sup>



### Price Premium

EFI maintains a commodity schedule that establishes the premium rates for EFI-Certified commodities.<sup>119</sup> The vast majority of premiums collected (87 percent) must be allocated to workers, including for additional worker compensation and offsetting the employer's resulting tax burden.<sup>120</sup> Ten percent of the premiums go to EFI as a licensing fee and three percent remain with the Certificate Holder for administrative expenses.<sup>121</sup>



### Challenges

EFI lacks some protections that could better ensure that workers are able to effectively monitor program compliance—such as guaranteed majority representation and veto power on the Leadership Team, a more proximate anonymous third-party complaint mechanism, mandatory training for all workers on their rights, and required involvement of worker organizations in the auditing process.

A 2023 report published by Corporate Accountability Lab evaluated several EFI-certified operations in San Quintin, Mexico, and concluded that the joint worker-management committee structure (the Leadership Team), in addition to other program components, fails to address uneven power dynamics between workers and management and that the operations did not meet the goals of the EFI Standards.<sup>122</sup> Following the report's publication, EFI contracted another group to investigate the report's allegations and issued a detailed response.<sup>123</sup> Links to the Corporate Accountability Lab report and EFI's response may be found on page 15.

# Fair Trade USA

Founded in 1998, Fair Trade USA (formerly TransFair USA) originated as a member of the umbrella organization, Fairtrade International.<sup>124</sup> In 2012, Fair Trade USA (FTUSA) broke off and now serves as a third-party certifier of Fair Trade products in North America.<sup>125</sup> Its seal can be found in more than 30 product categories, including dairy, quinoa, fresh produce, apparel, home goods, and seafood.<sup>126</sup> The organization has a Trade Standard—for businesses that buy and sell Fair Trade Certified goods<sup>127</sup>—and Producer Standards. The FTUSA Producer Standards include an Agricultural Production Standard, a Capture Fisheries Standard, and a Factory Standard.<sup>128</sup> This brief's analysis focuses on the Agricultural Production Standard (APS).



## Standard Summary

Key requirements under the APS include “fundamental rights at work” that are based on the Core Conventions of the International Labour Organization, such as the prohibition against forced, bonded, or compulsory labor; prohibition against child labor; freedom of association and collective bargaining rights; and prohibition against discrimination or abuse.<sup>129</sup> Additional requirements include clarity around the terms and conditions of employment, maintenance of a safe work environment, fair wages and benefits, reasonable work hours, responsible recruitment of migrant workers, access to basic needs and services, and grievance procedures.<sup>130</sup> While many of these requirements merely reinforce existing legal obligations (i.e., payment of minimum wages), some exceed legal minimums, such as: the provision of vacation, sick, and maternity leave; health insurance; workers’ compensation insurance; and a retirement pension.<sup>131</sup> Many of these elevated obligations are not required of farms initially; certified farms can work toward and achieve these requirements by year six of certification.<sup>132</sup> Some requirements—even several that relate to fundamental rights—are recommended but not required on small farms.<sup>133</sup>



## Standard Setting

It does not appear that workers or worker-centered organizations are directly involved in creating or updating the FTUSA Standards.<sup>134</sup> FTUSA has its own Standards and Implementation Resources Team that is charged with leading the drafting process.<sup>135</sup> This team may consult with stakeholders (including workers) during drafting and may create an external stakeholder Advisory Committee in certain circumstances.<sup>136</sup> All “major” revisions—including substantive changes to a Standard and the five-year review of an existing Standard—and new Standards require stakeholder consultation, which is solicited through a public consultation process that opens the draft Standard or revision for comments.<sup>137</sup> Standards are approved by the FTUSA Standards Committee, the composition of which is unclear.<sup>138</sup>



## Worker Education

The APS requires that workers receive written information about their rights under the APS in languages the workers understand.<sup>139</sup> Every three years, workers should receive training by an “independent third party” on their legal rights and the ILO Conventions.<sup>140</sup> While it is recommended that this training highlight where the APS protections exceed existing legal protections, specific training on rights under the APS is not required.<sup>141</sup> These informational requirements are recommended, but not required, on small farms.





### Monitoring

FTUSA contracts with “Conformity Assessment Bod[ies]” to conduct annual audits—a certification/recertification audit every three years and surveillance audits in between.<sup>142</sup> These audits are announced in advance. Because the Certificate Holder may be an entity that aggregates products from several farms, not all farms will necessarily be included in each audit. All sites visited in an audit will include worker interviews with a sample of workers.<sup>143</sup> The Certificate Holder must maintain an Internal Management System to assist with internal monitoring and risk assessment to ensure APS compliance among its suppliers.<sup>144</sup>

The APS requires employers to maintain a grievance process that allows for anonymous complaints.<sup>145</sup> Workers should also be informed of Fair Trade USA’s “Complaints Procedure”—open to anyone—and that they can report an issue directly to Fair Trade USA if the internal grievance process has not resolved an issue.<sup>146</sup>



### Enforcement

Incidents reported to FTUSA that are considered a “Priority Issue” or an imminent threat to the integrity of the Fair Trade USA certification are treated as allegations and investigated through an audit, which may be unannounced.<sup>147</sup> Priority Issues generally include violations that “undermines fundamental worker rights and the principles of the fair trade movement.”<sup>148</sup> A subsequent failure to address noncompliance results in suspension of the certification, which can last six months.<sup>149</sup> If the Certificate Holder fails to resolve the issue that led to the suspension or abide by the suspension’s terms, the Certificate Holder will be decertified.<sup>150</sup>



### Price Premium

FTUSA sets minimum prices and premiums for all products it certifies.<sup>151</sup> “Fair Trade Premium Participants”—the producers, workers, and cooperative members who are to be the primary beneficiaries of the Premium<sup>152</sup>—elect representatives to a Fair Trade Committee (FTC) that manages the use of the Premium.<sup>153</sup> A Needs Assessment is completed to help identify the social, economic, and environmental development needs of the Premium Participants and their communities.<sup>154</sup> This assessment informs the FTC’s plan for spending the premium, which is subject to approval by a majority of the Premium Participants.<sup>155</sup>





### Challenges

FTUSA lacks the worker empowerment mechanisms employed by other programs. There do not appear to be any workers or representatives from worker organizations on FTUSA's Board of Directors or Advisory Board.<sup>156</sup> Worker involvement in writing the Standards is limited to a stakeholder consultation process. It appears that worker complaints are primarily routed through internal grievance processes and workers have limited opportunities to assist in monitoring compliance. As Fair World Project has noted, the standards do not require worker representatives to be present to support workers during an audit, thus limiting worker candor and detection of violations.<sup>157</sup> The standard also lacks mandatory training for workers on the full scope of protections to which they are entitled under the APS.

FTUSA has faced allegations of “fairwashing” from some advocacy and watchdog groups. In 2018, a coalition of labor organizations wrote in opposition to the certification of a Honduran melon producer with a history of human rights violations and anti-union activity.<sup>158</sup> FTUSA subsequently decertified the producer.<sup>159</sup> FTUSA also met pushback as it worked with a food company to develop a standard for dairy produced in the United States.<sup>160</sup> Worker organizations voiced concerns about the consultation process, the label's potential to undermine worker organizing efforts, and the poor prospect of the standard bringing meaningful change to the U.S. dairy industry.<sup>161</sup> Fair World Project and Corporate Accountability Lab have also alleged instances of improper vetting of Certification Holders, gaps in protections, and inadequate enforcement.<sup>162</sup> FTUSA has responded to some of these allegations by affirming its “belie[f] in the rigor of our program” and noting, among other points, that several of the sites discussed in a lengthy report published by Corporate Accountability Lab were no longer certified.<sup>163</sup>

As noted under "Challenges," the Equitable Food Initiative and Fair Trade USA were both subjects of a critical report published by Corporate Accountability Lab. The report concerned labor conditions in the produce sector in San Quintín, Mexico, and was partially based on ethnographic research conducted by one of the authors. Both organizations issued a response to the report. The report and responses can be found at the following links:

- [Certified Exploitation: How Equitable Food Initiative and Fair Trade USA Fail to Protect Farmworkers in the Mexican Produce Industry](#)
- [EFI Response Letter](#)
- [FTUSA Response Letter](#)



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## KEY CHALLENGES

Although third-party certification programs may offer increased assurance of improved working conditions and meaningful information to consumers, there are challenges in the utility and reliability of these types of programs. These include:

### ○ Lack of consistent criteria

Each certification program has different standards or requirements for participation. Consumers may find it challenging to distinguish between the different programs, and certifications with weaker standards may unfairly benefit from the reputation and impact of stronger certification programs. This lack of consistency also raises the risk that certifications with weaker standards will facilitate greenwashing or “fairwashing.”

### ○ Lack of continuous monitoring

Some certifications require an audit to verify program compliance just once a year or once every few years. Without effective monitoring in between these audits, this approach does not ensure that the standards are being met at all times.<sup>164</sup> Working conditions can quickly change due to factors like financial pressures, new management, interpersonal dynamics, or unexpected events. Programs with monitoring mechanisms that include workers throughout the year offer greater assurance of compliance and empower workers to participate in the oversight and accountability process.

### ○ Persistent power imbalances

Many certifications are developed through multi-party arrangements that include industry actors like retailers and brands; owners, operators, and managers of agricultural operations or intermediaries; and workers, unions, or worker-centered organizations. Without strong protections in place—such as strong unions at the table, worker veto power, or a guaranteed worker majority in decision-making bodies—these arrangements can be susceptible to the same power imbalances that plague the food production industry.<sup>165</sup> Additionally, a certification scheme’s success relies in part on consumer familiarity with the label and its prevalence in the market. Programs may thus rely on buy-in from the “regulated” entities, who may then wield influence over the standards and processes in a way that ultimately dilutes the strength of the worker protections.<sup>166</sup> If consumers are concerned about fair labor, they should look for certification programs in which workers lead the standard-setting process and are fully empowered to monitor program adherence.

### ○ Weak enforcement mechanisms

For many programs, the principal enforcement mechanism for violations is loss of access to the certification. Unless a business is truly committed to fair practices, this loss may not incur sufficiently significant financial repercussions to discourage violations.<sup>167</sup> The supply chain agreements employed in WSR programs offer a stronger deterrent to noncompliance since suspension from the program results in the loss of a major buyer.

These key challenges draw upon research findings that examine a much larger field of certification schemes and multi-stakeholder initiatives that have emerged over the past several decades as a means to address human rights and environmental concerns in international supply chains. Individual programs may seek to address these issues through structural decisions and programmatic design, as several of the certifications described above attempt to do.

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## CONCLUSION

Fair labor labels are difficult to navigate given the absence of regulatory oversight and the variety of claims and certifications that have emerged.

Self-declared claims should be approached with serious skepticism; these claims are unregulated and companies may use unsubstantiated claims about labor conditions to market their products.

Third-party certifications should be approached with thoughtful discernment. The proliferation and variety of these programs means that it still falls to consumers to do their own investigation and evaluation of each certification to determine which certifications match the individual consumer’s expectations and which provide sufficient verification that their standards are being met.



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## About the Center for Agriculture and Food Systems at Vermont Law and Graduate School

The Center for Agriculture and Food Systems (CAFS) is a research-based center at Vermont Law and Graduate School that produces original scholarly research in the field of food and agricultural law and policy to serve the broadest range of food system stakeholders.

With local, regional, national, and international partners, CAFS addresses food system challenges related to food and nutrition security and affordability, farmland access, food system workers, farm viability, local economies, and public health, among others. CAFS works closely with its partners to provide legal services and develop resources that respond to their needs. Through CAFS's Food and Agriculture Clinic and Research Assistant program, Vermont Law and Graduate School students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system. Learn more at [cafs.vermontlaw.edu](https://cafs.vermontlaw.edu).



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