

**TESTIMONY OF  
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BEFORE THE  
SUBCOMMITTEE ON HORTICULTURE, RESEARCH, BIOTECHNOLOGY, AND  
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U.S. HOUSE OF REPRESENTATIVES**

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Good morning Chairman Scott, Ranking Member Schrader, and Members of the Subcommittee. Thank you for the invitation to testify at this hearing on the Fair Labor Standards Act's (FLSA) "hot goods" provision, a statutory enforcement tool and safeguard of critical importance to our nation's workers, businesses and economy. It is an important tool that we use carefully and appropriately. Courts have upheld our use of this provision many times in the context of preventing the illegal shipment of tainted goods in many industries including agriculture, garment, and other manufacturing, among others.

Mr. Chairman, the Department of Labor recognizes the importance of the U.S. agricultural industry and the critical role it plays in not only putting food on our tables but also creating jobs and helping our nation's economy prosper.

I am pleased to be here today to talk with you about the Wage and Hour Division's work in protecting the rights of agricultural workers and ensuring a level playing field for the vast majority of this industry's businesses who play by the rules.

***Background***

The Fair Labor Standards Act of 1938 was born during a time of great economic suffering, when the Great Depression touched every corner of this nation. In response to those circumstances, Congress recognized the critical need to establish a floor of basic labor protections, including setting minimum wage, overtime compensation, and child labor protections for America's workers, and also the need to level the competitive playing field for employers.

The passage of this law was an unprecedented development – one that recognized that the establishment and enforcement of basic labor standards are necessary for promoting the economic security of workers and their families and for ensuring the integrity of our economy.

To advance the critical mission of the FLSA, Congress included in the Act an explicit prohibition against the shipment and distribution in commerce of goods that were produced in violation of the FLSA's minimum wage, overtime or child labor requirements.

Commonly referred to as the "hot goods" provision of the FLSA, § 15(a)(1), the basic purpose of the § 15(a)(1) prohibition, as the Supreme Court has pointed out, is to exclude from interstate commerce goods produced under substandard labor conditions, which would compete unfairly with goods produced by complying employers, and which in their total effect might force complying employers out of business.

In his 1937 message to Congress, President Roosevelt urged Congress to enact the FLSA and include in the bill the rules and legal prohibitions necessary to accomplish the objectives of the Act. More specifically, President Roosevelt's message identified the needs and objectives of the

hot goods prohibition: “And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.”

President Roosevelt’s message is cited approvingly throughout the legislative history of the FLSA and served as strong inspiration for passage of the Act.

Prohibiting the shipment of goods produced in violation of the FLSA serves several fundamental statutory purposes. In addition to ensuring that employers who violate the FLSA do not enjoy an unfair competitive advantage over their law-abiding peers, the hot goods provision serves to incentivize employers to adhere to the FLSA’s requirements. The hot goods provision also serves to protect the interests of those workers who have suffered substandard working conditions during the production of such goods.

It is also important to point out that Congress crafted the hot goods provision to apply expansively to *all* goods for the purpose of removing those tainted goods from the stream of interstate commerce. There is no statutory exception for agricultural or perishable goods to the hot goods provision. In fact, in today’s economy, most goods can be considered perishable if you consider the tremendous pressure upper-tier businesses place on lower-tier suppliers to deliver goods on a precise schedule. Be they blueberries, automobile parts, high fashion clothing items, or consumer digital products, delay in delivery date can be extremely costly to all parties in the supply chain.

### ***Wage and Hour Efforts***

The FLSA’s passage in 1938 marked the creation of the Agency I am honored to lead, the Wage and Hour Division (WHD), whose mission is to *promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation’s workforce*. That is, we are charged with ensuring that working people receive a fair day’s pay for a fair day’s work.

This is a critical directive in the agricultural industry where, for more than 76 years WHD has been working hard to strengthen compliance with federal labor laws. We know that the majority of employers in this industry are doing right by their workers and the law, but we continue to find labor violations impacting the wages and working conditions of some of our country’s lowest-paid workers who, due to a lack of knowledge of the law or a fear of exercising their rights, are vulnerable to disparate treatment and labor violations.

The agricultural industry is the backbone of our economy, which is supported by growers, farm labor contractors and other businesses. The value of our nation’s farms cannot be overstated, and it is in all of our interests to ensure that farmers and workers prosper together. That’s where we come in – our job at the Wage and Hour Division is to ensure that agricultural employers keep their workers safe on the job, house them in safe and sanitary residential facilities, and pay them their legally required wages. We are also committed to protecting the interests of law-abiding employers and ensuring that they are not placed at a competitive disadvantage by businesses that break the law.

As a law enforcement agency, we take seriously our responsibilities to ensure compliance with the law. WHD conducts thorough inspections of migrant housing units, transportation vehicles, employment practices and pay records to ensure compliance with all applicable agricultural labor standards. These enforcement efforts also include timely compliance assistance where, for example, our investigators reach out to agricultural employers in advance of their growing or

harvest season to remind them of their legal responsibilities and help them ensure compliance throughout the season.

During investigations, our investigators go to great lengths to gather accurate and sufficient evidence of an employer's level of compliance with all applicable laws. And when violations are found, WHD investigators work expeditiously with the employers to identify solutions and methods for coming into compliance. We also devote time and resources to educating employers about their responsibilities to help them prevent future labor violations from occurring.

However, employers who refuse to comply with the law may face appropriate action based on what we find. By conducting effective investigations and using a variety of enforcement tools – including civil money penalties, liquidated damages, injunctions, and other appropriate remedies – WHD is able to bring employers into compliance and deter future labor violations, thereby safeguarding the rights and welfare of agricultural workers.

In a majority of agricultural cases, WHD is able to reach a resolution with employers and we often work together to remedy the problems. Occasionally, however, we uncover labor violations that necessitate the use of enforcement tools like the hot goods provision of the FLSA, in order to obtain remedies for the affected workers and protect the stream of commerce from being adversely affected by illegally produced goods and to make sure that responsible producers in the agriculture supply chain are not put at a competitive disadvantage by producers who flout the law.

The hot goods provision is one of several tools in WHD's enforcement toolbox. And, while not a tool we use frequently, the hot goods provision has been an important part of our enforcement program since the FLSA was enacted.

In fact, one of our earliest hot goods enforcement actions occurred in 1946 when the Department obtained injunctions from federal court to restrain vegetable packers in Mississippi from shipping their goods in interstate commerce because the vegetable products were processed and packed by minors, many under 14 years of age, in violation of the FLSA's child labor provisions.

In more recent years, WHD has utilized hot goods actions in numerous agricultural sectors all across this country:

- In the 1980's for example, WHD brought hot goods actions against sweet potato growers in North Carolina to obtain back wages and compliance agreements from the employers.
- In 1990's, WHD utilized the hot goods provision to obtain compliance in several cases involving child labor violations. For example, WHD sought court action against onion growers in Texas and strawberry growers in Louisiana, who employed children, ages 6 to 11, to pick crops, in violation of the FLSA. The employers were prevented from shipping the "hot" goods until our enforcement matters were resolved. As a result, they agreed to comply in the future, paid civil money penalties and also signed compliance monitoring agreements with WHD.
- To give a more recent example, earlier this year WHD recovered \$428,000 in back wages and damages for low-wage workers on a Hawaiian basil farm. After uncovering egregious minimum wage and overtime violations, the Agency requested the employer to voluntarily refrain from shipping the basil harvested in substandard conditions to off-island customers. The Agency agreed to shipment and released its objection once the employer agreed to come into immediate compliance and started paying the back wages due on behalf of the affected workers.

These are just a few examples of our decades-long commitment to strengthening compliance in the agricultural industry through the use of the hot goods provision of the FLSA.

Beyond the use of a particular statutory tool, WHD has become more strategic in its efforts to strengthen labor law compliance in the agricultural industry and keep workers safe while on the job.

WHD offices conduct strategic initiatives in industries across the country. These initiatives include directed investigations of employers throughout the supply chain, as well as compliance evaluations that inform the Agency of the severity and likely causes of violations. Our initiatives also heavily focus on reaching out to employers, industry associations, and worker advocates to engage them in dialogue and identify strategies for addressing industry-specific problems.

This multipronged approach to ensuring compliance is working – our strategic efforts are helping maximize WHD’ impact and the results of all these efforts speak volumes in the agricultural industry.

*Between FY 2009 and FY2013, WHD concluded nearly 7,500 agricultural investigations, collecting more than \$20 million in back wages for more than 40,000 workers nationwide.*

These are big numbers but please allow me to underscore the gravity of what they represent. These are real dollars and cents that were earned through the labor of real people – many of whom are your constituents and are also vulnerable low-wage workers. It is real money that has enabled them to put food on the table, pay the rent, care for their children, keep the lights on, and pay for other expenses.

Furthermore, putting rightfully earned wages back into the pockets of working people means that they will turn around and spend it on goods and services, stimulating our economy and helping to create new jobs.

These numbers also represent our success in making sure that law-abiding employers are not placed at a competitive disadvantage against businesses that break the law. Robust and consistent enforcement of the law is critical to leveling the playing field, creating the right incentives and making those who comply with workplace laws stronger, not weaker, in the marketplace.

I would like to share with you a real success story that has made a difference in the lives of hardworking people and serves as a great example of our strategic enforcement efforts in action.

- A few years ago, WHD implemented one of the most effective, creative, and visible farm labor enforcement programs in the history of the Agency, focusing on agricultural industries in NJ, NC and MI during their blueberry harvest seasons.
- Investigations conducted during the 2009 harvest season uncovered egregious labor violations among blueberry growers and farm labor contractors (FLCs) in the three states– including the illegal employment of children in several fields. Other violations included unsafe housing conditions, transporting workers in uninsured vehicles, failing to pay the minimum wage, failing to properly disclose terms and conditions of employment, failing to comply with farm labor contractor registration requirements, and failing to keep all required records. In addition to recovering several thousand dollars in back wages and assessing penalties, WHD took a comprehensive approach to ending the dangerous practices it had uncovered.
- In early 2010, before the blueberry harvest was to begin, WHD offices in the three states took proactive steps to ensure compliance with agricultural labor standards, particularly

in regard to child labor. WHD offices conducted outreach and education (in English, Spanish and Haitian-Creole) to inform employers of their legal responsibilities and ensure workers understood their rights. WHD also met with farmers, FLCs, community organizations, state and local agencies, and industry associations – including the NJ Farm Bureau and the NC Blueberry Council – to speak with them about our enforcement efforts and to provide them with meaningful compliance assistance.

- As a result of WHD’s enforcement and compliance assistance efforts, employers took observable and important steps to ensure that children were not working in the fields. No child labor violations were found at the farms investigated in NC and NJ, and only one farm in MI was found in violation of federal child labor requirements. This is truly a win-win for everybody and a great example of how WHD’s efforts are aimed at helping farms and farm workers prosper together. This story also reflects the commitment my staff has to providing employers with the tools they needed to ensure their business practices are in compliance with the law.

### ***Compliance Assistance***

WHD has long maintained that enforcement alone will never be sufficient to achieve the Agency’s mission of protecting our nation’s workers. Education and outreach to the employer community to promote voluntary compliance has been and will continue to be one of our key strategies for promoting sustained and industry-wide compliance with federal wage and hour laws.

We are equally committed to reaching out to agricultural workers and their representatives to inform them of their rights and to encourage them to contact us if they believe their rights have been violated.

The common theme here is *awareness*. We believe that workers who are *aware* of their rights and employers who are *aware* of their legal responsibilities (and the consequences of breaking the law) are better positioned than we are, in many instances, to identify and remedy labor violations, or to prevent them from occurring in the first place.

In furtherance of our goal to increase awareness, the Agency has hired Community Outreach and Resource Planning Specialists (CORPS) to work in WHD District Offices across the country. These officers establish and maintain lines of communication at the local level; engage partners in dialogue about local industry practices and labor concerns; provide training and resources to stakeholders on wage and hour laws; and provide WHD with recommendations on how to better serve the needs of workers and regulated communities.

With the addition of these dedicated CORPS, WHD has increased its outreach and education efforts to inform employers, employees and other stakeholders about federal wage and hour laws and to engage their participation in promoting industry-wide compliance.

This has been particularly important in the agricultural context where, *since FY 2009, WHD has conducted nearly 600 outreach events and presentations nationwide that were specifically geared to providing valuable information and compliance assistance to the agricultural industry.*

WHD also regularly engages community organizations, industry associations, employer representatives and other stakeholders in dialogue about compliance-related matters. These stakeholder relationships are multidimensional – it is not just us talking to them about the importance of compliance or asking for their participation in outreach activities, we are also asking our partners about how we can improve our services and better serve workers and the regulated community.

For example, WHD collaborates with Farm Bureaus, Growers' Associations, and other industry representatives to solicit feedback and input when developing educational and outreach materials. These stakeholders' opinions help to inform the content of the final products and help WHD remain focused on the topics most relevant to the intended audiences.

This is the case with our newly developed compliance assistance materials, which we created in direct response to feedback received from agricultural employer groups and other industry stakeholders.

- We just released a new booklet that provides employers with simplified and consolidated information on the applicable statutes and requirements governing agricultural employment. The information is presented in easy-to-understand language and is broken down into components that employers may quickly reference as needed. Separate segments cover topics including wages, housing, transportation, and field sanitation.
- This booklet is accompanied by a 10-minute video tutorial that walks agricultural employers through compliance requirements under the applicable laws, and provides real world examples of compliant and non-compliant employment conditions and practices.
- We have also released a revised informational pocket card for agricultural workers. The card will more clearly inform workers of their rights and provide them information on how to file a complaint with WHD if they believe their rights have been violated.

We are very proud of these new compliance assistance materials because they represent the benefits and success of stakeholder cooperation and dialogue. These new resources will be valuable additions to WHD's robust library of compliance assistance materials, and will be distributed widely through our ongoing outreach efforts and events.

### ***Conclusion***

Congress enacted the Fair Labor Standards Act of 1938 at a very dark time in our nation's history – a time where those fortunate enough to find employment were often exploited and had little available recourse for their grievances. And Congress, in its wisdom and knowledge of the inherent competitive nature of the market, recognized that without strong enforcement mechanisms – such as the hot goods provision – workers as well as responsible employers would fall victim to the ills of unfair competition and exploitive labor practices.

I am proud to be leading an agency with such a critical mission in the 21<sup>st</sup> century economy. We will continue our focus on data-driven, evidence-based strategic enforcement efforts and will be engaging in even more education and outreach. The ultimate goal of all our strategic enforcement and compliance assistance efforts is to change employer behavior for the better – to discourage employers from cutting labor costs at the expense of workers' wages and working conditions, and to help move them towards positive, compliant business practices so that workers and employers can prosper together. Our hot goods enforcement actions are a small but important part of this overall mission. Our measure of success will be improving compliance levels in the agricultural industry, so that when we enter workplaces in the days, weeks, months and years ahead, we find fewer and fewer violations.

Thank you again for the opportunity to testify today. I am happy to answer your questions.