



Food Safety and
Inspection Service

January 8, 2014

Alameda District
620 Central Avenue,
Bldg. 2C
Alameda, CA 94501

Mr. Ron Foster, CEO
Foster Poultry Farms
Establishment 6137 P
P.O. Box 457
Livingston, CA 95334

Phone: (510) 769-5712
Fax: (510) 337-5081

**CERTIFIED RETURN-
RECEIPT REQUESTED**

Email: Robert.Oconnor@fosterfarms.com

NOTICE OF SUSPENSION

Dear Mr. Foster:

This letter confirms the verbal notification that was provided to your establishment on January 8, 2014, by the Food Safety and Inspection Service (FSIS), Alameda District, of the withholding of the marks of inspection and the suspension of the assignment of inspectors at your establishment in accordance with FSIS Rules of Practice, Title 9 Code of Federal Regulations (CFR), Part 500.3(a)(4). This action is initiated based on egregious insanitary conditions observed in your establishment whereby products produced at your facility may have been rendered adulterated in violation of the Poultry Products Inspection Act (PPIA) 21 U.S.C. 453 and 456, and the regulations promulgated thereunder, specifically Title 9 CFR 416. This is evidenced by findings of an infestation of live cockroaches in and around your production areas, that created insanitary conditions, and demonstrate that your firm failed to maintain an effective pest control program and other sanitary controls to assure that wholesome, unadulterated meat and poultry products are produced at your facility.

Background/Authority

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) provides that it is essential in the public interest that the health and welfare of consumers be protected, by assuring that poultry products distributed to them are wholesome, not adulterated, properly marked, labeled and packaged. This Act gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to issue rules and regulations describing sanitation requirements for inspected establishments. The Act also provides FSIS program personnel the authority to refuse to allow poultry or poultry products to be labeled, marked, stamped, or tagged as “*inspected and passed*” and to prevent the entry of products into commerce when the sanitary conditions of any such establishment are such that products are adulterated and provide definitions for the term “*adulterated*.” Furthermore, this Act provides FSIS the authority to appoint inspectors from time to time to examine and inspect products, including the

sanitary conditions of facilities. The Act also give FSIS program personnel the right to examine and inspect all carcasses and parts of carcasses that are further treated and prepared and the right to access and examine establishment records. When the sanitary conditions of a facility are not properly maintained, FSIS can refuse inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing.

Under the authorities of the Act, FSIS has prescribed rules and regulations required for establishments producing poultry products including the requirements pertaining to Sanitation Standard Operating Procedures (SSOP) and Sanitation Performance Standards (SPS) (Title 9 CFR Part 416) and other matters. FSIS has also developed Rules of Practices regarding enforcement (Title 9 CFR, Part 500). The Rules of Practice describe the types of enforcement action that FSIS may take and include procedures for taking a withholding action and suspension, with or without prior notification, and for filing a complaint to withdraw a grant of Federal Inspection.

Findings/Basis for Action

On January 8, 2014, during production at 0350 hours, FSIS inspection personnel observed and documented findings of live cockroaches at the hand wash sink directly across from Inspection Station 7, line 2. At the time of the observation, slaughter operations were in progress, and exposed product was present on the kill floor. FSIS inspection personnel took a withholding action due to the presence of live cockroaches in the production area at your establishment.

Further, FSIS inspection personnel have documented noncompliances related to cockroaches in your production areas on four occasions between August 1, 2013, and January 8, 2014.

- On January 7, 2014, FSIS documented a noncompliance for live cockroaches found during production on a grey plastic tub that is a direct product contact surface.
- On December 28, 2013, FSIS documented a noncompliance for live cockroaches found during production to the left of the faucet of Inspection Station 7.
- On November 4, 2013, FSIS documented a noncompliance for live cockroaches found during production next to the sanitizer dispenser box, which is located on the wall next to the ice machine.
- On September 14, 2013, FSIS documented a noncompliance for live cockroaches found during production on the floor between the liver tumbler/belt and the wall.

FSIS Inspection has observed and documented cockroaches in your establishment on multiple days (including on two consecutive days), in multiple locations within your establishment. These recent findings of egregious insanitary conditions related to a

cockroach infestation in your facility indicate that your establishment is not being operated and maintained in sanitary condition, or in a manner to ensure that product is not adulterated. As demonstrated by the findings of pests in your facility, your establishment failed to prevent conditions that could lead to insanitary conditions, where products may have been rendered adulterated and/or injurious to health. These are regulatory noncompliances of Title 9 CFR 416.1, 416.2(a) and 416.2(b)(3).

On January 8, 2014, the Alameda District Office (ADO) verbally notified your establishment of the withholding of the marks of inspection and suspension of the assignment of inspectors based on the egregious insanitary conditions present within your facility.

Pests are highly unsanitary given that they can come in contact with decomposing garbage or other organic materials. Because animal-based organic materials and garbage are excellent breeding media, cockroaches and other pests can transmit disease-causing pathogens, including bacteria. Poorly maintained facilities and equipment that are not maintained to prevent entrance of pests, such as cockroaches, rats and flies, can and do harbor food borne pathogens, which can then multiply and be dispersed throughout the food processing environment, increasing the chances of product contamination rendering the product unsafe.

The Poultry Products Inspection Act, 21 U.S.C. 453(g)(4), states product is adulterated *“if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.”* Foster Poultry Farms failed to meet the sanitary measures required by the Sanitation Performance Standards regulatory requirements, creating insanitary conditions that may result in the production of products, which may have been rendered injurious to health.

The Poultry Products Inspection Act, 21 U.S.C. 456 states, *“the Secretary shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.”* Foster Poultry Farms failed to maintain sanitary conditions at its establishment, creating insanitary conditions that could result in the production of products, which may have been rendered injurious to health.

The Poultry Products Inspection Act, 21 U.S.C. 463 states, *“the Secretary shall make rules and regulations as are necessary for the efficient execution of the provisions of this Act and all inspections and examinations made under this Act shall be made in such manner as described in the rules and regulations.”* Foster Poultry Farms failed to abide by the rules and regulations promulgated under the Poultry Products Inspection Act.

Based on the above findings of your failures to meet the SSOP and SPS regulatory requirements in accordance with Title 9 CFR, Part 416, your failure to implement effective corrective actions and preventive measures, and the existing insanitary conditions that may render product(s) at your establishment adulterated, FSIS is suspending the assignment of inspectors for all processes at your establishment.

The suspension will remain in effect until such time as you provide adequate written assurances of corrective and preventive measures to assure that meat and poultry products will be produced under sanitary conditions in accordance with the Poultry Products Inspection Act and the regulations promulgated there under.

Your corrective and preventive action plan should include at a minimum the following:

- 1- Identify the assessment process you intend to use to determine the nature and cause of the insanitary condition and the occurrence of pest infestation, including but not limited to the conditions of your facility and the level of repair performed at your facility.
- 2- Identify what the assessment revealed as the likely cause of pest problems in your establishment.
- 3- Describe what specific actions your establishment will take to correct and eliminate the causes.
- 4- Provide a pest control program that will describe the monitoring procedures and other activities that will ensure the prevention of future pest infestations.
- 5- Define the future monitoring activities that your firm intends to use to ensure that the changes and the preventive measures you initiated are effective.

In addition, failure to respond to this notice of suspension adequately, or failure to assure that the products produced at your establishment meet the requirements of the Poultry Products Inspection Act and the regulations promulgated there under, may result in further administrative enforcement actions. You may submit your response via facsimile to 510-337-5081 or by electronic mail (email) to virginia.molano@fsis.usda.gov.

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Dr. Hany Sidrak
Executive Associate for Regulatory Operations
1400 Independence Avenue, SW
Room 3157-S
Washington, DC 20250
Phone: 202-205-4208

In accordance with 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

Director; Enforcement and Litigation Division
Office of Investigation, Enforcement, and Audit
Food Safety and Inspection Service
United States Department of Agriculture
Patriot Plaza III, 8th Floor, Cubicle 8-243A
355 E Street, SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Facsimile Number: (202) 245-5097

If you have any questions, please call the Alameda District Office at 510-769-5712.

Sincerely,

/S/

Abdalla Amin
Deputy District Manager

cc:

Y. Sharma, DM
F. Gillis, DDM
V. Felix, DDM
J. Scrivner, DCS
L. Wang, DCS
M. Tiojanco, SEIAO
C. Vu, SEIAO
G. Abreu, FLS
M. Williams, EIAO
A. Khroustalev, RD, IEA
USDA, IIC, Est. 6137 P
FO/QR