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May 1, 2023

Mailed via USPS, sent via email to dlcp@dc.gov, and submitted online at dlcp.dc.gov

Shirley Kwan-Hui
Director
Department of Licensing and Consumer Protection
1100 4th Street, SW,
Washington, DC 20024

Director Kwan-Hui,

On behalf of Animal Partisan, I submit the enclosed complaint pursuant to D.C. Code § 28–3905(a) to initiate an investigation into American Humane, a nonprofit corporation headquartered in the District of Columbia. As described herein, the complaint alleges that American Humane’s online statements constitute deceptive trade practices in violation of D.C. Code § 28–3904.

Pursuant to D.C. Code § 28–3905(b)(1), the Department of Licensing and Consumer Protection is required by law to investigate such complaints. We urge you to use the department’s broad administrative authority to impose civil fines and order American Humane to cease its deceptive trade practices.

Please contact me at wlowrey@animalpartisan.org or (804) 307-4102 should you require further information. We appreciate your consideration and look forward to your response.

A handwritten signature in black ink, appearing to read 'Will Lowrey'.

Will Lowrey
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cc:

Brian Schwalb
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BEFORE THE DISTRICT OF COLUMBIA DEPARTMENT OF LICENSING AND
CONSUMER PROTECTION

ANIMAL PARTISAN

Complainant,

v.

AMERICAN HUMANE

Respondent.

**Complaint brought pursuant to D.C. Code § 28-3905(a) to mitigate deceptive trade
practices in violation of D.C. Code § 28-3904.**

May 1, 2023

Will Lowrey
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I. INTRODUCTION

As described herein, Animal Partisan submits this complaint pursuant to D.C. Code § 28–3905(a) and alleges deceptive trade practices by American Humane, a nonprofit corporation.

From its headquarters in the District of Columbia, American Humane proliferates deceptive statements on the Internet that are intended to promote the animal welfare practices of Foster Farms, a major poultry producer with a sordid and well-documented history of mistreating chickens. In doing so, American Humane, in collusion with Foster Farms, deceives countless consumers who rely on animal welfare claims when making grocery store purchasing decisions.

In accordance with its mandatory duties as prescribed by law,¹ we request that the Department of Licensing and Consumer Protection (“DLCP”) investigate American Humane’s conduct and grant the remedies requested below to protect consumers from deceptive trade practices emanating from the District of Columbia.

II. PARTIES

Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.²

American Humane is a charity organization that purports to be “first in promoting the welfare and safety of animals.”³ The organization is located at 1400 16th Street NW, Suite 360 Washington, DC 20036. American Humane claims to “set[] the gold standard as the most visionary and effective animal welfare organization in the nation.”⁴

III. FACTS GIVING RISE TO PETITION

A. American Humane operates an animal welfare certification program called “American Humane Certified” and claims to ensure the welfare of animals used in products bearing the program’s seal.

One of American Humane’s flagship programs is its animal welfare certification program. American Humane refers to its “American Humane Certified” program as “the nation’s first and farthest-reaching third-party certification effort for farm animal welfare.”⁵ According to American Humane, “[t]he American Humane Certified™ program provides third-party,

¹ See D.C. Code § 28–3905(b)(1), stating that “the Director *shall* investigate each such complaint and determine: (A) What trade practice actually occurred; and (B) Whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law of the District of Columbia.”

² *Home*, Animal Partisan, <https://www.animalpartisan.org/> (last visited Apr. 28, 2023).

³ *About Us*, American Humane, <https://www.americanhumane.org/about-us/> (last visited Apr. 21, 2023).

⁴ *Ibid.*

⁵ *American Humane Certified Newsletter*, American Humane, <https://www.americanhumane.org/app/uploads/2017/11/Fall-2017-Farm-Newsletter.pdf> (last visited Apr. 21, 2023).

independent audits to help verify that certified producers' care and handling of farm animals meet the science-based animal welfare standards of American Humane."⁶

As part of the "American Humane Certified" program, American Humane publishes and claims to verify compliance with certain standards for animal welfare.⁷ These standards . . .

. . . are centered on the internationally accepted Five Freedoms of animal welfare, a guiding set of basic conditions that must be met for the physical and mental welfare of an animal, including: Freedom from hunger and thirst; Freedom from discomfort; Freedom from pain, injury, and disease; Freedom to express normal and natural behavior (that is, allowing laying hens, for example, to nest and roost); and Freedom from fear and distress.⁸

"American Humane Certified" producers are widely advertised on corporation's website⁹ and producers are granted permission to affix a seal on their products which American Humane claims demonstrates to "ethically driven consumers" that the animals used in the product were "humanely raised".¹⁰ The seal is depicted below.



In a recent publication, American Humane promoted the seal by quoting another one of its certified producers—which happens to be currently awaiting trial in Pennsylvania on an animal cruelty charge¹¹—as stating that "[w]hen consumers buy product with the American Humane Certified seal, they know the animals were raised to high humane standards" and that "the

⁶ *About Humane Heartland*, American Humane, <https://www.americanhumane.org/humane-heartland/about-humane-heartland/> (last visited Apr. 24, 2023).

⁷ *Our Standards*, American Humane, <https://www.americanhumane.org/humane-heartland/our-standards/> (last visited Apr. 24, 2023).

⁸ *American Humane Certified Newsletter*, American Humane, <https://www.americanhumane.org/app/uploads/2017/11/Fall-2017-Farm-Newsletter.pdf> (last visited Apr. 21, 2023).

⁹ *Our Certified Producers*, American Humane, https://www.americanhumane.org/humane-heartland/?_per_page=500 (last visited Apr. 24, 2023).

¹⁰ *Ibid.* (video).

¹¹ See *Commonwealth v. Leidy's, Inc.*, MJ-38128-CR-0000121-2023 (Magisterial District Court-Lansdale, Pennsylvania); *Animal rights group claims truck driver beat hogs at Leidy's facility*, Bucks County Courier Times, <https://www.phillyburbs.com/story/news/2022/12/29/leidys-premium-meats-accused-of-animal-mistreatment/69761412007/> (last visited Apr. 27, 2023).

certification process signifies our efforts to be good stewards of the animals in our care and supports our desire to be a trusted supplier of quality food to our customers and consumers.”¹²

B. American Humane certifies Foster Farms and uses the Internet to actively promote the company’s animal welfare practices.

1. Foster Farms

Foster Farms is a large poultry company headquartered in Livingston, California.¹³ The company’s revenue in 2022 was reported at \$2.7 billion dollars.¹⁴ The company has 12,000 employees and locations in California, Oregon, Washington, Colorado, Arkansas, Alabama, and Louisiana.¹⁵

Foster Farms broiler chickens (those raised for meat) are certified by American Humane, which purportedly means that the company has “committed their operations to the humane treatment of animals under the guidelines outlined in the American Humane Certified™ animal welfare standards.”¹⁶ Below are screenshots from the American Humane website depicting Foster Farms’ certification and the accompanying statement describing the certified producers.¹⁷



2. Internet Statements at Issue

In addition to allowing Foster Farms to use its certification seal on products—which is **not** the subject of this complaint—American Humane actively promotes Foster Farms’ animal welfare practices on the Internet. These Internet statements form the basis of this complaint and appear on various websites, including both on American Humane’s as well as directly on Foster Farms.

¹² *Farm Program Newsletter-Fall 2022*, American Humane, <https://www.americanhumane.org/app/uploads/2022/09/Fall-2022-Farm-Newsletter.pdf> (last visited Apr. 25, 2023).
¹³ *Foster Farms*, Forbes, <https://www.forbes.com/companies/foster-farms/?sh=44b4475c5360> (last visited Apr. 24, 2023).
¹⁴ *Ibid.*
¹⁵ *Foster Farms*, LinkedIn, <https://www.linkedin.com/company/foster-farms/> (last visited Apr. 24, 2023).
¹⁶ *American Humane Farm Program*, American Humane, https://www.americanhumane.org/humane-heartland/?_per_page=500 (last visited Apr. 24, 2023).
¹⁷ *Our Certified Producers*, American Humane, https://www.americanhumane.org/humane-heartland/?_per_page=500 (last visited Apr. 25, 2023).

a. *American Humane website statements*

The following statements promoting Foster Farms' animal welfare practices appear on the American Humane website:

- "We are thrilled that Foster Farms **continues to prioritize animal welfare** as part of its operations."¹⁸
- "Farmers and associates like those who work with Foster Farms are part of the growing humane movement to **elevate standards for animals** living on farms and ranches."¹⁹
- "Producers like Foster Farms are **driving change to improve the lives of farm animals** everywhere."²⁰
- Producers who seek out independent auditing and assessment of their animal welfare practices help push the industry forward by paving new, innovative ways to **responsibly raise chickens**."²¹
- "We have many terrific producers who **raise their animals right**, including Springer Mountain Farms, Gold'n Plump, Foster Farms, Just Bare, Simply Essentials and Case Farms."²²

b. *Foster Farms' website statements that are attributable to American Humane*

American Humane's support of Foster Farms is so pervasive that American Humane President Robin Ganzert, Ph.D. even appears in a video on the Foster Farms website actively promoting the company's animal welfare practices. In the video, Ganzert states:

- "Foster Farms' certification program is **quite robust** in terms of **meeting the compliance of over 200 standards at each and every one of their farms and ranches**."²³
- "When you know that that is happening, you know there is somebody out there not associated with the producer that's **verifying that those animals were humanely raised**."²⁴

¹⁸ *Third-Party Audit Finds Foster Farms Continues Commitment to Excellent Animal Welfare*, American Humane, <https://www.americanhumane.org/press-release/third-party-audit-finds-foster-farms-continues-commitment-to-excellent-animal-welfare/> (last visited Apr. 25, 2023) (emphasis added).

¹⁹ *Ibid.* (emphasis added).

²⁰ *Ibid.* (emphasis added).

²¹ *Ibid.* (emphasis added).

²² *Presidential Fireside Chat #3*, American Humane, <https://www.americanhumane.org/blog/presidential-fireside-chat-3/> (last visited Apr. 28, 2023) (emphasis added).

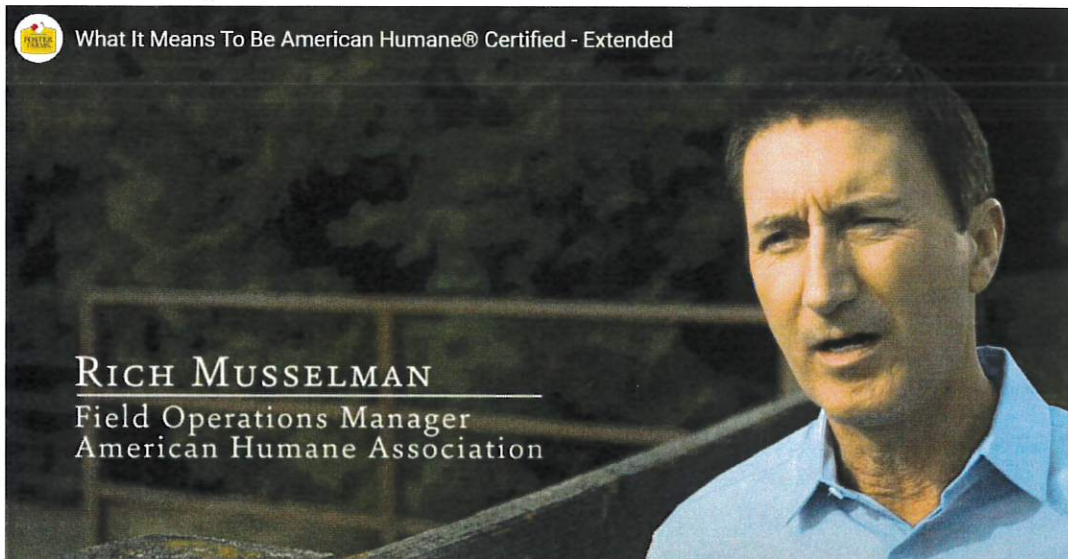
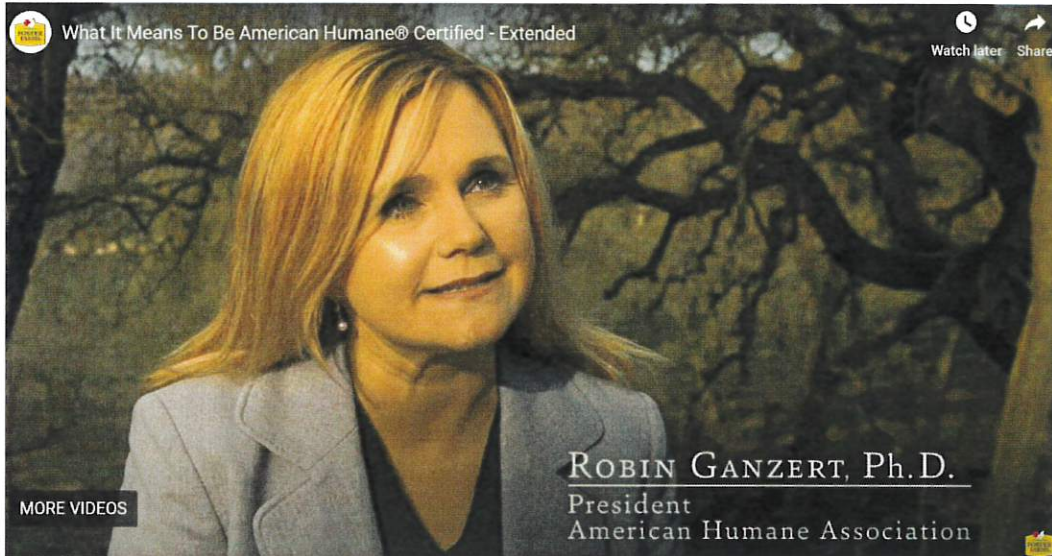
²³ *American Humane Association Certified*, Foster Farms (video), <https://www.fosterfarms.com/our-story/responsibility/> (last visited Apr. 27, 2023).

²⁴ *Ibid.*

American Humane Field Operations Manager, Rich Musselman also appears in the video promoting Foster Farms and states:

- “‘Humanely raised’ means that the producer is **taking care of the animals.**”²⁵

Below are screenshots of Ganzert and Musselman as they participate in Foster Farms’ video and promote its animal welfare practices:²⁶



²⁵ *Ibid.* (emphasis added).

²⁶ *Our Story*, Foster Farms, <https://www.fosterfarms.com/our-story/responsibility/> (last visited Apr. 24, 2023).

C. Contrary to American Humane’s assurances on the Internet, Foster Farms has a deplorable animal welfare record and well-documented history of mistreatment.

As described in detail below in Section V(B), Foster Farms’ animal welfare practices are incompatible with American Humane’s claims that the company “prioritizes animal welfare,” “responsibly raise[s] chickens,” “raises their animals right.”²⁷ Moreover, Foster Farms’ history of mistreatment demonstrates that American Humane is doing a poor job of “verifying that those animals were humanely raised,”²⁸ contrary to Ganzert’s assertions.

In the last two years, the United States Department of Agriculture has cited Foster Farms on 18 separate occasions for failing to abide by federal animal welfare law governing the treatment of animals at slaughter. USDA inspectors monitoring Foster Farms’ facilities have repeatedly documented fully conscious birds entering the scalding tank—a trough of water heated as much as 170 degrees that is used to soften skin so that the feathers can be removed. Inspectors have documented birds grabbed and thrown into the ground, trapped in machinery, abandoned in cages, dangling from shackles by one leg, or buried alive under piles of dead chickens.

Undercover investigations in recent years have also documented abuse. One investigation of a Foster Farms slaughterhouse documented Foster Farms workers throwing birds, leaving sick and injured birds to languish and suffer, burying live chickens beneath piles of dead ones, and causing chickens to be submerged in scalding water while fully conscious. A separate investigation conducted at a Foster Farms hatchery documented newborn chicks trapped and mangled in machinery, sent through washing machines while still alive, smashed with trays, and drowned in pools of water.

Finally, public records suggest that millions of Foster Farms chickens may have been deprived of necessary food during a recent supply chain failure. In 2022, Foster Farms engaged in a public dispute with Union Pacific Railroad regarding delayed deliveries of grain. These records indicate that Foster Farms was low on feed for millions of chickens and cattle and began rationing food which meant starving cattle and potentially reducing feed to its chickens.

Despite mountains of evidence showing that Foster Farms chickens are treated inhumanely, American Humane continues to promote the company’s animal welfare practices to unsuspecting consumers who deeply consider animal welfare claims when making purchasing decisions. DLCP should intervene to end American Humane’s proliferation of deceptive Internet statements emanating from its headquarters in the District of Columbia.

²⁷ *Third-Party Audit Finds Foster Farms Continues Commitment to Excellent Animal Welfare*, American Humane, <https://www.americanhumane.org/press-release/third-party-audit-finds-foster-farms-continues-commitment-to-excellent-animal-welfare/> (last visited Apr. 25, 2023) (emphasis added).

²⁸ *American Humane Association Certified*, Foster Farms (video), <https://www.fosterfarms.com/our-story/responsibility/> (last visited Apr. 27, 2023).

IV. DLCP HAS BROAD AUTHORITY TO ENFORCE THE DISTRICT OF COLUMBIA'S CONSUMER PROTECTION LAWS.

DLCP is "the principal consumer protection agency of the District of Columbia."²⁹ Under D.C. Code, DLCP has authority to "receive and investigate any consumer complaint and initiate its own investigation of deceptive, unfair, or unlawful trade practices against consumers where the: (i) amount in controversy totals \$250 or more; or (ii) case, or cases, indicates a pattern or practice of abuse on the part of a business or industry."³⁰

Private parties such as Animal Partisan may initiate a complaint with DLCP by submitting a writing describing the trade practice at issue along with the name and address of the respondent.³¹ Upon receipt of such complaint, the Director "*shall investigate*" and determine (A) what trade practice actually occurred; and (B) whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law of the District of Columbia.³²

At the conclusion of this investigation, "[t]he Director shall determine that there are, or are not, reasonable grounds to believe that a trade practice, in violation of a law of the District of Columbia within the jurisdiction of the Department, has occurred in any part or all of the case."³³

In the event DLCP identifies violations of the law, the agency possesses a wide range of remedies, including the ability to issue cease and desist orders, report to other governmental agencies, negotiate consent decrees, promulgate regulations, impose civil fines, and to "exercise and perform such other functions and duties consistent with the purposes or provisions of this chapter which may be deemed necessary or appropriate to protect and promote the welfare of District of Columbia consumers."³⁴

V. BY COLLUDING WITH FOSTER FARMS TO PROMOTE ITS ANIMAL WELFARE PRACTICES ON THE INTERNET DESPITE OVERWHELMING EVIDENCE TO THE CONTRARY, AMERICAN HUMANE HAS ENGAGED IN DECEPTIVE TRADE PRACTICES.

A. The Consumer Protection and Procedures Act prohibits a wide range of deceptive trade practices and American Humane is not beyond its reach.

Under the District's Consumer Protection and Procedures Act ("DCPPA"), it is unlawful for "any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including" to "represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another."³⁵

²⁹ D.C. Code § 28-3902(a).

³⁰ D.C. Code § 28-3903(a)(1).

³¹ D.C. Code § 28-3905(a).

³² D.C. Code § 28-3905(b)(1) (emphasis added).

³³ D.C. Code § 28-3905(d).

³⁴ D.C. Code § 28-3903(a)(1-17).

³⁵ D.C. Code § 28-3904(d).

As defined in the DCPA, the term “trade practice” means “any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services.”³⁶

The term “person” is defined broadly and means “an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized.”³⁷

At face value, American Humane falls within the purview of the DCPA and is subject to its prohibitions. First, as a corporation, American Humane is a “person” under the DCPA’s definitions.³⁸ Second, American Humane’s promotion of Foster Farms’ chicken products constitute “trade practice” as the online statements “provide[s] information about” a sale, of consumer goods.³⁹ Specifically, consumers viewing these statements are provided information about the way the chickens were raised, which may in turn influence their purchasing decisions.

But courts interpreting the definition of “person” under the DCPA have narrowed the scope of that term and a deeper analysis is necessary to demonstrate that American Humane is still subject to the District of Columbia’s prohibitions on deceptive trade practices. While courts interpreting the DCPA have traditionally applied the law only to actual merchants who provide consumers with goods or services,⁴⁰ third parties that are either (1) interested or (2) involved in the supply-side of the transaction may also be subject to the DCPA. American Humane fits both categories.

1. American Humane is an interested third party.

In *Howard v. Riggs Nat’l Bank*, the D.C. Court of Appeals decided a case involving claims brought against two bank employees who had recommended an architecture firm at the center of a transaction dispute.⁴¹ There, the court held that the DCPA does not “impose liability as a guarantor upon any private individual (or his employer) who recommends the goods or services of a particular merchant to another”⁴² However, the court’s holding appears limited to “disinterested third parties,”⁴³ indicating that an *interested* third party may indeed be subject to the DCPA.

In *Armstrong v. Accrediting Council for Continuing Educ. & Training*, the District Court for the District of Columbia considered DCPA claims against an educational accrediting body.⁴⁴ There, referencing *Howard*, the court considered that *interested* parties may subject to the

³⁶ D.C. Code § 28-3901(a)(6).

³⁷ D.C. Code § 28-3901 (a)(1).

³⁸ *Ibid.*

³⁹ D.C. Code § 28-3901(a)(6).

⁴⁰ *Calvetti v. Antcliff*, 346 F. Supp. 2d 92, 103 (D.D.C. 2004).

⁴¹ *Howard v. Riggs Nat’l Bank*, 432 A.2d 701 (D.C. 1981).

⁴² *Id.* at 710.

⁴³ *Ibid.*

⁴⁴ *Armstrong v. Accrediting Council for Continuing Educ. & Training*, 832 F. Supp. 419 (D.C.C. 1993).

CPPA.⁴⁵ The court ultimately decided that it need not decide this question as the plaintiff had failed to allege that the defendant “[was] anything but a disinterested party.”⁴⁶

Nonetheless, the *Armstrong* court went on to suggest several factors indicative of an interested third party, including: (1) whether the third party profited relationship with the merchant, (2) whether the third party controlled the merchant, and (3) whether the link between the third party and the merchant forms the basis of the improper action.⁴⁷

Here, American Humane is an interested party and should therefore be subject to the DCPA. First, American Humane apparently profits from its relationship with Foster Farms. An online summary of animal welfare certification programs published by Colorado State University indicates that American Humane collects an “administrative fee” for certifications and collects a daily audit fee of \$1,795 per day for large producers and \$900 day for small operations.⁴⁸ As Foster Farms is one of the largest poultry producers in the United States and American Humane certifies Foster Farms locations in three separate states,⁴⁹ it seems likely that thousands of dollars in administrative and audit fees are exchanged between the two entities every year.

Second, through its audits, American Humane exerts some degree of control over Foster Farms. To demonstrate compliance with American Humane, producers must submit to audits intended to ensure compliance with the designated standards.⁵⁰ Moreover, according to American Humane’s broiler chicken standards, if any instances of non-conformance are identified during the audit, the producer “must submit a Corrective Action Plan” and the issues of non-conformance “must be corrected.”⁵¹

Finally, the link between Foster Farms and American Humane is central to the “improper action.” Foster Farms’ sale of chicken products under the guise that the animals were humanely raised is facilitated by the American Humane’s deceptive statements. Consumers are heavily influenced by animal welfare claims on products. For example, one study found that 67% of consumers would purchase animal welfare certified products even if it meant a modest price increase.⁵² American Humane’s endorsement of Foster Farms directly promotes the sale of products derived from inhumanely treated animals.

⁴⁵ *Id.* at 425.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Animal Welfare Certification Programs, Colorado State University Extension, https://lpeic.org/wp-content/uploads/2019/03/Animal-Certification-Programs_final.rtf, p.12 (last visited Apr. 25, 2023).

⁴⁹ *Our Certified Producers*, American Humane, https://www.americanhumane.org/humane-heartland/?_per_page=500 (last visited Apr. 25, 2023).

⁵⁰ *Our Standards*, American Humane, <https://www.americanhumane.org/humane-heartland/our-standards/> (last visited Apr. 26, 2023).

⁵¹ Broiler Chickens, Animal Welfare Standards Audit Tool, American Humane, p.2, <https://www.americanhumane.org/app/uploads/2021/08/Broiler-Chickens-Audit-Tool.pdf> (last visited Apr. 24, 2023).

⁵² Consumer survey, Lake Research Partners, https://www.aspca.org/sites/default/files/aspca-2016_labeling_survey.pdf (last visited Apr. 26, 2023).

Accordingly, DLCP should find that American Humane is interested third party and therefore subject to the DCPA.

2. American Humane is involved in the supply side of the transaction.

In *Adler v. Vision Labs Telecoms., Inc.*, the District Court for the District of Columbia considered the case of a third-party defendant that transmitted unsolicited faxes on behalf of its clients.⁵³ The court held that “parties providing recommendations of the goods or services of a particular merchant to the consumer assume liability only when they are involved in supply side of the transaction.”⁵⁴

This principle is expounded on in *Calvetti v. Antcliff*, a case alleging that an individual (Charles Antcliff) violated the DCPA for recommending his brother (David Antcliff) to perform home renovation services that were not properly completed.⁵⁵ The court framed the issue as follows:

The question before this Court then is whether Charles Antcliff's recommendation concerning David Antcliff to the plaintiffs was just that, a recommendation, or was it the statement of a person involved in the "supply" side of the transaction, which therefore created potential liability under the CPPA.⁵⁶

The court held that Charles Antcliff was subject to the DCPA, in part because Charles had stated that “the quality of David Antcliff's work would be *overseen and monitored* by [him].”⁵⁷ Here, the “American Humane Certified” seal and Internet representations convey to consumers that Foster Farms’ operations are “overseen and monitored” by American Humane. Just as Charles Antcliff claimed that he would ensure his brother David completed the renovation work on time and with substantial quality, American Humane assures millions of consumers that Foster Farms will treat its chickens humanely. In fact, in one video on the Foster Farms website, American Humane President Ganzert states “When you know that that is happening, you know there is somebody out there not associated with the producer that’s verifying that those animals were humanely raised.”⁵⁸ By asserting that it is responsible for ensuring appropriate animal welfare practices at Foster Farms, American Humane has become deeply “involved in the supply side of the transaction” and moved beyond the stage of a simple recommendation.

While the court in *Calvetti* also weighed two additional factors in finding Charles Antcliff subject to the DCPA (statements that David was performing the work on his behalf and an agreement to obtain supplies and vendor contracts), the oversight element weighs more heavily here than in *Calvetti*. In *Calvetti*, the record suggests that Charles made a single statement that he would oversee David’s work. Here, American Humane’s depth of involvement with the promotion and sale of Foster Farms’ products is expansive. As stated herein, American Humane

⁵³ *Adler v. Vision Lab Telecoms., Inc.*, 393 F. Supp. 2d 35 (D.D.C. 2005).

⁵⁴ *Id.* at 39.

⁵⁵ *Calvetti v. Antcliff*, 346 F. Supp. 2d 92 (D.D.C. 2004).

⁵⁶ *Id.* at 104.

⁵⁷ *Ibid.* (emphasis added).

⁵⁸ *American Humane Association Certified*, Foster Farms (video), <https://www.fosterfarms.com/our-story/responsibility/> (last visited Apr. 27. 2023).

(1) apparently receives administrative fees and audit costs from Foster Farms for “overseeing and monitoring” the animal welfare aspects of its broiler production, (2) proactively issues press releases to promote Foster Farms’ animal welfare practices to influence consumers⁵⁹ and sell more chicken products, and (3) even promotes Foster Farms’ non-animal practices to further steer consumers to the company.⁶⁰ By providing oversight and monitoring of Foster Farms’ animal welfare practices, American Humane has involved itself in the supply side of the transaction and should be subject to the DCPPA.

Further support for this position is found in *Ali v. Mid-Atlantic Settlement Servs.* where the seller of a home brought a DCPPA claim alleging she was duped into selling her home at an unconscionably low price.⁶¹ One of the DCPPA claims was brought against a friend of the eventual home buyer who had connected the two parties and attended the closing but was never financially engaged in the transaction. The court found that the individual was not subject to the DCPPA as he did not receive any payment or enforce any terms of the agreement.⁶² In contrast, as stated above, American Humane accepts payment from Foster Farms in exchange for certification and claims to enforce the “American Humane Certified” standards. Thus, American Humane is distinguishable from the individual in *Ali* and should be subject to the DCPPA.

B. American Humane engages in deceptive trade practices by promoting Foster Farms’ animal welfare practices on the Internet while chickens are being routinely mistreated.

1. American Humane’s claims that Foster Farms prioritizes animal welfare are contradicted by government reports and undercover investigations reflecting egregious abuse and neglect of chickens at slaughter.

As stated in Section III(B)(2), American Humane uses the Internet to deceptively promote Foster Farms’ animal welfare practices and tout its own alleged verification of these practices. American Humane claims that Foster Farms “prioritize[s] animal welfare,” “elevates standards for animals,” “improve[s] the lives of farm animals,” “responsibly raises chickens,” and “raise[s] their animals right.”⁶³ American Humane also promotes its own alleged verification of Foster Farms’ animal welfare practices, stating that it “verif[ies] that [Foster Farms] animals were

⁵⁹ *Third-Party Audit Finds Foster Farms Continues Commitment to Excellent Animal Welfare*, Cision PR Newswire, <https://www.prnewswire.com/news-releases/third-party-audit-finds-foster-farms-continues-commitment-to-excellent-animal-welfare-301232867.html> (last visited Apr. 26, 2023).

⁶⁰ *American Humane Farm Program*, Facebook, (See Feb. 24, 2021 post: “We are so grateful (sic) that certified producers like Foster Farms are working to vaccinate their workers and protect those who have kept American families fed over the past year! Read more via The National Provisioner.”).

⁶¹ *Ali v. Mid-Atlantic Settlement Servs.*, 640 F. Supp. 2d 1 (D.D.C. 2009).

⁶² *Id.* at 7.

⁶³ *Third-Party Audit Finds Foster Farms Continues Commitment to Excellent Animal Welfare*, American Humane, <https://www.americanhumane.org/press-release/third-party-audit-finds-foster-farms-continues-commitment-to-excellent-animal-welfare/> (last visited Apr. 25, 2023) (emphasis added).

humanely raised” and that Foster Farms “meet[s] the compliance of over 200 standards at each and every one of their farms and ranches.”⁶⁴

Government inspections and undercover video reflect that these statements are false. Far from prioritizing animal welfare and raising chickens “right,” Foster Farms regularly abuses and mistreats its animals. Moreover, Foster Farms routinely violates the certification standards that American Humane tells consumers it verifies. These standards include several requirements related to the slaughter process, including the following:

- “All processing systems must be designed and managed to help ensure that poultry are not caused unnecessary distress or discomfort.”⁶⁵
- “Birds are unloaded from the coops onto the conveyor belt in a way to minimize injury and distress to the birds. The operator at the unloader must proceed slowly and be responsible for ensuring that the coop doors open properly and no birds are caught on or left in the coops.”⁶⁶
- “Appropriate measures must be taken to prevent wing flapping and birds raising their heads before reaching the stunning bath, i.e. the use of a breast bar, curtains, reduction in noise, low light intensity, running a hand down the bird’s back at shackling.”⁶⁷
- “All birds leaving the stunner must be checked to ensure they have been effectively stunned or euthanized. Birds that miss the initial stun must be either manually stunned or humanely euthanized prior to entering the bleeder.”⁶⁸
- “Each bird must be checked to ensure that the carotid artery has been cut. This cut must be checked by the appointed member of staff who must be given sufficient time to sever the blood vessels manually, if necessary.”⁶⁹

Since April 2021, the United States Department of Agriculture has cited Foster Farms facilities 18 separate times for failing to abide by federal animal welfare law. These incidents, listed individually in Appendix B as taken from USDA reports, include:

- Repeated instances of chickens entering the scald bath—a superheated trough of water intended to soften the birds’ skin before plucking—alive and fully conscious (January 27, 2022; April 11, 2022; December 6, 2022; December 14, 2022);

⁶⁴ *American Humane Association Certified*, Foster Farms (video), <https://www.fosterfarms.com/our-story/responsibility/> (last visited Apr. 27, 2023).

⁶⁵ Broiler Chickens, Animal Welfare Standards Audit Tool, American Humane, p.30, <https://www.americanhumane.org/app/uploads/2021/08/Broiler-Chickens-Audit-Tool.pdf> (last visited Apr. 24, 2023).

⁶⁶ *Id.* at p.32.

⁶⁷ *Ibid.*

⁶⁸ *Id.* at p.33.

⁶⁹ *Id.* at p.34.

- Repeated instances of chickens missing the blades and nearly becoming submerged in the scald bath (June 25, 2021; June 29, 2021; November 22, 2021);
- Multiple birds dangling from the shackles by one leg (January 6, 2022; January 23, 2022);
- Disposing of live birds in piles of dead birds (June 1, 2021);
- Live birds becoming trapped and mangled in machinery (April 9, 2021; February 6, 2022; June 10, 2022);
- A worker yanking a chicken trapped in the machinery so hard that the birds' skin tore open and the leg broke (June 10, 2022);
- A worker grabbing a bird from the shackles and forcefully throwing the animal to the ground (September 7, 2021).

In addition to the USDA's repeated observations of mistreatment, undercover investigations have revealed similar abuse. In September 2021, Direct Action Everywhere released an undercover video from inside the Foster Farms slaughterhouse in Livingston, California.⁷⁰ The video depicted graphic instances of mistreatment, including Foster Farms workers throwing birds against shackles, on the floor, and onto conveyor belts.⁷¹ Workers left sick and injured chickens to suffer and die⁷² and threw live chickens into piles with dead ones, leaving them to suffocate buried beneath corpses.⁷³ The USDA also documented workers improperly stunning chickens who then entered the scald bath fully conscious.⁷⁴

The image below from this investigation depicts a chicken strangled after being hung improperly in the shackles from their neck:⁷⁵

⁷⁰ *Inside Foster Farms Slaughterhouse*, Direct Action Everywhere, YouTube, <https://www.youtube.com/watch?v=qWdJst8f7Sk> (last visited Apr. 26, 2023).

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*



By making Internet claims promoting Foster Farms’ animal welfare practices, American Humane represents to consumers that the company’s products are derived from animals slaughtered humanely. But instead of treating its chickens humanely, Foster Farms subjects them to inhumane treatment, including grabbing and throwing them, smothering live chickens beneath carcasses, allowing chickens to become trapped and mangled in machinery, and scalding fully conscious chickens in superheated water. American Humane’s representations of humane treatment are false and thus, violate the DCPA by “represent[ing] that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another.”⁷⁶

2. Recent undercover video from a Foster Farms hatchery contradicts American Humane’s claims that Foster Farms raises chickens “responsibly” and treats them “right”.

American Humane’s claims also prove deceptive when examining Foster Farms’ treatment of newborn chicks at its hatcheries. Not only does Foster Farms not treat these chicks “responsibly” or “right,” the evidence reflects that—to the extent that Foster Farms hatcheries are certified—American Humane’s verification processes are inept and ineffective.

American Humane’s hatchery standards include the following requirements relevant here:

- “Any hatchlings that are severely injured/unviable must be immediately euthanized.”⁷⁷
- “Hatchlings must be protected from becoming entrapped within equipment or dropped to the floor, through the use of guards on belts, etc.”⁷⁸

⁷⁶ D.C. Code § 28-3904(d).

⁷⁷ Hatcheries (Chicks, Poults, and Ducklings) – Animal Welfare Standards Audit Tool, American Humane, p.12, <https://www.americanhumane.org/app/uploads/2021/08/Hatcheries-Audit-Tool.pdf> (last visited Apr. 27, 2023).

⁷⁸ *Id.* at p.13.

- “In the hatchling processing area, there must be no live hatchlings in the hatchery waste.”⁷⁹
- “In the hatchling processing area, there must be no live hatchlings in the hatchery washer.”⁸⁰

late 2021, Animal Equality released an undercover investigation from a Foster Farms hatchery in Waterford, California.⁸¹ The investigation video depicted newborn chicks trapped and mangled in machinery,⁸² injured chicks left to languish and suffer for hours before being ground alive in a macerator,⁸³ chicks falling from machinery and drowning in pools of water on the ground,⁸⁴ live chicks thrown into garbage bins where they drown in waste,⁸⁵ and chicks trapped in trays being run through the scalding water cleaner for trays after legs stuck.⁸⁶ The image below depicts a chick trapped in machinery.⁸⁷



The following image depicts a chick abandoned to languish and suffer:⁸⁸

⁷⁹ *Id.* at p.18.

⁸⁰ *Id.* at p.19.

⁸¹ *Undercover investigation inside a major U.S. hatchery*, Animal Equality, <https://animalequality.org/press-release/animal-equality-files-lawsuit-against-foster-farms/> (last visited Apr. 27, 2023).

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*



American Humane’s claims constitute a deceptive trade practice under the DCPA. American Humane represents that chicks at Foster Farms hatcheries are treated humanely when Animal Equality’s video reflects the opposite. Thus, American Humane “represent[s] that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another”⁸⁹ and in doing so, violates the DCPA.

3. American Humane may have engaged in deceptive practices by claiming that Foster Farms chickens are “free from hunger”.

While American Humane claims that Foster Farms values animal welfare, recent events at Foster Farms suggest millions of birds may have been at risk for starvation. If so, American Humane failed to enforce its own standards which declare that chickens shall be “free from hunger,”⁹⁰

American Humane’s broiler standards require the following:

- “Birds must be free from unnecessary hunger, thirst and malnutrition by being provided a wholesome diet and continuous access (until the start of catching) to fresh water to maintain their full health, prevent hunger, thirst, and malnutrition, and promote a positive state of well-being.”⁹¹
- “Broilers must be fed a wholesome diet in sufficient quantity to maintain their good health and satisfy their nutritional needs.”⁹²

⁸⁹ D.C. Code § 28-3904(d).

⁹⁰ *Five Freedoms: the gold standard of animal welfare*, American Humane, <https://www.americanhumane.org/blog/five-freedoms-the-gold-standard-of-animal-welfare/> (last visited Apr. 28, 2023).

⁹¹ Broiler Chickens, Animal Welfare Standards Audit Tool, American Humane, p.19, <https://www.americanhumane.org/app/uploads/2021/08/Broiler-Chickens-Audit-Tool.pdf> (last visited Apr. 24, 2023).

⁹² *Ibid.*

- “Broilers must have unrestricted, daily access to food, except prior to transport for processing or as required by the flock veterinarian.”⁹³

In 2022, Foster Farms’ failure to effectively manage its supply chain threatened to cause the starvation of millions of chickens. In December 2022, Foster Farms petitioned the Surface Transportation Board (“STB”) asking for it to intervene and ensure rail deliveries of feed to millions of the company’s chickens and dairy cows in California.⁹⁴ The STB is a federal agency “charged with the economic regulation of various modes of surface transportation, primarily freight rail” that “resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users.”⁹⁵ In response to Foster Farms’ petition, the STB required Union Pacific “to deliver specific train sets of animal feed to Foster Farms on the time schedule specified by [Union Pacific].”⁹⁶

Public records obtained via the STB (included here as Appendices B and C) reflect the severity of the feed shortage. In its own words, Foster Farms stated the following:

- “In the absence of the arrival of a unit train from UP, at that point chickens will start to starve and or attack one another as they fight for survival.”⁹⁷
- “To elaborate, the decision to cut off feed to dairy cattle was made to preserve as much corn for feeding the chickens, which are more susceptible to starvation and quick death.”⁹⁸
- “By early January, Foster Farms will be unable to feed any of the 40 to 50 million chickens it owns and/or supplies feed to in California.”⁹⁹
- “The point has again been reached where hundreds of thousands of dairy cattle are not being fed, and when millions of chickens will starve to death because of UP’s service failures.”¹⁰⁰

These records suggest that millions of chickens at Foster Farms may have been subject to reduced feed and the risk of starvation. If true, these facts directly contradict the representations

⁹³ *Ibid.*

⁹⁴ *Foster Farms: Union Pacific Service Disruptions Could Mean Death for Millions of Chickens*, <https://www.foodprocessing.com/supply-chain/transportation/news/21523587/foster-farms-union-pacific-service-disruptions-could-mean-death-for-millions-of-chickens> (last visited Apr. 24, 2023).

⁹⁵ Surface Transportation Board, <https://www.stb.gov/> (last visited Apr. 24, 2023).

⁹⁶ *Rail Roundup: Union Pacific ordered to fix service to Foster Farms*, Freightwaves, <https://www.freightwaves.com/news/rail-roundup-union-pacific-ordered-to-fix-service-to-foster-farms> (last visited Apr. 24, 2023).

⁹⁷ Appendix B: Foster Farms letter to STB, p.2 (Dec. 29, 2022).

⁹⁸ *Ibid.* at p.1.

⁹⁹ Appendix C: Foster Farms Ex Parte Petition to SBT, p.4 (Dec. 29, 2022).

¹⁰⁰ *Ibid.* at p.5.

made by American Humane and amount to further deceptive trade practices. DLCP should investigate and demand that American Humane provide evidence supporting its claims.

C. DLCP's enforcement of the DCPPA to Internet claims made by American Humane is not preempted by federal law.

It is important to reiterate that the conduct challenged in this complaint relates to claims made on the Internet and **not** on Foster Farms' labels. While numerous courts have held that challenges to labels on poultry products are preempted by the federal Poultry Products Inspection Act¹⁰¹—including one specifically ruling on the American Humane seal as appearing on poultry packaging¹⁰²—claims made beyond the label are not subject to automatic preemption.

This point was best stated by the District of Columbia Court of Appeals in *Animal Legal Defense Fund v. Hormel*, where the court stated that “States (and the District of Columbia) are free to regulate advertisements without regard to whatever terms the USDA approves as appropriate for labeling, so long as they do not encroach on the labeling itself.”¹⁰³

Here, the challenged claims are those made on American Humane's website as well as statements attributed to it on Foster Farms' website. As these statements do not encroach on the label itself, DLCP is not preempted by federal law from enforcing the DCPPA.

D. DLCP should use its broad authority to protect consumers by imposing a civil fine and ordering American Humane to remove its false statements from the Internet.

As stated above, DLCP possesses wide latitude in remedying instances of deceptive trade practices, including the ability to issue subpoenas, hold hearings, issue cease and desist orders, report to other governmental agencies, negotiate consent decrees, promulgate regulations, impose civil fines, and most broadly, to “exercise and perform such other functions and duties consistent with the purposes or provisions of this chapter which may be deemed necessary or appropriate to protect and promote the welfare of District of Columbia consumers.”¹⁰⁴

Complainant respectfully requests that DLCP use this broad authority to grant the following relief and remedy American Humane's deceptive trade practices:

1. Impose the maximum civil fine of \$2,000¹⁰⁵; and
2. Order American Humane to remove the challenged statements from its website and request that Foster Farms remove any similar statements attributed to it from its website.

These penalties will further DLCP's directive to enforce the District of Columbia's consumer protection laws by remedying American Humane's “improper trade practices and deter[ring] the

¹⁰¹ See *Kuenzig v. Hormel Foods Corp.*, 505 Fed. Appx. 937 (11th Cir. 2019); *Nat'l Broiler Council v. Voss*, 44 F.3d 740 (9th Cir. 1994); *La Vigne v. Costco Wholesale Corp.*, 284 F. Supp. 3d 496 (S.D.N.Y. 2018).

¹⁰² *Leining v. Foster Poultry Farms, Inc.*, 61 Cal. App. 5th 203 (Cal. Ct. App. 2021).

¹⁰³ *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021).

¹⁰⁴ D.C. Code § 28–3903(a)(1-17).

¹⁰⁵ *Civil Infractions: Schedule of Fines Amendments*, Department of Consumer and Regulatory Affairs, <https://doce.dc.gov/sites/default/files/dc/sites/dcoep/publication/attachments/Civil%20Infractions%20Schedule%20of%20Fines.pdf> (last visited Apr. 24, 2023).

continuing use of such practices."¹⁰⁶ By imposing the above remedies, DLCP will ensure that American Humane is not allowed to facilitate the deception of consumers across the country.

E. CONCLUSION

From its headquarters in the District of Columbia, American Humane purports to “set[] the gold standard as the most visionary and effective animal welfare organization in the nation,”¹⁰⁷ yet at the same time, it deceives consumers by promoting the animal welfare practices of Foster Farms, a company that has been repeatedly cited by the federal government and been exposed by undercover investigations for its abusive treatment of chickens. DLCP has been charged with protecting consumers and has ample authority to cease American Humane’s unlawful practices. Accordingly, DLCP should investigate this matter, impose the maximum civil penalty on American Humane, and order it to cease its deceptive trade practices.

¹⁰⁶ D.C. Code § 28-3901(b)(1).

¹⁰⁷ *Ibid.*

APPENDIX A

Establishment Number	Establishment Name	Inspection Date	NR Description	MOI Description
P33900+V33900	Foster Farms	11/6/22	MOI was documented. See MOI number NHH4000110007G.	<p>Est. P33900, Foster Farms, November 7, 2022, 0030 hours.</p> <p>At approximately 2120 hours on 11/6/22, while performing Ante-mortem, Inspection observed a dead bird in one of the coops that are placed at the back of the trailer unloading area for repairs. Inspection immediately contacted REDACTED REDACTED, REDACTED and showed him the bird. REDACTED REDACTED removed the bird from the coop. This is the second incident where inspection has observed a bird left in a coop. The first incident the bird was alive and removed from the coop and placed back into production. The establishment did not operate the Evisceration Department over the weekend. The establishment's last slaughter date was 11/4/22. The establishment provided a preventative measure after the first incident that coops would be checked regularly for birds. The establishment failed to meet their verbal preventative measure of observing coops for birds left in them. Now it has resulted in a bird being left in the coop possibly over the weekend. The establishment is required to meet the regulatory requirements of 9 CFR 381.65(b) which includes "the treatment of all birds brought unto the official premises of a slaughter plant; not just those entering production". Respectfully, REDACTED, REDACTED P3900 Foster Farms.</p> <p>Establishment Response: "Live Haul will not leave coops that need repairs in area."</p>

				Sanitation will place dead birds in drains and dayshift will make sure they remove all live and dead birds before the end of shift".
M6137+P6137	Foster Farms	12/6/22	<p>On 12/06/2022 and 12/07/2022, while monitoring the establishment's operations in Evisceration Plant 1, I, REDACTED REDACTED observed the following noncompliance with the regulatory requirements of 9 CFR 381.65(b):</p> <p>On 12/06/2022, at approximately 2213 hours, I was observing the Line 2 Kill Line prior to the birds entering the Scalders and I observed a live bird enter the scalding vat. I then moved to observe the carcasses arriving prior to the Pre-Sorter Station and, at approximately 2218 hours, I observed the corresponding cadaver emerging from the Picker Room; the carcass had a dark red/purple swollen head and no signs of a cut on the neck. I immediately informed REDACTED REDACTED of my observations. At approximately 2236 hours, I observed 2 additional cadavers in the line 2 Pre-Sorter barrel. At approximately 2323 hours, I observed another cadaver emerging from the Picker Room. All carcasses had dark red/purple swollen heads and no signs of cuts on their necks.</p> <p>At approximately 2229 hours, I observed a cadaver on the Line 1 Kill Line as it was emerging from the Picker Room. At approximately 2234 hours, I observed a second cadaver on the Line 1 Kill Line emerging from the Picker Room. At approximately 2236 hours, I observed 1 new cadaver in the Line 1 Pre-Sorter barrel. At approximately 2241 hours, I observed another cadaver on the Line 1 Kill Line emerging from the Picker Room. At approximately 2248 hours, I observed a fourth cadaver on the Line 1 Kill Line emerging from the Picker Room. All carcasses had dark red/purple swollen heads and</p>	

		<p>no signs of cuts on their necks. At approximately 2312 hours, I observed two more cadavers in the Line 1 Pre-Sorter barrel. At approximately 2313 hours, I observed a fifth cadaver on the Line 1 Kill Line emerging from the Picker Room. All carcasses had dark red/purple swollen heads and no signs of cuts on their necks.</p> <p>At approximately 2341 hours, REDACTED REDACTED observed the Line 1 Kill Line prior to the Pre-Sorter and observed 4 cadavers emerging from the Picker Room. At approximately 2344 hours, she observed another cadaver emerging from the Picker Room. At approximately 2350 hours, she observed another cadaver emerging from the Picker Room. At approximately 2359 hours, she observed a seventh cadaver emerging from the Picker Room. All carcasses had dark red/purple swollen heads and no signs of a cut on their necks.</p> <p>Later in the Shift, on 12/07/2022 at approximately 0055 hours, REDACTED REDACTED observed the Line 1 Kill Line prior to the Pre-sorter and observed a cadaver emerging from the Picker Room. At approximately 0057 hours, he observed another cadaver emerging from the Picker Room. At approximately 0109 hours, he observed a third cadaver emerging from the picker room. All carcasses had dark red/purple swollen heads and no signs of a cut on their necks.</p> <p>At approximately 0154 hours, REDACTED REDACTED observed the Line 2 Kill Line prior to the Pre-Sorter and observed a cadaver emerging from the Picker Room. At approximately 0210 hours, he observed a second cadaver emerging from the Picker Room. Both carcasses had dark</p>	
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			<p>red/purple swollen heads and no signs of a cut on their necks.</p> <p>At approximately 0336 hours, I was again observing the Line 1 Kill Line prior to the Pre-sorter and I observed a cadaver emerging from the Picker Room. At approximately 0423 hours, I observed a second cadaver emerging from the Picker Room. Both carcasses had dark red/purple swollen heads and no signs of a cut on their necks.</p> <p>The establishment made several corrective actions in response to the findings of cadavers. On 12/06/2022, at approximately 2255 hours, I was informed that an additional back-up killer was added. At approximately 2313 hours, a back-up killer was added to the Picking Room area. At approximately 2348 hours, the Kill Lines were slowed to REDACTED birds per minute and at break time new blades would be changed on killing machine. On 12/07/2022, at approximately 0210 hours the Stunners were adjusted.</p> <p>Due to the observation of multiple (a total of 26) cadavers on both Lines throughout the shift, and the inability of the establishment to maintain effective corrective actions, I notified REDACTED REDACTED that I would be documenting a noncompliance.</p>	
M6137+P6137	Foster Farms	12/14/22	<p>On 12/14/2022 and 12/15/2022, while monitoring the establishment's operations in Evisceration Plant 1, I, REDACTED REDACTED observed the following noncompliance with the regulatory requirements of 9 CFR 381.65(b):</p> <p>On 12/14/2022, at approximately 2234 hours, shortly after production had started in Plant 1,</p>	

		<p>REDACTED REDACTED and I were observing the Plant 1 Kill Lines. I observed two cadavers emerging from the Picker Room within a span of 2-3 minutes; the carcasses had dark red/purple swollen heads and no signs of a cut on their necks. I immediately informed REDACTED REDACTED of my observations and I was told that there was a mechanical issue with the Auto Kill machine, and it was in the process of being repaired. At approximately 2236 hours, REDACTED REDACTED observed 6 additional cadavers in the Line 1 Pre-Sorter barrel. At approximately 2307 hours, I observed another cadaver emerging from the Picker Room. All carcasses had dark red/purple swollen heads and no signs of cuts on their necks.</p>	
		<p>When I was able to resume monitoring the Kill Lines at approximately 0348 hours, I observed a cadaver on the Line 1 Kill Line as it was emerging from the Picker Room. At approximately 0349 hours, I observed a second cadaver on the Line 1 Kill Line emerging from the Picker Room. At approximately 0350 hours, I observed a third cadaver in the Line 1 Kill Line. At approximately 0351 hours, I observed a fourth cadaver on the Line 1 Kill Line emerging from the Picker Room. At approximately 0358 hours, I observed a fifth cadaver on the Line 1 Kill Line emerging from the Picker Room. All carcasses had dark red/purple swollen heads and no signs of cuts on their necks.</p>	
		<p>After discussing the number of cadavers on the Kill Line with REDACTED REDACTED, I issued a noncompliance for the deviation. At approximately 0427 hours, I notified REDACTED REDACTED and REDACTED REDACTED that I would be issuing a noncompliance as a result of observing several cadavers, with no indication of a cut on the necks</p>	

M6137+P6137	Foster Farms	4/9/21	<p>and dark red/purple swollen heads. No corrective action was given at this time. At approximately 0500 hours, REDACTED REDACTED notified me that a backup cutter would be added to Kill Line 1.</p> <p>At approximately 0515 hour, as I was on my way to the CI box, I observed another cadaver on the Line 1 Kill Line emerging from the Picker Room. The carcass had a dark red/purple swollen head and no sign of a cut on the neck.</p> <p>At approximately 0541 hours and 0553 hours, REDACTED REDACTED was performing VI duties and observed two more cadavers on the Line 1 Kill Line emerging from the Picker Room. Both carcasses had dark red/purple swollen heads and no signs of a cut on their necks.</p> <p>Despite the establishment making corrective actions as a result of finding cadavers on the Line 1 Kill Line, JPP continued to observe several cadavers throughout the night. On 12/14/2022, at approximately 2234 hours, I was informed that the Auto Kill Machine was being repaired. At approximately 0500 hours, a back-up killer was added to the Kill Line. These were the only corrective actions proffered by the establishment in response to my findings.</p> <p>This noncompliance was issued due to the observation of multiple (approximately 22) cadavers on Line 1 throughout the shift, and the inability of the establishment to maintain effective corrective actions.</p>	<p>This MOI is intended to document the discussion I, REDACTED, had with REDACTED and REDACTED, about the Poultry Good Commercial Practices (GCP) incident that</p>
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			<p>occurred on Friday, April 9th, 2021...While I, REDACTED, was performing a GCP task in Plant #2, I observed a live bird caught, by it's leg, on the Line #4 Dumping belt at approximately 0824 hours. I observed the bird was extremely dry in appearance and birds were landing on top of it as they dropped from the dumping belt. I asked the operator of the dumper not to dump any more birds onto the belt, as well as REDACTED also informed the operator not to dump anymore. REDACTED freed the bird from the belt, while REDACTED arrived at the area. REDACTED, REDACTED, and myself, observed the extreme dryness and patches of dry, dark yellow skin with missing feathers, as well as the lethargic head and eye movements of the bird. The bird was hung on the kill line, to continue through the slaughter process. .I reminded REDACTED and REDACTED that the PPA and Agency Regulations do require that live poultry are to be handled in a manner that prevents needless injury and suffering and in a manner that is consistent with good commercial practices...I recommended that the establishment review Federal Register Notice Vol. 70, No.187, published September 2005 [Docket No. 04-037N] for FSIS recommendations concerning treatment of live poultry before slaughter. I notified REDACTED that this MOI will be forwarded to the District Office and the District Veterinary Medical Specialist (DVMS) in case additional follow-up is recommended...Respectfully, ..REDACTED</p> <p>This MOI is intended to document the Poultry Good Commercial Practice incident that occurred at P7632 on Tuesday, June 1, 2021 at approximately 1135 hours. ...At approximately 1135 hours, while performing GCP Task, I,</p>
P7632	Foster Farms	6/1/2021	

				<p>REDACTED observed the following: approximately 150 birds piled up at the end of the serpentine belt, and on the ground surrounding the belt. This pile was overflowing off the serpentine belt and piled to the point that the birds on the ground were leveled with the said belt. This pile contained live and DOA (dead on arrival) birds. I immediately approached REDACTED to communicate this piling of live and dead birds. At this time, REDACTED arrived and began immediate corrective actions by removing and disposing of the dead birds by putting them into the DOA gondola. I observed him pulling three live birds out of the DOA gondola and placing them back onto the live hang area. These live birds were on top of the pile of DOA birds. I immediately informed REDACTED of the forthcoming MOI. REDACTED and REDACTED were informed of the concern immediately after the incident occurred. I informed REDACTED of the establishment's responsibility to handle live birds in a manner consistent with good commercial practices and to prevent needless injury/suffering. . REDACTED and I met with REDACTED on 6/1/21 at 1330 hours to discuss the MOI. REDACTED explained that the last two trailers of birds that had arrived had an excessive amount of DOA's and the Lead could not handle the influx of birds. We advised him that preventing the mistreatment of poultry decreases the chances of producing adulterated carcasses. We asked about the preventative measures the establishment will take to avoid reoccurrence. We also discussed the establishment's Animal Welfare Program criteria. Per the establishment's Animal Welfare Program, "Zero loose birds in yard and</p>
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				<p>no excessive loose birds in live hang. No live birds in DOA bins.” .Per Docket No. 04-037N - Treatment of Live Poultry Before Slaughter(2005)- FSIS reminds all poultry slaughter establishments that, under the Poultry Products Inspection Act (PPIA) and Agency regulations, live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely. FSIS considers humane methods of handling animals and humane slaughter operations a high priority and takes seriously any violations of applicable laws and regulations. Although there is no specific federal humane handling and slaughter statute for poultry, under the PPIA, poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter. .CC: REDACTED .CC: REDACTED .CC: REDACTED .CC: REDACTED .CC: REDACTED</p> <p>On June 25, 2021 at Foster Farms (P61644), at approximately 9:35 am, I REDACTED made the following observation while conducting a routine Good Commercial Practices (GCP) task. .While I was observing birds enter the scaldler, I noticed the end of the slaughter line approach immediately before the 1st shift lunch break. I observed that approximately the 5th-to-last bird passed the last head pulling machine and was still alive and fully alert. At this point there was no other establishment interventions between the bird and the scaldler to prevent it from entering the scaldler while still breathing. I stopped the line to prevent the bird from entering the scaldler alive. I confirmed</p>
P61644A	Foster Farms	6/25/21		

				<p>there was no bleed out cut to the bird's neck and that it was still alive and breathing. I tracked down a live hang employee, who removed the bird from the line and re-started the line. ..I notified REDACTED that an MOI would be documented for this isolated instance of a bird which would have been still breathing if I had not stopped it from entering the scalders. Poultry must be treated in a manner consistent with good commercial practices and must be slaughtered in a manner to ensure breathing has stopped before scalding. ..The topic was discussed with establishment management at the weekly establishment meeting at 1:35pm on the same day. The Day Shift Live Hang Supervisor notified me that he added an additional establishment personnel at the scalders to monitor for the presence of live birds for the rest of the shift.</p>
P6164A	Foster Farms	6/29/21		<p>On June 29, 2021 at Foster Farms (P6164a), at approximately 12:55 pm, I REDACTED made the following observation while conducting a routine Good Commercial Practices (GCP) task. ..While I was walking back towards the scalders area, at the establishment pre-sorter stand I noted one carcass hung back with a cherry-red head, neck, and upper breast area and no cut to the neck, consistent with a cadaver. I continued walking back to the scalders. ..While I was observing birds enter the scalders, I observed one bird move past the last head pulling machine which was still alive and blinking. At this point there was no other establishment interventions between the bird and the scalders to prevent it from entering the scalders while still breathing. I stopped the line to prevent the bird from entering the scalders alive. The bird had blood on its neck but no</p>

				<p>deep bleed out cut and was still alert, responsive, and breathing. I pointed out the bird to REDACTED, who removed the bird from the line and re-started the line. I notified him that an MOI would be documented for this instance of a bird which would have been still breathing if I had not stopped it from entering the scald. Poultry must be treated in a manner consistent with good commercial practices and must be slaughtered in a manner to ensure breathing has stopped before scalding. The establishment has recently had one other MOI written for the same issue (OJJ50120609251) on 6/25/2021. The topic was discussed with establishment management at the weekly establishment meeting at 1:35pm on Thursday, July 1. Establishment management conducted formal retraining for 1st shift live hang personnel after the incident.</p>
P6164A	Foster Farms	9/7/21		<p>On September 7, 2021 at approximately 8:50am, I REDACTED made the following observations while conducting a routine Good Commercial Practices (GCP) task at establishment P6164A. On the slaughter line after the neck-cutting machine, the establishment stations an individual as a back-up neck cutter for birds missed by the machine. I was observing this individual while he was at the far down-stream end of his station. A couple of birds in a row came which did not have neck cuts, which he successfully cut. As he was doing this, one bird without a cut neck was moving past his reach. I observed him forcefully grab this bird out of the shackle and throw it down into the corner of the room approximately 4 feet away from him, where it fell to the ground. The bird stayed on the ground with its head up, unmoving. I found the</p>

				<p>Day Shift REDACTED and notified him of my observations. He picked the bird off of the ground and brought it over to me, which was alive and alert with no neck cut. I observed him verbally counseled the back-up neck cutter individual, and he informed me that the individual would be retrained. I notified the Day Shift REDACTED that an MOI would be documented for an isolated incident of poultry mistreatment. I discussed the incident with the establishment's QC Manager at approximately 9:30am on the same day.</p>
P6164A	Foster Farms	11/22/2021		<p>On November 22, 2021 at Foster Farms (P6164A), at approximately 9:10 am, I REDACTED made the following observation while conducting a routine Good Commercial Practices (GCP) task. While I was observing birds enter the scalders, I observed one bird move past the last head pulling machine which was still alive, fully alert, and blinking. At this point there was no other establishment interventions between the bird and the scalders to prevent it from entering the scalders while still breathing. I stopped the line to prevent the bird from entering the scalders alive. The bird did not have any cuts on its neck and was breathing and vocalizing. I could not find any establishment management or off-line workers in the area, so I removed the bird, restarted the line, and gave the bird to one of the live hang personnel to re-hang on the line. I met REDACTED as I was walking to the main slaughter floor, and I notified him that an MOI would be documented since this bird would have been still breathing if I had not stopped it from entering the scalders. Poultry must be treated in a manner consistent with good commercial practices and must be slaughtered</p>

				<p>in a manner to ensure breathing has stopped before scalding. The establishment has not had another MOI written for the same root cause within the past 90 days. The topic will be discussed with establishment management at the weekly establishment meeting at 1:35pm on Wednesday, November 24.</p>
M6137+P6137	Foster Farms	11/26/2021		<p>This MOI is intended to document the discussion with REDACTED and REDACTED regarding a Poultry Good Commercial Practices incident that I, REDACTED observed on Saturday, November 27, 2021. At approximately 0530 hours, while walking past Kill Line #2 in Evisceration Plant #1, I observed a Cadaver on the Line as it was approaching the Pre-Sorter. I pointed out the Cadaver and requested that the Pre-Sorter, who had already observed the Cadaver, hang the bird back for me to examine instead of placing it in the Condemn Barrel. While I was waiting for the bird to approach the Pre-Sorter, I checked the Condemn Barrel for both Lines and observed one more Cadaver in the Barrel for Line 2. I examined the Cadaver from the Barrel and observed the head and neck were both swollen and dark purple, and the rest of the skin was pinkish-red. In addition, I observed that there was no evidence of any cut marks. The second carcass from the Line was also pinkish red in skin color with a swollen purple head and neck and no cut marks. At approximately 0533 hours I notified REDACTED of the findings and showed him the two Cadavers; he then radioed Superintendent Locks. At approximately 0535 hours REDACTED arrived and checked the Cadavers then informed me he would investigate. At approximately 0540 hours REDACTED and I proceeded to the Kill Lines to observe the</p>

M6137+P6137	Foster Farms	12/30/21		<p>Back-up Cutters. I observed a few birds on each line that were hung by one leg that missed the Neck Cutter, but were caught by the Back-Up Cutters. In addition, I observed a few birds on each line that were not stunned but were also caught by the Back-up Cutters. At this time I notified REDACTED that this incident would most likely be an MOI due to only observing two Cadavers, but that I had to report my findings up the chain of command. No further cadavers were observed until the end of the shift at approximately 0715 hours. The PPIA and Agency Regulations require that live poultry be handled in a manner that is consistent with Poultry Good Commercial Practices, and that they not die from causes other than slaughter. Please review Federal Register Notice Vol. 70, No.187, published September 2005 (Docket No. 04-037N) for FSIS recommendations concerning treatment of live poultry before slaughter. This MOI will be forwarded to the District Office and the District Veterinary Medical Specialist (DVMS) in case additional follow-up is recommended. REDACTED</p> <p>This MOI is intended to document the discussion with [REDACTED] regarding a Poultry Good Commercial Practices incident that I, [REDACTED] observed on Thursday, December 30, 2021.</p> <p>At approximately 2217 hours, while monitoring the Line #1 Giblet Sorter in Evisceration Plant #1, I observed a Cadaver on the Line #2 Kill Line as it was approaching the Pre-Sorter. I immediately moved to the Pre-Sorter and noted that three Cadavers had been marked on</p>
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the counter. Looking into the barrel I observed only one bird. The Pre-Sorter informed me that two birds had been removed. At this time I notified [REDACTED] of the situation and I headed to the Back-up Neck Cutter position to further investigate. I observed the Back-up Neck Cutter employee was having difficulty keeping up with the amount of birds that required their necks to be cut. While there I observed several birds (approximately one every ten seconds) on line 2 that were not stunned but were caught by the Back-up Cutter. [REDACTED] was notified of the situation at the Back-up Cutter position and the cadavers. Several remedies were tried before a second person was added to the Line 2 Back Up Cutter position.

At this time I notified [REDACTED] that this incident would most likely be an MOI due to observing thirteen Cadavers were counted at the Line 2 Pre-Sorter Station before a second employee was positioned at the Back-up Cutter position to prevent recurrence. No further cadavers were observed until the end of the shift at approximately 0715 hours.

The PPIA and Agency Regulations require that live poultry be handled in a manner that is consistent with Poultry Good Commercial Practices, and that they not die from causes other than slaughter. Please review Federal Register Notice Vol. 70, No.187, published September 2005 (Docket No. 04-037N) for FSIS

			<p>recommendations concerning treatment of live poultry before slaughter.</p> <p>This MOI will be forwarded to the District Office and the District Veterinary Medical Specialist (DVMS) in case additional follow-up is recommended.</p>
M6137+P6137	Foster Farms	1/3/22	<p>This MOI is intended to document the discussion that I, REDACTED, had with REDACTED regarding two Poultry Good Commercial Practices (GCP) incidents that were observed in Plant 1 on Tuesday, January 4, 2022. At approximately 0140 hours, while performing a routine GCP Task in Plant 1 Live Hang, REDACTED observed a bird exit the Line 1 Stunner Box without a head. REDACTED was unable to locate the Live Hang Lead Person, so he finished his GCP Task then informed REDACTED of his observations. REDACTED informed REDACTED she would investigate the incident. At approximately 0442 hours, while performing a directed GCP Task in Plant 1, I observed a chicken head and neck hanging from a Kill Line shackle exit the Line 2 Stunner. Continuing my investigation, I observed 3 heads on the floor in Live Hang, below Kill Line 2 near the West wall just past where the hanging birds pass over the Line 1 conveyor belt and the metal bar that pushes the chickens' feet deeper into the shackles. Upon further investigation, I observed 3 more chicken heads on the floor at the end of the Line 2 Live Hang conveyor belt. I immediately informed REDACTED of the issue. Due to a similar incident observed earlier in the shift, I then spoke with REDACTED regarding these concerns. Both REDACTED and I notified</p>

				<p>REDACTED of our observations. After discussing the incidents with REDACTED, it was determined to document the incidents as an MOI. The PPIA and Agency Regulations require that live poultry be handled in a manner that is consistent with Poultry Good Commercial Practices, and that they not die from causes other than slaughter. Please review Federal Register Notice Vol. 70, No.187, published September 2005 (Docket No. 04-037N) for FSIS recommendations concerning treatment of live poultry before slaughter. This MOI will be forwarded to the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended. REDACTED</p>
M6137+P6137	Foster Farms	1/6/22		<p>This MOI is intended to document the discussions that I, REDACTED, had with REDACTED and REDACTED regarding a Poultry Good Commercial Practices (GCP) incident I observed in Plant 1 on Thursday, January 6, 2022. At approximately 2328 hours, while performing a directed GCP Task in Plant, I observed 24 birds within a 3-minute timeframe exit the Line 1 Stunner that were not properly stunned. In addition, 4 of these birds were only hung by 1 leg (one-leggers) instead of both legs. All birds were caught by the back-up neck cutter. I immediately informed REDACTED of the failed check. As a Corrective Action, the company added salt to the stunner water, raised the water trough and leveled the stunner. At approximately 2338 hours, I performed a recheck and it passed with 4 improperly stunned birds and 0 one-leggers; the back-up neck cutter caught all birds. At approximately 2345 hours, REDACTED informed me that he observed one Cadaver in the condemn barrel at the Line 1 First Sorter</p>

				<p>station. At approximately 0355 hours on January 7, 2022 (same production day/Shift), I observed 11 improperly stunned birds exit the Line 1 Stunner within a 3-minute timeframe. In addition, 2 of these birds were one-leggers. As before, the back-up neck cutter caught all birds. I informed REDACTED. The company increased the voltage on the Stunner as a corrective action and called Maintenance to inspect the system. At approximately 0407 hours, the recheck of the Line 1 Stunner passed with 2 birds that had not been stunned properly and were caught by the back-up neck cutter. I notified REDACTED of both observations. After discussing the incidents with REDACTED, it was determined to document the incidents as an MOI. The PPIA and Agency Regulations require that live poultry be handled in a manner that is consistent with Poultry Good Commercial Practices, and that they not die from causes other than slaughter. Please review Federal Register Notice Vol. 70, No.187, published September 2005 (Docket No. 04-037N) for FSIS recommendations concerning treatment of live poultry before slaughter. This MOI will be forwarded to the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended. REDACTED</p> <p>This MOI is intended to document the discussion with REDACTED regarding a Poultry Good Commercial Practices (GCP's) incident that I, REDACTED, observed on Monday, January 24, 2022. At approximately 0338 hours, while performing a routine Good Commercial Practices Verification Activity in Plant #2 Live Hang just after the Line REDACTED Stunner Box, I observed approximately 10 birds within a 3-minute window that were hanging</p>
M6137+P6137	Foster Farms	1/23/22		

				<p>on the shackle by one leg. All the identified birds were improperly stunned and were conscious after leaving the Stunner Box. During this time, I observed that the back-up neck cutter was able to identify and properly cut all the identified birds that missed the neck cutter. After the 3-minute window passed, I immediately went to the Plant #2 Live Hang Lead Person and informed him of my observations. He informed me that for immediate Corrective Actions (CAs), he would notify all employees on Live Hang Line REDACTED of the deviation and add an additional person to monitor the birds after the hangers. I then informed REDACTED of my observations and the CA proffered by the Live Hang Lead Person. I informed REDACTED of my observations, and she instructed me to document an MOI due to observing 10 birds that were not properly hung and stunned prior to the neck cutter. I then notified REDACTED that REDACTED stated the incident would be an MOI. An additional inspection was performed by REDACTED, who verified that he observed the same deviation. The PPIA and Agency Regulations require that live poultry be handled in a manner that is consistent with Poultry Good Commercial Practices, and that they not die from causes other than slaughter. Please review Federal Register Notice Vol. 70, No.187, published September 2005 (Docket No. 04-037N) for FSIS recommendations concerning treatment of live poultry before slaughter. This MOI will be forwarded to the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended.</p> <p>This MOI is intended to document the discussion I, REDACTED, and REDACTED had</p>
M6137+P6137	Foster Farms	1/27/22		

				<p>with REDACTED regarding a Poultry Good Commercial Practices (GCP) incident that occurred on Wednesday, January 27th, 2022. At approximately 0802 hours, while performing a GCP task in Plant #1, I observed a live bird enter the Scaldler on Kill Line #1. I observed the bird had no visible cut on the neck, and no visible blood on the head or neck. I moved the head with my hand and verified there was no visible cut on the neck; in addition, the bird was moving its head and the eyes were open and looking around. I proceeded to the Pre-Sorter Station for Line #1 and at approximately 0809 hours, I observed a bird with a bright red head and neck with no visible cut on the neck Kill Line. I showed the cadaver to the Line #1 Pre-Sorter and she removed and discarded the bird into the yellow USDA Condemn barrel. I removed the bird from the barrel and I tagged it with U.S. Rejected/U.S. Retained tag #B-45482427. I then informed REDACTED of my observation of seeing the bird enter the Scaldler and then showed REDACTED and REDACTED the retained bird. For corrective actions, REDACTED added a second back-up Neck Cutter on Line #1 for the remainder of the shift, and also checked the machines. REDACTED and I reminded REDACTED that the PPIA and Agency Regulations do require that live poultry are to be handled in a manner that prevents needless injury and suffering and in a manner that is consistent with good commercial practices. REDACTED and I recommended that the establishment review Federal Register Notice Vol. 70, No.187, published September 2005 [Docket No. 04-037N] for FSIS recommendations concerning treatment of live poultry before slaughter. I notified REDACTED</p>
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				<p>that this MOI will be forwarded to the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended. Respectfully, REDACTED, REDACTED</p>
P7632	Foster Farms	2/6/22		<p>Est. P7632, Zorro Leasing LLC, February 7, 2022 at approximately 0444 hours. In attendance: REDACTED, REDACTED and REDACTED. At approximately 0439 hours, I REDACTED observed a live bird that was loose being partially squeezed. This occurred during a routine Good Commercial Practices verification task in the live hang department. As REDACTED and I positioned ourselves by the employee operating the coop dumper, he failed to ensure that the dumper was clear before positioning the next coop. A live bird that fell out of the previously dumped coop was on and in the direct location of where the next coop will have to be, in order for the establishment to dump the coops. As the employee position the next coop to the coop dumper, both the legs of the live bird (up to the mid-drums area) went under the incoming coop and the bird was pushed approximately a feet and a half where it was pinned under the coop and a part of the dumper. This caused the bird to vocalize. I immediately notified the employee of the issue and as he moved the coop back, the bird, with one of its legs appeared broken (flaccid), was placed onto the coop dump conveyor. I immediately notified REDACTED of the observation and at approximately 0444 hours both REDACTED and REDACTED was notified of the forthcoming MOI. The establishment was reminded that the Poultry Products Inspection Act (PPIA) and Agency regulation require that live poultry be handle in a manner that is consistent with good commercial practices and</p>

				<p>that they not die from cause other than slaughter.</p>
M6137+P6137	Foster Farms	4/11/22		<p>This MOI is intended to document the discussion I, REDACTED REDACTED, had with REDACTED REDACTED regarding a Poultry Good Commercial Practices (GCP) incident that occurred on Monday, April 11th, 2022. At approximately 0754 hours, while performing a GCP task in Plant #1, I observed a live bird enter the Scaldler on Kill Line #1. I observed the bird had no visible cut on the neck, and no visible blood on the head or neck; in addition, the bird was moving it's head and the eyes were open and looking around. I proceeded to the Pre-Sorter Station for Line #1. At approximately 0801 hours, I observed a bird with a bright red head and neck with no visible cut on the neck on Kill Line #1. I pointed out the cadaver to the Line #1 Pre-Sorter, she removed the bird and handed it to me. I showed the bird to REDACTED REDACTED, and I informed him of my observation of seeing the bird enter the Scaldler with no visible cut on the neck. REDACTED REDACTED informed me that a re-training would be done with the REDACTED located after the kill machine on Line #1. I reminded REDACTED REDACTED that the PPIA and Agency Regulations do require that live poultry are to be handled in a manner that prevents needless injury and suffering and in a manner that is consistent with good commercial practices. I recommended that the establishment review Federal Register Notice Vol. 70, No. 187, published September 2005 [Docket No. 04-037N] for FSIS recommendations concerning treatment of live poultry before slaughter. I notified REDACTED REDACTED that this MOI will be forwarded to</p>

				<p>the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended. Respectfully, REDACTED, REDACTED</p>
M61374P6137	Foster Farms	6/10/22		<p>This MOI is intended to document the discussion I, REDACTED REDACTED, along with REDACTED REDACTED, had with REDACTED REDACTED, about the Poultry Good Commercial Practices (GCP) incident that occurred on Friday, June 10th, 2022 at P6137. At approximately 2246 hours, while performing a Good Commercial Practices task in the Live Hang module dumping area in Plant #2, I observed a live chicken with its leg caught between the conveyor belt and the upper slide on Line REDACTED. Several attempts were made by a live hang employee, to move the live chicken forward with a poultry hook, tugging on the leg that was caught. During this time, I observed that the conveyor belt continued to run while the live bird was stuck, causing disfigurement to the leg. After several unsuccessful attempts to free the bird, an employee turned off the conveyor, climbed down onto the belt and worked on freeing the leg with both hands in a rushed manner until it was freed. This caused the skin on the leg to tear, further injuring the live bird. After the bird was freed, I requested numerous times that the bird be removed from the conveyor and handed to me. I was told no less than 4 times by REDACTED REDACTED that the bird was fine, and I didn't need to see it. The bird was allowed to proceed onto the lower conveyor and enter the Live Hang area. I once more requested that the bird be handed to me, at which time it was removed from the conveyor belt where I determined the leg was seriously damaged and</p>

				<p>appeared broken. . After REDACTED REDACTED informed REDACTED REDACTED REDACTED about the condition of the bird, she instructed him to have the bird humanely euthanized. I tagged the Live Hang dump conveyor with US Rejected Tag #B-45 420140 and I reminded REDACTED REDACTED and REDACTED REDACTED that the PPIA and the Agency Regulations do require that live poultry are to be handled in a manner that prevents needless injury and suffering and in a manner that is consistent with Good Commercial Practices. The conveyor belt was repaired by maintenance personnel before being released to resume production at 2258 hours by REDACTED REDACTED. In addition, REDACTED REDACTED informed REDACTED REDACTED that the entire belt would be replaced over the weekend, with a completion date of the night of June 12th, 2022. I recommend that the establishment review Federal Register Notice Vol. 70, NO. 187, published September 2005 [Docket No. 04-037N] for FSIS recommendations concerning treatment of live poultry before slaughter. I notified REDACTED REDACTED and REDACTED REDACTED that this MOI will be forwarded to the District Office and the REDACTED (REDACTED) in case additional follow-up is recommended. Respectfully, REDACTED</p>
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APPENDIX B



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December 29, 2022

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: STB Finance Docket No. 36609, Foster Poultry Farms – Ex Parte
Petition for Emergency Service Order

Dear Ms. Brown:

This letter is submitted on behalf of Foster Poultry Farms (“Foster Farms”) to provide additional detail surrounding statements made in Foster Farms’ Ex Parte Petition for Second Emergency Service Order about the harm to the dairy cattle and chickens which are supplied feed processed by Foster Farms. Specifically, page 4 of the Petition describes how the lack of deliveries of corn by UP has caused Foster Farms to cease supplying feed to approximately 400 dairy cattle customers overseeing approximately 800,000 head of cattle. To elaborate, this means the cattle are not receiving any feed from corn Foster Farms has received from UP, but also from any corn Foster Farms has been purchasing and transporting from the other modes and means described in the Petition in order to try and mitigate the harm from UP’s service failures. As explained at page 5 of the first Ex Parte Petition filed by Foster Farms in June 2022, unless the dairy cattle are receiving feed from other sources they are slowly starving, which obviously eventually leads to death but in the meantime it means that the cattle reduce and may eventually stop producing milk while causing material and in Foster Farms opinion lasting health issues.

The Petition also states that “by early January, Foster Farms will be unable to feed any of the 40 to 50 million chickens it owns and/or supplies feed to in California.” To elaborate, the decision to cut off feed to dairy cattle was made to preserve as much corn for feeding the chickens, which are more susceptible to starvation and quick death. Foster Farms continues, at great cost,

Law Office of Thomas W. Wilcox, LLC

Letter to Cynthia Brown

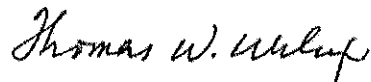
December 29, 2022

Page 2

to search for and purchase corn from any available sources to be trucked into its facilities for the purpose of keeping the chickens alive while Foster Farms awaits the delivery of unit trains of corn by UP. Foster Farms is unable to feed their dairy and other livestock customers and believes that these efforts to feed the poultry will be exhausted by January 7th. To make this later date Foster Farms will need to continue to find 25 to 35 truckloads of corn each day to continue to feed these chickens. In the absence of the arrival of a unit train from UP, at that point chickens will start to starve and or attack one another as they fight for survival. Foster Farms therefore seeks intervention from the Board to (1) immediately provide the volumes of corn its facilities require to function; and (2) mitigate the costs and other damages Foster Farms is incurring on a daily basis to find corn to feed its chickens.

Please do not hesitate to call me if you have any questions. I certify that I have served this letter on counsel for UP and the other parties listed below.

Sincerely,



Thomas W. Wilcox

Attorney for Foster Poultry Farms

CC: Counsel for Union Pacific Railroad Company
Janie Sheng, Surface Transportation Board

APPENDIX C

EXPEDITED CONSIDERATION REQUESTED
BY 5:00 EST ON DECEMBER 30, 2022

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December 29, 2022
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36609

**FOSTER POULTRY FARMS – *EX PARTE* PETITION
FOR EMERGENCY SERVICE ORDER**

***EX PARTE* PETITION FOR SECOND EMERGENCY SERVICE ORDER**

Foster Poultry Farms (“Foster Farms”)¹, with headquarters in Livingston, California, hereby submits this request to the Surface Transportation Board (“Board” or “STB”) to issue on an *ex parte* basis – by 5:00 PM EST on December 30, 2022 – a second emergency service order (“ESO”) pursuant to 49 C.F.R. §1117.1 and the authority granted to the Board by 49 U.S.C. §11123(b)(1) to “act on application² without regard to subchapter II of chapter 5 of title 5.” On June 17, 2022 the Board issued its first ESO in this proceeding following several months of persistent failures on the part of UP to deliver unit trains of corn to Foster Farms’ facilities in

¹ The first *Ex Parte* Petition for Emergency Service Order filed in this docket contains an extensive discussion about Foster Farms, its operations, and rail requirements as well as a summary of the Board’s legal authority to issue emergency service orders in these circumstances. As such, those discussions will not be repeated here but rather they are instead incorporated by reference.

² While §11123(b)(1) refers to an “application” the Board has more recently referred to “petitions” for emergency service orders pursuant to §11123(b)(1) and so that term is used here. See EP 762, *Revisions to Regulations for Expedited Relief in Service Emergencies* (served April 22, 2022) at 3 (“The Board may act on its own initiative or pursuant to a petition, and emergency service may be ordered summarily (i.e., without regard to the Administrative Procedure Act)” *Id.* § 11123(b)(1)”).

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December 29, 2022
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December 29, 2022
Surface
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Turlock and Traver, California. That ESO directed UP to take certain steps designed to restock the supplies of feed corn at Foster Farms facilities, including moving an additional trainset into service for Foster Farms and prioritizing (1) movement of the additional train; (2) crews needed for Foster Farms service; and (3) locomotives to be used for Foster Farms service. The Board also directed UP to provide daily data specific to Foster Farms' service as well as participate in weekly technical conferences with Board staff and Foster Farms.

The first ESO produced its intended result, as the stocks of Foster Farms Traver, Turlock and Delhi facilities were replenished within several weeks. Consequently, by Decision served July 20, 2022, the Board declined Foster Farms' motion to extend the first ESO an additional 90 days. However, the Board acknowledged that UP's service woes to Foster Farms could return, primarily because of uncertainty over the inability of UP to employ sufficient numbers of train crews and other human resources in its operations. Specifically, the Board elected to hold this docket open for six months, stating "[n]evertheless, the Board acknowledges Foster Farms' concerns about a possible recurrence of service problems and the uncertainty of whether UP has sufficient crews to continue to provide its current level of service. Therefore, this docket will remain open for six months. In the absence of any further Board order, the docket will automatically close six months from the service date of this decision."³ A further Board order is now needed.

I. FACTUAL BACKGROUND⁴

Beginning in October 2022, weeks before the recent winter storms in the Western United States, UP's service problems returned. In the month of November, only eight deliveries of unit

³ July 20 Decision at 2.

⁴ The factual assertions made in this filing are verified by Mr. Phil Greene, Vice President of Foster Farms (see attached Verification).

trains of Foster Farms were delivered and unloaded at Foster Farms' facilities. Foster Farms acquired an additional train from another rail shipper to counter UP's service slow down. UP also delivered another train that was billed in October but did not arrive until November. For the entire month of November UP managed only 7 complete cycles on Foster Farms' four trainsets, for an average of 1.75 turns per train per month versus a planned 2.5 turns each unit.⁵ The lack of sufficient deliveries of unit trains in October and November resulted in feed stocks dwindling to critically low levels. Foster Farms informed UP in November that its service was slipping, and Foster Farms was having to supplement the lack of UP deliveries with (1) corn shipped on BNSF Railway ("BNSF") and transloaded onto trucks at locations within driving distance to Foster Farms' facilities, and (2) with the purchase of extra unit trains on the secondary market.

The impact of UP's service failures in November on corn supplies was compounded by the service disaster that has occurred in December. Foster Farms received only three loaded trains from UP between December 1 and December 13, resulting in inventory levels continuing to dwindle. On December 12 Foster Farms informed UP executives on a business phone call that the railroad's service had slipped significantly. Foster Farms also advised the UP that it had four empty Foster Farms unit trains sitting empty and in need of movement to prevent problems later in the month. On December 14 Foster Farms informed UP and the STB's Office of Public Affairs, Governmental Assistance and Compliance ("OPAGAC") that Foster Farms was stopping outside sales to dairy cattle and chicken producers, and that all three of Foster Farms' facilities would run out of feed in the week prior to Christmas.⁶ Foster Farms also asked UP to permit BNSF to provide temporary service to Foster Farms via the railroads' interchanges in Fresno or Stockton,

⁵ As explained in the first *Ex Parte* Petition, the huge minimum weekly consumption levels of the livestock supplied by Foster Farms mandates the delivery of a minimum of nine loaded unit trains per month, which is typically 2.25 trains per week. *Ex Parte* Petition at 4.

⁶ See Attachment 1.

in order to avoid the cost and burdens of the hundreds of trucks Foster Farms was then utilizing to truck corn transloaded at BNSF-served locations.⁷ UP responded by first, asking if Foster Farms had a specific train in mind, but when Foster Farms indicated it would to secure a BNSF train, UP said it would handle Foster Farms' needs.

Despite the high level of urgency, UP was unable to deliver any additional unit trains utilized for Foster Farms' service until December 22, when it delivered one. Although there were now five additional trains in the pipeline (Foster Farms having incurred the cost of additional unit trains), none of these trains had been delivered loaded to any of Foster Farms' facilities as of the date of this filing.⁸

On December 26, 2022 dairy cattle supplied by Foster Farms had been without feed for 10 days at its Turlock milling operations, impacting hundreds of customers overseeing thousands of cattle. On December 29, 2022 Foster Farms shut down all feed corn processing at its larger Traver facility, which cut off the feed supply to the rest of its approximately 400 dairy cattle customers, overseeing approximately 800,000 head of cattle. By early January, Foster Farms will be unable to feed any of the 40 to 50 million chickens it owns and/or supplies feed to in California. These chickens supply a major amount of the West coast premium poultry products to Foster Farms' United States consumers.

Foster Farms has taken numerous measures to try to mitigate the harm being caused by UP's service failures. These have included purchasing 240 truckloads of corn from local growers, purchasing a unit train of corn that were shipped by BNSF and then transloaded onto 400 trucks, and purchasing four additional trains of corn in late November and early December from other UP shippers in the secondary market. Foster Farms has also lost millions of dollars in sales to its

⁷ *Id.* at 1.

⁸ See Emails between Foster Farms and UP attached as Attachment 2.

customers and other livestock owners and processors. Foster Farms expects to be fully reimbursed by UP for all of the costs it has incurred to try to mitigate the severe harms that have been caused by UP's service failures.

In summary, the immediate issuance of a second ESO is necessary in this proceeding to counter the substantial, measurable deterioration of rail service to Foster Farms' facilities located in Traver, Delhi, and Turlock, California by UP which started in November. UP has again reached the point where its operating plans and priorities cannot provide the service required at the Traver, Turlock and Delhi facilities, and Foster Farms has nearly run out of options for substituting the corn that should be delivered by UP by railroad with corn delivered by trucks. The point has again been reached where hundreds of thousands of dairy cattle are not being fed, and when millions of chickens will starve to death because of UP's service failures.

Consequently, this Petition for a second ESO clearly establishes that UP's current allocation of crews and locomotives, and its decisions concerning what traffic moves on its system and when, has again prevented UP from transporting Foster Farms' unit trains in a manner than properly serves Foster Farms. As before when the first ESO was issued, because the commodity UP delivers to Foster Farms is corn that is exclusively used to feed hundreds of thousands of cattle and millions of chickens which are raised for the purpose of providing food supplies, the failure of UP to properly serve Foster Farm's facilities translates into a much greater failure to properly serve the public as a whole.

II. REQUEST FOR RELIEF

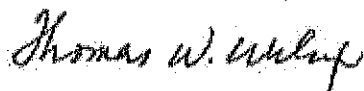
Based on the facts and reasons set forth above, ample evidence exists for the Board to again immediately issue an ESO, pursuant to §11123(b)(1), §11123(a)(1) and §11123(c)(4)(A),

directing UP, for a period of at least thirty (30) days, to direct the handling, routing and movement of Foster Farms' unit trains over UP's system, and to give preference and priority to the movement of unit trains of corn tendered to UP by or on behalf of Foster Farms from origins in the Midwestern United States to Foster Farms' facilities in Traver, Turlock, and Delhi California. Foster Farms asks the Board to grant this *Ex Parte* Petition and immediately issue an ESO on or before 5:00 EST on December 30, 2022 directing UP to take the following actions concerning the transportation of Foster Farms' unit trains of corn to its Traver, Turlock and Delhi facilities for at least 30 days from the date of the order:

- A. Prioritize the assignment of crews to Foster Farms' unit trains at loading origins.
- B. Prioritize the transportation of Foster Farms' unit trains on UP's system with the goal of minimizing the extent to which the crews on such trains "time out" under the Hours of Service rules, thereby enabling the train to complete its movement from origin to destination without stopping, the crew departing, and then waiting for a new crew.
- C. Assign and retain sufficient locomotives to Foster Farms' trains at loading origins to ensure that once a Foster Farms' train is loaded there is sufficient locomotive power for the unit train to immediately begin its trip to Foster Farms' Traver, Turlock and Delhi facilities.
- D. Direct UP to provide the Board with daily status reports over the 30-day period regarding the delivery of Foster Farms' trains, such reporting to include the number of trains and cars billed to Foster Farms' Traver Turlock, and Delhi facilities, and actual performance versus trip plan data for these shipments.

Finally, if UP should fail or refuse to comply with the Board's directives in an Emergency Service Order issued in response to this *Ex Parte* Petition, the Board should impose the maximum monetary civil penalties permitted under 49 C.F.R. §1022, and any penalty should be assessed on a per car basis, such that UP's failure to comply with the Board's directive as to a 100-car unit train shall equal the maximum penalty permitted under the Board's rules times 100.

Respectfully submitted,

A handwritten signature in cursive script that reads "Thomas W. Wilcox".

Thomas W. Wilcox
Law Office of Thomas W. Wilcox, LLC
1629 K. Street NW, Suite 300
Washington, D.C. 20006
202-508-1065
tom@twilcoxlaw.com

Attorney for Foster Poultry Farms

December 29, 2022

ATTACHMENT 1

Dan,

The Gibbon train has not started moving, so best case is 4 days out from what we can tell. The others are not loaded nor have they arrived at origin to load. So to us they look like end of month best case.

We would respectfully request you allow us the opportunity to switch a BN train in Fresno and perhaps Stockton. This would avoid the hundreds of trucks we are having to put on the highways to truck BN corn to our facilities while you are facing the current situation of being unable to deliver and perform.

Ryan and JJ just adding you to this email.

I am being told by our Matt Barr that one of our empties moved some/a little last night. Nothing else. We have seen almost no movement from your trains all week long. As I think you know, we will stop feeding livestock/dairy animals and outside Feed sales starting this afternoon. Until we get more feed out here, corn, from the UP trains they will not be eating anything that we can provide them. This is quite serious as you well know.

We were asking for your expectations on deliveries. Every day now is critical and serious.

Phil Greene
Foster Farms
559 457 6503

From: Dan Hartmann <DPHARTMA@up.com>
Sent: Friday, December 16, 2022 7:43 AM
To: Greene, Phil <phil.greene@fosterfarms.com>; Laura Heisterkamp <lauraheisterkamp@up.com>; Barr, Matt <matt.barr@fosterfarms.com>
Subject: RE: Status update please

EXTERNAL

Phil,

Here is an update on everything in the FF pipeline. The Gibbon train will launch today and make it to California on Sunday. The AG04 will empty at Maricopa then move empty to load back out for FF. All of the sets listed under "Empties" are actively moving except the one in Nevada, which is holding for winter weather. We will continue to watch these closely.

Loads					
GSGBTR-14	CG42	Gibbon, NE	Traver, CA	12/14/2022 18:16	
GSHVMR-10	AG04	Wellsford, KS	Maricopa, AZ	12/10/2022 10:12	12/14/2022 3:52
Empties					
GSTRVL-10	FR11	Strawberry, UT	Savage, MN	12/10/2022 15:00	12/12/2022 13:45
GSTUN1-12	FR12	Hunter, NV	Northfield, MN	12/12/2022 20:45	12/14/2022 20:45
G53GC2-14 / G53GPF-16	HS74	Salter, TX	Pickering, IA	12/14/2022 1:28	12/14/2022 11:13
GS4DAN-15	BR04	Valley Jct, TX	Alton, IA	12/15/2022 5:45	12/15/2022 5:45

-Dan

From: Greene, Phil <phil.greene@fosterfarms.com>
Sent: Friday, December 16, 2022 9:03 AM
To: Dan Hartmann <DPHARTMA@up.com>; Laura Heisterkamp <lauraheisterkamp@up.com>; Barr, Matt <matt.barr@fosterfarms.com>
Subject: Status update please

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

Dan, Laura

When I look at our train line up in your computer system, I can't see that any trains have moved. Can you please update us?

I think you know we went to no offer this last week on the external field sales only for filling, contractual agreements.

On this upcoming, Monday we will stop the sales for dairy cattle feed, until we get more feed into our California UP feed facilities . Right now that looks like a week or two of no feed. This is terrible as you know for all of the dairy cattle here in California.

We wanted to make sure you guys understand the severity of the situation that is continuing to deteriorate.

Please update us with statuses of what to expect so that we can do our best to minimize the potential losses to our California livestock.

Phil Greene
 Foster Farms
 559 457 6503

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ATTACHMENT 2

From: Greene, Phil <phil.greene@fosterfarms.com>
Sent: Tuesday, December 27, 2022 6:23 PM
To: Dan Hartmann; Adrian Guerrero; Jason Hess; Laura Heisterkamp; Ryan Raess; JJ Sullivan; lfritz@up.com
Cc: Boyce, Randy; Barr, Matt; Myers, Robert; Tom Wilcox
Subject: RE: Update

Union Pacific Team

We met at 2 pm today to evaluate current deteriorating situation.
 We will continue to roll corn at Traver facility tomorrow. After that we will shut down and no longer have corn to feed any cattle in California until you are able to get one or more of our 5 trains 4 of which are loaded and billed.
 When you can provide us with another update it will be appreciated. Your failure to move grain is unacceptable.

Our understanding of the situation here in California is it is approaching a FEED DISASTER.

Below is what we are seeing as of 2:40 pm pacific. It appears to us that the last train is all that has moved today, and it is not due in until Jan 1.

Trains In Process

Commodity :

Inbounds **Outbounds**

Arrival (Est/Act)	Train ID	Set	Cars (Alerts)	Current Location
DELHI CA FOSTER FARMS				
12/22 01:12 PT	GSGSDL 27	FR12		Grand Island, NE
KEARNEY/TURLOCK FOSTER FARMS				
12/22 03:56 PT	GSPFTU 26	HS74		Elko, NV
12/22 19:04 PT	GSANTU 21	BR04	103	Alton, IA
TRAVER CA FOSTER FARMS				
12/22 03:29 PT	GSGBTR 20	CG42	99	Traver, CA
12/22 06:16 PT	GSQLTR 20	FR11	109	West St James, MN

Earlier view from UP

From Dan Hartman last Thursday 12/22 5:27 am
Good Morning Phil and Matt,

We got one of the two Iowa trains launched last night. Alton did not launch due to a locomotive failure, we are working on a plan to get a replacement, but weather is not our friend right now. I will be working with our group to solidify a plan on this one this morning. Here are updates on the remaining trains:

GSPFTR 21 departed last night and is moving through Iowa, ETA Traver/Turlock 05:20-26 (Monday Morning)
GSGBTR 20 arrived Traver at 04:30 this morning
GSQLTR 20 is moving through Minnesota, ETA Traver/Turlock 12/26 – Noon (Monday Afternoon)
GSG5DL 23 – I believe it is being loaded at Ord, but will need to confirm

Phil, please call me this morning if you would like to go over this information; I'll send an additional updates out around Noon Central time and then again this evening. Thank you.

Dan



Dan Hartmann

Director Sales
Bulk Group / Agricultural Products

PHONE: 402-544-3387 | MOBILE: 402-216-5041 | EMAIL: dphartma@up.com

CUSTOMER CARE AND SUPPORT: 800-272-8777

E-BUSINESS SUPPORT: 800-872-1045

From Dan Hartman Fri 12/28 2:37pm

Late Afternoon Update:

Weather continues to be a significant factor.

GSPFTR 21 – Departed Fremont, NE at 10AM this morning. Moving through Nebraska. ETA Traver/Turlock PM – 21:30-26

GSQLTR 20 – No change - Held in Minnesota on Worthington Sub, subdivision currently shut down due to weather - ETA Traver/Turlock – late PM 12/27

GSANTU 21 – No change - There is a train on the main which cannot maintain its air blocking the route. There are plans in place to get locomotives added to the train to get the air back and free up the route to call the Alton grain. We will monitor as the day progresses, current ETD is 2000 tonight. ETA Traver/Turlock - PM 12/28

GSG5DL 26 – No change - Doesn't look like Cargill has loaded yet on the NCRC, ETA Pending.

We will check the status early tomorrow morning and send an update.

Thanks,
Dan

Phil Greene

Foster Farms

From: Greene, Phil
Sent: Tuesday, December 27, 2022 10:29 AM
To: Dan Hartmann <DPHARTMA@up.com>; Barr, Matt <matt.barr@fosterfarms.com>; Myers, Robert <Robert.Myers@fosterfarms.com>
Cc: Jason Hess <JMHESS@up.com>; Laura Heisterkamp <lauraheisterkamp@up.com>; Ryan Raess <RRAESS@up.com>; JJ Sullivan <JJSULLIVAN@UP.COM>; Boyce, Randy <Randy.Boyce@fosterfarms.com>; Adrian Guerrero <aguerre@up.com>
Subject: RE: Update

Thanks Dan,

Concerned about information accuracy is yours correct or is the STB information correct? We remain shut down at Turlock. We continue to operate at Traver for now and are directing critical needs customers to Traver or to others if they can assist, which is a problem for all.

The STB told us this morning different information than your 9:26 update, where is the Elko train they say we receive tomorrow? They did not have GSPFTU 26 in their line up. They show **GSVLTR-20 (FR11)** Moving; Current ETA Traver, CA 14:26-30th, you do not show this. STB note is below:

- **GSVLTR-20 (FR11)** Moving; Current ETA Traver, CA 14:26-30th
- **GSANTU-21 (BR04)** Holding at Alton, IA; Planning to move today
- **GSPFTR-21 (HS74)** Moving; Change name to GSPFTU-26 at Elko, NV; Current ETA Kearney, CA 19:58-28th
- **GSG5DL-27 (FR12)** Released 21:57-26th on NCRC; Working on a plan to provide power to the train.

Please update and advise.

Soymeal is less critical today but concerning.

We understand from MN soy they will be shutting down as they can not get cars to move on the manifest program? We are checking with CHS since we have cars ordered from them as well. We bought additional from AGP so hope this moves and buys us a few days.

Phil

From: Dan Hartmann <DPHARTMA@up.com>
Sent: Tuesday, December 27, 2022 9:26 AM
To: Greene, Phil <phil.greene@fosterfarms.com>; Barr, Matt <matt.barr@fosterfarms.com>
Cc: Jason Hess <JMHESS@up.com>; Laura Heisterkamp <lauraheisterkamp@up.com>; Ryan Raess <RRAESS@up.com>; JJ Sullivan <JJSULLIVAN@UP.COM>
Subject: FW: Update

EXTERNAL

Phil,

Here is today's update. I'm still waiting on more information regarding the Savage and Alton trains. They are still holding as of this email.

GSPFTU 26 -- Moving, ETA Turlock 03:00-29
GSG5DL 27 -- Waiting to receive from NCRC

I'll let you know if anything changes on the Alton/Savage trains later this afternoon.

Dan

From: Dan Hartmann

Sent: Monday, December 26, 2022 1:23 PM

To: Greene, Phil <phil.greene@fosterfarms.com>; Barr, Matt <matt.barr@fosterfarms.com>

Cc: Laura Heisterkamp <laurahelsterkamp@up.com>; Ryan Raess <RRAESS@up.com>; JJ Sullivan <JJSULLIVAN@UP.COM>; Jason Hess <JMHESS@up.com>; Kenny Rucker <KROCKER@up.com>; Tom Wilcox <tom@twilcoxlaw.com>; Boyce, Randy <Randy.Boyce@fosterfarms.com>; Lance Fritz <lfritz@up.com>; Myers, Robert <Robert.Myers@fosterfarms.com>; Smith, Donnie <Donnie.Smith@fosterfarms.com>; Mcgee, Drew K. <Drew.Mcgee@fosterfarms.com>

Subject: RE: Update

Phil,

I confirmed with our Operating team that the plan is to run both the Alton and Savage trains tomorrow morning. The line North of Sioux City, IA has been crippled by severe cold and snow accumulation. We continue to work on getting that line reopened with the expectation that it will reopen today/tonight. Once we open up the subdivision, we will run North with a few trains and then South with these two. I will continue to provide daily updates.

Thank you,
Dan

From: Greene, Phil <phil.greene@fosterfarms.com>

Sent: Monday, December 26, 2022 10:04 AM

To: Dan Hartmann <DPHARTMA@up.com>; Barr, Matt <matt.barr@fosterfarms.com>

Cc: Laura Heisterkamp <laurahelsterkamp@up.com>; Ryan Raess <RRAESS@up.com>; JJ Sullivan <JJSULLIVAN@UP.COM>; Jason Hess <JMHESS@up.com>; Kenny Rucker <KROCKER@up.com>; Tom Wilcox <tom@twilcoxlaw.com>; Boyce, Randy <Randy.Boyce@fosterfarms.com>; Lance Fritz <lfritz@up.com>; Myers, Robert <Robert.Myers@fosterfarms.com>; Smith, Donnie <Donnie.Smith@fosterfarms.com>; Mcgee, Drew K. <Drew.Mcgee@fosterfarms.com>

Subject: Re: Update

*** PROCEED WITH CAUTION - This email was sent from outside the Company ***

UP team

This is Very troubling. As you know we continue to not feed cattle out of Turlock and cannot start until a train arrives. Appears the Rest of our operations run out of UP corn this week. Last week you delivered one of six trains ordered and bought for end of year needs.

Later this week will be a California winter storm. Assume you know this and have that to in your plans.

With your disappointing news, we will stop rolling corn at Traver.

These great problems started in November and continue to deteriorate.

We need you to move feed to California operations immediately.

Please provide your plan.

Phil Greene
Foster Farms
559 457 6503

From: Dan Hartmann <DPHARTMA@up.com>
Sent: Monday, December 26, 2022 6:58 AM
To: Barr, Matt <matt.barr@fosterfarms.com>; Greene, Phil <phil.greene@fosterfarms.com>
Cc: Laura Heisterkamp <lauraheisterkamp@up.com>; Ryan Raess <RRAESS@up.com>; JJ Sullivan <JJSULLIVAN@UP.COM>
Subject: RE: Update

EXTERNAL

Matt,

Conditions on the Railroad are not good. We are working to get trains moving, but it's going to take a while. That said, the team understands we need to get your critical trains moving. I hope to have more details on Alton and Savage soon. Here is where we are now:

GSPFTR 21 – Holding for crew rest in Granger, WY – Estimated departure 23:30 tonight. Will divert to Turlock. ETA Turlock – 20:00-28

GSVLTR 20 – No change - Held in Minnesota on Worthington Sub, subdivision currently shut down due to weather - ETA Traver/Turlock – 14:00-30

GSANTU 21 – No change - Number 1 priority to launch, Still needs one locomotive. Working on a plan. ETA Traver/Turlock – 07:00-30

GSG5DL 26 – No change – Cargill planning on loading this train Monday 12/26

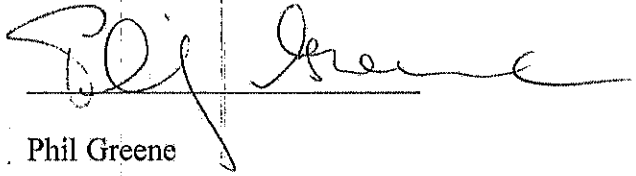
Based on this information, can you update me on the critical run out dates for each mill?

Dan

VERIFICATION

I, Phil Greene, Vice President of Foster Poultry Farms, declare under penalty of perjury that the facts set forth in the foregoing *Ex Parte* Petition for Second Emergency Service Order are true and correct. Further, I certify that I am qualified and authorized to execute this verification on behalf of Foster Poultry Farms.

Executed: December 29, 2022



Phil Greene

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December 2022, I served a copy of the foregoing *Ex Parte* Petition for Second Emergency Service Order by electronic mail upon the following counsel for Union Pacific Railroad Company, as follows:

Craig Richardson
Tonya W. Conley
1400 Douglas Street
Omaha, NE 68179
cvrichar@up.com

Michael Rosenthal
Covington Burling
mrosenthal@cov.com

Thomas W. Wilup
