

Food Safety and
Inspection Service



Office of Field
Operations

United States Department of Agriculture

Atlanta District Office

100 Alabama St., SW.
Suite 3R90
Atlanta, GA. 30303
Phone: 404-562-5900
Fax: 404-562-5877
Toll Free:
800-282-2005

USPS CERTIFIED MAIL

June 5, 2018

Mr. Francois Leger, Owner
Establishment # M332
FPL Food LLC
1301 New Savannah Rd.
Augusta, Georgia 30901

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Leger:

This serves as official notification by the Food Safety Inspection Service (FSIS) of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel at FPL Food LLC, Establishment M332, 1301 New Savannah Rd., Augusta, Georgia 30901.

The Federal Meat Inspection Act (FMIA) (21 U. S. C. 601 et seq.) provides that it is essential in the public interest that the health and welfare of consumers be protected by assuring that meat products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. The Act gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments. It also provides FSIS program personnel the authority to refuse to allow meat or meat food products to be labeled, marked, stamped or tagged as "inspected and passed" and to prevent the entry of products into commerce when the sanitary conditions of any such establishment are such that products are adulterated as defined by Federal Meat Inspection Act Section 1 [21 U.S.C. 601] (m) which states "*The term adulterated shall apply to any carcass, part thereof meat or meat food product under one or more of the following circumstances: (4) it has been prepared, packed or held under conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.*"

Furthermore, the Act provides FSIS the authority to appoint inspectors from time to time to examine and inspect products, including the sanitary conditions of facilities. It also gives FSIS program personnel the right to examine and inspect carcasses and parts of carcasses that are further treated and prepared and the right to access and examine establishment records. When the sanitary conditions of a facility are not properly maintained, FSIS can refuse to render inspection and indefinitely withdraw inspection from an establishment provided the establishment is afforded the right to an administrative hearing.

Under the authority of the Act, FSIS has prescribed rules and regulations required for establishments producing meat products, including the requirements pertaining to Hazard Analysis and Critical Control Point (HACCP) (9 CFR 417) and other matters. FSIS has also developed the Rules of Practice regarding enforcement (9 CFR 500). The Rules of Practice describe the types of enforcement action that FSIS may take and include procedures for taking a

withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a grant.

This Notice of Intended Enforcement (NOIE) is based on the failure of FPL Food LLC, Establishment M332, 1301 New Savannah Rd., Augusta, Georgia 30901 to support the decision made in the hazard analysis that *E. coli* 0157:H7 is not a hazard reasonably likely to occur. FSIS conducted a for cause Food Safety Assessment (FSA) that was performed at your establishment between the dates of 5/29/2018 and 6/4/2018. It has been determined that your establishment has not supported the decisions made in the hazard analysis that *E. coli* 0157:H7 is not a hazard reasonably likely to occur because you have control measures in place. Your control measures state that you have prerequisite programs i.e. Product examination, SOP for Sanitation (APC swabs), Carcass chilling, and a robust N-60 sampling program. *E. coli* 0157:H7 is a pathogenic bacterium that causes serious illness in humans after consumption of contaminated food products. Symptoms include abdominal cramping, hemorrhagic diarrhea, serious kidney disease, and in some cases, death.

After FSIS review of this program it has been determined that you lack support for the decision that *E. coli* O157:H7 is not a hazard reasonably likely to occur. Specifically as a result of your own sampling, your establishment had a positive 0157:H7 on a trim N-60 sample on April 25, 2018, two (2) positive 0157:H7 and one (1) 0130 STEC sample results on May 2, 2018, one (1) positive 0130 STEC sample on May 15, 2018, and one (1) positive 0157:H7 sample result on May 18, 2018. In addition to the *E. coli* positive results, during that same time period (January 1 to April 15, 2018), your establishment had 17 positive results for *Salmonella*. It should be noted that your establishment treats each combo of trim produced as a separate lot, and every lot of trim is tested using the N-60 method. When a combo/lot returns a positive result, that combo/lot is labeled "For Cooking Only" and sent to a USDA inspected establishment for cooking.

Prior to these positive results, your establishment also had positive sample results on March 23 from a sampled combo for 0157 STEC 026 and 045. After further record review, it was determined that no changes were made to your HACCP plan. A non-compliance record was issued for your establishment failing to reassess as per 9 CFR 417.4 (a) which states: "*Every establishment shall validate the HACCP plan's adequacy in controlling the food safety hazards identified during the hazard analysis, and shall verify that the plan is being effectively implemented*" were not met. On May 8, 2018 you had submitted an "on-site" assessment after two (2) production lots were found positive for *E. coli* 0157:H7 and 0103 that concluded: "There were no deficiencies noted during the review. Sterilizers were 180° F or greater and employee practices were acceptable. Sampling procedures and samplers were observed following proper procedures (sanitizing, targeting outside surfaces, 60+ pieces per sample)". In addition, record review of NRs indicated that your establishment received 24 NRs for Zero Tolerance deviations between January 1 and April 15, 2018 (a rate of 16.78%).

You are not adequately ensuring that your HACCP plan is functioning effectively because you are not assessing the on-going effectiveness of the prerequisite programs on which your hazard analysis rests. EIAO analysis of this information shows that your establishment is not preventing contamination to the carcasses as per 9 CFR 310.18 (a) which states: "*Carcasses, organs, and other parts shall be handled in a sanitary manner to prevent contamination with fecal material, urine, bile, hair, dirt, or foreign matter; however, if contamination occurs, it shall be promptly removed in a manner satisfactory to the inspector*". The STEC positives, *Salmonella* positives, and the Zero Tolerance findings all show cross contamination to the carcasses is reoccurring. Your establishment is not protecting product from adulteration during processing, handling and storage as per 9 CFR 416 .4 and your establishment's SSOPs are either not designed or implemented in a manner to prevent direct contamination to the product.

These findings (no reassessment, corrective actions, repetitive positive *E. coli* and *Salmonella* results, as well as Sanitation (Zero Tolerance failures) indicate that your establishment's HACCP system is inadequate and have not taken corrective actions as required by 9 CFR 417.3 which states: "*The written HACCP plan shall identify the corrective action to be followed in response to a deviation to a critical limit. The HACCP plan shall describe the corrective action to be taken, and assign responsibility for taking corrective action*". FSIS generally accepts that testing for *E. coli* 0157:H7 is sufficient to verify that the HACCP system is functioning as intended in controlling STEC unless there is some other evidence to suggest that the assumption is not true such as multiple non 0157 positives. In this case there is one (1) non 0157 positive and other evidence that the HACCP system in place is not functioning as intended.

Therefore, your HACCP system is inadequate under the regulatory requirements of 9 CFR Part 417.6(a)(1) which was promulgated from Federal Meat Inspection Act 21 U.S.C. 608 Section 8 of the Federal Meat Inspection Act which states "*The Secretary shall cause to be made experts in sanitation or by other competent inspectors such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules and other equines are slaughtered and the meat and meat food products thereof are prepared for commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which establishments shall be maintained; and where the sanitary condition of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped or tagged as "inspected and passed."*

In accordance with FSIS' Rules of Practice, 9 CFR Part 500, I am notifying you of FSIS' intent to withhold the marks of inspection and suspend the assignment of inspectors at your facility. Please provide this office with a written response concerning this Notice of Intended Enforcement (NOIE) within three (3) working days from the date of your receipt of this letter. I will determine further action, if any, based on your response.

You may appeal this action by contacting:

Philip Bronstein
Executive Associate for Regulatory Operations USDA, FSIS, FO
Room 3157 - South Building 1400 Independence Ave. SW Washington, DC 20250
Telephone: (202) 720-3697 or (202) 720-9521
Facsimile: (202) 690-3287

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

(Mailing address):
Scott C. Safian
Director Enforcement and Litigation Division
Office of Investigation, Enforcement and Audit Food Safety and Inspection Service
United States Department of Agriculture Stop Code 3753, PP III, Cubicle 8-235A 1400
Independence Avenue, SW Washington, DC 20250

Or

Physical (Courier) Address:
Scott C. Safian, Director
Enforcement and Litigation Division

Office of Investigation, Enforcement, and Audit Food Safety and Inspection Service
Patriot Plaza III, 8th Floor, Cubicle 8-235A
355 E Street, SW Washington, DC 20024-3221

Telephone: (202) 418-8872
Facsimile Number: (202) 245-5097

If you have any questions, please contact me at 404-562-5900.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dr. Phyllis Adams', written over a horizontal line.

Dr. Phyllis Adams, DM
Acting District Manager

cc: William C. Smith, AA/OFO
Haney Sidrak, Acting Deputy AA/OFO
Phillip Bronstein, EARO/OFO
Scott Safian, ELD/OIEA
Larry Hortert, RD/CID/OIEA
Jan Brown, DDM/OFO
Ghias Mughal, DDM/OFO
Tracy Bryant, DDM/OFO
Geneva Dennis, DCS/OFO

(b)(6)



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Office of
Program
Evaluation,
Enforcement &
Review

Compliance and Investigations Division
Southeast Region
100 Alabama Street, SW
Suite 3R95
Atlanta, GA 30303

CERTIFIED-RETURN RECEIPT REQUESTED

October 24, 2011

FPL Foods, LLC
Establishment #332
Attn: Mr. Randall Garrett, General Manager
1301 New Savannah Road
Augusta, Georgia 30901

NOTICE OF WARNING

We have a report showing that you violated the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.). Section 10 of the FMIA prescribes the legal requirements you are responsible for concerning this matter. A copy of the Act is enclosed for your information.

The reported violation was discussed with your representative, Mr. Randall Garrett, on October 12, 2011, specifically, we found that on or about August 5, 2011, your firm offered for sale, transported, and sold approximately 4000 pounds of inedible beef ears that were not properly denatured or identified as inedible-not fit for human consumption, to Border City USA, Hamtramck, Michigan.

Please note that Section 10 of the FMIA (21U.S.C 610) prohibits, among other things, the sale of articles required by the Act to be federally inspected, unless they have been inspected, passed, and so marked, or are exempt from the inspection requirements of the Act. The Food Safety and Inspection Service enforce these requirements.

Section 406 of the FMIA (21 U.S.C. 676) contains criminal penalties for violators. You are expected to voluntarily comply with all requirements of the Act. Please be advised that future violations could result in legal action. An Investigator will visit you periodically to verify compliance.

Larry S. Hortert, Regional Director
Southeast Region
Compliance and Investigations Division
Office of Program Evaluation, Enforcement and Review

Enclosure

ICS File Ref: 2011-0652

Violation Type: Inedible-Meat

e-cc: Regional Director, Larry S. Hortert

e-cc: (b)(6);(b)(7)(C)

e-cc: (b)(6);(b)(7)(C)

e-cc: CEB Carlos Torres

e-cc: EED Eleanor Lewis

e-cc: Atlanta District Manager or designee

e-cc: EPBCorrespondence@fsis.usda.gov

Initials - MPA HJohnson

EVIDENCE LOG

LOG NUMBER	DESCRIPTION OF EVIDENCE	DATE EVIDENCE COLLECTED (mm/dd/yyyy)	EVIDENCE COLLECTED BY	ROI EXHIBIT NUMBER	DATE OF FINAL DISPOSITION (mm/dd/yyyy)
1	FSIS Form 8050-2, dated 08/15/2011, signed by Rick Shah, president, Border City USA, Hamtramck, MI, pertaining to inedible beef ears product.	08/15/2011	(b)(6); (b)(7)(C)	2	10/24/2011
2	Straight Bill of Lading, #29282, dated 08/02/11, documenting the transportation of 146 cases of inedible beef ears, weighing approximately 4000 lbs total, to Border City USA, Hamtramck, MI.	08/15/2011	(b)(6); (b)(7)(C)	3	10/24/2011
3	Memorandum of Interview, dated 08/17/11, with USDA Export (b)(6), pertaining to inedible beef ears.	08/15/2011	(b)(6); (b)(7)(C)	5	10/24/2011
4	FPL Food LLC letter to Border City USA, Hamtramck, MI, dated 08/08/2011, pertaining to inedible beef ears.	08/08/2011	(b)(6); (b)(7)(C)	6	10/24/2011

LOG NUMBER	DESCRIPTION OF EVIDENCE	DATE EVIDENCE COLLECTED (mm/dd/yyyy)	EVIDENCE COLLECTED BY	ROI EXHIBIT NUMBER	DATE OF FINAL DISPOSITION (mm/dd/yyyy)
5	Three photographs depicting inedible beef ears product, not denatured, fully labeled as 'inedible' and bearing the mark of federal inspection.	08/05/2011	(b)(6); (b)(7)(C)	4	10/24/2011
6	Three photographs depicting inedible beef ears product, not denatured, fully labeled as 'inedible' and bearing the mark of federal inspection, not submitted as evidence.	08/05/2011	(b)(6); (b)(7)(C)	9	10/24/2011
7	CD-R, serial #N142NF181D817097A2, of six original photographs depicting inedible beef ears product, not denatured, fully labeled as 'inedible' and bearing mark of federal inspection.	08/05/2011	(b)(6); (b)(7)(C)	10	10/24/2011
8	Compliance Investigator Narrative Statement, signed by (b)(6); (b)(7)(C) documenting the email received from USDA (b)(6) regarding the disposition of the misbranded 'Inedible Beef Ears' located at Border City, USA, Hamtramck, MI.	09/09/2011	(b)(6); (b)(7)(C)	7	10/24/2011

FILE NUMBER

2011-0652

LOG NUMBER	DESCRIPTION OF EVIDENCE	DATE EVIDENCE COLLECTED (mm/dd/yyyy)	EVIDENCE COLLECTED BY	ROI EXHIBIT NUMBER	DATE OF FINAL DISPOSITION (mm/dd/yyyy)
9	Shippers Certification from (b)(6) HACCP Coord. FPL Foods, LLC	10/12/2011	(b)(6); (b)(7)(C)	1	10/24/2011
10		10/13/2011		8	10/24/2011

I. GENERAL INFORMATIONInvestigation File Number
2011-0652Start Date
08/05/2011Submit Date
10/13/2011Violation Date
08/02/2011Closed Date
10/24/2011Investigative Plan
NoStatute
FMIAPrimary Violator Region
SoutheastEnforcement Record
400-11-164Primary Case Type
Criminal

Secondary Case Type

Primary Violation Type
Misbranded

Secondary Violation Type

Predication Code
Referral from Federal Agency/Offical.

Agency

Food Safety Related

Keywords

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE**Investigation Record****II. VIOLATOR INFORMATION**

Primary Violator

FPL Foods

Official 1 Name

Randy Garrett

Official 1 Title

Chief Operating Officer

Official 2 Name

Janice Ball

Official 2 Title

Dir. of QA & Food Safety

Official 3 Name

Maurice Frazier

Official 3 Title

General Foreman

Official 4 Name

Official 4 Title

Official 5 Name

Official 5 Title

Secondary Violator

Border City USA, Inc.

Official 1 Name

Mr. Ricken Shah

Official 1 Title

President

Official 2 Name

Official 2 Title

Official 3 Name

Official 3 Title

Official 4 Name

Official 4 Title

Official 5 Name

Official 5 Title

Tertiary Violator

Official 1 Name	Official 1 Title
Official 2 Name	Official 2 Title
Official 3 Name	Official 3 Title
Official 4 Name	Official 4 Title
Official 5 Name	Official 5 Title

Fourth Violator

Official 1 Name	Official 1 Title
Official 2 Name	Official 2 Title
Official 3 Name	Official 3 Title
Official 4 Name	Official 4 Title
Official 5 Name	Official 5 Title

Fifth Violator

Official 1 Name	Official 1 Title
Official 2 Name	Official 2 Title
Official 3 Name	Official 3 Title
Official 4 Name	Official 4 Title
Official 5 Name	Official 5 Title

III. RECOMMENDED ACTION

Primary Violator Recommended Action NOW	Secondary Violator Recommended Action	Tertiary Violator Recommended Action
Fourth Violator Recommended Action	Fifth Violator Recommended Action	

IV. ADDITIONAL COMMENTS

Recommend NOW be issued to FPL Foods, LLC , Augusta, GA (primary violator) (b)(6); (b)(7)(C) 10-13-2011

(b)(6);
(b)(7)(C)

10/21/11-recommend NOW.

V. ROI REVIEW

Supervisor Reviewed (1) <input checked="" type="checkbox"/>	Date 10/21/2011	Supervisor Comments
Supervisor Reviewed (2) <input type="checkbox"/>	Date	Investigator worked two illness outbreak investigations and a
Regional Director Reviewed (1) <input type="checkbox"/>	Date	Regional Director Comments
Regional Director Reviewed (2) <input type="checkbox"/>	Date	
Signature Approval	Date	

LIST OF EXHIBITS

Exhibit Number	Description of the Exhibit
1	Shippers Certification (b)(6)
2	FSIS Form 8050-2, dated 08/15/2011, signed by Rick Shah, president, Border City USA, Hamtramck, MI, pertaining to inedible beef ears product.
3	Straight Bill of Lading, #29282, dated 08/02/11, documenting the transportation of 146 cases of inedible beef ears, weighing approximately 4000 lbs total, to Border City USA, Hamtramck, MI.
4	Three photographs depicting inedible beef ears product, not denatured, fully labeled as 'inedible' and bearing the mark of federal inspection.
5	Memorandum of Interview, dated 08/17/11, with (b)(6) pertaining to inedible beef ears.
6	FPL Food LLC letter to Border City USA, Hamtramck, MI, dated 08/08/2011, pertaining to inedible beef ears.
7	Compliance Investigator Narrative Statement, signed by (b)(6) documenting the email received from USDA (b)(6) (b)(6); (b)(7)(C) (b)(6) regarding the disposition of the misbranded 'Inedible Beef Ears' located at Border City, USA, Hamtramck, MI.
8	



Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Compliance and Investigations Division

Southeast Region
Atlanta, GA

REPORT OF INVESTIGATION

Investigation No.: 2011-0652	Violation Date: 08/02/2011
FPL Foods 1301 New Savannah Rd Augusta, GA 30901	
Case Type: Criminal	
Violation Type: Misbranded	

Investigator: (b)(6); (b)(7)(C) _____ **Date:** 10/13/2011

Approved By: _____ **Date:** _____

FOR OFFICIAL USE ONLY

'STRAIGHT BILL OF LADING SHORT FORM - NOT NEGOTIABLE

CARRIER CHOPTANK

REF # 29282

SAC #

DATE 8/2/11

H. N.
47594

CUSTOMER PO # 14270

Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier agrees to carry to its usual place of delivery. If on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all Bill of Lading terms and conditions in the governing classification on the date of shipment. The shipper hereby certifies that he is familiar with all the Bill of Lading terms and conditions in the governing classification and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

CONSIGNEE
BELLBOY CORP C/O
BORDER CITY
8350 AUBIN
HAMTRAMCK MI

PH 313 875 3300

BELLBOY CORP



RECEIVED

AUG 05 2011

INFO:

Route:

Vehicle Initial and Number:

EST NO. CASE	H M	Description of MATERIAL	EST. WEIGHT (Lbs)	Class	Charges	Subject to section 7 of conditions of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges. Signature of the Consignor If freight charges are to be pre-paid, write or stamp here "TO BE PREPAID".
164		Beef #96	9854			
145 CS		PATELLA BONES	10,000 9854 14270 LBS			
334		BEEF EARS Held Back	4000 LBS	14089		
		BACK FAT SKINS 242-	19,500 LBS	14329		
		Pork Fat Back Skin	20040			

DELIVER PO # SEE ABOVE

CARRY ALL PRODUCT AT 0 DEGREES

PALLETS OUT

PALLETS IN

ORDER IS PALLET EXCHANGE

+330 Bx Bones
@
9900 lbs.

NOTE: Where the rate is dependent on value, shippers are required to state specifically in writing the agreed on value of the property. The agreed on or declared value of the property is hereby specifically stated by the shipper to be not exceeding:

\$ _____ N/A per _____ (unit)

SS741 Reference

Label(s) applied:


Placard(s) required:

TRAILIER MUST BE SEALED ON FULL LOADS

Seal # 0008301

U.S. DEPARTMENT OF AGRICULTURE
 FOOD SAFETY AND INSPECTION SERVICE
 OFFICE OF PROGRAM EVALUATION, ENFORCEMENT AND REVIEW

SHIPPER'S OR RECEIVER'S CERTIFICATION

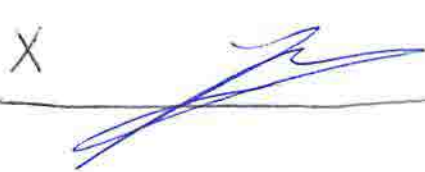
1. DESCRIPTION OF PRODUCT <input type="checkbox"/> Shipped <input checked="" type="checkbox"/> Received 146 cases of beef ears, weighing approximately 4000 lbs total, fully labeled as 'Inedible' product and bearing mark of federal inspection. (b)(6); (b)(7)(C)		2. DATE PRODUCT WAS SHIPPED OR RECEIVED On or about 08/05/11	
6. NAME OF SHIPPER AND ADDRESS (Street, No., City, State & ZIP Code) FPL Foods, LLC 1301 New Savannah Road Augusta, GA 30901		4. PLACE WHERE OBSERVED Border City USA Hamtramck, MI 48212	
10. NAME OF PROCESSOR AND ADDRESS (Street, No., City, State & ZIP Code) Same as block C		7. TYPE OF SHIPPING RECORD(s) (If any) Straight Bill of Lading	
13. INVOICE(s) ISSUED BY: (Name and Address) n/a		8. SHIPPING RECORD NO. (s) #29282	9. DATE OF SHIPPING RECORD(s) 08/02/11
16. REMARKS On 08/05/11 (b)(6); (b)(7)(C) visited my firm after a referral from (b)(6) regarding 146 cases of 'Inedible Beef Ears', weighing approximately 4000 pounds total, fully labeled with the marks of federal inspection. I stated to the Investigator that (b)(6) observed the beef ears product on our dock when she inquired about it. I acknowledged the beef ears product was to be shipped along with patella bones and back fat skins. I acknowledged to the Investigator that at that time the inspector placed US Retained tags #B39-916963, #B39-916964, #589-916965 and #B39-916966. On 08/05/11, the Investigator observed the beef ears product and photographed the product under retention. I stated to the Investigator that I would contact the company and inform them the beef ears product was labeled as 'inedible' and also bore the mark of federal inspection, which is incorrect. On 08/08/11, I received a letter from the company, FPL Foods, LLC stating the beef ears product had been placed in the wrong shipping container and that		11. METHOD OF TRANSPORTATION Contracted truck service	
17. CERTIFICATION: I certify (1) that the product described above was received or shipped by us as noted and (2) that the shipping record(s), if any, and invoice(s), or copies thereof furnished to or copied by an authorized USDA employee, cover the shipment(s) described.		12. MARKINGS ON CONTAINERS OR PRODUCT Fully labeled as 'inedible' product and bearing mark of federal inspection	
NAME AND ADDRESS OF FIRM Border City USA 8350 St. Aubin Hamtramck, MI 48212		14. INVOICE NO. (s) n/a	
BY: (Signature) 		15. DATE OF INVOICE n/a	
TYPE OR PRINT NAME SIGNED RICK SHAH		TITLE PRESIDENT	
		DATE 08/15/11	

see
→
attach

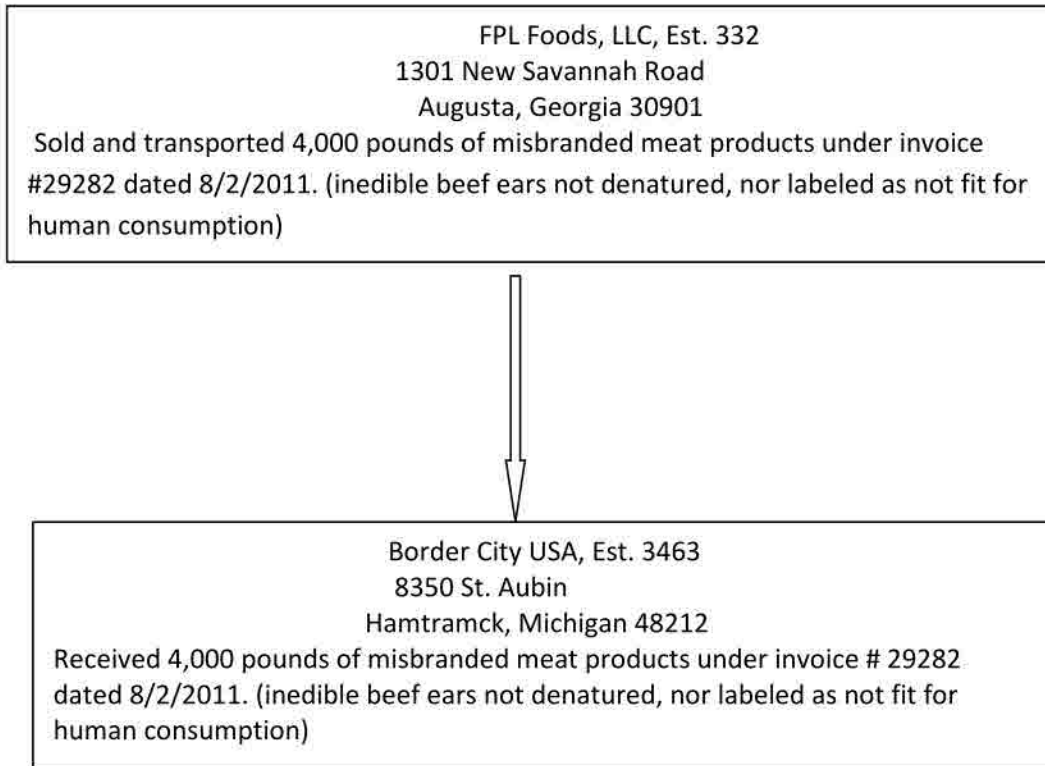
08/15/11

Continuation of Receiver's Certification

The beef ears product was not meant for human consumption. I stated to the Investigator that the company also provided round, plain white labels to be placed over the legend on the product. On 08/15/11, Investigator Wlasiuk visited my firm again. I stated to the Investigator that the beef ears product was still retained in my freezer because I was informed by the Inspector that the product must also be 'de-natured' before it can be shipped in-commerce. I acknowledged that the Inspector was instructed by the District Office that we are not to further distribute or ship the beef ears product until that occurs. I stated to the Investigator that I contacted FPL Foods, LLC and told them the beef ears could not just have a new label. I stated to the Investigator that at this time the company does not want the product to be de-natured because of past complaints, and that they believe the regulations state it does not need to be. I stated to the Investigator that at this time the beef ears product is still under retention in our freezer until further notice. On 08/15/11 I provided the Investigator with the Straight Bill of Lading, # 29282, dated 08/02/11, that accompanied the beef ears product.

X  8/15/11

FLOW CHART





August 8, 2011

To Our Valued Customer:

During inspection in the Border City Cold Storage Facility, it was found that the inedible cow ears which were produced for export to Canada were placed in the incorrect box which contained the USDA inspection label not blacked out / covered.

This product is not meant for Human Consumption and the enclosed labels are to be placed over the inspection label to bring this product back into compliance. We apologize for any inconvenience that this may have caused you. Additionally, we have taken corrective actions within the facility to ensure that this type of error does not occur in the future.

Thank you again for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads 'Janice Ball'. The signature is fluid and cursive, with the first name 'Janice' being larger and more prominent than the last name 'Ball'.

Janice M. Ball
Director of Quality and Food Safety

(b)(6)@fplfood.com

(b)(6)

U.S. DEPARTMENT OF AGRICULTURE
 FOOD SAFETY AND INSPECTION SERVICE
 OFFICE OF PROGRAM EVALUATION, ENFORCEMENT AND REVIEW

SHIPPER'S OR RECEIVER'S CERTIFICATION

1. DESCRIPTION OF PRODUCT <input checked="" type="checkbox"/> Shipped <input type="checkbox"/> Received		2. DATE PRODUCT WAS SHIPPED OR RECEIVED	
146 cases of Beef ears, weighing approximately 4000 pounds, labeled as "inedible" product and bearing Federal marks of Inspection#332.		On or about 8/5/2011	
3. OBSERVED BY: (Name of FSIS employee) (b)(6); (b)(7)(C)		4. PLACE WHERE OBSERVED Border City USA	5. DATE OBSERVED 08/05/2011
6. NAME OF SHIPPER AND ADDRESS (Street, No., City, State & ZIP Code) FPL Foods, LLC 1301 New Savannah Road Augusta, Georgia 30901		7. TYPE OF SHIPPING RECORD(s) (if any) Bill of Lading	
		8. SHIPPING RECORD NO.(s) 29282	9. DATE OF SHIPPING RECORD(s) 08/02/2011
10. NAME OF PROCESSOR AND ADDRESS (Street, No., City, State & ZIP Code) Same as Block#6		11. METHOD OF TRANSPORTATION Commercial Truck	
		12. MARKINGS ON CONTAINERS OR PRODUCT Est.332	
13. INVOICE(s) ISSUED BY: (Name and Address) N/A		14. INVOICE NO. (s) N/A	15. DATE OF INVOICE N/A

16. REMARKS

On October 11, 2011, USDA/OPEER (b)(6); (b)(7)(C) visited FPL Foods, Inc, Augusta, Georgia and made inquiries about inedible product labeled with marks of inspection at Border City USA, Hamtramck, Michigan. The above described product was shipped to Border City USA, under BOL#29282, dated 8/2/2011 for 146 cases. This was an oversight on our part, the inedible product was placed in the wrong type of box and we have implemented the following corrective actions: 1) all inedible product is in plain boxes labeled as inedible not fit for human consumption. 2) all inedible employees were re-trained on the labeling and packaging of inedible products.

I acknowledge that my firm sold and transported inedible beef ears without being denatured and not labeled as not for human consumption and also labelled as federally inspected product. I was not aware of all of the regulations but now I understand and will comply with the Federal Meat Inspection Act.

17. CERTIFICATION: I certify (1) that the product described above was received or shipped by us as noted and (2) that the shipping record(s), if any, and invoice(s), or copies thereof furnished to or copied by an authorized USDA employee, cover the shipment(s) described.

NAME AND ADDRESS OF FIRM FPL Foods, LLC 1301 New Savannah Road Augusta, Georgia 30901	BY: (Signature) (b)(6)
	TYPE OR PRINT NAME SIGNED (b)(6)
	TITLE (b)(6)
	DATE 10-12-2011

MEMORANDUM OF INTERVIEW

(b)(6)
USDA/FSIS/OFO
Est. I-265

(b)(6); (b)(7)(C)
USDA/FSIS/OPEER/CID

I interviewed (b)(6) in connection with a misbranding case associated with Border City USA (BCUSA), DBA Freezer Services of MI LLC, Est. 3463, Hamtramck, MI.

On August 15, 2011, I met with (b)(6) I asked (b)(6) about the inedible beef ears product delivered to BCUSA, by FPL Food, LLC (FPL), Augusta, GA (Est. 332), for export on August 5, 2011. (b)(6) stated that during (b)(6) export review at the firm (b)(6) observed four pallets of product boldly labeled as 'Inedible Beef Ears' and bearing the mark of federal inspection (Est. 332) on the shipping container. (b)(6) further stated (b)(6) then requested to speak to Mr. Rick Shah, President BCUSA, to inquire what the status of the beef ears product was. (b)(6) stated to the CI that Mr. Shah stated to (b)(6) that the inedible beef ears product had just arrived at the firm, along with back fat skins and patella bones, that morning. (b)(6) then stated (b)(6) tagged the 146 cases of inedible beef ears product, weighing approximately 4000 lbs total, under US Retained Tag #B39 916963, #B39 91694, #B39 91695 and #B39 91696.

(b)(6) stated (b)(6) then contacted (b)(6) USDA/FSIS/OFO, who further contacted DM Paul Kiecker, USDA/FSIS/OFO, on how the tagged inedible beef ears product should be handled. (b)(6) stated (b)(6) was instructed to tell Mr. Shah that he was to contact FPL and inform them of the situation. (b)(6) acknowledged Mr. Shah informed FPL the inedible beef ears product could not be further transported in commerce because they were misbranded, bearing both 'inedible' labeling and the mark of federal inspection. (b)(6) stated that in response to this information FPL sent a letter to BCUSA stating the product was accidentally shipped in containers bearing the marks of federal inspection and are in fact, inedible beef ears. Accompanying the letter from FPL were plain white, round stickers to be applied over the marks of inspection. (b)(6) stated (b)(6) was contacted by DDM Todd Gerwig, USDA/FSIS/OFO, who instructed (b)(6) that the inedible beef ears product could not be further distributed in commerce until the federal mark of inspection was covered and the product was fully denatured.

(b)(6) stated that FPL has not given BCSUA permission to denature the inedible beef ears product as of the time of this interview and the product remains under US Retention in the freezer at BCUSA.

August 17, 2011
Hamtramck, Michigan

I prepared this report on August 17, 2011, two days after the interview. I certify that this report has recorded in it a summary of all pertinent matters discussed with the interviewee.

(b)(6); (b)(7)(C)

NARRATIVE STATEMENT

I (b)(6); (b)(7)(C) am a (b)(6); (b)(7)(C) employed by the Compliance and Investigation Division, Office of Program Evaluation Enforcement and Review, Food Safety and Inspection Service, United States Department of Agriculture stationed in Oak Park, MI.

On September 9, 2011, I received an email from (b)(6) USDA/FSIS/OFO (b)(6) regarding 146 cases of 'Inedible Beef Ears', weighing approximately 4000 pounds total. (b)(6) had placed under US Retention on August 5, 2011 for a misbranded label. The 'Inedible Beef Ears' were fully labeled as an 'inedible' product and bore the mark of federal inspection. In the email, (b)(6) stated that all 146 cases of 'Inedible Beef Ears' product had been tempered and charcoal denatured. (b)(6) (b)(6) further stated all federal marks of inspection had been covered with a white circle label. The product was to be further distributed and exported under an APHIS Inedible Certificate.

The email document from (b)(6) is to be used as verification of the disposition of 146 cases of misbranded 'Inedible Beef Ears' product, weighing approximately 4000 pounds total, and will be included in the list of evidence collected along with this narrative.

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

FSIS

From: (b)(6) [redacted]@fsis.usda.gov
Sent: Thursday, September 08, 2011 9:04 AM
To: (b)(6); (b)(7)(C) - FSIS
Cc: (b)(6) - FSIS; Gerwig, Todd - FSIS
Subject: B beef Ears

The Job has been completed. The ears were tempered and Charcoal Denatured. The Legend was covered with a white circle label. Product to be shipped out under APHIS inedible certificate.

Thanks

(b)(6)

Photographic Report (Digital)



Photograph # 1

Photograph of close-up of shipping container of inedible beef ears product, not denatured, bearing the federal inspection legend, Est. 332 and fully labeled as "Beef Ears-Inedible". FPL Foods LLC (Est. 332) transported approximately 146 cases of inedible beef ears product, weighing approximately 28.5 lbs each and weighing approximately 4000 lbs total, to Border City USA, Hamtramck, MI, to be further distributed. This photograph was taken on 08/05/2011, at Border City USA, 8350 St. Aubin Hamtramck, MI 48212, by (b)(6); (b)(7)(C)

Photographic Report (Digital)



Photograph # 2

Photograph of inedible beef ears product, not denatured, bearing the federal inspection legend, Est. 332 and fully labeled as "Beef Ears-Inedible". FPL Foods LLC (Est. 332) transported approximately 146 cases of inedible beef ears product, weighing approximately 28.5 lbs each and weighing approximately 4000 lbs total, to Border City USA, Hamtramck, MI, to be further distributed. This photograph was taken on 08/05/2011, at Border City USA (I-265), 8350 St. Aubin Hamtramck, MI 48212, by

(b)(6); (b)(7)(C)

Photographic Report (Digital)



Photograph # 3

Photograph of two of four pallets of inedible beef ears product, not denatured, bearing the federal inspection legend, Est. 332 and fully labeled as "Beef Ears-Inedible". FPL Foods LLC (Est. 332) transported approximately 146 cases of inedible beef ears product, weighing approximately 28.5 lbs each and weighing approximately 4000 lbs total, to Border City USA, Hamtramck, MI, to be further distributed. This photograph was taken on 08/05/2011, at Border City USA (I-265), 8350 St. Aubin Hamtramck, MI 48212, by

(b)(6); (b)(7)(C)

PREDICATION

Inquiry initiated on August 5, 2011, after the Oak Park, MI, OPEER, CID office received information about possible violations from an USDA/FSIS/OFO Export Inspector regarding Border City USA (BCUSA), Est. 3463, an exporting warehouse, Hamtramck, MI.

OBJECTIVE

This investigation was conducted to determine whether BCUSA violated any provisions of the Federal Meat Inspection Act (FMIA) by offering for transportation misbranded meat products.

This investigation was further conducted to determine whether FPL Food LLC (FPL), a federal establishment (Est. 332), Augusta, GA, violated any provisions of the FMIA by knowingly selling and transporting misbranded meat products to BCUSA, to be further distributed and exported in commerce.

SUMMARY

This investigation determined that BCUSA did not knowingly offer for transportation misbranded meat products.

This investigation further determined that FPL sold and transported misbranded meat products to BCUSA, to be further distributed and exported in commerce.

This investigation determined that FPL sold and transported inedible beef ears without being denatured and not labeled as not fit for human consumption; and also labeled with the federal marks of inspection in commerce.

BACKGROUND

FSIS is the public health agency within USDA and is responsible for ensuring that meat, poultry, and processed egg products are safe, wholesome, and accurately labeled. Within FSIS, the Office of Program Evaluation Enforcement and Review conducts surveillance, investigation, and enforcement activities which are not assigned exclusively to in-plant or administrative personnel. Section 10 of the Federal Meat Inspection Act (FMIA) requires that all meat food products intended for human food to be wholesome and properly labeled

INVESTIGATIVE FINDINGS

On or about August 2, 2011, FPL sold and transported 146 cases of misbranded 'Inedible Beef Ears' product, weighing approximately 4000 pounds total, fully labeled and bearing the mark of federal inspection to BCUSA to be further distributed and exported in commerce. This is in violation of:

TITLE 21 UNITED STATES CODE § 610 (c) (1) (B)

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals—

(c) sell, transport, offer for sale or transportation, or receive for transportation, in commerce,

(1) any such articles which

(B) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or

On 08/05/2011, (b)(6) USDA/FSIS/OFO Export Inspector, observed 146 cases of 'Inedible Beef Ears' product, weighing approximately 4000 pounds total, fully labeled as 'inedible' and bearing the mark of federal inspection (Est. 332) at BCUSA. (b)(6) placed the 'Inedible Beef Ears' product under US Retention and contacted (b)(6). On 08/05/2011, (b)(6); (b)(7)(C) observed and photographed the 'Inedible Beef Ears' product at BCUSA. (Exhibit: 4)

On 08/15/2011 (b)(6); (b)(7)(C) met with and interviewed Mr. Rick Shah (SHAH), President BCUSA. SHAH acknowledged in a Receiver's Certification, dated 08/15/2011, the 146 cases of 'Inedible Beef Ears' product was transported to his firm by FPL and received on 08/05/2011. SHAH provided the CI with the Straight Bill of Lading, #29282, dated 08/02/2011, that accompanied the 'Inedible Beef Ears' product. SHAH acknowledged the beef product was fully labeled as 'inedible' and bore the mark of federal inspection (Est. 332). SHAH further acknowledged the product was not in the process of being further distributed by his firm yet and the product was just received. SHAH stated he had contacted FPL and received a letter stating the product shipped to BCUSA was misbranded, is 'inedible' and should not bear the mark of federal inspection. SHAH further stated the letter from FPL was accompanied by white circle labels to be placed over the inspection legend. (Exhibits: 2, 3, 4 & 6)

On 08/15/2011 (b)(6); (b)(7)(C) met with and interviewed (b)(6) USDA/FSIS/OFO (b)(6) (b)(6) acknowledged BCUSA received the letter from FPL, as well as, the white circle labels, however, the labels had not been applied to the product yet. (b)(6) stated to the CI that FPL had not given BCUSA permission to denature the product at that time. (b)(6) stated (b)(6) was instructed by DDM Todd Gerwig, USDA/FSIS/OFO, the 'Inedible Beef Ears' product must be properly denatured and the white circle labels be placed over the marks of federal inspection before the product could be further distributed and exported in commerce. (Exhibit: 5)

Sold and Transported Misbranded Meat Product in Interstate Commerce

On October 12, 2011, (b)(6); (b)(7)(C) met and interviewed (b)(6) (b)(6) at FPL. (b)(6) acknowledged in a Receiver's Certification, dated 10/12/2011, the 146 cases of 'Inedible Beef Ears' product was transported by FPL to BCUSA on 8/2/2011. (b)(6) acknowledged the beef product was labeled as 'inedible' and bore the marks of federal inspection (Est. 332) which was an oversight on FPL. (b)(6) further acknowledged the product was not denatured and properly labeled; the marks of inspection should not have been on the boxed inedible product. (b)(6) stated FPL sent a letter stating the product shipped to BCUSA was misbranded, and is 'inedible' and should not bear the mark of federal inspection. (b)(6) further stated the letter from FPL was accompanied by white circle labels to be placed over the inspection legend and gave permission for the inedible product to be denatured; this product was destined for export to be used as pet food. (b)(6) also stated that FPL has re-vamped the entire procedure for labeling and packing inedible products as well as re-training the employees in that department. (Exhibits: 1, 3, 4 & 6)

PRODUCT DISPOSITION

(b)(6); (b)(7)(C) On 09/09/2011, BCUSA tempered the 146 cases of 'Inedible Beef Ears' product, weighing approximately 4000 pounds total, and then applied charcoal denature to the product under the supervision of (b)(6) USDA/FSIS/OFO (b)(6). (b)(6) stated in an email to (b)(6) the 'Inedible Beef Ears' product had been properly denatured and the federal mark of inspection had been properly covered with a white circle label. (b)(6) further stated the product was to be further distributed and exported under an APHIS Inedible Certificate. (Exhibits: 5 & 7)

COMPLIANCE HISTORY

FPL Foods, LLC (Est. 332)
1301 New Savannah Road
Augusta, GA 30901

No record of violations in the SE Region.

Border City, USA (Est. 3463)
8350 St. Aubin
Hamtramck, MI 48212

No record of violations in the NE Region.