

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Fremont District Office
39141 Civic Center Drive, Suite 310
Fremont, CA 94538
Phone: (510) 794-2521 Fax: (510) 794-3889

Inspection #: 1477009
Inspection Dates: 06/01/2020 - 12/02/2020
Issuance Date: 12/09/2020
CSHO ID: W6628
Optional Report #: 019-20

**Citation and Notification of Penalty**

Company Name: Lusamerica Foods, Inc.
Establishment DBA:

and its successors

Inspection Site: 16480 Railroad Ave
Morgan Hill, CA 95037

Citation 1 Item 1 Type of Violation: **General**

Title 8 CCR 5144(c) (1) Respiratory Protection Program.

(c) Respiratory protection program. This subsection requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator. The Small Entity Compliance Guide contains criteria for the selection of a program administrator and a sample program that meets the requirements of this subsection. Copies of the Small Entity Compliance Guide will be available from the Occupational Safety and Health Administration's Office of Publications, Room N 3101, 200 Constitution Avenue, NW, Washington, DC, 20210 (202-219-4667).

(1) In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions, as applicable:

(A) Procedures for selecting respirators for use in the workplace;

(B) Medical evaluations of employees required to use respirators;

(C) Fit testing procedures for tight-fitting respirators;

(D) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;

(E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;

(F) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;

(G) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations;

(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and

(I) Procedures for regularly evaluating the effectiveness of the program.

Prior to and during the course of the inspection including, but not limited to June 1, 2020, the employer failed to establish and implement a written respiratory protection program for employees required to wear a filtering facepiece respirator at the workplace.

Date By Which Violation Must be Abated:

January 13, 2021

Proposed Penalty:

\$560.00

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Citation 2 Item 1 Type of Violation: **Serious**

Title 8 CCR Section 3203(a). Injury and Illness Prevention Program.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:

- (A) When the Program is first established;**
- (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and**
- (C) Whenever the employer is made aware of a new or previously unrecognized hazard.**

...
(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

- (A) When observed or discovered; and,**
- (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.**

Prior to and during the course of the inspection, the employer failed to effectively implement its Injury & Illness Prevention Program in that it did not identify, evaluate, or correct the following unhealthy conditions or work practices relating to SARS-CoV-2, the virus causing COVID-19, that affected its employees in the following instances:

1. The employer failed to identify and correct workplace hazards relating to COVID-19 affecting its employees during the month of May 2020 who were eating, drinking, and taking breaks without maintaining a physical distance of six feet in all directions and who were not wearing face coverings. [3203(a)(4) & (6)]

2. The employer did not ensure employees maintained a physical distance of at least six feet apart in all directions from each other while working along the processing and packing conveyor lines and tables during packing and processing operations. [3203(a)(4) & (6)]

3. During the month of May 2020, the employer failed to prevent harmful exposures to employees from infectious droplets and aerosols by utilizing engineering controls, such as physical barriers, when physical distancing was impractical at workstations along the processing and packing conveyor lines and tables where employees were working in close proximity of less than 6 feet in all directions from each other. [3203(a)(6)]

4. The employer failed to correct the hazard of persons potentially infected with SARS-CoV-2 by establishing and implementing procedures for screening employees and visitors entering its facility, or by implementing equally effective practice, means or processes to prevent the spread of the infectious disease on or before May 10, 2020. [3203(a)(6)]

Or in the alternative to instance 3:

Title 8 CCR 5141 (a) Control of Harmful Exposure to Employees.

(a) Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever feasible.

Prior to and during the course of inspection, including but not limited to June 1, 2020, the employer failed to prevent potentially harmful exposures of its employees to SARS-CoV-2 in airborne particles by ensuring the use of feasible engineering controls, including but not limited to, physical barriers, such as Plexiglas shields or other impermeable dividers or partitions, to separate employees while working along the processing and packing conveyor lines. [5141 (a)]

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$8435.00

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Citation 3 Item 1 Type of Violation: **Serious**

Title 8 CCR 5144 (d) (1) Respiratory Protection

(d) Selection of respirators. This subsection requires the employer to evaluate respiratory hazard(s) in the workplace, identify relevant workplace and user factors, and base respirator selection on these factors. The subsection also specifies appropriately protective respirators for use in IDLH atmospheres, and limits the selection and use of air-purifying respirators.

(1) General requirements.

(A) The employer shall select and provide an appropriate respirator based on the respiratory hazard(s) to which the worker is exposed and workplace and user factors that affect respirator performance and reliability.

(B) The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification.

(C) The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH.

Prior to and during the course of the inspection including, but not limited to June 1, 2020, the employer failed to select and provide N95 respirators to employees with exposure to the respiratory hazard of other employees infected with SARS-CoV-2, the virus that causes COVID-19.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$8435.00**

Kelly Tatum
Compliance Officer / District Manager