

Respondent consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent is now and at all times material herein was, a corporation located at 2475 Courage Drive, Fairfield, California 94533.
2. Respondent was and has been granted Federal meat and poultry inspection services, pursuant to the FMIA and PPIA, at the above named establishment that was and has been designated as Official Establishment Number 06024/P-06024.
3. On August 20, 2009, in the United States District Court for the Eastern District of California, Sacramento, California, respondent pleaded guilty and was adjudicated guilty of two (2) misdemeanor violations, for sale, transportation and offering for transportation of adulterated and misbranded poultry products in violation of 21 U.S.C. Sections 458(a) (2) and 461(a).

Conclusion

Because the parties have agreed to the provisions set forth in the following Consent Decision and Order in disposition of this proceeding, the following Order will be issued.

Order

1. Federal meat and poultry inspection services under Title I of the FMIA and the PPIA are withdrawn from respondent, its owners, including officers, directors, partners, affiliates, successors and assigns, directly or indirectly through any corporate device, for a period of three (3) years, beginning on the effective date of this Consent Decision and Order.

However, the withdrawal of Federal meat and poultry inspection services for a three (3) year period shall be held in abeyance, and Federal meat and poultry inspection services shall be

provided to the respondent so long as all of the terms and conditions of this Consent Decision and Order set forth below, in addition to all other requirements to maintain meat and poultry inspection services under the FMIA and PPIA are met.

Compliance Provisions

2. Upon the effective date of this Order, and for the duration of this Order and subject to verification by FSIS, respondent shall comply with the Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point (HAACP) systems and *Listeria Monocytogenes* ("Lm") sampling and testing in accordance with regulatory requirements specified in Title 9, Code of Federal Regulations, Part 416, 417 and 430 as applicable.

3. Respondent shall, within thirty (30) calendar days from the effective date of this Order and subject to the verification of FSIS, develop and implement a compliance program to ensure that all inspected meat and poultry products do not become adulterated or misbranded. This compliance program shall include at a minimum, provisions to:

(a) ensure that all meat and poultry products are produced or processed in accordance with product specifications and formulations, and as required by 9 C.F.R. 318.6, Part 319 and Part 381 Subpart P;

(b) ensure that all meat and poultry products produced, processed, and/or re-packed by respondent do not have any undeclared substance of any kind and bear full and accurate labeling in accordance with 9 C.F.R. Parts 317, 319 and Part 381 Subparts N and Y;

(c) produce and maintain records concerning the ingredients and other articles used in the preparation of meat and poultry products as outlined in Respondent's Inventory Control

Procedures (as provided to FSIS through Respondent's counsel as part of correspondence dated March 2, 2010);

(d) ensure that all nutrition facts are displayed on product labels are truthful and accurate in compliance with 9 C.F.R. Part 317, Subpart B and 9 C.F.R. Part 381, Subpart Y;

(e) ensure written records are maintained of all findings, corrective actions taken, and preventative measures implemented, when any non-compliance are found;

(f) ensure a total of 18 finished sausage and/or meat loaves product are tested for cholesterol, fat, protein and sodium on a semi-annual basis as outlined in Respondent's Nutrition Labeling Compliance Program (as provided to FSIS through Respondent's counsel as part of correspondence dated March 2, 2010); and

(g) ensure written recall procedures are in place to effectively recall potentially adulterated or misbranded products produced or processed, by respondent when found within distribution channels.

Respondent shall submit their proposed compliance program to the Director of Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review (OPEER), FSIS, USDA (hereinafter "Director, EED") for review prior to its implementation. Upon implementation of the program, Respondent shall notify FSIS program personnel of any changes or modifications to this compliance program, or any of the recordkeeping forms associated with the compliance program.

4. Respondent shall designate one full-time and one alternate employee to be responsible for oversight of all aspects of the compliance program. The designated employee or alternate shall have authority to hold up production, stop production, remove product from production, or take positive control of any products produced, processed, packed, or stored at the establishment

which are, or are believed to be, adulterated or misbranded, or when facility sanitation or production deficiencies are observed. The designated employee or alternate shall be available at all times when operations requiring Federal inspection are conducted.

Ethics Training and Corporate Code of Conduct

5. Within one hundred and twenty (120) days of the effective date of this Order, all management and supervisors, including corporate officers, of respondent shall participate in and successfully complete a training program or educational course encompassing ethical business practices. Prior to participating in this course, respondent shall submit a detailed description of the proposed training course for concurrence by the Director, EED, or designee. Respondent shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by any FSIS program personnel.

6. Within sixty (60) days of the effective date of this Order and subject to verification by FSIS, respondent shall develop and submit for review by the Director, EED, a code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by the respondent. The Corporate Code, at a minimum, shall include:

- (a) a statement of corporate policy addressing business ethics and the public trust;
- (b) a statement of respondent's commitment to comply with all applicable Federal and State food safety and other laws in the conduct of their business;
- (c) guidelines for respondent employees to follow with respect to food safety and ethics issues; and

- (d) assurances to preclude any acts of intimidation, assault, or interference of FSIS program personnel.

The Corporate Code shall be permanently displayed in a prominent location in the respondent's federal establishment and shall be discussed with all current and new employees.

Record Keeping Provisions

7. Respondent shall record and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA, PPIA, and implementing regulations; and (b) all records required by this Order.

8. Respondent shall make all records required by paragraph 7 of this Order available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Corporate Reporting to FSIS

9. Respondent shall prepare a report identifying respondent's compliance with all terms and conditions of this Order. Such report shall also include information on any regulatory control actions, withholding actions, or suspension actions taken by FSIS personnel. The report shall be submitted to the Director, EED, every six months for duration of the Order.

General Provisions

10. Respondent and any of the Respondent's partners, managerial employees, agents or affiliates, shall not:

(a) violate any section of the FMIA, PPIA or regulations promulgated thereunder, any state or local statute involving the preparation, sale, transportation, or attempted distribution of any adulterated, non inspected, misbranded or deceptively packaged meat, or poultry food products;

(b) commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health; or

(c) assault, intimidate, impede, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA, PPIA, or regulations promulgated thereunder.

11. For positions which would make an individual responsibly connected to Respondent firm as defined by 21 U.S.C. 467(a) and 671, Respondent shall not knowingly hire or add any new individual who has been convicted, in any Federal, state, or territorial court, of any felony, or of more than one misdemeanor based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. To the extent permitted by State and Federal law, respondent shall immediately terminate their connection with any such individual when that individual's conviction becomes known to respondent.

12. Respondent shall fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of respondent's compliance with the FMIA, PPIA or this Order.

Enforcement Provisions

13. The Administrator, FSIS, shall have the right to summarily withdraw inspection services upon a determination by the Director, EED, or his or her designee, that one or more conditions set forth in paragraphs 1 through 12 of this Order have been violated. It is acknowledged that respondent retains the right to request an expedited hearing pursuant to the Rules of Practice, 9 C.F.R Part 500, concerning any violation alleged as the basis for a summary withdrawal of inspection services. This does not affect complainant's right to suspend operations

in accordance with Rules of Practice, 9 C.F.R. Part 500. Nothing in this Order shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA, PPIA, EPIA and the regulations promulgated there under.

14. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

15. The provisions of this Order shall be applicable for a period of three (3) years from the effective date of this Order.

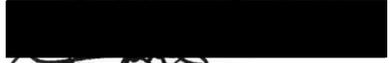
19. This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge.

ENGELHART GOURMET FOODS, INC. (ENGELHART)
Respondent

BY: 
Robert J. Engelhart, owner
Engelhart Gourmet Foods, Inc.


Brett T. Schwemer
Attorney for Respondent


Scott C. Safian, Director
Evaluation and Enforcement Division
Food Safety and Inspection Service
U.S. Department of Agriculture


Carlyne Cockrum
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

Issued this 21 day of May 2010

at Washington, D.C.


Administrative Law Judge
Jill S. Clifton