

ORDER OF THE HEALTH OFFICER OF THE COUNTY OF MERCED
DIRECTING FOSTER FARMS POULTRY PROCESSING PLANT
IN LIVINGSTON, CA TO RESPOND TO CURRENT OUTBREAKS AT THE LIVINGSTON
COMPLEX AND COMPLY WITH OTHER DIRECTIVES OF THIS ORDER

DATE OF ORDER: August 28 , 2020

WHEREAS, the worldwide pandemic of COVID-19 disease, also known as “novel coronavirus” has infected over 7,500 Merced County residents and has resulted in the death of 115 Merced County residents.

WHEREAS, over 800 residents in the City of Livingston, located in Merced County, have been infected with COVID-19.

WHEREAS, there is significant evidence of increasing transmission of COVID-19 within the County of Merced and surrounding counties, placing a measurable strain on the local healthcare systems.

WHEREAS, according to the Meat and Poultry Processing Workers and Employers Interim Guidance from CDC and the Occupational Safety and Health Administration (OSHA), meat and poultry processing facilities are particularly vulnerable to COVID-19 infections due to working conditions. These conditions include prolonged, close contact with coworkers on the production line.

WHEREAS, Foster Poultry Farms maintains a poultry processing facility located in the City of Livingston.

WHEREAS, the California Department of Public Health has defined an outbreak in a congregate employment setting as three (3) or more cases of laboratory confirmed COVID-19 in employees not linked outside of the workplace.

WHEREAS, the Foster Farms complex at Livingston consists of multiple buildings on the same campus. Foster Farms first experienced an outbreak of COVID-19 at their Livingston facility on June 29, 2020, the first known case dated to June 9, 2020. As of the date of this Order, the initial outbreak is ongoing and outbreaks are widespread throughout multiple separate buildings at the Livingston facility. One department at the facility currently has an active outbreak that has affected 105 workers and other departments have active outbreaks affecting over 20 workers. Of the approximate 2,600 workers at the Livingston facility, 13.7 percent of the workforce has received a positive test result based on worker self-reporting. Most concerning is that these current testing figures do not accurately represent the extent of outbreak at the facility as universal testing has not been accomplished within the timeline necessary to accurately identify the extent of the outbreak.

WHEREAS, since April 24, 2020, the Merced County Department of Public Health (MCDPH) has received report of 358 confirmed cases of COVID-19 and eight (8) deaths attributed to COVID-19 linked to workers from the Foster Farms Livingston facility. Five (5) of the eight (8) deaths

occurred in a hospital located outside of Merced County, illustrating the serious impact of the Foster Farms outbreak on healthcare systems and the community-at-large in California.

WHEREAS, in the past month, Foster Farms has experienced an increase of 214 reported cases of COVID-19 positive workers and six (6) deaths. Weekly reports from Foster Farms indicate the outbreak has continued since the initial reported outbreak on June 29, 2020.

WHEREAS, to-date, there has been insufficient timely testing of Foster Farms workers to assess the true extent of cases at the facility. Without accurate information on the number of cases, it is not possible to properly identify workers who require testing and/or quarantine because of exposure to the virus. This is hampered by the difficulty of testing and monitoring a growing temporary workforce. Hospital data on current hospitalizations and mortality has been slowly reported to MCDPH, further complicating decisive interventions that would allow a safe production process to continue at the facility.

WHEREAS, the Merced County Health Officer issued Directives to Foster Farms on August 5, 2020 and August 11, 2020, providing specific direction on testing requirements and other measures to control the spread of COVID-19 within the Livingston building. In summary, these Directives required immediate COVID PCR testing of all permanent, volunteer, and temporary employees who share air within a facility that has an outbreak (three or more individuals within the same building). Once an outbreak is initiated within a building, the outbreak is not considered resolved until the building reports zero additional cases for two consecutive weeks, or until universal testing of the building within the previous three (3) day period, reveals less than 1% positivity rate within the workforce.

WHEREAS, in response to the previous Merced County Health Officer Directives, Foster Farms has not implemented the required universal testing of the entire Livingston Complex, as directed. Over the three-week period since the August 5, 2020 directive was issued, the spread of disease within the facility has not been contained and active outbreaks continue to spread, creating a public nuisance as defined by California Penal Code 370 and Civil Code 3479, and posing a great risk to the health and safety of Merced County residents and the surrounding counties. Given the current epidemiological data, the slowness in testing workers, and the time necessary to complete comprehensive contact tracing and quarantine those who are exposed, partial closure of the facility for timely, universal testing of all workers and sanitation is necessary.

WHEREAS, based on the increasing number of positive COVID-19 cases at the Foster Farms Livingston Facility, the mounting death rates, the delay in implementation of a comprehensive testing scheme, the need for comprehensive contact tracing and quarantine of those exposed, decisive intervention is essential to control the COVID-19 outbreak. It is imperative that the Merced County Health Officer issue this Order to protect and preserve the health of workers at the Facility and residents of Merced County, surrounding counties, and the State of California.

Under the authority of California Health and Safety Code Sections 101040, 101085, 120175; California Government Code Sections 8610, 8630, and 8634; Article XI of the California Constitution; Title 17 California Code of Regulations Section 2501; and Merced County Code

Chapter 2.72, the Health Officer of the County of Merced (“Health Officer”) Orders Foster Poultry Farms A Corp (Foster Farms):

1. **Livingston Plant (including, but not limited to, Food Service Operations, Livingston Plant 1, Livingston Plant 2, Livingston Retail Packaging, Livingston Weigh and Price, and Livingston Rotis Room)** located at 843 Davis St., Livingston, CA 95334: To cease all operations Tuesday, September 1 at the end of the day shift, no later than 8:00 PM, excluding weigh price label which shall cease all operations by 11:59PM, through at least Monday, September 7 for the beginning of the night shift, no earlier than 9:30 PM, excluding the small maintenance crew necessary to restart plant operations, who may re-enter the plant up to six hours earlier, including any and all on-site manufacturing, transportation, processing, food service, packing, administrative, and/or other similar operations within Livingston Plant for the purposes of deep cleaning and testing all workers (permanent, temporary, contract, volunteer, and other) for clearance (as defined as two (2) negative PCR COVID-19 tests taken at least three (3) days but no more than seven (7) days apart), and implementing other measures in compliance with this Order. Foster Farms is further required to direct its agents, employees, officers, and others acting on its behalf, as well as subsidiaries, affiliates, and other entities controlled by Foster Farms, in such a manner as to ensure the closure of the entire Livingston Plant and that Livingston Plant on-site operations cease and resume only in accordance with this Order.
 - a. Once Foster Farms accomplishes the requirements of this Section to the satisfaction of the Merced County Public Health Officer and/or Health Officer designee (MCDPH contact), Foster Farms may be able to resume operations at the Livingston Plant facility.
 - b. No worker may return to work at the Livingston Plant until they have received two (2) negative PCR COVID-19 tests taken at least three (3) days but no more than seven (7) days apart.
 - c. Only sanitation workers and evisceration workers who have been cleared by two negative PCR COVID-19 tests taken at least three (3) days but no more than seven (7) days apart can enter the Livingston Plant facility during the closure period above.
2. **NCDC 2** located at 843 Davis St., Livingston, CA 95334: will be allowed to remain open and operational despite active outbreak status due to the ability to maintain at least six (6) foot social distancing within the workplace and a lower worker density within the facility, if:
 - a. Foster Farms enforces six (6) feet of social distancing between workers at NCDC 2;
 - b. The current break room(s) are closed and Foster Farms provides an alternative, appropriate break space that can accommodate and ensure social distancing (that is actively monitored); and
 - c. Foster Farms to provide enough additional microwave capacity for workers so that they are able to socially distance six (6) feet apart;
 - d. Items 2(b)-(c) shall remain in place until the facility is cleared, defined as <1% positivity rate of the entire workforce at the NCDC 2, tested same day, for 2 rounds of testing, three (3) days apart. If testing positivity rate is greater than 1%, testing must be continued every three (3) days until outbreak is cleared.

3. **All Other Facilities** located at 843 Davis St., Livingston, CA 95334 and 1000 Davis St., Livingston, CA 95334: can remain open and operational, if:
 - a. All employees (permanent, temporary, contract, volunteer, and other) are tested immediately and every seven (7) days until thereafter Livingston Complex is cleared from outbreak. Individual buildings in the complex may be cleared from the outbreak on a case by case basis, dependent on the discretion of MCDPH. Foster Farms must provide MCDPH with a clear list of the departments within each of the Livingston Complex buildings, and a line report of the cases within each building. If testing positivity rate is greater than 1%, testing must be increased to every three (3) days.
 - b. The Administration Building located at 1000 Davis St., is excluded from the outbreak testing clearance protocol listed in this section at this time.
4. Conduct a terminal cleaning of the entirety of the Livingston Complex through a qualified cleaning agency either during facility closure or within seven (7) days of the issuance of this Order. Ensure that high-traffic areas and high-touch areas are disinfected following CDC guidelines:
<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html> and
https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/REopening_America_Guidance.pdf.
Terminal cleaning will be conducted within the Livingston Plant on August 30, 2020 and the entire Livingston Complex during the closure period.
5. The following COVID-19 line lists of data, at a minimum and as required by MCDPH, shall be reported to the MCDPH contact directly in a format determined by MCDPH and at intervals determined by MCDPH, but at no time less often than two times each week on Tuesdays and Fridays by 12:00PM:
 - a. Worker full name, date of birth, gender, race, phone number, county of residence, job title, location in facility/assigned department, unit/shift (e.g., day, night, swing), if the individual works in another facility/location and name of the other facility, positive test date, last day worked, symptom start date (note if asymptomatic), testing location, if worker was tested due to part of mandated response testing, type of test used (e.g., PCR, antigen), return to work date, if worker was hospitalized due to illness, hospitalization date, if worker died due to illness (if yes, immediately e-mail the MCDPH contact), date of death, number of close contacts sent home/teleworking due to exposure, and if the case was a close contact to another index/case in the facility.
 - b. The full laboratory testing line list data (including on-site testing), at a minimum, shall be reported to the MCDPH contact directly in a format and at intervals determined by MCDPH, including worker full name, date of birth, phone number, address of residence, county of residence, test result, and test date. Submission via the CalREDIE system alone will not be accepted.
6. Immediately upon issuance of this Order, a COVID-19 Mitigation Plan for the entire Livingston Complex is required to be prepared and submitted to and approved by the

MCDPH contact and shall include continued proper COVID-19 worker medical screening, symptom-based testing, and testing of new hires and temporary workers, including the following:

- a. Permanent employees, temporary workers, contract workers, and/or volunteers that present with a positive COVID-19 test result shall be sent home from work for the required quarantine period and follow MCDPH, California Department of Public Health (CDPH), and CDC requirements and guidance. Workers who refuse or are unable to be tested as directed by MCDPH should be quarantined at home for 14 days, and shall not be allowed to work during the isolation period as defined by CDC:
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.
- b. Workplace contact tracing shall be conducted by Foster Farms within 24 hours of notification of a positive employee. Close contacts, is defined as being within six (6) feet for more than 15 minutes during the case's infectious period to positive workers. Close contacts shall be sent home from work for a 14-day quarantine period. The infectious period begins 48 hours prior to development of symptoms. For the purposes of contact tracing of individual who were asymptomatic and tested positive, the infectious period commences 48 hours prior to the day the sample was collected.
- c. Temporary workers, permanent employees, contract employees, and/or volunteers will not be allowed to begin work without submitting proof to Foster Farms of a COVID-19 negative point-of-care antigen test result dated same day before start of work up to 48 hours before the start date.
 - i. MCDPH recognizes the shortage of rapid testing materials in the Central Valley. While Foster Farms is awaiting delivery of antigen testing materials, temporary workers can be allowed entry to the plant if the following conditions are met, in substitution:
 1. A separate break space is provided for temporary workers (apart from permanent employees),
 2. N95s and any necessary replacements are provided to temporary employees, following proper CalOSHA and fit testing protocols. N95s must be offered to workers adjacent to temporary workers on the line.
 3. Temporary workers who will be provided continual employment will be tested via PCR test on the first day of employment, and at least three (3) days and at most seven (7) days apart. Once these temporary employees have two negative tests, they may be treated for purposes of this Order as permanent work force.
- d. Symptom-based testing is required when a permanent employee, temporary worker, contract worker, and/or volunteer presents with any one of the COVID-19 symptoms described by the CDC in the following guidance:
<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
Immediately upon notice to or observation by Foster Farms of any one of the COVID-19 symptoms by any worker at the site, the employee will be immediately isolated, and testing of the worker shall immediately occur by either PCR or point-

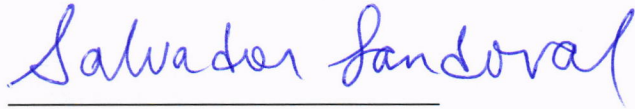
of-care antigen testing, or other Health Officer approved testing method, and results shall be obtained within 24-48 hours, by Foster Farms if testing is not available for the employee in the community.

- e. When there is a COVID-19 outbreak of three (3) permanent employees, temporary workers, contract workers, and/or volunteers in any building, or area that shares the same air supply, all individuals who had worked in the area during the potential outbreak period (within 48 hours prior to the onset of symptoms of a positive employee throughout the duration of the outbreak) must be tested for COVID-19 by PCR immediately and every seven (7) days thereafter until the building reports zero additional cases for two consecutive weeks, or until universal testing of the building reveals less than 1% positivity rate within the workforce.
 - f. The employer is responsible for ensuring all workers, including temporary workers, permanent employees, contract employees, and/or volunteers, are offered and provided COVID-19 testing at no cost to the employee.
- 7. As soon as practical, but no more than 30 days of issuance of this Order, expand the on-site Occupational Health program and clinic, consisting of a designated licensed medical or nursing professional and liaison for MCDPH to ensure and oversee proper COVID-19 worker medical screening processes, contact tracing, case investigation and referral to health care provider as needed, accurate data collection and reporting of all workers tested, reporting of all COVID-19 positive results regardless of county of residence, immediate notification of COVID-19 related hospitalizations to the MCDPH contact and CalOSHA, immediate reporting of COVID-19 related deaths to the MCDPH contact and CalOSHA, data quality assurance verification protocol, and the implementation of adequate COVID-19 surveillance testing and reporting to the MCDPH contact, as approved by MCDPH. These requirements are subject to review and supervision by MCDPH to ensure adequate procedures and practices are implemented.
 - 8. Foster Farms management shall ensure that all employees be informed of testing requirements, outbreaks that occur, areas affected, and trained on safety requirements, in English, Spanish, and Punjabi, working with the union as applicable.
 - 9. Foster Farms shall permit MCDPH to enter the Livingston Complex, and each and every building therein, for purposes of ensuring compliance with this Order on 12 hours' notice.
 - 10. Provide proper face coverings at no cost to all contract employees, permanent employees, temporary workers, and/or volunteers prior to each shift, and if a replacement is needed during a shift, and require use as directed in the Merced County Health Officer Order.
 - 11. Foster Farms shall follow all State Orders, including State COVID-19 Industry Guidance for Food Packing and Processing: <https://files.covid19.ca.gov/pdf/guidance-food-packing-en.pdf>.
 - 12. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom; March 12, 2020 Executive Order N-25-20 and March 19, 2020 Executive Order N-33-20, each issued by

Governor Newsom ordering all state residents to heed any orders and guidance of state and local public health officials with respect to COVID-19; May 4, 2020 Executive Order N-60-20 issued by Governor Newsom ordering various protocols and reaffirming the existing authority of local health officers to establish public health measures that are more restrictive or additional to statewide directives; Government Code section 8567(a); the March 13, 2020 Declaration of Local Health Emergency in Merced County pursuant to Health and Safety Code section 101080; the March 13, 2020 Proclamation of Local Emergency pursuant to Government Code section 8630 and Merced County Code section 2.72.060; the March 16, 2020 Resolutions of the Board of Supervisors of the County of Merced ratifying the Local Emergency and Local Health Emergency; and the California Department of Public Health, Cal/OSHA, and the California Department of Food and Agriculture jointly issued Industry Guidance for Food Packing and Processing updated on July 29, 2020 and any future dated updates.

13. Violation of this Order by Foster Farms is a misdemeanor punishable by fines up to \$1,000 per day, imprisonment of 90 days, or both. Violation also subjects Foster Farms to civil enforcement actions including injunctive relief, attorneys' fees and costs. A violation of this Order constitutes a public nuisance. (Health and Safety Code Sections 120275 and 120295; Penal Code Sections 19 and 370; Government Code Sections 25132 and 8665; Merced County Code 2.72.100)
14. Pursuant to Government Code Sections 26602 and 41601 and Health and Safety Code Sections 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order.
15. This Order repeals and replaces all previous Orders issued by the Health Officer of Merced County to Foster Farms and any agreed upon stay of such Orders. This Order does not supersede any conflicting or more restrictive orders issued by local governments, the State of California, or the Federal Government.
16. Copies of this Order shall promptly be: (1) made available at the County Administration Building at 2222 M Street, Merced, California 95340; (2) and provided to any member of the public requesting a copy of this Order.

SO ISSUED AND ORDERED:




Salvador Sandoval, MD, MPH
Merced County Health Officer

Dated: August 28, 2020

NOTICE OF RIGHTS

1. If you object to this order, you have a right to arrange for your own legal representative.
2. You have a right to also file for judicial relief to seek release from the order.
3. All requests to contact the County Health Officer will be through Merced County Department of Public Health at 209-381-1203 during normal business hours.



Salvador Sandoval, MD, MPH
Merced County Health Officer

Dated: August 28, 2020