

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE ADMINISTRATOR  
FOOD SAFETY AND INSPECTION SERVICE

In re: )  
)  
Mr. Eson Fleming, )  
Mrs. JoAnne Fleming, and )  
Fleming's Meat Processing )     STIPULATION AND  
)     CONSENT AGREEMENT  
Respondents. )

This administrative action was instituted by the delivery of a letter (Notice of Ineligibility) on or about September 22, 2008, to Mr. Eson Fleming, Mrs. JoAnne Fleming and Fleming's Meat Processing, hereafter "Respondents", notifying them that they were no longer eligible for custom exemption under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601 et seq.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451 et seq.). The notice of ineligibility that was hand delivered by FSIS personnel was effective upon receipt, and resulted from Respondents' alleged failure to maintain the facility in a sanitary manner.

The aforementioned action was instituted by the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA), hereafter "Complainant", in accordance with Section 23(a) of the FMIA (21 U.S.C. § 623(a)), Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. § 303.1 et seq.), and Section 15(a) of the PPIA (21 U.S.C. § 464(a)), and Parts 303, 381.10, and 416 of the Poultry Products Inspection Regulations (9 C.F.R. § 303, 381.10, 416 et seq.).

The Parties have agreed that this administrative proceeding should be terminated by the execution of the Agreement set forth below and have agreed to the following stipulations:

1. For the purpose of this Stipulation and the provisions of this Agreement only, Respondents admit the jurisdictional allegations of the above-mentioned notification and both

parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that the Stipulation and Consent Agreement in this proceeding contains findings and conclusions with respect to fact or law, as well as to reason or basis thereof; and
- (c) all rights to seek further judicial review or to otherwise challenge or contest the validity of this Stipulation and Consent Agreement.

2. This Stipulation and Consent Agreement is for settlement purposes in this proceeding only, and does not otherwise constitute an admission or denial by Respondents that they have violated any Federal regulation or statute.

3. Respondents waive any action against USDA under the Equal Access to Justice Act of 1980 (5 U.S.C. 504 et seq.) for fees or other expenses incurred in connection with this proceeding, and any other action against the USDA and its employees in connection with this proceeding and the facts and events that gave rise to this proceeding.

#### FINDINGS OF FACT

1. Fleming's Meat Processing, is now and at all times material was an unincorporated business operating as a custom exempt meat slaughter and processing facility at 4200 Old M Route 51, Croswell, Michigan, 48422.

2. Mr. Eson Fleming and Mrs. JoAnne Fleming are now and at all times material have been co-owners and operators of Fleming's Meat Processing.

## CONCLUSION

In as much as the parties have agreed to the provisions set forth in the following Agreement in disposition of this proceeding, such Agreement will be issued.

## AGREEMENT

Custom exempt meat slaughter and processing privileges granted under 9 C.F.R. Part 303.1 promulgated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 623) Poultry Products Inspection Act (PPIA) (21 U.S.C. 641 *et seq.*) are terminated from Eson Fleming, Mrs. JoAnne Fleming, and Fleming's Meat Processing, and its owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate device, for a period of two (2) years. This termination of exemption privileges shall be held in abeyance and custom exemption privileges shall be provided to Respondents, pursuant to Section 23 (a) of the FMIA, Section 15 (a) of the PPIA, and 9 C.F.R. Parts 303, 381.10, and 416, provided all regulatory requirements and the additional conditions set forth in this Agreement are met.

## CONDITIONS

1. Respondents have demonstrated, prior to reinstatement of eligibility to operate as a custom exempt meat slaughtering and poultry processing facility, compliance with the FSIS statutory and regulatory requirements upon review and examination of its written operational procedures and of the physical and sanitary conditions of Respondent's facility. Prior to resumption of exemption privileges, Respondents' facility shall receive an "acceptable" rating in every category of FSIS' "Exempt Establishment Review Report," FSIS Form 5930-1.

2. Respondents shall make facility repairs and/or improvements necessary to maintain sanitary conditions, as required by 9 C.F.R. Parts 303 and 416, including but not limited to:

- a) maintenance of equipment and their facility to provide an acceptable environment for the production of a wholesome product; and
- b) maintenance of overhead structures to include ceilings, rails, etc. in a manner to prevent the presence of debris, rust, and other foreign material.

3. Prior to resumption of exemption privileges, respondents shall develop, implement and maintain a sanitation program, addressing pre-operational and operational sanitation, monitoring activities, and recordkeeping. Respondents will conduct the sanitation program on a daily and on-going basis to ensure sanitary conditions and to prevent adulteration.

4. Respondents shall:

- a) maintain establishment grounds and facilities, equipment and utensils, sanitary operations, and employee hygiene, as required by 9 C.F.R. Parts 303 and 416;
- b) monitor and record sanitation deficiencies, take corrective and preventive actions to ensure sanitation, and make these records available to FSIS for review and/or copying upon request; and
- c) document findings of and corrective actions to address structural and/or mechanical repairs and/or improvements under a "Planned Improvement Program" (PIP) and make these records available to FSIS for review and/or copying upon request.

5. Respondents shall establish a pest management program to prevent the harborage and breeding of pests on the grounds and within the facility consistent with 9 C.F.R. Parts 416.2(a).

6. Respondents shall immediately take action to (a) ensure that all cattle slaughtered or processed at its facility are eligible for slaughter or processing and are not adulterated, (b) that Specified Risk Materials (SRM) are removed from any cattle slaughtered or processed at its facility, (c) prevent the custom slaughtering or processing of non-ambulatory disabled cattle

(downers), and (d) that any records thereof available to FSIS for review and/or copying immediately upon request.

7. Respondents shall (a) ensure that product does not become adulterated during processing, handling, storage, loading and unloading, or during transportation; (b) ensure that all slaughtered and processed animal carcasses and further processed meat or meat food products are properly marked, labeled and packaged, (c) ensure that custom prepared products are plainly marked "Not for Sale" and kept separate and apart from any meat products held for sale, and (d) maintain records as required by 9 C.F.R. Part 303.

8. Respondents shall within fifteen (15) days from the effective date of this Agreement, designate one person and an alternate who shall have overall responsibility for (a) developing, implementing, and maintaining the sanitation and other requirements of 9 C.F.R. Parts 303 and 416 and (b) compliance with the conditions of this Agreement.

9. Respondents shall not (a) commit any felony or fraudulent act; (b) violate any section of the FMIA, Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat product; or (c) assault, intimidate, impede, or interfere with, or threaten to assault, intimidate, impede, or interfere with any representative or designee of the Secretary of Agriculture.

10. Respondents shall make all records required to be maintained by the FMIA or regulations issued thereunder or this Agreement available to FSIS personnel for review and/or copying immediately upon request.

11. Respondents shall ensure that any cattle, sheep, swine, or goats slaughtered or handled in connection with slaughter at their facility comply with the Act of August 27, 1958

(7 U.S.C. 1901-1906), 9 C.F.R. Part 313, and any Federal, state, or local laws regarding the humane treatment of animals.

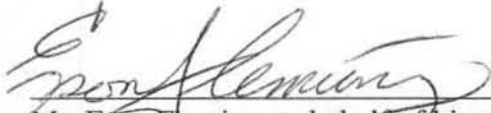
12. Respondents shall fully and completely cooperate with any USDA or FSIS investigation, inquiry, review or examination of Respondents' (a) facility, products, inventory or records, (b) compliance with the FMIA or the regulations issued thereunder, or (c) compliance with this Agreement.

13. The Administrator, FSIS, may summarily terminate custom exemption privileges from Respondents upon a determination by the Director, Evaluation and Enforcement Division, Office of Program Evaluation, Enforcement and Review, FSIS, that Respondents have failed to comply with 9 C.F.R. Parts 303 and/or 416 or any requirement of this Agreement. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the Adopted Rules of Practice concerning any violation alleged as the basis for a summary termination of custom exemption privileges.

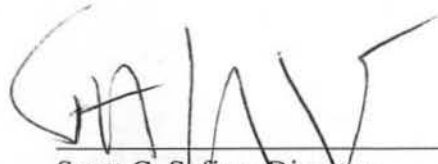
14. The provisions of this Agreement shall be applicable for two (2) years and become effective when signed by all parties.

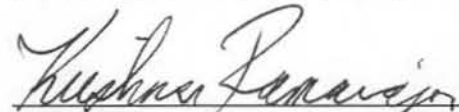
15. Nothing in this Agreement shall preclude any regulatory or administrative actions or the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

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

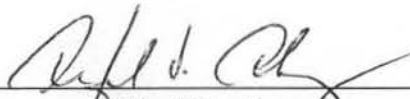
  
Mr. Eson Fleming on behalf of himself  
and for Fleming's Meat Processing  
Croswell, Michigan

  
Mrs. JoAnne Fleming on behalf of herself  
and for Fleming's Meat Processing  
Croswell, Michigan

  
Scott C. Saffian, Director  
Evaluation and Enforcement  
Division, OPEER, FSIS, USDA

  
Krishna G. Ramaraju, Esq.  
Office of the General Counsel  
Attorney for Complainant

Issued this 14 day of October 2008

  
Alfred V. Almanza  
Administrator  
Food Safety and Inspection Service