

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

In re:)	FSIS/EED Docket Number 11-0001
)	
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 Summary Termination) on or about October 7, 2010, 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.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451 et seq.). The notice of summary termination that was hand-delivered by FSIS personnel was effective upon receipt, and resulted from Respondents' failure to maintain the facility in a sanitary manner and comply with the terms of an October 14, 2008 Stipulation and Consent Order.

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 this 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 notice and both parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that this Stipulation and Consent Agreement contain 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, Crosswell, 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.

3. On September 22, 2008, FSIS issued a Notice of Ineligibility to Respondents, notifying them that they were no longer eligible for custom exemption under the FMIA and PPIA. This action resulted from Respondents' failure to maintain the facility in a sanitary manner.

4. On October 14, 2008, the FSIS Administrator issued a Stipulation and Consent Agreement provisionally granting custom exemption under the FMIA and PPIA, provided that Respondents complied with the conditions of the Stipulation and Consent Agreement for the specified duration of those conditions. This agreement had been accepted by and knowingly and willingly entered into by Complainant and Respondents.

5. On October 7, 2010, FSIS issued a Notice of Summary Termination to Respondents, notifying them that they were no longer eligible for custom exemption under the FMIA and PPIA and the conditions of the October 14, 2008 Agreement. This action resulted from Respondents' repeated failures to comply with the conditions of the October 14, 2008 Agreement and to maintain their facility in a sanitary manner.

CONCLUSION

In as much as the parties have agreed to the provisions set forth in the following Agreement in disposition of this proceeding, the following 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 Mr. Eson Fleming, Mrs. JoAnne Fleming, and Fleming's Meat Processing, and their owners, officers, directors, partners, successors, affiliates, or assigns, directly or through any corporate device, for a period of 30 months. 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. Prior to the to reinstatement of custom exemption privileges, and subject to verification and a satisfactory determination by FSIS, Respondents shall demonstrate compliance with the FSIS statutory and regulatory requirements including, but not limited to, 9 C.F.R. Parts 303, 381.10, and 416, upon a review and examination of: (a) Respondents' written operational procedures and other programs and (b) of the physical and sanitary conditions of Respondents' facility.

2. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall address and repair any premises, facility and or equipment issues identified by FSIS at the time of the facility review conducted pursuant to paragraph 1 of this Agreement that do not comply with FSIS statutory and regulatory requirements.

3. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents' facility must receive an "acceptable" rating in every category of FSIS' "Exempt Establishment Review Report," FSIS Form 5930-1.

Sanitation Performance Standards

4. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop written procedures for monitoring and identifying non-compliance, corrective and preventive actions, and recordkeeping that Respondents will conduct, and implement, to operate and maintain its premises, facilities, equipment, and outside premises, in a manner sufficient to: (i) prevent the creation of insanitary conditions and practices; and (ii)

ensure that meat and meat food products, and poultry and poultry products, stored, prepared, and packed are not adulterated.

5. Upon the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall:

(a) comply with the requirements of the SPS regulations (9 C.F.R. 416);

(b) operate and maintain, at all times, its facility, including its premises, facilities, equipment, and outside premises, in a manner sufficient to prevent the creation of insanitary conditions and practices;

(c) ensure that meat and meat food products, and poultry and poultry products, are not adulterated; and

(d) assess its written SPS procedures to evaluate their effectiveness, and make necessary improvements, corrective actions, and repairs to the facility buildings, structures, rooms, and compartments to ensure that they are kept in good repair, and sufficient size to allow for processing, handling, and storage of product in a manner to ensure and maintain sanitary conditions.

Sanitation Standard Operating Procedures (SSOP)

6. Prior to the reinstatement of custom exemption privileges, and subject to verification of FSIS, Respondents shall develop a written SSOP to describe the monitoring activities, record keeping, and other procedures that Respondents will conduct, implement and maintain on a daily and on-going basis, before, during and after and operations, in accordance with 9 C.F.R. Parts 416.11 to 416.16, to ensure sanitary conditions and prevent product adulteration.

7. Upon the reinstatement of custom exemption privileges, and subject to verification of FSIS, Respondents shall:

(a) implement and maintain on a daily and on-going basis their SSOP system as required by 9 C.F.R. § 416 to ensure sanitary conditions and prevent product adulteration; and

(b) implement corrective and preventative actions, as required by 9 C.F.R. § 416.15.

Planned Improvement Program

8. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop a “Planned Improvement Program” (PIP) designed to identify and correct non-compliance and to ensure that the entire structure of the facility, to include its rooms and compartments, is of sound construction and that all equipment is maintained in proper working order and kept in good repair.

9. Upon the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain their PIP as required in this Order, and document any findings and corrective actions to address structural and/or mechanical repairs and/or improvements to their facility and make these records available to FSIS for review and/or copying upon request.

Pest Management Program

10. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop a written pest management program, to be implemented and maintained by an independent pest control service, to prevent the harborage and breeding of pests within the facility and on its grounds consistent with 9 C.F.R. 416.2 (a) and (b) to ensure that:

(a) the pest control service reviews and services Respondents’ facility and grounds on at least a monthly frequency; and

(b) the pest control service provides Respondents written reports detailing its findings and recommendations of its review.

11. Upon the reinstatement of custom exemption privileges, and subject to verification of FSIS, Respondents shall implement and maintain its pest control program.

Specified Risk Materials (SRM) and Non-Ambulatory Cattle

12. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop a written specified risk material (SRM) control program, to include daily records sufficient to document procedures for the removal, segregation, and disposition of SRM, to ensure the control of SRM and regulatory compliance with 9 C.F.R. Parts 309, 310, 311, and 313.

13. Upon the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain, on a daily basis and on-going basis, their written SRM control program.

Humane Handling and Slaughter

14. Respondents shall ensure that any cattle, sheep, swine, or goats slaughtered or handled in connection with slaughter at their facility comply with the Humane Methods of Slaughter Act (HMSA) 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.

Custom Exemption Requirements

15. 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.

Management and Training

16. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall designate one person and an alternate who shall have overall responsibility for (a) 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. Respondents may name a new designee or alternate only upon written request to, and subject to the written concurrence of, the Director, EED.

17. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop and complete training instructions in sanitation and sanitary dressing procedures for all employees. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall also train all employees in all programs, procedures and requirements of this Agreement.

18. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents Eson Fleming and JoaAnne Fleming and any designated and alternate officials as described in paragraph 16 shall participate in and successfully complete a training program or educational course encompassing aspects of food safety, sanitation measures, including the requirements of the SPS, SSOP, SRM controls, recordkeeping procedures, and Good Manufacturing Practices (GMP’s). Respondents shall submit their proposed training program or course to the Director, Evaluation and Enforcement Division (EED) of OPEER, FSIS (hereinafter, the Director, EED) for review and concurrence.

19. Respondents shall maintain for the duration of the Agreement records documenting the completion of all training as described in paragraphs 16-18 and shall make these records available upon any request to any authorized representative of the Secretary.

Recordkeeping

20. Respondents shall document and maintain complete and accurate written records of (a) all records required to be maintained by the FMIA, PPIA and the regulations; and (b) all records required by this Agreement available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

General Provisions

21. 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.

22. 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.

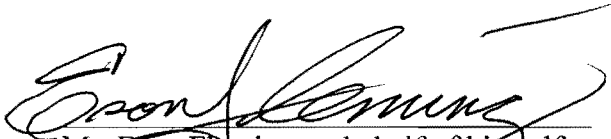
23. The Administrator, FSIS, may summarily terminate custom exemption privileges from Respondents upon a determination by the Director, EED that Respondents have failed to comply with 9 C.F.R. Parts 303 and/or 416 or any requirement of this Agreement. The termination of Respondents' custom exemption privileges shall become effective immediately upon FSIS's service of a Notice of Summary Termination to Respondents, without further

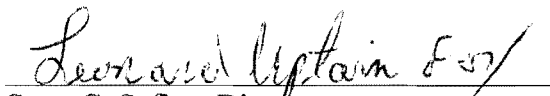
proceeding. Respondents shall retain the right, after any summary termination of Respondents' custom exemption privileges, to request an expedited hearing pursuant to the Adopted Rules of Practice concerning any violation alleged as the basis for a summary termination of custom exemption privileges. Such request for an expedited hearing must be submitted within twenty (20) calendar days of FSIS' service of a Notice of Summary Termination.

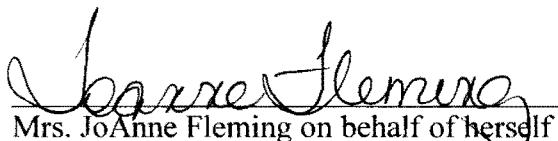
24. The provisions of this Agreement shall be applicable for of 30 months and become effective when signed by all parties and upon the reinstatement of custom exemption privileges.


25. 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.

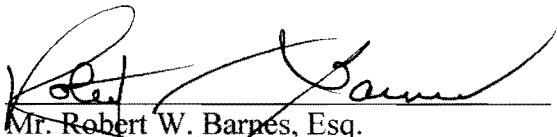
If any provision of this Agreement is declared invalid, such declaration shall not affect the validity of any other provision herein.


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


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


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


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Issued this 15th day of June, 2011

Phong Salunkh for Alfred V. Almanza
Alfred V. Almanza, Administrator
Food Safety and Inspection Service
United States Department of Agriculture