

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

In re:)
)
Mr. Jerry Martin, and)
Martin's Meat Processing)
Sandusky, Michigan) STIPULATION AND
) CONSENT AGREEMENT
Respondents.)

This administrative action was instituted by the delivery of a Notice of Ineligibility (“NOI”) on or about June 24, 2008, to Mr. Jerry Martin and Martin’s Meat Processing (“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 NOI was effective upon receipt, and was issued due to Respondents’ alleged failure to maintain their 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), and Section 15(c) of the PPIA (21 U.S.C. § 464(a)), and Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. § 381.10).

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. Martin's Meat Processing is now and at all times material was a business operating as a custom exempt meat slaughter and processing facility at 1770 Sheldon Road, Sandusky, Michigan, 48471.

2. Mr. Jerry Martin is now and at all times material was owner and operator in the operations under custom exemption eligibility, at Martin's Meat Processing, pursuant to Section 23(a) of the FMIA and applicable federal meat inspection regulations (9 C.F.R. Part 303.1 et seq.), and Section 15(a) of the PPIA (9 C.F.R. § 303, 381.10, 416 et seq.).

3. In a letter delivered on or about June 24, 2008, Respondents were notified that they were no longer eligible for custom eligibility under the FMIA and PPIA as required by 9 C.F.R.

Parts 303, 381 and 416.

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 is 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) and 9 C.F.R. Part 381.10 promulgated under the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 464) are terminated from Jerry Martin, and Martin'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. The termination of custom exempt meat slaughter and processing 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 (c) 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 processing facility, compliance with the FSIS statutory and regulatory requirements upon review and examination of its written pre-operational and 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.

Sanitation Performance Standards (SPS)

2. Prior to the resumption of exemption privileges, and subject to verification of FSIS, respondents shall:

(a) develop written procedures for monitoring, corrective action, and record keeping that respondents will implement to operate and maintain their facility at Martin's Meat Processing, including its outside premises, in a manner sufficient to prevent the creation of insanitary conditions and practices, to comply with the requirements of the Sanitation Performance Standards (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6), and to ensure that meat and poultry products stored, prepared, and packed at said facility are not contaminated or adulterated; and

(b) address and repair, any premises, facility, and/or equipment non-compliance issues identified by FSIS at the time of the physical facility review required by paragraph 1 of this Agreement.

3. Upon the resumption of exemption privileges, and subject to verification of FSIS, respondents shall:

(a) operate and maintain, at all times, the facility in a manner sufficient to prevent the creation of insanitary conditions and practices, to comply with the requirements of the (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6), and to ensure that meat products are not contaminated or adulterated; and

(b) maintain walls, doors, and overhead structures, including ceilings, hoists, and rails in a manner to prevent the presence of condensation, algae, mold, flaking paint, rust or other foreign material.

Sanitation Standard Operating Procedures (SSOP)

4. Prior to the resumption of exemption privileges, and subject to verification of FSIS, respondents shall:

(a) 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.

(b) designate one person and an alternate who shall have overall responsibility for developing, implementing, and maintaining the sanitation and other requirements of 9 C.F.R. Parts 303 and 416 and compliance with the conditions of this Agreement.

5. Upon the resumption of 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;

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

Planned Improvement Program

6. Prior to the resumption of exemption privileges, and subject to verification of FSIS, respondents shall develop a “Planned Improvement Program” (PIP) to ensure that the entire structure of the facility, to include its rooms and compartment, is of sound construction and that all equipment is maintained in proper working order and kept in good repair.

7. Upon the resumption of exemption privileges, and subject to verification of FSIS, respondents shall implement and maintain their PIP 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

8. Prior to the resumption of exemption privileges, and subject to verification of FSIS, respondents shall develop a written pest management program.

9. Upon the resumption of exemption privileges, and subject to verification of FSIS, respondents shall implement and maintain their pest management program in a manner sufficient to prevent the creation of insanitary conditions and practices, to prevent the harborage and breeding of pests, and to ensure that meat and poultry products stored, prepared, and packed are not contaminated or adulterated.

Specified Risk Materials (SRM) and Non-Ambulatory Cattle

10. Prior to the resumption of exemption privileges, and subject to verification of 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.

11. Upon the resumption of operations pursuant to custom exemption, and subject to verification of FSIS, respondents shall implement and maintain, on a daily basis and on-going basis, their written SRM control program.

Humane Handling and Slaughter

12. 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.

Personnel and Training

14. Prior to the resumption of exemption privileges at respondent's facility, and subject to verification by FSIS, all employees shall complete training instructions in sanitation and sanitary dressing procedures.

15. Upon the resumption of exemption privileges, and subject to verification of FSIS, respondents shall conduct annual training for all employees, current and new, consistent with the requirements of paragraph 14.

Custom Exemption Requirements

16. Respondents shall ensure that product does not become adulterated during processing, handling, storage, loading and unloading, or during transportation; and

(a) ensure that all slaughtered and processed animals' carcasses and further processed meat or meat food products are properly marked, labeled and packaged; and

(b) ensure that meat derived from custom slaughtered livestock, and custom prepared meat and meat food product, is for the personal use of the owner and may not be sold or donated; and

(c) ensure that custom prepared meat products are plainly marked "Not for Sale" and kept separate and apart from meat or poultry products held for sale; and

(d) maintain records as required by 9 C.F.R. Part 303.

Poultry Exemption Requirements

17. If conducting custom exempt poultry slaughter operations, respondents shall ensure that the following poultry exemption requirements in 9 C.F.R. §381.10 are met:

- (a) respondents may not engage in the buying or selling of any poultry products capable of use as human food;
- (b) ensure that the custom slaughtered poultry is for the personal use of the owner of the poultry and may not be sold or donated;
- (c) ensure that the shipping containers of custom slaughtered poultry products bear the owner's name, address, and the statement "Exempted-P.L. 90-492.
- (d) ensure that only one poultry exemption is claimed during a calendar year.

General Provisions

18. Respondents shall not (a) commit any felony or fraudulent act; (b) violate any section of the FMIA, PPIA, Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat or poultry 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.

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

20. 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, PPIA, or the regulations issued thereunder, or (c) compliance with this Agreement.

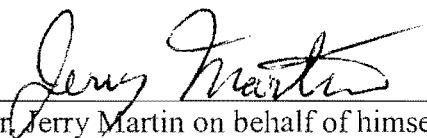
21. The Administrator, FSIS, may summarily terminate custom exemption privileges from respondents upon a determination by the Director, Evaluation and Enforcement Division,

Office of Program Evaluation, Enforcement and Review, FSIS, that respondents have failed to comply with 9 C.F.R. Parts 381.10, 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.

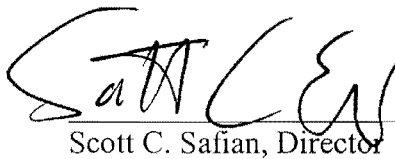
22. The provisions of this Agreement shall be applicable for two (2) years and become effective when signed by all parties.

23. 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.

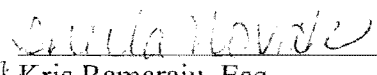
If any provision of this Agreement is declared invalid, such declaration shall not affect the validity of any other provision herein.



Mr. Jerry Martin on behalf of himself
and for Martin's Meat Processing,
Sandusky, Michigan




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



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

Issued this 5 day of JULY 2009



Alfred V. Almanza
Administrator
Food Safety and Inspection Service