

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

In re:)
)
Mr. Laurn Oltmer,)
Mrs. Kay Oltmer, and)
Butcher Block) STIPULATION AND
) CONSENT AGREEMENT
Respondents.)

This administrative action was instituted by the delivery of a letter (Notice of Ineligibility) on or about April 10, 2007, to Mr. Laurn Oltmer, Mrs. Kay Oltmer and Butcher Block, 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 notice of ineligibility 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)) and Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. 303.1 *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. Butcher Block, is now and at all times material was a business operating as a custom exempt meat slaughter and processing facility at 101 S. 4th Street, Indianola, Nebraska 69034.
2. Mr. Laurn Oltmer and Mrs. Kay Oltmer are now and at all times material have been partners, owners and operators of Butcher Block.
3. Butcher Block, Mr. Laurn Oltmer and Mrs. Kay Oltmer are now and at all times material were partners, owners and operators in the operations under custom exemption eligibility pursuant to Section 23(a) of the FMIA and applicable federal

meat inspection regulations (9 C.F.R. Part 303.1 et seq.).

4. On or about December 28, 2006, and other dates, Respondents allegedly violated the FMIA by failing to maintain and operate its custom exempt facility in a sanitary manner and comply with other applicable regulatory requirements as required by 9 C.F.R. Part 303.1 et seq.
5. In a letter delivered on or about April 10, 2007, Respondents were notified that they were no longer eligible for custom exemption eligibility under the FMIA as required by 9 C.F.R. Parts 303 and 416.
6. As of December 19, 2001, Laurn Oltmer and Mrs. Kay Oltmer are now and at all times material were partners, owners, operators in the operations under custom exemption eligibility pursuant to Section 23(a) of the FMIA and applicable federal meat inspection regulations (9 C.F.R. Part 303.1 et seq.).

CONCLUSION

Inasmuch 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) are terminated from Laurn Oltmer and Kay Oltmer and Butcher Block, 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 and 9 C.F.R. Part 303, 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 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. Prior to resumption of exemption privileges, 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 facility to provide an acceptable environment for the production of a wholesome product;
 - 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. Respondents shall, within fifteen (15) days from the effective date of this Agreement, 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. (a) Respondents shall 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) Respondents shall monitor and record sanitation deficiencies under a sanitation report, take corrective and preventive actions to ensure sanitation, and make these records available to FSIS for review and/or copying upon request. (c) Respondents shall 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. Within ten (10) days of the effective date of this Agreement, Respondents shall establish a pest management program, implemented and maintained by an independent pest control service, 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) and (b). Respondents shall assure that (a) the pest control service reviews and services Respondents’ facility and grounds on at least a monthly frequency; (b) written reports are provided by the pest control service to the Respondents detailing its findings and recommendations of its review; (c) that report recommendations are implemented in a timely fashion; and (d) its pest management program and servicing firm’s written findings, recommendations, and reports are available to FSIS personnel for review and for copying immediately upon request.

6. (a) Respondents shall immediately take action to (i) ensure that all cattle slaughtered or processed at its facility are eligible for slaughter or processing and are not adulterated and (ii) that Specified Risk Materials (SRM) are removed from any cattle slaughtered or processed at its facility. (b) Respondents shall, within fifteen (15) days from the effective date of this Agreement, develop, implement and maintain written procedures to prevent the custom slaughtering or processing of non-ambulatory disabled cattle (downers). Respondents shall train and educate its employees in these procedures, post the procedures in an appropriate, visible area, and make the procedures and 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 ten (10) 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. Within thirty (30) days from the effective date of this Agreement, Respondents' owners, managers, and employees shall complete training instruction in sanitation

and sanitary dressing procedures. Respondents shall maintain written records of all completed instruction. Respondents shall make the training materials and records available to FSIS personnel for review and/or copying immediately upon request.


10. 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.
11. 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.
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

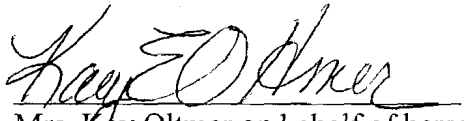
privileges.

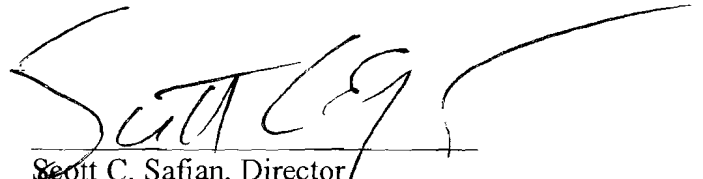
14. The provisions of this Agreement shall be applicable for two (2) years and become effective when signed by all parties.

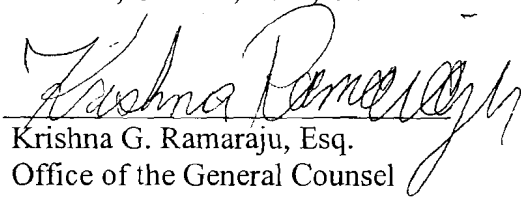
15. Nothing in this Agreement shall preclude any regulatory or administrative actions, or the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

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

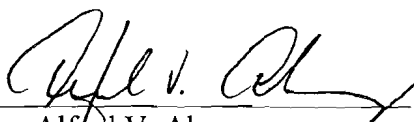

Mr. Laurn Oltmer on behalf of himself
and for Butcher Block
Indianola, Nebraska


Mrs. Kay Oltmer on behalf of herself
and for Butcher Block
Indianola, Nebraska


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


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

Issued this 11 day of July 2007

/s/ 
Alfred V. Almanza
Administrator
Food Safety and Inspection Service