

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	FMIA Docket No.
	}	
Thomas G. Salistean and	}	
Tovinity, Inc., d/b/a Van Fleet Meat	}	
Company and Salistean Processed	}	
Meats,	}	
	}	STIPULATION AND
	}	CONSENT AGREEMENT
Respondents	}	

The Food Safety Inspection Service (FSIS), U.S. Department of Agriculture (USDA), hereinafter “Complainant”, commenced this administrative action on July 6, 2016, when FSIS personnel hand delivered a Notice of Ineligibility for Custom Exempt Status (NOI) to Mr. Thomas G. Salistean and Tovinity, Inc., d/b/a/ Van Fleet Meat Company and Salistean Processed Meats, hereinafter “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 (NOI) was effective upon receipt and resulted from Respondents’ alleged failure to maintain the facility in a sanitary manner and otherwise operate in a manner that is in compliance with the FMIA.

The aforementioned action was instituted in accordance with Section 23(c)(2) of the FMIA (21 U.S.C. § 623(c)(2)), Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. § 303.1 et seq.), and Part 416 of the Sanitation Regulations (9 C.F.R. § 416).

The Parties have agreed that this administrative proceeding should be terminated by the entry of this Stipulation and Consent Agreement, hereafter “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 NOI and both parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that the Agreement in this proceeding 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 Agreement.

2. This 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. Respondent Tovinity, Inc., d/b/a Van Fleet Meat Company and Salistean Processed Meats is now, and at all times material herein was, a slaughter or processing facility and retail store located at 7615 Park Drive, Ralston, Nebraska 68127. It slaughters and processes cattle, hogs, lambs, goats, and wild game as a custom exempt facility pursuant to section 23(a) of the FMIA (21 U.S.C. § 623(a)) and applicable federal regulations concerning meat inspection and sanitation (9 C.F.R. §§ 303.1 and 416).

2. Respondent Thomas G, Salistean is, and at all times material herein was, the owner of Respondent Tovinity, Inc., d/b/a Van Fleet Meat Company and Salistean Processed Meats.

3. On July 6, 2016, respondents were personally served with an NOI informing them that they were no longer eligible to operate under the custom exempt provisions of the FMIA because of alleged violations of custom exempt, record keeping, sanitation, and other requirements set forth in 9 C.F.R. §§ 303.1 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, this Agreement will be entered.

Agreement

Custom exempt livestock slaughter and meat processing privileges as provided under section 23 of the FMIA (21 U.S.C. § 623) and 9 C.F.R. Part 303.1 are terminated from respondent Thomas G. Salistean, his partners, affiliates, successors, and assigns, and from respondent Tovinity, Inc., d/b/a Van Fleet Meat Company and Salistean Processed Meats and its owners, officers, directors, partners, affiliates, successors, or assigns, directly or through any corporate device, for a period of three (3) years. This termination of exemption privileges shall be held in abeyance and custom exemption privileges shall be permitted to Respondents, pursuant to Section 23 (a) of the FMIA and 9 C.F.R. Parts 303.1 and 416, provided all statutory and regulatory requirements and the additional conditions set forth in this Agreement are met.

Conditions

1. Prior to the 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 303.1 and 416. FSIS will base its determination of satisfactory compliance upon a review and

examination of: (a) Respondents' written operational procedures and other programs and (b) the physical and sanitary conditions of the 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.

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

Sanitation Performance Standards (SPS)

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

(a) develop written procedures for monitoring and identifying non-compliance issues, taking corrective and preventative actions, and maintaining proper recordkeeping, which Respondents will implement, conduct, and maintain in order to operate and maintain their premises, facilities, equipment, and outside premises in a manner sufficient to prevent the creation of insanitary conditions and practices;

(b) comply with the requirements of the Sanitation Performance Standards (SPS) regulations (9 C.F.R. Parts 416.1 to 416.6);

(c) ensure that meat and meat food products that are prepared, packed, and stored on their premises are not contaminated or adulterated; and

(d) address and repair non-compliance issues previously identified by FSIS with respect to the premises, facility, and/or equipment.

Sanitation Standard Operating Procedures (SSOP)

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

(a) develop written Sanitation Standard Operating Procedures (SSOP) to describe the monitoring activities, record keeping, and other procedures that Respondents will implement, conduct, and maintain on a daily and on-going basis, before, during, and after operations, in accordance with 9 C.F.R. Parts 416.11 to 416.16, to ensure sanitary conditions and prevent product adulteration;

(b) implement, conduct, and maintain on a daily and on-going basis their SSOP system in accordance with 9 C.F.R. 416 to ensure sanitary conditions and prevent product adulteration; and

(c) implement, conduct, and maintain corrective and preventative actions, in accordance with 9 C.F.R. 416.15.

Recordkeeping and Labeling Provisions

6. Respondents shall maintain full, complete, and accurate written records of all business activities applicable to the FMIA, as specified in 9 C.F.R. Parts 303.1(b)(3), 310.22, and 320. Respondents shall make all such records available for review and copying upon request of any authorized representative of the Secretary of Agriculture. Respondents shall maintain such records for a period of two years after December 31 of the year in which the record was made, in accordance with 9 C.F.R. Parts 320.3.

7. Prior to the reinstatement of custom exemption privileges, Respondents shall designate and identify to the Director, Enforcement and Litigation Division (ELD), one person who shall have overall responsibility of maintaining the written records in accordance with the regulatory

requirements. Any changes to the designated employee must first be notified to and approved by the Director.

Planned Improvement Program (PIP)

8. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall develop a 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 Agreement, 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 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). The written program shall include procedures to ensure that:

(a) Respondents review and service the facility and grounds at least weekly for any signs of insect and rodent presence and activity; and

(b) Respondents provide written reports detailing their findings, corrective actions, and recommendations based on their review and service of the facility and grounds for any signs of rodent and insect presence and activity.

11. Upon the reinstatement of custom exemption privileges, and subject to verification of FSIS, Respondents shall implement and maintain their pest control 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 products stored, prepared, and packed are not contaminated or adulterated.

Personnel and Training

12. Prior to the reinstatement of custom exemption privileges, and subject to verification by FSIS, all of Respondents' management and any other personnel shall complete training in sanitation procedures and all programs required to be maintained under this Agreement.

13. Upon reinstatement of custom exemption privileges, and subject to verification by FSIS, Respondents shall conduct annual training for all employees, current and new, consistent with the requirements of paragraph 12.

Custom Exemption Requirements

14. Respondents shall ensure that:

(a) product does not become adulterated during processing, handling, storage, loading and unloading, or during transportation;

(b) all slaughtered and processed animal carcasses and further processed meat or meat food products are properly marked, labeled and packaged;

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

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

General

15. Respondents shall not:

(a) violate any section of the FMIA, the regulations promulgated thereunder, or any Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat product;

(b) commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

(c) willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by the Respondents in compliance with Federal, State or local statutes or regulations or this Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the Respondent's business;

(d) assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA or regulations promulgated thereunder;
or

16. Respondent shall fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of Respondents' compliance with the FMIA or this Order.

Enforcement Provisions

17. The Administrator, FSIS, shall have the right to summarily terminate custom exemption privileges upon a determination by the Director, ELD, or his or her designee, that Respondents have failed to comply with 9 C.F.R. Parts 303.1 and/or 416 or any requirement of this Agreement. It is acknowledged that Respondents retain the right to request a hearing pursuant to the Adopted Rules of Practice concerning any violation alleged as the basis for a summary termination of custom exemption privileges.

18. This Agreement shall be considered issued on the date that it is signed by the Administrator, FSIS, but shall become effective only after FSIS has verified that all the above provisions stipulating completion “prior to the reinstatement of custom exemption privileges” have been completed.

19. Nothing in this Agreement shall preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA and the regulations promulgated there under.

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

21. This Agreement shall expire three (3) years from the date on which the Respondents’ custom exempt privileges resume.



Thomas G. Salistean, Owner,
Tovinity, Inc. d/b/a
Van Fleet Meat Company and
Saleistean Processed Meats



Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety Inspection Service
U.S. Department of Agriculture



Thomas Bolick
Attorney for Complainant
United States Department of Agriculture
Office of the General Counsel

Issued this 16th day of August 2016

in Washington, D.C.



Alfred V. Almanza, Acting Administrator
Food Safety and Inspection Service