



United States Department of Agriculture

Food Safety and
Inspection Service

1400 Independence
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20250

August 27, 2021

Emailed:
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APPEAL RESPONSE

This letter is in response to the letter you submitted today to Dr. Dawn Sprouls, District Manager, and Dr. Timothy Weisensel, Front Line Supervisor, and later to Paul Kiecker, Administrator, where you are appealing issuance of FSIS Notice 34-21 and the withholding of FSIS inspection services from your establishment.

In light of a growing number of national COVID-19 cases and hospitalizations due to the highly transmissible Delta variant, FSIS has taken extra steps to protect our employees including issuing FSIS Notice 34-21 which states: "*FSIS will now require establishments to follow the CDC guidance and require employees and contractors to wear masks, regardless of vaccination status, when IPP are present, if located in an area of "substantial" or "high" community COVID-19 transmission.*" On August 23, 2021, personnel from the Des Moines District Office notified you of the issuance of FSIS Notice 34-21 and requirements contained in the Notice. On the morning of August 25, 2021, the FSIS Frontline Supervisor communicated the requirements of the Notice to you. On that same day, you were contacted telephonically by the Des Moines District Office Manager who reiterated the requirements of the Notice. Because you notified FSIS personnel that you would not comply with the requirements of the Notice, you were issued a "Notice to Withhold the Marks of Inspection" on August 25, 2021 and FSIS withheld inspection services at your establishment.

FSIS is required to maintain an Occupational Safety and Health (OSH) Program that complies with the OSHA Safety and Health Act of 1970 (the Act), Section 19, Federal Agency Safety Programs and Responsibilities; Executive Order 12196, Occupational Safety and Health Programs for Federal Employees; and 29 CFR 1960, Basic Program Elements for Federal Employees. As such, FSIS requires our employees to wear masks at *all* times while in official duty status, regardless of CDC community COVID-19 transmission designation of their work location and as indicated in FSIS Notice 34-21, "Establishments must require their employees or

contractor to wear masks when IPP are present, if the establishment is located in a country with “substantial” or “high community transmission of COVID-19. For the purposes of this notice, establishments include all facilities where inspection is provided.

Your establishment is located in Clark County Wisconsin, which is designated as a “High” community COVID-19 transmission area according to the Centers for Disease Control and Prevention (CDC) [COVID Data Tracker](#).

For the reasons outlined above, I am denying your appeal of our decision to withhold FSIS inspection services from your establishment. If the community COVID-19 transmission area designation for the county in which your establishment is located changes and is no longer “High” (and is not designated as “Substantial”) or you agree to comply with the requirements of Notice 34-21, FSIS will resume inspection services to your establishment.

If you would like to appeal my decision further, there is more information about the appeals process available on the Agency’s web site at: [Appealing Inspection Decisions \(usda.gov\)](#).

Sincerely,



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