

# Exhibit A

**UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE  
WASHINGTON, DC**

# FSIS NOTICE

34-21

8/20/21

## FSIS ACTIONS AT ESTABLISHMENTS THAT DO NOT FOLLOW MASK REQUIREMENTS

### I. PURPOSE

This notice announces that to reduce the risk of COVID-19 infection for FSIS employees, as of Wednesday, August 25, 2021, FSIS will require official meat and poultry establishments, egg products plants, and all other facilities where FSIS provides inspection services, such as voluntary inspection service, to follow current guidance from the Centers for Disease Control and Prevention (CDC) on mask use. Establishments must require their employees or contractors to wear masks when IPP are present, if the establishment is located in a county with “substantial” or “high” community transmission of COVID-19. For the purposes of this notice, official establishments, egg products plants, and all other facilities where inspection is provided are collectively referred to as “establishments.” This notice cancels FSIS Notice 30-21, *Measures to Protect FSIS Inspection Program Personnel (IPP) from Covid-19 Infection*.

### II. BACKGROUND

- A. 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.
- B. For FSIS employees working in privately owned establishments, the Agency does not have authority to abate hazardous conditions directly. However, the Agency is required to provide employees with safe and healthy working conditions as part of the overall inspection process. Means used by the Agency to reduce exposure to hazardous work conditions include: administrative controls, providing employees with proper personal protective equipment (PPE), and removing employees (including withdrawing IPP) from unsafe conditions as necessary for protection of the employees.
- C. Based on [updated guidance](#) from the Centers for Disease Control and Prevention, and to reduce the risk of infection with COVID-19, FSIS requires every employee to wear masks that cover the nose and mouth in the workplace, regardless of vaccination status. 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. Managers and employees are to use the [CDC COVID Data Tracker](#) website, which is updated daily, to determine whether they are located in one of these areas.

**DISTRIBUTION:** Electronic

**NOTICE EXPIRES:** 9/1/22

**OPI:** OPPD

### III. AWARENESS MEETING

Upon publication of this notice, IPP are to schedule a meeting with establishment management to inform them of this requirement and document the discussion in a Memorandum of Interview (MOI) as described in FSIS [Directive 5010.1](#), *Food Safety Related Topics for Discussion During Weekly Meetings with Establishment Management*. In the awareness meeting, the Inspector-In-Charge is to tell establishment management:

1. FSIS is required to provide safe and healthy working condition for its employees;
2. FSIS requires establishments in areas of “substantial” or “high” community transmission of COVID-19 to follow CDC guidance and ensure their employees and contractors wear masks to reduce the risk of COVID-19 transmission when FSIS personnel are present;
3. Establishment management can use the [CDC COVID Data Tracker](https://covid.cdc.gov/covid-data-tracker) website (<https://covid.cdc.gov/covid-data-tracker>), which is updated daily, to determine whether they are located in one of these areas; and
4. As of Wednesday, August 25, 2021, FSIS will not provide inspection service to the establishment unless it meets this requirement.

### IV. FSIS SUPERVISORY RESPONSIBILITY

A. If, on or after Wednesday, August 25, 2021, FSIS supervisory personnel become aware of an establishment in an area of substantial or high community COVID-19 transmission where establishment employees or contractors are not wearing masks to reduce the risk of COVID-19 transmission, in accordance with CDC guidance, when IPP are present, they are to:

1. Notify establishment management as soon as possible that if the establishment does not follow CDC guidance and ensure that employees and contractors consistently wear masks to reduce the risk of COVID-19 transmission when FSIS personnel are present, then FSIS will not provide inspection service at the establishment. This should be followed up with a written notification, which may be by e-mail;
2. Maintain ongoing communication with the establishment regarding mask use by employees at the establishment; and
3. Notify the District Manager through supervisory channels of any establishments in areas of “substantial” or “high” community transmission that do not follow CDC guidance and require their employees and contractors to wear masks when IPP are present.

B. If an establishment in an area of substantial or high community COVID-19 transmission does not require employees and contractors to wear masks when FSIS personnel are present or they are not consistently implementing that requirement, the District Manager is to withhold inspection service from the establishment.

**V. QUESTIONS**

Refer questions regarding this notice through supervisory channels.

A handwritten signature in black ink, appearing to read "Rachel A. Edelstein". The signature is written in a cursive, flowing style.

Assistant Administrator  
Office of Policy and Program Development

# Exhibit B



Nolechek's Meats, Inc. &lt;nolechek@nolechekmeats.com&gt;

## FSIS Actions at Establishments That Do Not Follow Mask Requirements

1 message

USDA Food Safety and Inspection Service <usfsis@public.govdelivery.com>

Fri, Aug 20, 2021 at 1:31 PM

Reply-To: usfsis@public.govdelivery.com

To: nolechek@nolechekmeats.com



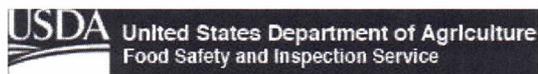
On August 20, 2021, FSIS released a notice and emailed FSIS inspected establishments of updated measures to reduce the risk of COVID-19 infection for FSIS inspection program personnel (IPP) at establishments. This notice replaces FSIS Notice 30-21 released on August 4, 2021. These changes are based on guidance from the Centers for Disease Control and Prevention (CDC).

### Effective Wednesday, August 25, 2021:

- Federally regulated establishments are required to follow the latest CDC guidance. Establishment employees and contractors are required to wear masks, regardless of vaccination status, when IPP are present, if located in an area of "substantial" or "high" community COVID-19 transmission. Managers and employees are to use the CDC COVID Data Tracker website, which is updated daily, to determine whether they are located in one of these areas.
- FSIS will maintain ongoing communication with establishment personnel if the establishment does not follow CDC guidance and ensure that employees and contractors consistently wear masks to reduce the risk of COVID-19 transmission when FSIS personnel are present. **As of August 25, 2021, FSIS will not provide inspection service to the establishment unless it meets this requirement to protect IPP at their establishments.**

On July 28, FSIS directed its employees to wear a mask in federal buildings, regulated establishments, and government owned or leased vehicles regardless of vaccination status. On August 4, FSIS issued a notice outlining the expectation that establishments follow the CDC guidance in response to a national increase in COVID-19 cases and hospitalizations due to the highly transmissible Delta variant. These measures align with FSIS Directive 4791.1 Basic Occupational Safety and Health Program and FSIS Directive 4791.5 Hazard Communication Program. For FSIS employees working in privately owned establishments, the Agency does not have authority to abate hazardous conditions directly. However, the Agency is expected to provide employees with safe and healthy working conditions as part of the overall inspection process. Means used by the Agency to reduce exposure to hazardous work conditions include administrative controls and removing employees (including withdrawing inspection program personnel (IPP)) from unsafe conditions as necessary for protection.

Please remember that all three of the COVID-19 vaccines available in the U.S. remain effective against serious infection or death from COVID-19. I encourage you to promote vaccination among your employees and associates. It is the best way to protect yourself, your loved ones, and your community from the Delta variant of COVID-19.



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# Exhibit C



**United States Department of Agriculture**

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Food Safety and  
Inspection Service

August 25, 2021

Digitally-signed copy hand-delivered

Office of Field  
Operations  
Des Moines District  
Office

Kelly Nolechek  
Nolechek Meats, Inc.  
104 North Washington Street  
Thorp, Wisconsin 54771

Neal Smith Federal  
Building  
210 Walnut Street  
Room 985  
Des Moines, IA  
50309-2123

**NOTICE TO WITHHOLD THE MARKS OF INSPECTION**

Dear Kelly Nolechek,

Voice 515.727.8960  
Fax 515.727.8991

This letter confirms the verbal notification provided to your establishment, Nolechek Meats, Inc., located in Thorp, WI, on August 25, 2021, by the Food Safety Inspection Service (FSIS), Des Moines District, of the decision to withhold the marks of inspection from all operations at your official establishment and initiate the withdrawal of FSIS Inspection Personnel (IPP). This action was taken due to your establishment's failure to comply with face mask requirements set forth in FSIS Notice 34-21, FSIS Actions at Establishments that do not Follow Mask Requirements, published on August 20, 2021.

Prior to initiating this withholding action at your establishment, FSIS IPP communicated with management at your establishment on the contents of FSIS Notice 34-21 and the expectation that if an establishment is located in an area of substantial or high community COVID-19 transmission, they are to require their employees or contractors to wear face masks when FSIS IPP are present at their facility. Specific communications include:

- August 23, 2021 a meeting was held with IPP and you were made aware of Notice 34-2021 and the mask requirement.
- August 25, 2021 the FLS discussed the mask requirement with you.
- August 25, 2021 the Des Moines Deputy District Manager discussed the mask requirement with you.

The Agency is required to provide employees with safe and healthy working conditions as part of the overall inspection process. Means used by the Agency to reduce exposure to hazardous work conditions include administrative controls, providing employees with proper personal protective equipment (PPE), and removing employees (including withdrawing IPP) from unsafe conditions as necessary for protection of the employees.

Per FSIS Notice 34-21, establishments were to comply with the mask requirement by August 25, 2021. If an establishment in an area of substantial or high community COVID-19 transmission does not require employees and contractors to wear masks when FSIS personnel are present or they are not consistently implementing that requirement, the District Manager is to withhold inspection service from the establishment.

The withholding of inspection will remain in effect until such time as you provide the Des Moines District Office adequate written procedures to comply with the mask requirement described in FSIS Notice 34-21.

Establishments can appeal the withholding action in accordance with FSIS regulations. More information about the appeals process is available on the Agency's web site at: [Appealing Inspection Decisions \(usda.gov\)](https://www.usda.gov/peers/appeals) Also, establishments will be afforded the opportunity to contest the action in accordance with the Rules of Practice in 9 C.F.R. § 500.3 and the Uniform Rules of Practice in 7 C.F.R. § 1.130 et seq.

If you have any questions regarding this matter, you may contact the Des Moines District Office at 515-727-8960.

Sincerely,



Digitally signed by Todd C.  
Gerwig  
Date: 2021.08.25 15:40:15 -05'00'

for Dawn Sprouls, DVM  
District Manager  
USDA FSIS OFO  
Des Moines District Office

# Exhibit D



United States Department of Agriculture

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Food Safety and  
Inspection Service

1400 Independence  
Avenue, SW.  
Washington, D.C.  
20250

August 27, 2021

Emailed:  
[nolecheck@nolechekmeats.com](mailto:nolecheck@nolechekmeats.com)

Kelly J Nolechek and  
Lindsey R. Fox  
Owners  
Nolechek's Meats, Inc.  
104 N. Washington St  
Thorp, WI 54771

### 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,



**Philip Bronstein, Ph.D.**  
Assistant Administrator  
Office of Field Operations  
Food Safety and Inspection Service, USDA  
Room 344E Whitten Building  
Washington, DC 20250  
Office: 202 720 4991  
Mobile: 202 617 6664  
Email: [philip.bronstein@usda.gov](mailto:philip.bronstein@usda.gov)

# Exhibit E



Nolechek's Meats, Inc.  
104 N. Washington Street | P.O. Box 599 | Thorp, WI 54771  
715.669.5580 | nolechek@nolechekmeats.com | www.nolechekmeats.com

August 30, 2021

Dr. Dawn Sprouls  
District Manager  
210 Walnut Street  
Room 985, Federal Building  
Des Moines, IA 50309

Dr. Sprouls:

We have appealed the withholding actions taken at our facility. Pending the result of the appeal we are implementing the following actions:

1. When USDA FSIS personnel are present at our facility all employees will wear masks.
2. Those employees who can't or won't wear a mask will be excused for the duration of the agents visit.

**Actions Requested:**

Please lift the withholding action immediately.

Best Regards,

Handwritten signature of Kelly J. Nolechek in black ink.

Kelly J. Nolechek  
Owner  
Nolechek's Meats, Inc. (M48256+P48256)

Handwritten signature of Lindsey R. Fox in black ink.

Lindsey R. Fox  
Owner  
Nolechek's Meats, Inc. (M48256+P48256)