



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Meat and Poultry Inspection Division

W. Alan Wade
State Director

January 8, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Wayne Shuler
Shuler Meats, Inc.
124 Shuler Road
Thomasville, North Carolina 27360

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS
OF THE MEAT AND POULTRY INSPECTION LAWS
G.S. § 106-549.55 and G.S. §106-549.56

Dear Mr. Wayne Shuler

Pursuant to North Carolina General Statute (G.S.) §106-549.59(a1) this letter is notice of a civil penalty by the North Carolina Department of Agriculture and Consumer Services, Meat and Poultry Inspection Division (NCDA & CS). The civil penalty assessment document is attached.

Within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the Office of Administrative Hearings appealing the penalty assessment.

Pursuant to G.S. §150B-22, informal settlement negotiations may be initiated at any time. To negotiate a settlement of this assessment, present your offer to Mr. W. Alan Wade, Director, Meat & Poultry Inspection Division, who may be contacted by telephone at (919) 707-3180. Settlement offers do not extend the 60 day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

-PAYMENT-

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Mr. W. Alan Wade, Director
Meat & Poultry Inspection Division
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

-APPEAL-

If you file a contested case petition, it must be in writing and in the form prescribed by G.S. § 150B-23. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-1001

Any questions about filing a petition may be directed to the Clerk of OAH by telephone (919) 733-0926. You must serve NCDA & CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Process Agent and General Counsel
1001 Mail Service Center
Raleigh, North Carolina 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA & CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,



Mr. W. Alan Wade
Director, Meat & Poultry Inspection Division

- E. In a signed statement dated October 22, 2015, Ms. Bess Lee Brinkley, owner/operator of McBride Concession, Inc. stated that she has used Shuler Meats, Inc., 124 Shuler Road, Thomasville, North Carolina 27630, as McBride Concession, Inc.'s poultry distributor for fully cooked turkey drumsticks for the past three (3) years. Ms. Brinkley stated that on October 14, 2015, Shuler Meats, Inc. Distribution Center at the North Carolina State Fair, delivered 420 cases of Belmont Sausage Company, fully cooked smoked turkey drumsticks to the three storage trailers used by McBride Concession, Inc. at the North Carolina State Fairground.
- F. On October 15, 2015 at 8:00 AM, an employee of McBride Concession, Inc. noticed what appeared to be mold on some of the fully cooked smoked turkey drumsticks delivered by Shuler Meats, Inc. Distribution Center on October 14, 2015. Ms. Brinkley stated that the employee immediately notified her and she in turn notified her managers to examine all the turkey drumsticks for any off condition at the three (3) locations that received a shipment from Shuler Meats, Inc. on October 14, 2015. The managers all reported back that they also had turkey drumsticks that had what appeared to be visible mold.
- G. Ms. Brinkley stated that she then contacted Mr. Bobby Childress, Shuler Meats, Inc. Supervisor, and informed him that the Belmont Sausage Company fully cooked smoked turkey drumsticks had mold on them. Mr. Childress in turn picked up the 420 cases of Belmont Sausage Company fully cooked smoked turkey drumsticks and shipped them back to Shuler Meats, Inc.'s primary facility located at 124 Shuler Rd., Thomasville, NC.
- H. On October 19, 2015, NCDA &CS., M.P.I.D., Food Compliance Officer Jake H. Groce visited Shuler Meats, Inc. U.S.D.A. inspected establishment TA-40367, 124 Shuler Road, Thomasville, North Carolina 27360. He interviewed Mr. Wayne Shuler, owner/operator of Shuler Meats, Inc. and Mr. Keith Gerken, Processing Supervisor at Shuler Meats, Inc., in reference to Shuler Meats, Inc.'s alleged processing, storing, transporting, offering for sale and selling of misbranded/non-inspected and/or adulterated poultry products wholesale to McBride Concession, Inc., 1098 Greenfield Road, Walnut Cove, and North Carolina 27052.
- I. In signed statements dated October 19, 2015 and November 17, 2015, respectively, Mr. Keith Gerken, Shuler Meats, Inc. processing supervisor; and Mr. Wayne Shuler, owner of Shuler Meats, Inc. stated that on April 30, 2015 that Shuler Meats, Inc. received 1,064 cases of fully cooked smoked turkey drumsticks from Belmont Sausage Company (Est. P-21309), Elk Grove Village, Illinois, which they in turn transported to and stored at B&M Storage & Distribution, 690 Gaynor Street, Winston-Salem, NC 27105, an independently owned cold storage warehouse utilized by Shuler Meats, Inc.
- J. Mr. Gerken and Mr. Shuler stated that on October 14, 2015, Shuler Meats, Inc. transported 420 cases (approximately 15,880 pounds) of the Belmont Sausage Company fully cooked smoked turkey drumsticks on a refrigerated truck to McBride Concession, Inc. located at the North Carolina State Fairgrounds for the sole purpose of resale to the general public.
- K. On October 15, 2015, McBride Concession, Inc. noticed green and white mold on the Belmont Sausage fully cooked smoked turkey drumsticks and requested that the product be sent back to the Shuler Meats, Inc. Distribution Center. Shuler Meats, Inc. in turn transported the 420 cases of adulterated fully cooked turkey drumsticks back to Shuler Meats, Inc. in Thomasville, North Carolina on October 15, 2015.

- L. Mr. Gerken and Mr. Shuler stated that upon arrival, they instructed employees of Shuler Meats, Inc. to visually inspect each case of the turkey drumsticks and wash and scrub each turkey drumstick until free of any visible mold. Once washed, the turkey drumsticks were placed back into their original Belmont Sausage Company containers bearing the USDA mark of inspection (Est. P-21309).
- M. Mr. Gerken and Mr. Shuler stated that in some instances, because of damaged boxes, the washed turkey drumsticks were repackaged into previously used Mountaire Farm Inc. (17269 NC Hwy 71 N, Lumber Bridge, NC 28357) raw chicken boxes which already contained Mountaire Farm, Inc., U.S.D.A. (federal) inspection legend, (Est. P-7470) on the boxes.
- N. Mr. Gerken and Mr. Shuler stated that the reconditioning activities took place between the hours of 4:00 pm on October 16, 2015 until 6:00 pm on October 17, 2015. Reconditioning activities involving the fully cooked turkey drumsticks were performed without the benefit of required U.S.D.A. inspection.
- O. Mr. Gerken and Mr. Shuler stated that after reconditioning and repackaging the product, Shuler Meats, Inc. transported approximately 15,880 pounds (420 cases) of reconditioned fully cooked smoked turkey drumsticks back to McBride Concession, Inc. at the North Carolina State Fairgrounds on or about October 17, 2015 where they were offered for sale to the general public.
- P. Mr. Shuler failed to provide accurate and legible records documenting the reconditioning, repackaging or reshipment and sale of the turkey drumsticks, which were processed without the benefit of U.S.D.A. inspection, to McBride Concessions, Inc.
- Q. On October 20, 2015, approximately 7752 pounds (204 cases) of N.C. detained misbranded/non-inspected and/or adulterated, fully cooked smoked turkey legs were transported back to Shuler Meats, Inc., 124 Shuler Road, Thomasville, North Carolina, under detention and direct observation by N.C.D.A. & C.S., M.P.I.D., CO Lackman.
- R. On October 20, 2015, N.C.D.A. & C.S., M.P.I.D., Food Compliance Officer, Jake H. Groce verified the tag numbers and case count at Shuler Meats, Inc., Thomasville, North Carolina. The 204 cases of the N.C. detained poultry products were in turn placed under U.S.D.A. retention by in plant inspection personnel and stored for voluntarily destruction at a later date by Shuler Meats, Inc. after signing Form C&E 3a (Voluntary Destruction of Detained Product).

II. CONCLUSIONS OF LAW

- A. Mr. Wayne Shuler/Shuler Meats, Inc. was found to be processing, storing, transporting, offering for sale and selling misbranded, non-inspected and/or adulterated poultry products to the general public. In addition, Mr. Shuler/Shuler Meats, Inc. was found to be using labels that contained the USDA marks of inspection (Est. # P-7470 and # P-23409) without authorization and offering those fraudulently labeled poultry products for sale to the general public in violation of General Statutes §106-549.55 and §106-549.56 and may be assessed a civil penalty of up to five thousand (\$5,000.00) dollars per violation under North Carolina General Statute §106.549.59(a1).
- B. The Commissioner of Agriculture, pursuant to North Carolina General Statute §106.549.59(a1), has the authority to assess civil penalties in this matter. This authority has been delegated to Mr. W. Alan Wade, Director, Meat and Poultry Inspection Division by the Commissioner of Agriculture pursuant to North Carolina General Statute § 143B-10(a).

III. DECISION

- A. As required by North Carolina General Statute § 106-549.59(a1) in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of General Statutes § 106-549.55 and § 106.549.56.

Accordingly Mr. Wayne Shuler/Shuler Meats, Inc. is assessed a civil penalty of:

- \$ 2,500.00 for violating § 106-549.55 - (False Labeling)
- \$ 2,500.00 for violating § 106-549.56 – (Prohibited Sales of Misbranded Poultry)
- \$ 2,500.00 for violating § 106-549.56 – (Prohibited Sales of Adulterated Poultry)
- \$ 2,500.00 for violating § 106-549.56 – (Non-Inspected)
- \$ 2,000.00 for violating § 106-549.56 – (Knowingly represent product as being inspected and passed)
- \$ 2,000.00 for violating § 106-549.56 – (Unauthorized usage of an official mark of inspection)

\$14,000.00 TOTAL AMOUNT ASSESSED.

1/8/16
Date

W. Alan Wade
W. Alan Wade
Meat and Poultry Inspection Division