

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

Old Apr. 7, 2005
effective Apr. 15, 2005
2 yr.
- Apr. 15, 2007

In re:)
)
Howard Petersen and)
Bancroft Meat Processors, Inc.) STIPULATION AND
) CONSENT AGREEMENT
Respondents.)

This administrative action was instituted by the delivery of a letter (Notice of Ineligibility) on or about February 4, 2005, to Howard Petersen, and Bancroft Meat Processors, Inc. 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.) or the Poultry Products Inspection Act (PPIA) (21 U.S.C. 453 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)), Section 15 (a) of the PPIA (21 U.S.C. 464 (a)), Part 381 of the PPIA (9 C.F.R. 381.10 et seq.) 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.

FINDINGS OF FACT

1. Bancroft Meat Processors, Inc., is now and at all times material was a corporation operating a custom exempt meat slaughtering and processing facility at 311 Main Street, Bancroft, Nebraska 68004.
2. Mr. Howard Petersen is now and at all times material was the owner and operator of Bancroft Meat Processors, Inc.
3. Bancroft Meat Processors, Inc. and Howard Petersen are now and at all times material were operating under custom exemption eligibility pursuant to Section 23(a) of the FMIA (21 U.S.C. 623(a)), Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. 303.1 et seq.), and Section 15(a) of the PPIA (21 U.S.C. 464(a)), and Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. 381.10 et seq.).

4. On or about October 8, 2004, and other dates, Respondents allegedly violated the FMIA and PPIA by failing to maintain its custom exempt facility in a sanitary manner and comply with other applicable requirements as required by 9 C.F.R. 303.1 et seq. and 9 C.F.R. 381.10 et seq.
5. In a letter delivered on or about February 4, 2005, Respondents were notified that they were no longer eligible for custom exemption eligibility under the FMIA and PPIA as required by 9 C.F.R. 303.1, 381.10, and Part 416.

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

Meat and poultry exemption privileges granted under 9 C.F.R. 303.1 and 9 C.F.R. 381.10 promulgated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 623) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 464) are terminated from Howard Petersen, Bancroft Meat Processors, Inc. 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 meat exemption privileges shall be held in abeyance and custom exemption privileges shall be provided to Respondent, pursuant to Section 23(a) of the FMIA (21 U.S.C. 623(a)), Section 15(a) of the PPIA (21 U.S.C. 464(a)), 9 C.F.R. 303.1, 381.10 and Part 416, 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 meat and poultry 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. Future reviews will be conducted at the discretion and frequency specified by FSIS officials.

2. Respondents shall, prior to resumption of exemption privileges, make facility repairs and/or improvements necessary to maintain sanitary conditions, as required by 9 C.F.R. 303.1, 381.10, and Part 416, including but not limited to:
 - a) all food-contact surfaces, including food-contact surfaces of utensils and equipment, must be clean and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product;
 - b) ventilation adequate to control odors, vapors, and condensation to the extent necessary to prevent adulteration of product and the creation of insanitary conditions must be provided;
 - c) effective floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor; and
 - d) maintenance of overhead structures to include ceilings, rails, etc. in a manner to prevent the presence of rust or other insanitary conditions.
3. Respondents shall, prior to resumption of exemption privileges, develop, implement and maintain a written sanitation program that includes addressing grounds and facility, equipment and utensils, sanitary operations, employee hygiene, pre-

operational and operational sanitation, monitoring activities, and recordkeeping in accordance with 9 C.F.R. Part 416. Respondents will conduct the sanitation program on a daily and on-going basis to ensure sanitary conditions and to prevent adulteration in accordance with 9 C.F.R. Part 416.

4. Respondents shall maintain establishment grounds and facilities, equipment and utensils, sanitary operations, and employee hygiene, as required by 9 C.F.R. 303.1, 381.10, and Part 416. Respondents shall monitor and record sanitation deficiencies on a sanitation report, take corrective and preventive actions in accordance with the regulations as stated in 9 C.F.R. Part 416 to ensure sanitation, and make these records available to FSIS for review and/or copying upon request.
5. Respondents shall, prior to resumption of exemption privileges, establish a written 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. 416.2(a) and 303.1. 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) the 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. Respondents shall monitor and maintain the structural integrity of its facility and document needed repairs and corrective actions taken to address structural and/or

mechanical repairs and/or improvements and shall make these records available to FSIS for review and/or copying upon request.

7. (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 effect 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.
8. 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 and poultry 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 or poultry products held for sale and (d) maintain records as required by 9 C.F.R. 303.1, 318.10 and Part 416.
9. Respondents shall, prior to resumption of operations, 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. 303.1, 381.10, and Part 416 and (b) compliance with the conditions of this Agreement.

10. Within thirty (30) days from the effective date of this Agreement, Respondents' 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.
11. Respondents shall not (a) commit any felony or fraudulent act; (b) violate any section of the FMIA, PPIA, 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.
12. Respondents shall make all records required to be maintained by the FMIA, PPIA, or regulations issued thereunder or required by this Agreement available to FSIS personnel for review and/or copying immediately upon request.
13. 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, PPIA, or the regulations issued thereunder, or (c) compliance with this Agreement.
14. 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. 303.1, 381.10, and/or Part 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.

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

16. 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. Howard Petersen, President for Bancroft Meat Processors, Inc. Bancroft, Nebraska



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

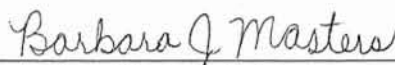


Mr. Howard Petersen



Krishna Ramaraju, Esquire Office of the General Counsel, USDA Attorney for Complainant

Issued this 7th day of April, 2005



Dr. Barbara J. Masters
Acting Administrator
Food Safety and Inspection Service