

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

In re:)
)
Mr. Russell Smith and)
Smith & Sons Meat Processing, Inc.)
)
) STIPULATION AND
) CONSENT AGREEMENT
Respondents.)

This administrative action was instituted by the delivery of a letter (Notice of Ineligibility) on or about October 14, 2008, to Mr. Russell Smith and Smith & Sons Meat Processing, 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.) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451 et seq.). The Notice of Ineligibility that was hand delivered by FSIS personnel 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)), Part 303 of the Federal Meat Inspection Regulations (9 C.F.R. § 303.1), Section 15(c) of the PPIA (21 U.S.C. § 464(a)), and Part 381 of the Poultry Products Inspection Regulations (9 C.F.R. § 381.10).

The Parties have agreed that this administrative proceeding should be terminated by the execution 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 notification and both

parties waive:

- (a) any further procedural steps in this proceeding;
- (b) any requirement that the 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 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. Smith & Sons Meat Processing, Inc. is now and at all times material, was an incorporated business operating as a custom exempt meat slaughter and processing facility, pursuant to Section 23(a) of the FMIA and applicable federal meat inspection regulations (9 C.F.R. Part 303.1 et seq.); and Section 15(a) of the PPIA (9 C.F.R. § 303, 381.10, 416 et seq.), at 5808 East Broadway, Mount Pleasant, Michigan 48858.

2. Russell Smith is now and at all times material, was president, owner, and operator of Smith & Sons Meat Processing, Inc.

3. In a Notice of Ineligibility letter delivered on or about October 14, 2008, Respondents

were notified that they were no longer eligible to operate a custom exempt slaughter and processing facility under the FMIA and PPIA because of violations of sanitation, facility, and other requirements, as required by 9 C.F.R. Parts 303 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, such Agreement will be issued.

AGREEMENT

Custom exempt meat slaughter and processing exempt privileges under 9 C.F.R. Part 303.1, promulgated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 623), and 9 C.F.R. Part 381.10, promulgated under the Poultry Products Inspection Act (PPIA) (21 U.S.C. § 464), are terminated from Russell Smith, and Smith & Sons Meat Processing, 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 custom exempt meat slaughter and processing exemption privileges shall be held in abeyance and custom exemption privileges shall be provided to Respondents, pursuant to Section 23 (a) of the FMIA, Section 15 (c) of the PPIA, and 9 C.F.R. Parts 303, 381.10, and 416, provided all statutory and 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 processing facility, compliance with the FSIS statutory and regulatory requirements upon review and examination of Respondents written operational

procedures and of the physical and sanitary conditions of Respondents 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. If during the two (2) year term of this Agreement, Respondents desire to move or relocate custom exempt operations to a different facility, Respondents shall prior to any custom exempt operations, inform FSIS in writing of the intended relocation and such facility must receive an "acceptable" rating in every category of FSIS' "Exempt Establishment Review Report," FSIS Form 5930-1.

Sanitation Performance Standards (SPS)

2. Prior to the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall:

(a) develop written procedures for monitoring, corrective action, and record keeping that Respondents will implement to operate and maintain the facility at Smith & Sons Meat Processing, Inc., including its 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 poultry products stored, prepared, and packed at said facility are not contaminated or adulterated; and

(d) address and repair the following, premises, facility, and/or equipment non-compliance issues previously identified by FSIS:

(i) large and small cooler: cracks and/or holes in walls, loose wall panels, fan covers with rust and flaking paint;

(ii) carcass holding cooler: cracks and/or holes in walls, torn metal sheeting, fan covers with rust and flaking paint;

(iii) door and door frames: exposed wood and peeling paint, freezer door handles and hinges with rust;

(iv) overhead rails and/or rail supports: scaling paint, rust.

3. Upon the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall:

(a) operate and maintain, at all times, the facility in a manner sufficient to prevent the creation of insanitary conditions and practices;

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

(c) ensure that meat and poultry products are not contaminated or adulterated; and

(d) maintain overhead structures, including ceilings, hoists, and rails in a manner to prevent the presence of algae, mold, flaking paint, rust or other foreign material.

Sanitation Standard Operating Procedures

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

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

(b) designate one person and an alternate who shall have overall responsibility for developing, implementing, and maintaining the sanitation and other requirements of 9 C.F.R. Parts 303 and 416 and compliance with the conditions of this Agreement.

5. Upon the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall:

(a) implement and maintain on a daily and on-going basis their SSOP system as required by 9 C.F.R. Part 416 to ensure sanitary conditions and prevent product adulteration; and

(b) implement corrective and preventative actions, as required by 9 C.F.R. § 416.15.

Planned Improvement Program

6. Prior to the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall develop a "Planned Improvement Program" (PIP) to ensure that the entire structure of the facility, to include its rooms and compartment, is of sound construction and that all equipment is maintained in proper working order and kept in good repair.

7. Upon the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain their PIP 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

8. Prior to the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall develop a written pest management program, to be implemented and maintained by an independent pest control service, 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) to ensure that:

(a) the pest control service reviews and services Respondents' facility and grounds on at least a monthly frequency; and

(b) the pest control service provides Respondents written reports detailing its findings and recommendations of its review.

9. Upon the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain their pest management 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 and poultry products stored, prepared, and packed are not contaminated or adulterated.

Specified Risk Materials (SRM) and Non-Ambulatory Cattle

10. Prior to the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall develop a written specified risk material (SRM) control program, to include monitoring, verification, and record keeping procedures and corrective and preventative actions, that they will implement and maintain, on a daily and on-going basis, to ensure the control of SRM and regulatory compliance with 9 C.F.R. Parts 309, 310, 311, and 313. This program shall include detailed procedures indicating the handling of non-ambulatory disabled cattle (downers) at their facility, and the removal of non-ambulatory disabled cattle (downers) from their facility.

11. Upon the resumption of exemption privileges, and subject to verification by FSIS, Respondents shall implement and maintain, on a daily basis and on-going basis, their written SRM control program.

Humane Handling and Slaughter

12. Respondents shall ensure that any cattle, sheep, swine, or goats slaughtered or handled in connection with slaughter at their facility comply with the Humane Methods of

Slaughter Act (HMSA) of August 27, 1958 (7 U.S.C. 1901-1906), 9 C.F.R. Part 313, and any Federal, state, or local laws regarding the humane treatment of animals.

Personnel and Training

14. Prior to the resumption of exemption privileges, and subject to verification by FSIS, all management and employee personnel at Respondents' shall complete training instructions in sanitation and sanitary dressing procedures and all programs required to be maintained under this Agreement.

15. Upon the resumption of 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 14.

Custom Exemption Requirements

16. 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's 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 meat or poultry products held for sale; and
- (d) records are maintained as required by 9 C.F.R. Part 303.

Poultry Exemption Requirements

17. If conducting poultry slaughter operations, Respondents shall ensure that the following poultry exemption requirements in 9 C.F.R. §381.10 are met:

- (a) Respondents may not engage in the buying or selling of any poultry products capable of use as human food;
- (b) ensure that the slaughtered poultry is for the personal use of the owner of the poultry and may not be sold or donated;
- (c) ensure that the shipping containers of custom slaughtered poultry products bear the owner's name, address, and the statement "Exempted-P.L. 90-492"; and
- (d) ensure that only one poultry exemption is claimed during a calendar year.

General Provisions

18. 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 or poultry 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.

19. Respondents shall make all records required to be maintained by the FMIA, PPIA, or regulations issued thereunder or this Agreement available to FSIS personnel for review and/or copying immediately upon request.

20. 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.

21. 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. Parts 303, 381 and/or 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.

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

23. 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.

Russell E. Smith
Mr. Russell Smith on behalf of himself
and for Smith & Sons Meat Processing, Inc
Mount Pleasant, Michigan

Paul Blanco
Paul A. Blanco, Esq.
Lynch, Gallagher, Lynch, Martineau & Hackett
Attorney for Respondent

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

Carlyne Cockrum
Carlyne Cockrum, Esq.
Office of the General Counsel
Attorney for Complainant

Issued this 23 day of December 2008

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