



United States Department of Agriculture

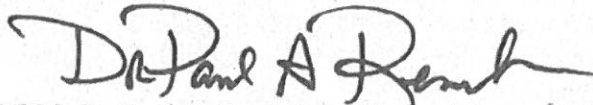
Food Safety and
Inspection Service

Office of Field Operations
Jackson District Office
713 S Pear Orchard Rd.
Plaza 2, Suite 402
Ridgeland, MS
39157

DATE: November 19, 2013

TO: Scott Safian, Director, USDA FSIS OIEA ELB

THRU: Dr Armia Tawadrous, EARO, USDA FSIS OFO

 11/19/13

FROM: Dr Paul A. Resweber, District Manger, USDA FSIS OFO JDO

SUBJECT: Brooksville Meat Fabrication Est. 09173M
Mr. Keith Wright, Plant Owner
80 Liberty Drive
Brooksville, KY 41004

AER CASE Files: 90-14-R001 3rd Reinstatement of Suspension
90-13-R033 2nd Reinstatement of Suspension
90-13-R025 1st Reinstatement of Suspension
90-13-S132 Initial Suspension

Mr Safian:

In accordance with FSIS Directive 8010.5, Revision 3, 11/5/12, VIII., 1., c., OFO is preparing a transmittal memo to the your attention as Director of ELB stating the recommended action of withdrawal of inspection service for Brooksville Meat Fabrication Est. 09173M due to four egregious humane handling violations and suspensions between April 30, 2013 and October 9, 2013 slightly over 5 months. The Est. 9173 M remains in the 3rd reinstatement and the 4th suspsion as of this writing as the plant has yet to proffer acceptable corrective and preventive measures to OFO.

This is the basic history of this establishment:

On April 30, 2013, a "Notice of Suspension" was issued to suspend the assignment of inspectors at Brooksville Meat Fabrication Est. 09173M.

On May 7, 2013, a "Notice of Suspension Held in Abeyance" was issued to the establishment. In the "Notice of Suspension Held in Abeyance" the establishment was made aware that failure to comply with regulatory requirements or to effectively

implement the establishment's proposed actions that formed the basis for the abeyance could result in the immediate suspension of inspection at the establishment.

In addition, on June 19, 2013, a "Notice of Reinstatement of Suspension" was issued to suspend the assignment of inspectors at the establishment for failure to handle livestock humanely. On June 21, 2013, a "Notice of Suspension Held in Abeyance" was issued to the establishment. In the "Notice of Suspension Held in Abeyance" the establishment was again made aware that failure to comply with regulatory requirements or to effectively implement the establishment's proposed actions that formed the basis for the abeyance could result in the immediate suspension of inspection at the establishment.

Subsequently, on August 9, 2013, a "Notice of Suspension Held in Abeyance" was again issued to the establishment. In the "Notice of Suspension Held in Abeyance" the establishment was made again aware that failure to comply with regulatory requirements or to effectively implement the establishment's proposed actions that formed the basis for the abeyance could result in the immediate suspension of inspection at the establishment.

Additionally, on September 9, 2013, the establishment was issued a "Notice of Show Cause" letter from FSIS Office of Investigation, Enforcement and Audit—Enforcement and Litigation Division, Washington, DC, giving the establishment an opportunity to provide information as to why FSIS should not initiate action to indefinitely suspend or withdraw inspection service at 09173M, Brooksville Meat Fabrication, Brooksville, KY 41004.

Also, Non-Compliance Reports (NRs) were written on November 11, November 16, November 27, 2012 and July 30, August 7, August 9, August 26, September 13, and October 2, 2013, for various humane handling non-compliances involving failure to provide water, food, slips/falls, and stunning mishaps.

Finally, on October 9, 2013, at approximately 635 AM CDT hours, the establishment's stunning procedures again violated 9 CFR 313.15 (a) (1), 313.16(a)(1) and 313.2 (f) by the failure of the first stun attempt to render the animal insensible and failure to implement immediate and effective corrective action to render the animal insensible using a firearm. As such, a "NOTICE OF THIRD REINSTATEMENT OF SUSPENSION" was issued on October 9, 2013 to re-suspend the assignment of inspectors.

Since October 9, 2013, the establishment has proffered only one very poorly constructed response of eleven words which was wholly inadequate. The establishment owner has been in touch with both OFO JDO and OIEA, but has not proffered any plausible written corrective and preventive measures.

The OFO JDO District Veterinary Medical Specialist conducted a very small plant outreach on October 29 and 30, 2013 at Brooksville Meat Fabrication Est. 09173M and spend the vast majority of his time providing information to Mr. Keith Wright, Plant Owner.

As such, we in OFO again request OIEA work in concert with OGC to effect the action of withdrawal of inspection service for Brooksville Meat Fabrication Est. 09173M

CC: Alan Shadduck, OIEA
Olga Morales, OIEA
William Smith, OIEA
Daniel Engeljohn, OFO
Donald Coley, OFO
Perry Davis, OFO
David Thompson, OFO

I concur with Jackson District decision to proceed forward with withdrawal action. Thank you

Armi Arin Talus, EARO

11-20-2013



November 20, 2013

TO: James A. Booth, Assistant General Counsel
Marketing, Regulatory & Food Safety Programs Division
Office of the General Counsel

FROM: Scott C. Safian, Director
Enforcement and Litigation Division
Office of Investigation, Enforcement and Audit

SUBJECT: Brooksville Meat Fabrication
Establishment 9173 M
80 Liberty Drive
Brooksville, Kentucky 41004

Please prepare an administrative complaint to indefinitely suspend and permanently withdraw the grant of Federal inspection service from Brooksville Meat Fabrication (Brooksville), Establishment 9173 M, Brooksville, Kentucky, pursuant to sections 3(b) and 401 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603 (b) and 671) and section 500.6 of the FSIS Rules of Practice (9 CFR 500.6). This request is based on a documented history of egregious and repetitive violations by Brooksville of sections 3(b) and 10(b) of the FMIA (21 U.S.C. 603(b) and 610(b)), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 et. seq.), and the regulations issued under the FMIA (9 CFR Part 313).

Brooksville is a very small slaughtering and processing establishment operating under a grant of inspection (current grant is dated March 5, 2003). Brooksville's primary business is slaughtering livestock and processing of meat and poultry for the local community.

In the past seven months, the Jackson District Office has suspended slaughter operations at the establishment four times, including reinstating the suspension most recently on October 9, 2013, for violations of FSIS statutory and regulatory requirements for the handling and/or slaughter of animals. The enclosed case file evidences the serious and repetitive failures of Brooksville to comply with FSIS requirements for humane slaughter and handling, to implement effective corrective and preventive actions to ensure compliance after each previous enforcement action, and of acts of animal cruelty.

Documented noncompliance includes, among others, the following:

- On April 30, 2013, after failing to effectively render a heifer insensible with the first shot from a .22 caliber rifle, the animal stood bleeding from the first shot approximately four minutes before a second shot rendered the animal insensible;

Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 8-210C
1400 Independence Avenue, SW
Washington, D.C. 20250
Voice: (202) 418-8872 Fax: (202) 245-5097

- On June 19, 2013, after failing to effectively render a swine insensible with the first shot from a captive bolt stunner, over two minutes elapsed before the second shot was applied and rendered the animal insensible;
- On August 9, 2013, after the first and second failed attempts to stun a beef animal by firing shots from a .22 caliber rifle, the third shot rendered it insensible; and,
- On October 9, 2013, after the first failed attempt to stun a swine with a captive bolt stunner, the animal was shot two more times with a .22 caliber rifle before it was rendered insensible.

The enclosed documentation shows repetitive failures by Brooksville to implement and maintain effective corrective actions and preventive measures as a result of the previous suspension actions, and failure to effectively educate and train their employees in humane handling and/or slaughter requirements.

In this case, the Agency has provided Brooksville with numerous opportunities to comply with FSIS requirements and to identify and implement corrective and preventive actions to ensure that the slaughter and handling of livestock in connection with slaughter is carried out only by humane methods. On September 9, 2013, after the August 9 suspension had been placed in abeyance, the Agency issued a Notice of Show Cause to Brooksville, providing the opportunity to present views as to why the Agency should not initiate action to withdraw inspection. Brooksville's response provided no new information, nor any new proposed corrective action. The Agency provided outreach on October 29 and 30, 2013, with a two-day visit from the Jackson District Veterinary Medical Specialist (DVMS). The DVMS provided information and material including review of published FSIS guidelines for a systematic approach to the humane handling of livestock. However, Brooksville and its responsible officials have demonstrated an unwillingness or inability to ensure the humane treatment of animals and prevent violations of the law.

Based on the aforementioned, Brooksville is unfit to engage in a business requiring Federal inspection under the FMIA. Given the seriousness of this matter, we request your office expedite this action to assist FSIS protect the welfare of animals and the public health.

At your request, we are available to brief you on this case. If you have any questions, please contact Mr. Alan Shaddock of my office at (402) 437-5 633, in regards to this case.

Enclosures

"ADMINISTRATIVELY CONFIDENTIAL"

November 21, 2013

Mr. Darryl Keith Wright, President
Brooksville Meat Fabrication Center, Inc.
80 Liberty Drive
Brooksville, Kentucky 41004

Dear Mr. Wright,

As you are aware, on October 9, 2013, the Food Safety and Inspection Service (FSIS) Jackson District Office reinstated the suspension of the assignment of inspectors from the slaughter operations at Brooksville Meat Fabrication Center, Inc., establishment number 9173 M, Brooksville, Kentucky. The reinstatement was based on a repetitive egregious failure to comply with statutory and regulatory requirements for humane handling. After careful review of this matter, including documented repetitive violations of humane handling requirements and failure to implement effective corrective actions, FSIS has determined that the violations raise serious concerns regarding your establishment's ability or willingness to take actions that are effective to ensure the humane handling of livestock.

Accordingly, we have referred this case to the United States Department of Agriculture (USDA), Office of the General Counsel with a request to file an administrative complaint to institute proceedings under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the FSIS Rules of Practice (9 C.F.R. Part 500) regarding suspension or withdrawal of inspection services. Once a complaint is filed, you will receive notice and a copy, and be provided with the opportunity under the USDA Rules of Practice, 7 C.F.R. Part 1, Subpart H, to respond to the complaint and for a formal hearing before an Administrative Law Judge.

If you have any questions or wish to discuss this matter, please contact Mr. Alan Shaddock, Compliance Specialist, Enforcement and Litigation Division, Administrative Enforcement Branch, at (402) 437-5633.

Sincerely,



Scott C. Safian
Director, Enforcement and Litigation Division
Office of Investigation, Enforcement and Audit

Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 8-210C
1400 Independence Avenue, SW
Washington, D.C. 20250
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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:

Brooksville Meat Fabrication Center, Inc.)	FMIA Docket No.	14-0045
Darryl Keith Wright)		
Respondents)	Complaint	14-0046

There is reason to believe that inspection services provided to Brooksville Meat Fabrication Center, Inc., as well as Darryl Keith Wright (collectively, "Respondents"), should remain suspended indefinitely because Respondents have not provided assurances satisfactory to the Secretary that all slaughtering and handling of livestock will be conducted humanely, as required under Section 3 of the Federal Meat Inspection Act ("FMIA"), (21 U.S.C. § 603(b)) and the regulations promulgated thereunder (9 C.F.R. Part 313). Therefore, pursuant to Section 21 of the FMIA (21 U.S.C. § 621), and Part 500 of Title 9 of the Code of Federal Regulations (9 C.F.R. Part 500), and Part 1 Subpart H of Title 7 of the Code of Federal Regulations (7 C.F.R. Part 1), this complaint is issued alleging the following:

I.

(a) Brooksville Meat Fabrication Center, Inc., herein referred to as Respondent Corporation, is now and at all times material herein was, a corporation located at 80 Liberty Drive, Brooksville, KY 41004.

(b) Respondent Corporation was and has been granted Federal inspection services pursuant to the FMIA since March 3, 2003, at the above named establishment that was and has been designated as Official Establishment Number 9173/P-9173.

(c) Darryl Keith Wright is now and at all times material herein was responsibly

connected to Respondent Corporation; in that Darryl Keith Wright is President and holder of ten percent or more voting stock in the corporation.

II.

(a) On April 30, 2013, the Food Safety and Inspection Service ("FSIS") issued a Notice of Suspension, suspending the assignment of inspectors at Respondents' facility because of an egregious act involving the inhumane handling of livestock in violation of 9 C.F.R. 313.16(a)(1) and 313.16(b)(2). FSIS personnel observed a failure to stun incident at the facility involving a heifer less than 30 months of age. At that time, an establishment employee made an attempt to render the heifer insensible. After the first shot was fired with a 22 Long rifle Mini Mag Hollow Point, inspection personnel noticed that the animal was not insensible and FSIS personnel had to insist that the employee make a secondary shot. The second shot, with a .22 magnum rifle, occurred approximately four (4) minutes later.

(b) Respondents proposed corrective and preventive measures between May 1-6, 2013. On May 6, 2013, FSIS verbally notified Respondents that it found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan. On May 7, 2013, FSIS sent a letter to the facility to notify Respondents that the suspension was held in abeyance.

(c) On June 19, 2013, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors at Respondents' facility because FSIS determined that the establishment again failed to handle animals humanely, in violation of 9 C.F.R. 313.15(a)(1) and 313.15(a)(3). In this instance, FSIS inspection personnel observed an employee of Respondents' facility deliver multiple shots to a hog with a captive bolt stunner, and fail to

take immediate corrective action to render that hog insensible. It took the employee two (2) minutes and fifteen (15) seconds to reload the captive bolt stunner, re-shoot the swine, and render the animal insensible to pain.

(d) Respondents proposed corrective and preventive measures between June 20-21, 2013. On June 21, 2013, FSIS notified Respondents verbally and in writing that it found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan.

(e) On August 9, 2013, FSIS issued a Notice of Reinstatement of Suspension of the assignment of inspectors at Respondents' facility because FSIS determined that the establishment repeatedly failed to handle animals humanely, in violation of 9 C.F.R. 313.16(a)(1) and 313.16(a)(3). FSIS inspection personnel again observed an employee of the Respondents' facility deliver multiple shots of a .22 caliber rifle, and again fail to take immediate corrective action to render a beef animal insensible. In this instance, the animal had to be hit three (3) times in order to be rendered insensible to pain. In addition, 30 seconds elapsed between the first and second shot.

(f) Respondents proposed corrective and preventive measures between August 11-14, 2013. On August 16, 2013, FSIS verbally notified Respondents that it found the proposed corrective actions and preventive measures were appropriate to meet regulatory requirements, thus, FSIS held the suspension in abeyance, pending verification of the proposed action plan. On August 19, 2013, FSIS sent a letter to the facility to notify the Respondents that the suspension was held in abeyance.

(g) On October 9, 2013, FSIS issued a Notice of Reinstatement of Suspension of the

assignment of inspectors at Respondents' facility because FSIS determined that the establishment repeatedly failed to handle animals humanely, in violation of 9 C.F.R. 313.16 (a)(1), 313.2(f), 313.16(a)(1) and 313.16(a)(3). FSIS inspection personnel again observed an employee of the Respondents' facility deliver multiple shots, first with a captive bolt stunner and then multiple shots from a .22 caliber rifle. It took three shots to render the hog insensible to pain.

(h) In addition to the suspensions, Respondents have received Non-Compliance Records from FSIS inspection personnel on November 14, November 16, November 27, 2012; and July 30, August 7, August 9, and August 26, 2013, for various other humane handling violations involving the failure to provide food and water, and stunning mishaps.

III.

By reason of the facts alleged in paragraphs I and II herein, inspection services at Respondents' facility should continue to be suspended until such time as Respondents provide adequate assurances that all slaughter and handling of livestock shall be conducted humanely as required Section 3 of the Federal Meat Inspection Act ("FMIA"), (21 U.S.C. § 603(b)), and the regulations promulgated thereunder (9 C.F.R. part 313).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the Secretary of Agriculture should continue to suspend the assignment of inspectors from Respondents' facility, this complaint shall be served upon the Respondents. The Respondents must file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with section 500.6 of the rules of practice (9 C.F.R. section 500.1 et. seq.) and 1.136 of the uniform rules of practice (7 C.F.R. section 1.136 et. seq.). Failure to file an answer within the prescribed time shall constitute

an admission of all material allegations of this complaint and a waiver of hearing.


The Food Safety and Inspection Service requests:

1. That unless the Respondents fail to file an answer within the prescribed time, or file an answer admitting all the material allegations of the complaint, or unless this proceeding is disposed of by the issuance of a consent decision as provided in section 1.138 of the uniform rules of practice (7 C.F.R. section 1.138), this proceeding be set for oral hearing in conformity with the rules of practice governing proceedings under the FMIA; and

2. That an order continuing the suspension of the assignment of inspectors indefinitely from the Respondents and their affiliates, successors, or assigns, as warranted by the facts and circumstances of the case.

Done at Washington, D.C.

This 5th day of December, 2013.


Alfred V. Almanza
Administrator
Food Safety and Inspection Service

Carlyne S. Cockrum
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