

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2022 MAY 11 1:16 PM

In re:)	
)	
Penn's Country Hams, LLC)	Docket No. 22-J-0035
John Penn, and)	Docket No. 22-J-0036
Justin (Blake) Penn.)	Docket No. 22-J-0037
)	
)	
Respondents.)	Consent Decision and Order

This is a proceeding under the Federal Meat Inspection Act (FMIA), as amended, (21 U.S.C. § 601 *et seq.*) and the applicable Rules of Practice (7 C.F.R. § 1.130 *et seq.*, 9 C.F.R. § 500.1 *et seq.*) to withdraw Federal inspection services from Penn's Country Hams, LLC ("Respondent Company" or "Penn's"), John Penn ("Respondent Penn I"), and Justin (Blake) Penn ("Respondent Penn II"). This proceeding was commenced by a Complaint filed by the Administrator of the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS). The parties have agreed that this proceeding should be terminated by issuance of the Consent Decision and Order set forth below pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

Respondents admit the Findings of Fact, as set forth herein, and specifically admit that the Secretary has jurisdiction in this matter. Respondents waive oral hearing and further procedure and waive any rights to seek judicial review or otherwise challenge or contest the validity of this Consent Decision and Order, including waiving any challenges to the Administrative Law Judge's authority to enter this Consent Decision and Order under the Administrative Procedure Act and the Constitution of the United States. Respondents and its owners, officers, directors, partners, successors, affiliates, and assigns waive any claim against

the Complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) and waive any other action against USDA or its employees in connection with this proceeding and the facts and events that gave rise to the proceeding. Respondent's consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this Consent Decision and Consent Decision and Order.

Complainant agrees to the issuance of this Consent Decision and Order.

Findings of Fact

1. Respondent Company is now, and at all times material herein, a Limited Liability Company physically located at 8812 Liberty Road, Campbellsville, Kentucky, 42718. Respondent Company also has a mailing address listed as PO Box 88, Mannsville, Kentucky, 42758.
2. Respondent Company is, and was at all times material herein, a recipient of Federal inspection services, pursuant to the FMIA, at its place of business in Campbellsville, Kentucky, and designated as official Establishment M-7929.
3. Since on or about November 22, 1971, Respondent Company has maintained a meat processing business under a grant of Federal inspection, designated as official Establishment No. M-7929, and has periodically updated its FSIS Form 5200-2, "Application for Federal Inspection," to reflect changes in operations and individuals responsibly connected to the establishment, with the most recent submittal of FSIS Form 5200-2 on August 19, 2021.
4. Respondent Penn I is identified as the manager in Respondent Company's most recent FSIS Form 5200-2 to update its grant of inspection. Respondent Penn II is also identified as the Plant Supervisor in Respondent Company's most recent FSIS Form 5200-2 to update its grant of inspection. Respondent Penn I and Respondent Penn II are individuals whose home address is in

[REDACTED] To protect their personal privacy, both Respondents addresses are not included in this Consent Decision and Order but has been provided to the Hearing Clerk for the purpose of effectuating service of process.

5. While not named as a Respondent herein, Mr. Donald Penn is also listed in block 22 of the most recent application as a person responsibly connected with the applicant. Specifically, Mr. Penn is listed as the Owner of Respondent Company. Mr. Penn is an individual whose home address is also in [REDACTED] To protect the personal privacy of Mr. Penn, his address is not included in this Consent Decision and Order but has been provided to the Hearing Clerk for the purpose of effectuating service of process.

6. On or about September 18, 2018, in the Circuit Court for Taylor County, Commonwealth of Kentucky, Respondent Penn I was convicted of two class C felony charges for trafficking in marijuana. Respondent Penn I received a sentence of 5 years imprisonment that was probated for 5 years and ordered to pay a fine in the amount of \$200.00.

7. On or about September 18, 2018, in the Circuit Court for Taylor County, Commonwealth of Kentucky, Respondent Penn II was convicted of five class D felony charges for trafficking in marijuana and one class D charge possession of illegal substance. Respondent Penn II received a sentence of 10 years imprisonment that was probated for 5 years and ordered to pay restitution in the amount of \$5,434.80. As a condition of his probation, Respondent II served an alternative jail sentence of 60 days and was given a work release during that period.

Conclusion

Respondents having admitted jurisdiction and the Findings of Facts herein, and the parties having agreed to entry of this Consent Decision and Order, the Consent Decision and Order will be issued.

Order

Federal meat inspection services under the FMIA are withdrawn from Respondents and its owners, officers, directors, partners, successors, affiliates, and assigns, directly or through any business or other device, for a period of three (3) years, upon issuance of this Consent Decision and Order; provided, however, said withdrawal of inspection services shall be held in abeyance, and Federal meat inspection services shall be provided to Respondents, pursuant to a conditional grant of inspection, for so long as the statutory and regulatory requirements for applicable inspection services are met and all terms and conditions of this Consent Decision and Order set forth below are met and maintained.

Establishment Management and Personnel

1. Within thirty (30) calendar days of issuance of this Consent Decision and Order, and subject to verification by FSIS, Respondent Company shall submit to the District Manager, FSIS, Office of Field Operations, Jackson District Office (“District Manager”), a revised application for federal meat inspection services under the FMIA, in accordance with FSIS regulations (9 C.F.R. § 304.1). Said application shall update, as applicable, all required information, including, but not limited to, the applicant information (identifying the form of organization), establishment information, types of operations (identifying all HACCP categories and associated products intended to be slaughtered, processed, and otherwise produced), and responsible persons information (identifying name, title, contact, any prior convictions, and other required information) for all management officials required by this Consent Decision and Order and for all other partners, officers, directors, holders or owners of 10 percent or more of voting stock, or employees in a managerial or executive capacity. Further, Respondent Company shall resubmit

an updated application for federal meat inspection services under the FMIA to the District Manager within fifteen (15) calendar days of any change to required information prescribed above for the duration of the Consent Decision and Order.

2. Within thirty (30) calendar days of issuance of this Consent Decision and Order, Respondent Company shall appoint or hire, subject to concurrence of the Director, Enforcement Operations Staff ("Director, EOS"), an individual to the role of Corporate Ethics and Compliance Officer ("CECO"). The CECO:

- a. shall exercise independent oversight of Respondent Company's compliance with the terms and conditions of this Consent Decision and Order and the Federal regulations, shall receive any and all reports of alleged compliance issues of the terms of this Order, and shall have the authority to conduct inquiries into alleged compliance issues and make recommendations to Respondent Company's ownership and management in response to compliance concerns;
- b. shall not be Respondent Penn I or Penn II;
- c. shall conduct quarterly conference calls or meetings with Respondent Company in order to facilitate its responsibilities listed in paragraph 2(a); and
- d. shall prepare and submit a quarterly report of its oversight of Respondent Company's compliance, as described in paragraphs 2(a) and (c) to the Director, EOS.

3. Should the CECO vacate their position during the period of this Consent Decision and Order, Respondent Company shall immediately notify the Director, EOS, and the District Manager, and shall appoint, hire, or otherwise designate another person to fill the vacated position within thirty (30) days, subject to the concurrence of the Director, EOS. If Respondent

Company is unable to fill the vacated position within the allotted time, it may submit a request to the Director, EOS, for additional time to fill the position.

Ethics Training

4. Within ninety (90) days of issuance of this Consent Decision and Order, Respondent Penn I and Respondent Penn II shall participate in and successfully complete a training program(s) or educational course(s) encompassing ethical business practices.

5. Prior to participating in such course(s), Respondent Penn I and Respondent Penn II shall submit a detailed description of the proposed training course(s) for concurrence by the Director, EOS.

6. Respondent Company shall maintain for the duration of the Consent Decision and Order records documenting the successful completion of such training and shall make these records available upon request to any FSIS program personnel.

Standards of Conduct Policy and Program

7. Within ninety (90) days upon issuance of this Consent Decision and Order, Respondent Company shall develop and submit for review and concurrence by the Director, EOS, a Standards of Conduct Policy and Program to include, at a minimum:

- a. measures for Penn's officers, managers, and employees to report alleged violations of food safety, compliance, ethics issues, or violations of Penn's policies without fear of reprisal and for Penn to document and address reported allegations;
- b. corrective actions to be implemented by Respondent Company and its owners, management officials, and/or supervisors for reported instances of noncompliance, including disciplinary actions and employment termination, when appropriate; and

- c. a policy statement reflecting (i) Penn's commitment and a commitment of its officers, managers, and employees to condemn and not tolerate any illegal activities at the Penn's by Establishment owners, management officials, supervisors, or employees; (ii) a Penn's commitment to comply with all Federal and State food safety and other laws in the conduct of their business; (iii) Penn's policy addressing business ethics and the public trust; (iv) Penn's commitment to maintain a safe work environment and ensure that Respondents, its officers, employees, or agents do not assault, harass, interfere, intimidate, or threaten FSIS personnel; (v) Penn's commitment to promote communications and exchanges between Penn's officers, managers, and employees and FSIS personnel that are professional, respectful, business like, non-threatening, and non-offensive in gender or ethnicity

8. The Standards of Conduct Policy and Program shall be permanently displayed in a prominent location in Penn's Federal establishment and shall be provided to and discussed with all current and future officers, managers, and employees.

9. Respondent Company shall require initial, and thereafter annual, written acknowledgement by each of its current and future owners, management officials, supervisors, and employees of their receipt, discussion, understanding, and adherence to the Standards of Conduct Policy and Program.

Management Meetings

10. Upon issuance of this Consent Decision and Order, Respondent Company's owners and management officials shall participate in a meeting with the District Manager, or their designee, the Director, EOS, or their designee, and any other personnel designated to attend the meeting by FSIS, to review the terms and conditions of the Consent Decision and Order and the compliance

responsibilities of Respondent Company and its owners, management officials, supervisors, and employees.

11. Upon issuance of this Consent Decision and Order, Respondent Company's owners and management officials shall participate in quarterly meetings with personnel designated by the FSIS Jackson District Office regarding the issues addressed by this Consent Decision and Order.

12. The meetings identified herein shall emphasize maintaining professionalism and safety; preventing assault, harassment, interference, intimidation, or threats; and compliance with the terms and conditions of this Consent Decision and Order. The meetings may cover inspection, compliance, regulatory issues, or other matters, as determined by FSIS or Respondent Company.

13. FSIS may, in its discretion, determine the Agency attendees for the meetings identified herein and waive attendance by any specific owner or management official of Respondent Company.

14. The meetings identified herein may be conducted in person at Respondent Company's establishment, at the FSIS Jackson District Office, at another USDA facility, or remotely, such as by teleconference, or otherwise, as agreed to by the FSIS Jackson District Office and Respondent Company.

15. Respondent Company and FSIS agree to cooperate in scheduling the meetings identified herein.

16. The meetings identified herein shall not limit, in any way, any other meetings (*e.g.*, weekly in-plant meetings) or other activities between FSIS employees and Respondent Company and its owners, management officials, supervisors, or employees.

General Provisions

17. Respondent Company and its officers, directors, partners, employees, agents, successors, affiliates, and assigns shall not:

- a. violate any section of the FMIA or the regulations promulgated thereunder, or any State or local statutes involving the preparation, sale, transportation, distribution, or attempted distribution of any meat products;
- b. commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;
- c. willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by Respondents in compliance with Federal, State or local statutes or regulations or this Consent Decision and Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the Respondents' business;
- d. assault, harass, interfere, intimidate, or threaten any FSIS program employee in the performance of his or her official duties under the FMIA, or the regulations promulgated thereunder; and
- e. conduct any operation requiring Federal inspection outside the official hours of operations without first submitting a written request to, and receiving written approval from, FSIS.

18. Respondent Company shall not knowingly employ any individual, in a managerial or other responsibly connected position (as defined in 21 U.S.C. § 671) to Respondent Company, who has been convicted, in any federal or state court, of any felony, or of more than one

violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled or deceptively packaged food, or upon fraud in connection with transactions in food.

19. Respondent Company and its owners, management officials, supervisors, and employees shall fully cooperate with any investigation, inquiry, review, or examination of Respondent Company's compliance with the FMIA, and regulations promulgated thereunder, and/or compliance with the terms and conditions of this Consent Decision and Order.

Implementation

20. Respondent Company shall implement the company policies and programs required by this Consent Decision and Order, require strict adherence to the company policies and programs on the part of all current and future officers, managers, and employees, and take and document corrective action, including disciplinary action, when necessary.

Enforcement Provisions

21. The Administrator, FSIS, may summarily withdraw the grant of federal inspection from Respondents upon determination by the Director, EOS, or their designee, that Respondents have committed any act in violation of, or failed to comply with, one or more conditions set forth in Paragraphs 1 through 16 of this Consent Decision and Order. The withdrawal of Respondents' grant of federal inspection shall become effective immediately upon FSIS's service of a Notice of Summary Withdrawal to Respondents, without further proceeding. Respondents shall retain the right, after any summary withdrawal of Respondents' grant of federal inspection, to request within twenty (20) days an expedited hearing, pursuant to the applicable rules of practice (7 C.F.R. Part 1, subpart H and 9 C.F.R. Part 500). Such request for an expedited hearing must be submitted within twenty (20) days of FSIS's service of a Notice of Summary Withdrawal.

22. Nothing in this Consent Decision and Order will preclude FSIS from taking any administrative enforcement action against Respondent Company, its owners, managers, other responsibly connected persons, affiliates, successors and/or assigns, in accordance with the FMIA, the regulations promulgated thereunder, and the applicable Rules of Practice. Nothing in this Consent Decision and Order will preclude the referral of any violation of law by Respondent Company, its owners, managers, other responsibly connected persons, affiliates, successors and/or assigns to the U.S. Department of Justice for possible criminal or civil proceedings.

Miscellaneous Provisions

23. If any provision of this Consent Decision and Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

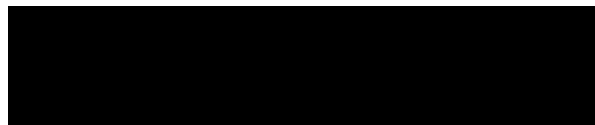
24. This Consent Decision and Order shall become effective upon issuance by the Administrative Law Judge.

25. The provisions set forth in this Consent Decision and Order shall be applicable for three (3) years from the date of issuance by the Administrative Law Judge.

26. Copies of this Consent Decision and Order will be served upon the parties.



Donald Penn
Owner
Penn's Country Hams, LLC



Scott C. Safian, Director
Enforcement Operation Staff
Food Safety and Inspection Service



John Penn
Manager
Penn's Country Hams, LLC

G. Blake
Jackson

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Blake Jackson
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G. Blake Jackson
Attorney for Complainant
Office of the General Counsel



Justin (Blake) Penn
Plant Supervisor
Penn's Country Hams, LLC

Issued this 11th day of May, 2022
at Washington, D.C.

CHANNING
STROTHER
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CHANNING STROTHER
Date: 2022.05.11
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Chief ADMINISTRATIVE LAW JUDGE