



United States Department of Agriculture

Food Safety and
Inspection Service

Office of Field
Operations
Des Moines District
Office

Neal Smith Federal
Building
210 Walnut Street
Room 985
Des Moines, IA
50309-2123

Voice 515.727.8960
Fax 515.727.8991

March 19, 2020

Signed original sent via FedEx

Russ Crawford, Plant Manager
Swift Pork Company
402 North Tenth Avenue
Marshalltown, Iowa 50158

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Crawford:

This serves as official notification by the Food Safety and Inspection Service (FSIS) of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel at Est. 3S, Swift Pork Company, 402 North Tenth Avenue, Marshalltown, IA. This action is taken in accordance with the Rules of Practice, 9 CFR Part 500.3(b), which states that FSIS may take a withholding action or impose a suspension without providing an establishment prior notification if it is handling or slaughtering animals inhumanely such as occurred at your establishment on March 19, 2020.

Authority

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 603 *et seq*) provides for the purpose of preventing the inhumane slaughtering of livestock. This Act gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under this Act. They also provide FSIS program personnel the authority to temporarily suspend at a slaughtering establishment if FSIS finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishments by any method not in accordance with the *Humane Methods of Slaughter* Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901-1906), until the establishment furnishes assurances satisfactory to FSIS that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of the Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, as contained in Regulations 9 CFR Part 313, and the Humane Methods of Slaughter Act of 1978. FSIS has also developed Rules of Practice regarding enforcement prescribed in 9 CFR Part 500. The Rules of Practice describe the types of enforcement actions that FSIS may take and include procedures for taking a withholding action and or suspension, with or without prior notification, as well as the procedures for filing a complaint to withdraw a Grant of Federal Inspection.

Findings/Basis for Action

At approximate 0405 on March 19, 2020, while performing Humane Handling Activities Tracking System (HATS) task Category IV – Antemortem Inspection, of the slow/temporarily disabled/non-ambulatory hogs and HATS Category V – Suspects and Disabled, the FSIS, Supervisory Public Health Veterinarian (SPHV), observed the following, HATS Category VIII – Stunning Effectiveness egregious noncompliance:

The humane handling monitor attempted to euthanize a condemned hog that was conscious and on its side with a hand-held captive bolt device (HHCB). The initial attempt struck the animal approximately one inch above the right eye. The hog remained conscious, alert, and looking around. The second attempt with the same HHCB struck the animal in the middle of the forehead, however, the hog remained conscious, looking around and blinking its eyes. After retrieving additional captive bolt charges, the same humane handling monitor returned for a third attempt making contact in the middle of the forehead. The hog remained conscious, alert and was looking around. A fourth attempt, placed behind the base of the ear, rendered the animal unconscious. The same captive bolt gun was used for all four attempts.

(b) (6) was immediately informed of the situation and regulatory control action was taken by tagging the butina drive alleys with U.S. Reject Tag #'s B38155820 and B38155821. The following plant employees were also notified: (b) (6) and (b) (6)

The incident described above is a violation of the Federal Meat Inspection Act (FMIA) (21 U.S.C.) 603, Regulations 9 CFR 313.15(a)(1) and the Humane Methods of Slaughter Act of 1978.

Conclusion

According to the FSIS Rules of Practice laid out in 9 CFR 500.3(b), FSIS may impose a suspension without providing prior notification because an establishment is handling or slaughtering animation inhumanely. Alternatively, FSIS may issue a withholding action or suspension with prior notification in certain cases based on considerations of plant history of compliance and demonstration of implementation of a robust systematic approach to humane handling.

The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your implementation of a written systematic approach for the humane handling of livestock in a manner consistent with the Agency expectations for consideration of a robust systematic approach and a history of compliance with the humane handling regulations.

Before proceeding with any enforcement action, we are affording you the opportunity to demonstrate why a determination should not be made that your slaughter process is inadequate or to demonstrate that you have achieved regulatory compliance.

Please provide this office with a written response to this NOIE within three (3) working days from the date of your receipt of this letter. We will determine if any further actions are necessary based on your response. The corrective actions and preventive measures in your response should address the following:

1. An initial assessment of incident/determine the cause.
2. Immediate corrective actions taken.
3. Preventive measures to prevent reoccurrence.
4. Any training of employees and materials used.
5. Type of monitoring activity for stunning, along with a documentation record.

Your proposed corrective actions and preventive measures should include any times and/or dates for completion of these proposed activities.

Please be advised that you have the right to appeal this matter. If you wish to appeal this action, contact:

Paul Wolseley
Executive Associate for Regulatory Operations
USDA, FSIS, OFO
Room 3168 - South Building
1400 Independence Avenue, SW
Washington, DC 20250
Telephone: (202) 205-0194

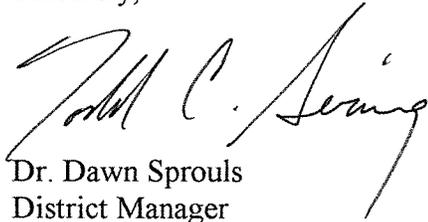
In addition, you may also request a hearing regarding this determination pursuant to FSIS' Rules of Practice (9 CFR Part 500). The Rules of Practice were published in the Federal Register, Vol. 64, No. 228, on November 29, 1999. As specified in Section 500.5(d), should you request a hearing, FSIS will file a complaint that will include a request for an expedited hearing. If you wish to request a hearing regarding this determination, you should contact:

Scott C. Safian, Director
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 9-205
355 E. Street SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Fax: (202) 245-5097

We urge your cooperation and voluntary compliance. If you have questions regarding this matter, please feel free to contact (b) (6)

(b) (6) or (b) (6)
(b) (6) of the Des Moines District Office, at 515-727-8960.

Sincerely,



Dr. Dawn Sprouls
District Manager
Des Moines District
FSIS, USDA