



United States Department of Agriculture

Food Safety and
Inspection Service

Office of Field
Operations

Springdale District

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February 20, 2020

Via Email: tmessman@smithfield.com
FedEx Tracking # 777821420871

Mr. Tim Messman, General Manager
Smithfield Fresh Meats Corp., Est. M320M
22123 Highway 5
Milan, MO 63556

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Messman,

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 personnel with prior notification for your Slaughter process at Est. M320M, Smithfield Fresh Meats Corp., located at 22123 Highway 5, Milan, MO, as per Title 9 of the Code of Federal Regulations (CFR), Part 500.3(b) (Rules of Practice). This Notice of Intended Enforcement (NOIE) is based on your failure to prevent inhumane handling and slaughter of livestock at your facility as required by 9 CFR 313.2(d)(2).

Background / Authority

In 7 U.S.C. 1901, the Humane Methods of Slaughter Act (Humane Slaughter Act) states: *The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.*

FSIS has developed Rules of Practice regarding enforcement (9 CFR Part 500) that describe the types of enforcement action that FSIS may take and include procedures for taking a withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a grant of federal inspection. As per Title 9 of the Code of Federal Regulations (9 CFR) 500.3(b), FSIS may impose a suspension without providing the establishment prior notification because the establishment is handling or slaughtering animals inhumanely.

The Federal Meat Inspection Act (FMIA) (21 USC 603(b)) states: *For the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be*

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made, by inspectors appointed for that purpose, an examination and inspection of the method by which amenable species are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this chapter. The Secretary may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901–1906) until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

Findings / Basis for Action

On February 20, 2020, (b) (6) documented the following inhumane handling incident in MOI VWK0113025720I:

Today, February 20, 2020, at approximately 1000 hours, I verbally notified (b) (6) that I had taken a regulatory control action in the butina drive alley for dragging of a nonambulatory hog resulting in an egregious inhumane treatment of a hog. I also informed (b) (6) that I was contacting the District Office to discuss and recommend the issuance of a notice of intended enforcement (NOIE) action rather than a suspension, unless the DO determines otherwise. I based my decision to recommend the NOIE on the following circumstances and establishment history:

On 02/20/2020 at 1000 hours I was standing just after the ninety-degree angle at the final leg of the North butina drive alley. A plant employee was at the first push gate entering the final drive. This is an automated hydraulic gate. The gate had stopped about halfway down its path, or roughly 8 feet from the ninety-degree angle. I saw the employee tap his rattle paddle down into the drive alley and the gate proceeded to push. As the gate came into view I saw a single hog that was sitting down with the left side of its hindquarters in contact with the push gate and the rear haunches in contact with the drive alley wall. The hog was pushed on its side by the gate for approximately half the distance of the lane while it was in a sitting position and the employee was tapping the back of the hog to attempt to get it to rise. I immediately stopped slaughter operations and notified plant management that I was rejecting both gates leading to the North and South drive alleys (US Reject tags B28258700 and B28258699) and contacting the District Office about an egregious humane handling event.

My decision to recommend an NOIE to the District Office is due to the fact that you have a written animal handling program that has effectively implemented

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a robust systematic approach to humane handling resulting in the high rate of compliance you have exhibited over the last 6 months. The events I observed today and recorded above appear to be an unintentional random occurrence that resulted in an egregious inhumane handling incident. Your supervisor's actions were as indicated in your animal handling program. This history coupled with your supervisor's immediate and effective intervention led to my recommendation to an NOIE instead of a Suspension.

Your establishment failed to comply with 9 CFR 313.2(d)(2), the Humane Slaughter Act (section 1902), and the Federal Meat Inspection Act (21 U.S.C. 603(b)). Dr. Brown verbally notified you of this NOIE on 2/20/2020.

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 animals 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.

In consideration of the factors listed above, we are notifying you of our intent to withhold the marks of inspection and suspend assignment of inspection personnel **with** prior notification for your Slaughter process in accordance with 9 CFR 500.3(b). Please be advised that, as a federally-inspected establishment, you are expected to comply with the FMIA, Humane Methods of Slaughter Act, and all appropriate FSIS regulations. We are giving you the opportunity at this time to demonstrate: (a) why a decision to suspend the assignment of personnel for your Slaughter process should not be made; and, (b) that you have achieved regulatory compliance.

Please provide this office with a written response concerning this NOIE within three (3) business days from the date of your receipt of this letter. We will determine further action, if any, based on your response. Your written response is expected to explain how you will bring your establishment back into compliance with the regulatory requirements. It should include all corrective and preventive measures you are taking or have taken and your support for why these actions will prevent future recurrences.

If you have any questions, please contact this office.

Sincerely,



Robert Q. Bane
District Manager

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cc: Ms. Geraldine French, Acting EARO
Dr. Evan Sumner, DDM
Dr. Don Dowdle, DDM
Mr. Jeffery Barham, DDM

(b) (6)



FO/Quarterly Reports