



United States Department of Agriculture

Food Safety and
Inspection Service

Office of Field
Operations

Springdale District

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November 2, 2020

Via Email: tmessman@smithfield.com
FedEx Tracking # 771977264703

Mr. Tim Messman, General Manager
Smithfield Fresh Meats Corp, Est. M320M+V320
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+V320, Smithfield Fresh Meats Corp, located at 22123 Highway 5, Milan, MO 63556, 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(a) and 313.2(d)(1).

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 October 31, 2020, (b) (6) observed an inhumane handling incident documented in NR VWK3315104331. The NR states that an employee attempted to drive three ambulatory hogs between two non-ambulatory hogs against the wall of Pen 1B and the wall of the Resale Pen; however, the ambulatory hogs went over one of the non-ambulatory hogs. Another employee was present but made no attempt to intervene. The SPHV informed (b) (6) of this noncompliance and rejected the middle alley for usage with U.S. Reject Tag# B28258711. Your establishment failed to comply with 9 CFR 313.2(a) and 313.2(d)(1), the Humane Slaughter Act (section 1902), and the Federal Meat Inspection Act (21 U.S.C. 603(b)).

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 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. Prior to this incident, your establishment had a robust, systematic approach to humane handling; thus, FSIS is issuing this NOIE rather than a suspension.

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

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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,



Jeffery Barham
District Manager

cc: Ms. Geraldine French, EARO
Dr. Evan Sumner, DDM
Dr. Don Dowdle, DDM

(b) (6)



FO/Quarterly Reports