



United States Department of Agriculture

Food Safety and Inspection Service

November 17, 2021

Signed copy electronically delivered

Office of Field Operations
Des Moines District Office

(b) (6)
Smithfield Fresh Meats Corp.
800 Industrial Drive
Denison, Iowa 51442

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

NOTICE OF INTENDED ENFORCEMENT

Dear, (b) (6)

Voice 515.727.8960
Fax 515.727.8991

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on November 16, 2021, of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP) at Establishment M717, Smithfield Fresh Meats Corp., herein referred to as the/your establishment. This action is taken in accordance with the Rules of Practice, 9 CFR 500.3(b). The Notice of Intended Enforcement (NOIE) is being issued due to observation of an egregious human handling incident that occurred on November 16, 2021, failing to meet the requirements of 9 CFR 313.15(a)(1).

Background

The Federal Meat Inspection Act (FMIA) (Title 21 of the United States Code {21 U.S.C.} 603 et seq.) provides that for the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the methods by which cattle, sheep, swine, goats, horses, mules, or other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act. The Secretary may refuse to provide inspection to a new slaughtering establishment or may cause slaughtering 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 establishments by any method not in accordance with sections 1901 to 1906 of Title 7 until the establishment furnishes assurances, satisfactory to the Secretary, that all Slaughtering and handling in connection with livestock shall be in accordance with such a method.

The Humane Methods of Slaughter Act of 1978 (7 U.S.C. 1901 et seq.) provides that 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 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 approximately 02:45 PM, while performing HATS category IV, Antemortem Inspection, Inspection Program Personnel (IPP) condemned a pig in the U.S. Suspect pen. The establishment employee accompanying IPP immediately prepared two hand-held captive bolt devices (HHCB) to humanely euthanize the animal. IPP then observed the following noncompliance with HATS category VIII, Stunning Effectiveness. The employee attempted to stun the animal with one of the HHCB device, but the attempt was unsuccessful, and the animal remained conscious, attempting to roll over from a recumbent position. IPP observed blood trickling down the forehead from where the stunning attempt had made contact. IPP then had to instruct the establishment employee to make a second stun attempt on the animal. The employee then used the second HHCB device in attempt to stun the animal and again the animal remained conscious, attempting to roll over. After the second attempt IPP observed the animal blinking and tracking movement with its eyes. IPP then had to instruct the employee to make a third attempt to stun the animal. The employee promptly reloaded the HHCB, and on the third attempt, successfully rendered the animal unconscious. IPP informed plant management of her observations regarding the establishments failure to render the animal unconscious after multiple stunning attempts and that a noncompliance record (NR) would be issued. IPP informed the (b) (6) that she contacted the Des Moines district through supervisory channels for further guidance regarding possible enforcement action.

This is noncompliant with regulation 9 CFR 313.5(a)(1). Prior to this noncompliance, the establishment operated under a robust systematic approach to humane handling.

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 establishment history of compliance with the humane handling regulations, demonstration of implementation of a robust systematic approach to humane handling, whether suspension is necessary to prevent inhumane handling from continuing, and whether the egregious noncompliance represents a rare finding or an anomaly in an otherwise well-functioning system.

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 humane handling program in

a “robust” manner and 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.

You are reminded that as an operator of a federally inspected establishment, you are expected to comply with FSIS regulations, regarding the humane handling and slaughter of livestock. We urge your cooperation and voluntary compliance.

If you have questions regarding this matter, please feel free to contact the Des Moines District Office at 515-727-8960 or (b) (6)

Sincerely,



Digitally signed by Todd C. Gerwig
Date: 2021.11.17 15:05:54 -06'00'

Dawn Sprouls, DVM
District Manager
USDA FSIS OFO
Des Moines District