



May 16, 2023

National Beef Packing Co., L.L.C.  
M208A  
1501 East 8<sup>th</sup> Street, Liberal, KS 67905  
dennis.boyles@nationalbeef.com  
(620) 624-1851

ELECTRONIC MAIL on May 16, 2023  
FEDEX TRACKING 7721 5922 1485

Attention: Dennis Boyles, Plant Manager

### **NOTICE OF INTENDED ENFORCEMENT**

This letter 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 (IPP), with prior oral notification, for your Slaughter Hazard Analysis and Critical Control Point (HACCP) processes at National Beef Packing Co., L.L.C, M208A, located at 1501 East 8<sup>th</sup> Street, Liberal, KS 67905.

The decision to institute this enforcement action is in accordance with Title 9 of the Code of Federal Regulations (CFR), Rules of Practice 500.3(b), based on the determination that your establishment did not handle or slaughter animals humanely. The evidence demonstrates failure to comply with the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*), and the regulatory requirements (9 CFR Part 313).

#### **Background/Authority**

The FMIA (21 USC 601 *et seq.*) provides it is essential to the public interest that the health and welfare of consumers be protected, by assuring meat products distributed to them are wholesome, not adulterated, and properly marked, and labeled. The Act gives FSIS the authority, as designated by the Secretary of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments and provide FSIS program personnel the authority to refuse to allow meat/meat food products to be marked, labeled, stamped, or tagged as *inspected and passed*, to prevent the entry of adulterated products into commerce. Furthermore, the FMIA provides FSIS the authority to appoint inspectors to examine and inspect the method by which livestock are slaughtered and handled at slaughtering establishments.

The HMSA 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.

Under the authority of the Acts, FSIS has prescribed rules and regulations required for establishments slaughtering and handling livestock, as required by 9 CFR Part 313. FSIS has also developed the Rules of Practice regarding administrative enforcement, 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, and for filing a complaint to withdraw a grant of inspection. Specifically, 9 CFR 500.3(b) states that FSIS may impose a suspension without providing prior notification due to handling or slaughtering of animals inhumanely.

### **Findings/Basis for Action**

At approximately 8:31 A.M. on May 16, 2023, FSIS Inspection Program Personnel (IPP) observed a failed stunning procedure, as documented in NR LLG0910052516N. IPP observed the establishment employee attempt to stun the animal with a compressed air captive bolt. IPP heard the knocking device discharge and observed blood on the faceplate of the animal. Then, IPP observed the animal strenuously shaking its head back and forth, eyes tracking, and blinking occurring. IPP also observed the animal attempting to evade the captive bolt as the establishment employee attempted to perform a second stun attempt. After the second stun attempt, IPP again heard the captive bolt device discharge, observed additional blood on the faceplate, and the animal continued to strenuously shake its head back and forth, eye tracking, and the animal attempting to evade the captive bolt of the establishment employee attempting a third stun attempt. After the third stun attempt, IPP observed the animal remained conscious as evident by strenuous movement of the head and eyes tracking. The area supervisor then provided a fourth stun attempt successfully rendering the animal unconscious. IPP took a regulatory control action by tagging the restrainer with U.S. Reject Tag B-45696303.

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" in the Federal Register (69 FR 54625). On September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, entitled, "*Humane Handling and Slaughter of Livestock.*" Additionally, on October 23, 2013, FSIS introduced new guidance, titled "*FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock.*" Within the guidance material is information intended to better ensure the humane treatment of livestock presented for slaughter. The guidance material provides a set of practices designed to minimize excitement, discomfort, and accidental injury regarding the humane handling of livestock to include the four components of a robust systematic approach to humane handling.

When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed. Although your establishment has previously developed and implemented a systematic approach to humane handling that was considered robust, you have failed to effectively implement your program accordingly.

### **Summary and Conclusion**

Provisions of the FMIA outline FSIS' ability to refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing, when conditions exist where the slaughter and/or handling of livestock was not by a method in accordance with the Act(s). Evidence demonstrates your failure to meet regulatory requirements addressed in 9 CFR 313.15(a)(1), constituting a violation of the humane slaughter requirements, and supporting the conclusion that your handling of livestock violated the provisions of the FMIA and HMSA.

Please provide a written response, inclusive of written corrective action and preventative measures, by addressing the following:

- Evaluate and identify the nature, cause of the incident.
- Describe the specific actions taken to eliminate the cause of the incident and prevent future recurrences.
- Describe specific monitoring activities planned to ensure future compliance.
- Provide any supporting documentation and records maintained and/or associated with the proposed corrective actions and preventative measures.

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, no later than close of business May 19, 2023. 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. Your response should include the specific corrective actions and preventative measures that have been or will be taken in response to the noncompliance(s) identified and copies of all documents associated with the proffered corrective actions.

### **Appeal Rights**

You have the right to appeal this matter and can do so by contacting:

Paul Wolseley,  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service  
United States Department of Agriculture  
SB, Room 3160  
1400 Independence Avenue, SW  
Washington, DC 20250  
Email: paul.wolseley@usda.gov  
Phone: (202) 937-4761

If you have any questions, please contact Dr. Don Dowdle via telephone at 479-717-5006 or via electronic mail at don.dowdle@usda.gov. Additionally, you can contact Springdale District Office at 479-751-8412 or by fax at 479-751-4739.

Dennis Boyles, Plant Manager  
National Beef Packing Co., L.L.C.

Notice of Suspension  
May 16, 2023

Sincerely,



*For*

Jeffery Barham  
District Manager

cc: Mr. Paul Wolseley, EARO  
Mr. Jeffery Barham, DM  
(b) (6) Humane Handling Enforcement Coordinator  
Mr. Shaun Smith, OIEA Regional Director  
Dr. Don Dowdle, DDM  
Dr. Evan Sumner, DDM  
Dr. Daran (Curtis) Stovall, DDM  
(b) (6) SEIAO  
(b) (6) Acting SEIAO  
(b) (6) DCS  
(b) (6) DVMS  
(b) (6) FLS  
(b) (6) SPHV, at M208A  
FO/Quarterly Reports