



January 17, 2020

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Mr. Bruce Rundle, General Manager
Smithfield Fresh Meats Corp.
Est. M717M
1220 North 6th Street
Monmouth, IL 61462

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Rundle:

This letter confirms verbal notification provided to you by Mr. William Cranford, Deputy District Manager, on January 17, 2020, at approximately 1645 hours CST, of the Food Safety and Inspection Service's (FSIS) intent to withhold the marks of inspection and suspend the assignment of inspection program personnel from your slaughter process at Smithfield Fresh Meats Corp., Establishment M717M, located at 1220 North 6th Street, in Monmouth, Illinois. This action is based on your establishment's failure to effectively implement humane methods of slaughtering and handling of animals in a manner that complies with the regulatory requirements prescribed by the Federal Meat Inspection Act (FMIA) and the Humane Methods of Slaughter Act (HMSA). Your establishment was observed to be in violation of Title 9 of the Code of Federal Regulations (9 CFR) Section 313.5(a)(3). The Rules of Practice, 9 CFR 500.3(b), provide that FSIS may impose a suspension without providing prior notification if it is determined that an establishment is handling or slaughtering animals inhumanely.

Background and Authority

The Federal Meat Inspection Act (21 U.S.C. 603 Sec. 3 (b)) states, "*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 method 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 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 Sections 1901 to 1906 of Title 7 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.*" In addition, under prohibited acts 21 U.S.C. 610 sec 10 (b), "*No person, establishment or corporation shall, with the respect to any cattle, sheep, swine, goats, horses, mules, and other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals slaughter or handle in connection with slaughter any such animals in any manner not in accordance with sections 1901 to 1906 of Title 7.*"

The Humane Methods of Slaughter Act 7 USC 1901 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 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.”*

The Humane Methods of Slaughter Act 7 USC 1902 states, *“No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane.”* When an egregious situation exists, FSIS can refuse to render inspection and indefinitely withdraw inspection from an establishment provided the establishment is afforded the right to an administrative hearing.

Under the authority of the above Acts, FSIS has prescribed rules and regulations required for establishments producing meat and poultry products, including the requirements pertaining to the humane slaughter of livestock, as required by 9 CFR 313, and other matters. FSIS has also developed Rules of Practice regarding enforcement, which can be found in 9 CFR 500. The Rules of Practice describe the types of enforcement actions that FSIS may take to include a withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a Grant of Federal Inspection.

Findings/Basis for Action

On January 17, 2020, at approximately 1555 hours while observing market hogs in the sticking area, the FSIS Supervisory Public Health Veterinarian (SPHV) noticed a hog in front of the stick employee with shallow rhythmic breathing. The employee checked the eye reflexes of the hog and called for a captive bolt gun. The hog was then immediately shot with the captive bolt gun. (b) (6)
(b) (6) was in the area where the establishment was running hogs and the SPHV called for him to come to the stick area. At that time, the SPHV went down the steps to obtain a closer view of the shackling area. The SPHV noticed two additional hogs with shallow rhythmic breathing. Establishment personnel were checking the hogs' eye reflexes, and one was noted to have a palpebral reflex. The hogs were immediately shot with a captive bolt gun by establishment personnel. Around the same time, a hog that was shackled and hanging in between the shackle table and stick area was righting itself and vocalized. The hog was immediately stunned with a captive bolt gun by an establishment employee. The SPHV advised (b) (6) that they could no longer run hogs into the Butina machines and applied U.S. Rejected Tag B19083469.

The occurrence of this inhumane handling incident as described is egregious and a violation of the humane handling requirements as prescribed by 21 U.S.C. 603, Section 3 (b) of the FMIA, and 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

You have failed to meet the regulatory requirements of 9 CFR 313.5(a)(3), which states in part, *“On emerging from the carbon dioxide tunnel, the animals shall be in a state of surgical anesthesia and shall remain in this condition throughout shackling, sticking, and bleeding, except for swine in which death has been induced by the administration of carbon dioxide.”*

Summary and Conclusion

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 Notice (54 Fed. Reg. 54625). On August 15, 2011, FSIS released FSIS Directive 6900.2 Revision 2, 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.

In cases where an egregious animal handling incident is observed by FSIS inspection program personnel (IPP), the Agency provides for regulatory discretion in the decision of the type of enforcement action issued if an establishment maintains a written systematic approach that meets the criteria for robustness.

Your establishment is currently operating under an animal handling and welfare program that provides for how your establishment will respond if an event of this nature occurs. 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.

Based on the evaluation of this plan, your response in accordance with your animal handling program is expected to effectively address the regulatory issues identified within this letter. 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. Identify the specific reason(s) why the events described occurred.
2. Describe the specific action(s) that will be implemented to eliminate the cause of the incident and prevent future recurrences.
3. Describe the specific future monitoring activity or activities that your establishment will employ to ensure the actions implemented are effective.
4. Provide any supporting documentation and records maintained and associated with your proposed corrective actions and preventive measures.

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:

Michael Watts
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

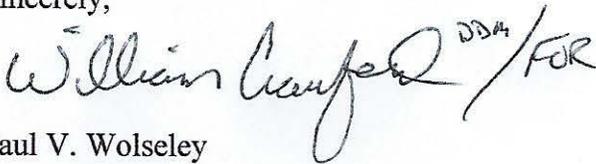
If you have questions regarding this matter, you may contact (b) (6)

(b) (6)

(b) (6)

or you may contact this office at (630) 620-7474 or
by fax at (630) 620-7599.

Sincerely,



Paul V. Wolseley
District Manager
Chicago District