

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) FMIA Docket No. 20-J-0128
)
Nelson's Meat Processing, LLC,) Consent Decision and Order
)
Respondent.)

This proceeding was instituted under the Federal Meat Inspection Act (FMIA), as amended, (21 U.S.C. § 601 *et seq.*) and the applicable rules of practice (7 C.F.R. § 1.130 *et seq.*, 9 C.F.R. § 500.1 *et seq.*) to indefinitely suspend and permanently withdraw Federal inspection services for livestock slaughter operations from Respondent Nelson's Meat Processing, LLC. The Administrator of the Food Safety and Inspection Service (FSIS) commenced this proceeding on May 22, 2020, by filing a complaint alleging that Respondent has not provided satisfactory assurances to FSIS that all slaughtering and handling of livestock will be conducted humanely, as required under Section 3(b) of the FMIA (21 U.S.C. § 603(b)), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. § 1901 *et seq.*), and the regulations promulgated thereunder (9 C.F.R. Part 313). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

Respondent admits the findings of fact, as set forth herein, and admits that the Secretary has jurisdiction in this matter. Respondent agrees to the entry of this Consent Decision and Order, waives oral hearing and further procedure, and waives any rights to seek judicial review or otherwise challenge or contest the validity of this Consent Decision and Order, including waiving any challenges to the Administrative Law Judge's authority to enter this Consent

Decision and Order under the Administrative Procedure Act and the Constitution on the United States.

Complainant agrees to the entry of this Consent Decision and Order.

FINDINGS OF FACT

1. Respondent's slaughter and processing facility is located at 2571 Yates Crossing Road, Milton, West Virginia 25541.
2. Respondent is a recipient of Federal inspection services and is designated as Official Establishment No. M-33927/P-33927.
3. On October 8, 2019, FSIS suspended the assignment of inspectors for slaughter operations at Respondent's facility following violations of the humane handling and slaughter requirements under the FMIA, HMSA, and 9 C.F.R. Part 313.

CONCLUSION

4. Respondent having admitted the jurisdictional facts, and the parties having agreed to entry of this Consent Decision and Order, the Consent Decision and Order will be entered.

ORDER

5. Respondent agrees to voluntarily withdraw from Federal inspection for livestock slaughter operations.
6. Respondent will sign and submit to the FSIS Office of Field Operations, Raleigh District Office (Raleigh DO) an FSIS Form 5200-2 Application for Federal Inspection, requesting to update its Grant of Inspection to include Federal inspection services only for meat

and poultry processing operations. Respondent will submit the application within five (5) business days after service of this Consent Decision and Order. The application will include all required information, including, but not limited to, applicant information, establishment information, types of operations (identifying all HACCP categories and associated products intended to be processed and otherwise produced), and responsible persons information.

7. Upon receipt of the application, FSIS will process the application in accordance with standard procedures and issue to Respondent an updated Grant of Inspection for meat and poultry processing operations, conditioned upon Respondent's compliance with applicable statutes and regulations.

8. Respondent may continue to conduct custom exempt livestock slaughter (21 U.S.C. § 623; 9 C.F.R. § 303.1), subject to the requirements of applicable statutes and regulations.

9. Nothing in this Consent Decision and Order will preclude FSIS from taking any appropriate administrative action with respect to Respondent's operations under applicable statutes and regulations or preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings.

10. Should Respondent or Respondent's successor, affiliate, or assign submit a future application for Federal inspection of livestock slaughter, Complainant retains the right to evaluate the necessity of filing an administrative complaint to refuse Federal inspection services under the FMIA and applicable regulations and rules of practice.

11. Respondent waives any action under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees or expenses incurred in connection with this proceeding, and any

other action against the United States Department of Agriculture (USDA) or any USDA employee in connection with the events that gave rise to this proceeding.

12. If any provision of this Consent Decision and Order is declared invalid, such declaration will not affect the validity of any other provision herein.

13. This Consent Decision and Order will be considered entered and effective on the date of signature by an Administrative Law Judge.

Copies of this Consent Decision and Order shall be served upon the parties.



Andrew Nelson, Owner
Nelson's Meat Processing, LLC



Scott Safian, Branch Chief
Enforcement Operations Branch
Enforcement and Litigation Division
Food Safety and Inspection Service
United States Department of Agriculture



Tracy McGowan, Attorney for Complainant
Marketing, Regulatory, and Food Safety
Programs Division
Office of the General Counsel
United States Department of Agriculture

Issued this 10th day of July, 2020
in Washington, D.C.



Chief Administrative Law Judge
Channing D. Strother