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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:	}	FMIA Docket No. 18- 0012, 18-0013
	}	
Wells Pork and Beef Slaughter, Inc.	}	
and Victor Swinson,	}	
	}	
	}	
	}	
Respondents	}	Consent Decision and Order
	}	

This proceeding was instituted under Title I of the Federal Meat Inspection Act, as amended (21 U.S.C. § 601 et seq.) (FMIA) 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 Federal inspection services under Title I of the FMIA from Respondents. This proceeding was commenced by a Complaint filed by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA), alleging that Respondents have not provided 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).

Respondents admit the findings of fact, as set forth herein, and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations,

waive oral hearing and further procedure, waive all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waive any action against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 *et seq.*) for fees and other expenses incurred by respondent in connection with this proceeding or any action against any USDA employee in their individual capacity.

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

Findings of Fact

1. Respondent Wells Pork and Beef Slaughter, Inc., (Corporate Respondent) is a corporation organized and existing under the laws of the State of North Carolina. Its physical and mailing address is 750 Croombsbridge Road, Burgaw, North Carolina 28425.

2. Respondent Victor Swinson (Respondent Swinson) is an individual whose home address is in [REDACTED]. In order to protect the personal privacy of Respondent Victor Swinson, his address is not included in this consent decision but has been provided to the Hearing Clerk for purpose of effectuating service of process.

3. Corporate Respondent, under the direction, management, and control of Respondent Swinson, received a grant of federal inspection services for livestock slaughter and meat processing on May 19, 2009. Corporate Respondent has been designated as Official Establishment No. M39876.

4. Respondent Swinson at all times material herein was:

(a) President of Corporate Respondent;

- (b) Owner of 100% of the stock issued by the Corporate Respondent; and
- (c) Responsible for the direction, management, and control of Corporate Respondent.

5. On November 30, 2017, FSIS suspended the assignment of inspectors to cover slaughter of animals at Respondents' establishment following a violation of the humane handling and slaughter requirements.

Conclusion

Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this consent decision, the consent decision will be entered.

Order

Federal inspection services under the FMIA are suspended from Respondents and its owners, officers, directors, partners, successors, affiliates and assigns, directly or through any business or other device beginning on the effective date of this Order. However, the suspension of inspection services shall be held in abeyance, and inspection services shall be provided to Respondents for so long as the conditions set forth below, in addition to all other requirements of inspection, are met. This Order shall remain in effect for a period of three (3) years.

Requirements

1. Prior to resumption of inspection services, Respondents will hire or appoint a full-time humane handling coordinator. The humane handling coordinator must have at least two years of experience in livestock slaughter or has taken instructional courses and training in humane handling and slaughter from a reputable organization.

2. Prior to resumption of inspection services, Respondents will provide in writing to the FSIS ELD Director (Director), for review and concurrence, the name of the humane handling coordinator and documentation of education or work experience.

3. The humane handling coordinator will be responsible for the overall implementation, coordination, monitoring, documentation, recordkeeping, evaluation, and maintenance of the Respondents' "Humane Handling and Slaughtering Program" established under paragraphs 14 through 16 of this Order. The humane handling coordinator will be present during the handling of livestock and the slaughter of livestock.

4. In the absence of the humane handling coordinator, Respondents agree not to slaughter on their premises, and will slaughter livestock at another USDA approved facility outside Respondents' premises.

5. Respondent Victor Swinson may not serve as the humane handling coordinator.

6. Within 10 calendar days of the humane handling coordinator vacating the assigned role, Respondents are responsible for assigning a new humane handling coordinator who meets all qualifications as detailed above and receives concurrence by the Director. Respondents may submit a request to the Director for an extension of time if the Respondents are unable to fill the role(s) within the allotted time.

Initial Assessment and Review

7. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondents will contract a qualified, independent third party to conduct an initial assessment of Respondents' facility, operations, practices, and controls for humane slaughter and handling.

8. The qualified, independent third party must be certified by the Professional Animal Auditor Certification Organization (PAACO) or another reputable organization, subject to verification and approval by FSIS. Respondents must submit to the Director, for review and concurrence, the name and credentials of the individual.

9. The assessment will, at a minimum:

a. list and provide an analysis of all incidents of regulatory noncompliance of the humane handling requirements, at Respondents' facility, documented by FSIS in Noncompliance Records (NR), Notices of Intended Enforcement, Notices of Suspension, or as otherwise documented by FSIS;

b. analyze Respondents' past livestock handling and stunning practices and describe how those practices and/or other factors contributed to the regulatory violations noted in part (a) above;

c. recommend corrective actions and preventative measures, based on its analysis, for adoption by Respondents that will prevent the recurrence of noncompliance. These corrective actions include, but are not limited to, any structural changes or repairs, management changes, employee training, and new humane handling methodologies or programs.

10. Respondents will prepare a written response to the third party initial assessment. Respondents' written response will include, at a minimum:

a. a description of the corrective actions taken in response to the assessment recommendations; and

b. documentation demonstrating the implementation of the corrective actions, including invoices and photographs of facilities and equipment, and/or any other relevant supporting documents that prove corrective actions were taken.

11. Prior to the resumption of services, Respondents will submit a copy of the third-party initial assessment and the Respondents written response to the Director for review and concurrence.

Physical Conditions of Facilities and Humane Handling and Slaughter Equipment

12. Prior to resumption of inspection services, Respondents will provide the Director documentation demonstrating that all stunning devices, restraining equipment, and any other equipment used in livestock handling and slaughter have been tested for functionality and, as applicable, have received service from the manufacturing company or otherwise in accordance with the manufacturer's guidelines.

13. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondents will demonstrate that the structural and physical conditions of the establishment comply with the FMIA, HMSA, and the regulations under 9 C.F.R. 313.

Humane Handling and Slaughter Program

14. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents will develop a written Humane Handling and Slaughter Program to ensure that any slaughter of livestock or any handling of livestock in connection with slaughter at Respondents' establishment complies with the FMIA, HMSA, and 9 C.F.R. 313.

Humane Handling

15. Respondents' written Humane Handling procedures will at a minimum:

a. detail procedures for the construction, maintenance, and monitoring of pens, driveways, ramps, and stunning areas so that: (i) they are kept in good repair, (ii) they are free from sharp or protruding objects; (iii) the floors of livestock pens, driveways, and ramps are constructed and maintained in a manner to provide slip resistant surfaces; and (iv) the facilities are monitored and preventative actions are taken in a timely manner to prevent pain and injury to any animal;

b. identify procedures to be implemented and monitored by Respondents for the unloading, driving, and holding of livestock that will prevent or minimize discomfort, stress, and excitement;

c. identify the implements and aids to be used by employees during the unloading and driving of animals and the acceptable procedures and limitations for the use of the implements and aids to be implemented and monitored;

d. address procedures to be implemented and monitored to ensure: (i) that pen structures are appropriate to the size of the animals to avoid overcrowding; (ii) that livestock are placed in holding pens that provide functioning watering systems and systems are monitored as frequently as necessary to ensure continuous access to potable water at all times and at all ambient temperatures; and (iii) that all animals that are held overnight are provided adequate quantities of formula or feed, appropriate for the species and age of the animal, and clean potable water at all times;

e. address procedures to be implemented and monitored to ensure that suspect and non-ambulatory disabled animals will be identified, segregated, and handled using humane methods;

g. address procedures to be implemented and monitored for the administration, monitoring, and documentation of animal euthanasia to ensure minimal animal suffering;

h. ensure that the monitoring and documentation of all handling procedures are conducted on a daily and on-going basis, or as applicable, to ensure that livestock are treated in a humane manner prior to slaughter; and

i. ensure that corrective actions are implemented and recorded in a timely manner to prevent recurrence of noncompliance.

Humane Slaughter

16. Respondents' written Humane Slaughter procedures will at a minimum:
- a. identify the systems and procedures, which will account for variations in animal size and strength, for the restraint of animals prior to the application of a stun that are appropriate for each species and ensure that animal movement is limited to allow accurate and effective stunning;
 - b. identify specific stunning devices and projectiles that will provide adequate force to ensure animals are unconscious after a single application. Stunning devices and projectiles must be appropriate for the type, size, and age of the animal to be stunned;
 - c. identify the anatomical locations for the placement of the stunning device, per species and per stunning method, to ensure that animals will be rendered immediately unconscious and remain unconscious throughout shackling, hoisting, sticking, and bleeding;
 - d. address procedures to be implemented and monitored that ensure all backup devices, parts, and projectiles are readily accessible to the stunning employee(s);
 - e. address procedures to be implemented and monitored that ensure storage and maintenance of all stunning equipment, parts, and projectiles, including backup equipment, are done under appropriate conditions;
 - f. address procedures to be implemented and monitored for assessing signs of consciousness in each animal after the application of a stun and throughout shackling, hoisting, sticking, and bleeding;
 - g. address the specific actions to be taken by employees in the event of an ineffective stun;

h. address procedures to be implemented and monitored for the daily maintenance and testing of all slaughter equipment, including restraint devices and primary and backup stunning devices. Daily maintenance and equipment testing procedures must be recorded every slaughter day;

i. address procedures for routine service of slaughter equipment, including restraint devices and primary and backup stunning devices, to ensure that equipment is kept in good repair. The frequency of service will be per the manufacturer's recommendations or other supporting documentation. Records of equipment service are maintained with the written program and are available for review by inspection personnel;

j. ensure that the monitoring and documentation of all slaughter procedures are conducted on a daily and on-going basis, or as applicable; and

k. ensure that corrective actions are implemented and recorded in a timely manner.

17. Upon resumption of inspection services, and subject to verification by FSIS, Respondents will implement and maintain, on a daily basis, the Humane Handling and Slaughter Program, as provided in this Order.

Reassessment of the Humane Handling and Slaughter Program

18. Upon resumption of inspection services, and subject to verification by FSIS, Respondents will ensure that the humane handling coordinator will reassess the Humane Handling and Slaughter Program to determine the program's effectiveness in complying with this Order and the FSIS's statutory and regulatory requirements. This reassessment will be conducted and documented by the appointed humane handling coordinator every 90 days from

the effective date of this Order and within 10 days of FSIS taking an action in accordance with 9 C.F.R. 500.3(b).

19. Each reassessment will include, at a minimum:

a. an evaluation of all records associated with program implementation generated during the 90 day period;

b. a summary of any failures to implement the program, as required by paragraph 16 of this Order, NRs documented for 9 C.F.R. 313 violations, and actions taken by FSIS in accordance with 9 C.F.R. 500.3(b) documented during the 90 day period;

c. a summary of any corrective actions taken as a result of program deviations, NRs, and other FSIS actions during the 90 day period;

d. an assessment on the adequacy of the program and its effectiveness in maintaining compliance with the Order and the FSIS statutory and regulatory requirements; and

e. a summary of any actions taken as a result of the reassessment, including changes to the written program, personnel, facilities, or equipment.

20. Upon resumption of inspection services, Respondents will submit records of each reassessment to the Director, for review and concurrence, every 90 days from the effective date of this Order, and within 10 days of FSIS taking an action in accordance with 9 C.F.R. 500.3(b).

Third Party Audits

21. Upon resumption of inspection services, Respondents will hire a qualified, independent third-party auditor, who will conduct an initial written audits of Respondents' slaughter operations. The third party auditor will conduct additional written audits after each enforcement action taken by FSIS during the period of this Consent Decision.

22. The audits will be conducted through on-site evaluation by an auditor and will include, at a minimum:

a. a review of the Respondents' humane handling practices from truck unloading to preparation for stunning for all species slaughtered;

b. a review of the Respondents' humane stunning procedures for all species slaughtered and all stunning techniques utilized;

c. an assessment of the adequacy Respondents' handling and stunning practices in maintaining compliance with the statutory and regulatory requirements; and

d. any findings and recommendations.

23. The initial audit should occur prior to resumption of services. Any additional audit thereafter will only occur should FSIS take an enforcement action against Respondents.

24. Respondents will prepare, for each audit conducted, a written response to the audit findings and recommendations. Respondents' written response will identify:

a. any modifications to its Humane Handling and Slaughter Program or procedures; and

b. all corrective actions implemented, or to be implemented, in response to the audit recommendations.

25. Respondents will submit a copy of each third-party audit, a copy of Respondents' written corrective actions, and any other relevant documents to the Director within thirty (30) calendar days after each audit is completed.

Establishment Management and Personnel Training

26. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents will ensure:

a. training for Respondents' management, supervisors, and for employees working in the live animal areas, in all aspects of the humane handling and slaughtering requirements set forth in the HMSA (7 U.S.C. § 1901 et. seq.), the FMIA (21 U.S.C. §§ 603 and 610), and the regulations promulgated thereunder (9 C.F.R. 313). This training will be conducted by a qualified, independent third party and will ensure, at a minimum, that management and supervisory personnel are trained and qualified in: (i) livestock handling practices; (ii) restraint and stunning techniques; (iii) signs of consciousness and unconsciousness; and (iv) the regulations in 9 C.F.R. 313.

b. additional training for employees conducting stunning procedures to ensure that said employees are trained in all aspects humane handling and slaughtering requirements set forth in the HMSA (7 U.S.C. § 1901 et. seq.), the FMIA (21 U.S.C. §§ 603 and 610), and the regulations promulgated thereunder (9 C.F.R. Part 313). This training will be conducted by a qualified, independent third party and will ensure, at a minimum, that employees are trained and qualified in: (i) the selection of the appropriate stunning device and projectile for each species and animal size and type; (ii) the routine testing and monitoring of restraining and stunning equipment, including back-up devices, to ensure functionality; and (iii) actions to take in the event of an ineffective stun.

27. Prior to resumption of inspection services, Respondents will submit to the Director, for review and concurrence, a copy of all training and educational program materials, including training records, test results, and any other materials and records for the training described in paragraph 26 of this Order.

28. Upon the resumption of inspection services, and subject to verification by FSIS, Respondents will:

a. train and educate any new manager, supervisor, and employee working in live animal areas prior to starting work duties, consistent with the requirements paragraph 19 of this Order; and

b. conduct semi-annual training for all employees, current and new, consistent with the requirements of this Order.

29. Respondent will make all training and education materials, training records, test results, and other materials and records of the initial and annual training of current and new employees and management personnel available to FSIS personnel for review and/or copying immediately upon such request by FSIS.

Recordkeeping

30. Respondents will keep and maintain full, complete and accurate copies of (a) all written records required by the FMIA, the regulations promulgated thereunder, and all applicable State or local statutes, (b) written records of all of its practices under its Humane Handling and Slaughtering Program, and (c) all other written records required by this Order. Respondents will make all such records available to FSIS representatives for review and/or copying immediately upon request.

31. Respondents will notify the Director of any changes or modifications to Respondents' Humane Handling and Slaughtering Program, including changes and modifications to all related record keeping forms.

General

32. Respondents will not:

a. violate any section of the FMIA, the regulations promulgated thereunder, or any Federal, State, or local statute or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated or misbranded meat product;

b. commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

c. willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by the Respondents in compliance with Federal, State or local statutes or regulations or this Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the Respondent's business;

d. assault, intimidate, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA or regulations promulgated thereunder;
or

e. conduct any operation requiring Federal inspection outside Respondents' official hours of operations without first submitting a written request to, and receiving written approval from the FSIS Raleigh District Office.

33. Respondents will maintain compliance with statutory and regulatory requirements for sanitation, food safety programs, process controls, humane slaughter and handling, and all other applicable requirements, including, but not limited to, Sanitation Performance Standards (SPS), Sanitary Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point

ACCP), and all other requirements as specified in 9 C.F.R. Parts 310, 313, 416, 417, and 418 applicable.

34. Respondents will fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of Respondent's compliance with the FMIA or this Order.

Enforcement Provisions

35. The Administrator, FSIS, will have the right to summarily withdraw inspection services upon a determination by the Director, or his or her designee, that one or more conditions set forth in paragraphs 1 through 34 of this Order have been violated. It is acknowledged that respondents retain the right to request an expedited hearing pursuant to the Rules of Practice, 9 C.F.R. 500, concerning any violation alleged as the basis for a summary withdrawal of inspection services. This does not affect Complainant's right to suspend operations in accordance with the Rules of Practice, 9 C.F.R. 500.

36. Nothing in this Order will preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings, or preclude the Administrator from taking other appropriate administrative action under the FMIA and the regulations promulgated thereunder.

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

38. This Order will be considered issued on the date that an Administrative Law Judge signs it but will become effective on the date that Respondent's inspection services resume.

39. This Order will expire three (3) years from the date on which the respondents' Federal inspection services resume.

[Redacted]

Victor Swinson, Owner,
Wells Pork and Beef Slaughter

[Redacted]

Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[Redacted]

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Office of the General Counsel

Issued this 14th day of March 2018

in Washington, D.C.

[Redacted]

ADMINISTRATIVE LAW JUDGE

Acting Chief