

October 6, 2022

Via email

Dr. Kurt Schulz
Humane Handling Ombudsman
Food Safety and Inspection Service
[REDACTED]

**Re: Failure to investigate apparent violations of federal law at
Smithfield Packaged Meats Corp.**

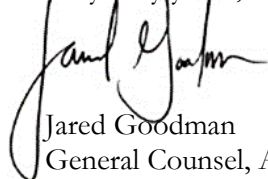
Dear Dr. Schulz:

I am counsel to People for the Ethical Treatment of Animals (PETA) and am writing regarding the Food Safety and Inspection Service's (FSIS) failure to adequately investigate or pursue evident violations of federal law at Smithfield Packaged Meats Corp. (establishment M17D+P7613+V17D). PETA presented FSIS with a whistleblower's serious allegations of violations of the Humane Methods of Slaughter Act (7 U.S.C. § 1907(b)) and its implementing regulations (9 C.F.R. § 313.1-313.50), which are substantiated by the agency's own records. Yet, FSIS failed to engage in minimal due diligence by declining to conduct a site visit or even interview the whistleblower.

More concerning still, the agency's documents show that Smithfield's violations are escalating in severity. On June 2, 2021, FSIS noted that the facility had "robustly implemented" a Systematic Approach to Humane Handling. By September 3, 2021, FSIS inspectors revoked this classification and issued Smithfield a Notice of Intended Enforcement for leaving a hog alive, conscious, and "turning on the shackle" of the "bleed chain." In March 2022, a witness reported that employees beat animals to the point of collapse, ineffectively used captive bolt guns, and left injured hogs to suffer for hours.

While FSIS' own records described abuse at Smithfield similar to that relayed by the whistleblower, the agency inexplicably discounted these allegations. Accordingly, we again urge FSIS to investigate and take appropriate action against Smithfield Packaged Meats Corp. for apparent violations of federal law, as further detailed in the attached appendix.

Very truly yours,


Jared Goodman
General Counsel, Animal Law
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APPENDIX

On March 14, 2022, an eyewitness whistleblower reported apparent violations of the Humane Methods of Slaughter Act's implementing regulations at Smithfield Packaged Meats Corp. (Smithfield) in Sioux Falls, South Dakota, which PETA promptly disclosed to FSIS.¹ On April 6, PETA followed up with FSIS to inquire if someone from the agency would speak with the whistleblower. On April 21, the agency informed PETA that FSIS "looked into the allegations" but "did not find evidence to support the specific claims made."² Subsequently, records PETA received in response to a Freedom of Information Act request revealed that FSIS itself documented violations that supported the specific claims made. Yet, despite having ample evidence of serious violations, FSIS failed to do any meaningful investigation into the allegations. These apparent violations are detailed below.

I. Violations of 9 C.F.R. § 313.2(a), Handling of Livestock

FSIS regulations specifically require that animals be unloaded and moved with "minimum [] excitement and discomfort to the animals." 9 C.F.R. § 313.2(a). The witness reported that plant workers called "blue helmets," especially "Emily Anderson" and another worker named "Jonathan," "beat the crap out of pigs" by raising paddles over their shoulders, swinging the paddles, and striking the animals on their hindquarters, anuses, and faces. Employees would occasionally beat the animals beyond the point of collapse and with such force that the paddles broke. Agency documents reveal that FSIS has long been aware of this kind of conduct occurring at Smithfield. On January 19, 2021, FSIS inspection program personnel (IPP) noted that "[t]he in-plant inspection team documented concerns with paddle marks on carcasses, observed on PM [post mortem]."³ On January 30, 2021, IPP noted "[e]xcessive rattle paddle and sort board usage on multiple hogs . . . Increased excitement and discomfort observed. IPP instructed employee to stop hitting hogs so hard . . . excessive force continued."⁴ Additionally, the IPP stated that "there were several standalone MOIs [memorandum of interview] document for concerns with implements marks/bruises found on hogs at PM inspection."⁵

On March 31, 2018, IPP observed "two employees using their rattle paddles excessively. Both were repeatedly picking up the rattle paddles over their head and coming down very quickly with excessive force. There was vocalizing from the group of hogs in the west alleyway while they were using the paddles."⁶ Similarly, on December 29, 2018, IPP observed an employee "picking the paddle up above the shoulders and repeatedly swinging the paddle

¹ Letter from Colin Henstock, Assistant Manager of Investigations, PETA to Dawn Sprouts D.V.M., District 25 Manager, USDA Food Safety Insp. Serv., et al. (Mar. 17, 2022).

² Letter from Philip Bronstein, Ph.D., Assistant Administrator, USDA Food Safety Insp. Serv. to Colin Henstock, Assistant Manager of Investigations, PETA (Apr. 21, 2022).

³ USDA, Food Safety Insp. Serv., Report of Humane Handling Verification Visit (June 2, 2021), Attachment 1, at 2 [hereinafter Report of Humane Handling Verification].

⁴ USDA, Food Safety Insp. Serv., M17D Summary (Jan. 2021-Mar. 2022), at 1 [hereinafter M17D Summary].

⁵ Report of Humane Handling Verification, Attachment 1, at 2.

⁶ USDA, Food Safety Insp. Serv., MOIs in Response to FOIA2018-328, MOI WLJ41071 23529G, at 5 (May 30, 2018), https://www.fsis.usda.gov/sites/default/files/media_file/2021-06/FOIA-2019-298-Released-Records.pdf

downward in a very fast motion.”⁷ Employees have failed to comply with FSIS regulations which require unloading and moving animals with “minimum [] excitement and discomfort.” 9 C.F.R. § 313.2(a). Beating an animal beyond the point of collapse, excessive use of paddles, and repeatedly striking animals clearly violates 9 C.F.R. § 313.2(a), yet Smithfield is permitted to continue to engage in this conduct.

II. Violations of 9 C.F.R. § 313.2(d)(2), Treatment of Disabled and Non-Ambulatory Animals

FSIS regulations prohibit “[t]he dragging of disabled animals and other animals unable to move, while conscious.” 9 C.F.R. § 313.2(d)(2). The witness reported that pigs who collapsed after beatings and other injured pigs were moved to a “cripple pen,” some via front-end loader while still alive. On November 25, 2020, IPP documented that a front-end loader hit an ambulatory pig, knocking the pig to the ground.⁸ On March 9, 2021, IPP “remind[ed] the establishment that pushing conscious hogs across the floor would be noncompliant” and “if the skid loader cannot get to a non-ambulatory hog, employees cannot push and that FSIS intervened on one occasion before an establishment employee pushed the hog.”⁹

Similarly, the witness alleged that the barn manager, “Michael,” frequently started his shift late, leaving the non-ambulatory and injured pigs to suffer for hours before they were killed. FSIS documents corroborate this practice, stating that “fatigued and disabled hogs were waiting up to two hours after receiving antemortem inspection and being sent to slaughter. A concern with prompt stunning and euthanasia was discussed.”¹⁰

Smithfield has negligently hit a hog with a front end loader and dragged live hogs across the floor, which substantiates the witness’s claim that Smithfield employees improperly move injured hogs in apparent violation of 9 C.F.R. § 313.2(d)(2). Additionally, both the witness and FSIS records indicate that disabled and injured hogs are left to suffer for hours before being killed.

III. Violations of 9 C.F.R. § 313.2(b), Improper Implement Use

FSIS regulations require that “[e]lectric prods, canvas slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury. Any use of such implements which, in the opinion of the inspector, is excessive, is prohibited.” 9 C.F.R. § 313.2(b). They further require that “electrical equipment be used as little as possible and with the lowest effective voltage” when driving animals into stunning areas. 9 C.F.R. § 313.15(a)(2). The witness reports that Smithfield employees “light [the pigs] up” with shock prods to force pigs off arriving trailers, causing the animals to run back and forth from the front to the back of the trailers. On January 16—just a few weeks prior to the witness’s report—IPP “observed [a hog] on AM inspection with two distinct U shaped

⁷ *Id.* at WLJ34070 42102G.

⁸ Report of Humane Handling Verification Visit, Attachment 1, at 1.

⁹ M17D Summary, at 2.

¹⁰ *Id.*

(battery-powered electric prod) marks on its dorsum.”¹¹ Additionally, on August 19, 2020 and January 30, 2021, IPP noted noncompliance for two other instances of improper “implement use” when moving hogs.¹² FSIS is aware that employees have misused implements to drive the animals on multiple occasions. This behavior cannot be considered an isolated incident and appears to violate humane handling regulations. 9 C.F.R. §§ 313.2(b), 313.15(a)(2).

IV. Violations of 9 C.F.R. § 313.15(a), Ineffective use of Captive Bolt

FSIS regulations require that, “[i]mmediately after the stunning blow is delivered the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.” 9 C.F.R. § 313.15(a). The witness alleged that after workers used captive bolt guns on non-ambulatory or injured pigs, the workers did not verify that the pigs were dead or rendered unconscious prior to throwing them from the loading truck. PETA supplied FSIS with two photos, which the witness indicated depict pigs who had been shot with captive bolt guns and thrown from arriving trucks—while still alive—on November 30, 2021. The witness also alleges that the supervisor reprimanded him for asking that one of the conscious pigs be shot again. The supervisor’s response is no surprise given the known frequency with which FSIS inspectors cited Smithfield for noncompliance with stunning requirements:

- Sept. 3, 2021: FSIS issued a Notice of Intended Enforcement when IPP discovered an egregious violation of humane handling regulations when a live, conscious, hog was shackled on the bleed chain.¹³
- Nov. 2, 2020: IPP “documented noncompliance with the ineffective stunning of a moribund hog with a HHCB [hand held captive bolt gun].”¹⁴
- Dec. 6, 2019: IPP “documented noncompliance with ineffective stunning of a disabled hog with a HHCB.”¹⁵
- Jan. 24, 2019: employees failed to render a non-ambulatory hog in the “cripple” pen unconscious following ineffective use of an HHCB. The IPP noted that the “hog remained fully conscious and blinked several times. The hog’s eyes tracked the movement of its surroundings. I observed a captive bolt stun wound to the right base of the ear. Blood had begun to seep from the wound.”¹⁶
- Apr. 21, 2018: employees failed to render a fatigued hog unconscious following ineffective use of an HHCB.¹⁷

¹¹ *Id.*

¹² Report of Humane Handling Verification Visit, Attachment 1, at 1-2.

¹³ USDA, Food Safety Insp. Serv., Notice of Intended Enforcement to Smithfield Packaged Meats Corp. (Sept. 4, 2021), https://www.fsis.usda.gov/sites/default/files/media_file/2021-09/M17D-NOIE-09042021.pdf.

¹⁴ Report of Humane Handling Verification Visit, Attachment 1, at 1.

¹⁵ *Id.*

¹⁶ USDA, Food Safety Insp. Serv., Noncompliance Reports in Response to FOIA2018-328, WLJ180 404472 2N-1 (May 29, 2019), https://www.fsis.usda.gov/sites/default/files/media_file/2021-06/FOIA-2019-298-Released-Records.pdf

¹⁷ *Id.*

- Jan. 15, 2018: an employee ineffectively used an HHCB on a hog in the “cripple pen.” The IPP noted that he “heard a captive bolt shot followed by a quick vocalization from the hog. I peered over the wall and observed the hog ‘dog sitting’ (sitting on its hind quarters and standing on its forequarters) and breathing with chest movement.”¹⁸ The IPP noted “[t]he previous corrective action of retraining was ineffective in preventing this noncompliance from occurring.”
- Jan. 4, 2018: a barn employee in the “south ‘cripple’ pen” failed to render an immobile pig unconscious after ineffective use of a HHCB.¹⁹
- Sept. 11, 2017: IPP stopped operations at the plant when he “observed a conscious hog ‘dog sitting’ on the conveyor belt.” Apparently, having not been rendered unconscious or killed, the hog was “dumped, along with 6 other hogs, onto the conveyor after the [stunning] cycle had finished.”²⁰

Smithfield has consistently and repeatedly violated this clear requirement. Further, of these violations, most occurred when the hogs were non-ambulatory or injured. This pattern of noncompliance further supports the witness’s allegation that employees were not killing non-ambulatory hogs on the trailer, but rather leaving them to suffer.

Documents released to PETA show a pattern of the agency’s failure to enforce humane handling regulations. On April 7, 2021, PETA informed FSIS of similar whistleblower complaints at US 212 Beef Corp. (Est. no. M47368) in Buffalo Lake, MN.²¹ The whistleblower alleged that cattle were inadequately stunned, leading to cows being shackled and being cut on their lips and ears while they were still conscious.²² On April 12, when an FSIS veterinarian investigated this allegation, the veterinarian witnessed a cow “shackled and hoisted [. . .] exhibiting signs of possible rhythmic breathing while on the rail.”²³ An employee then attempted to stun the animal again, but left without checking to see if the animal was unconscious.²⁴ The cow still appeared to “exhibit signs of possible rhythmic breathing” and had to be shot a third time.²⁵ Despite this apparent violation of 9 C.F.R. § 313.15(a), it does not appear that FSIS took any enforcement action.²⁶ On April 16, a FSIS veterinarian returned for a humane handling verification visit and witnessed a steer “hung on the rail in the blood pit area” who was still blinking his eyes after being cut across his throat.²⁷ An employee attempted to stun the steer, but “the stunning device did not fire” and

¹⁸ *Id.* at WLJ09220 12715G.

¹⁹ *Id.* at WLJ170 101301 1N-1.

²⁰ *Id.* at WLJ29171 13909G.

²¹ Letter from Colin Henstock, Assistant Manager of Investigations, PETA to Dr. Dawn Sprouls, District Manager for District 25, FSIS et al., Alleged Inhumane Handling and Sanitation Violations at US 212 Beef Corp. (Apr. 7, 2021).

²² *Id.*

²³ Letter from Supervisory Public Health Veterinarian to Des Moines District Management Team, Alleged Inhumane Handling and Sanitation Violations at US 212 Beef Corporation (Apr. 12 2021).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Report of Humane Handling Verification Visit, Est. No. M47368, GRU 20100420161 (Apr. 16, 2021).

another employee had to bring a second captive bolt gun, which successfully stunned the steer.²⁸ Still, FSIS did not pursue an appropriate enforcement action despite witnessing conduct on two separate occasions that matched the whistleblower's allegations. Notably, FSIS returned to the facility on April 21, hoping that "this [would] put the matter to rest for PETA"—yet still taking no action to prevent further violations in the face of an obvious pattern of non-compliance.²⁹ It is no surprise then that on May 20 and 21, 2021, FSIS inspectors would document at least two additional instances in which animals were improperly stunned, requiring multiple shots with a captive bolt gun.³⁰ Although inspectors repeatedly confirmed the whistleblower's allegations, FSIS failed to even speak with the whistleblower when offered the opportunity or impose any meaningful consequence on the facility that would help prevent future violations.

V. Conclusion

Despite FSIS' own records mirroring the witness's statements, the willingness of the witness to speak with FSIS, Smithfield's demonstrated history of noncompliance, the deterioration of the facility's humane handling program, and a recent Notice of Intended Enforcement from FSIS, the agency rejected offers to speak with the whistleblower, did not conduct a site visit, and has not offered any explanation for its inaction or conclusion that it "did not find evidence to support the specific claims made." In light of the severity and credibility of the allegations against Smithfield, the agency has apparently failed to do minimal due diligence by ending its inquiry at a document review. Accordingly, FSIS should investigate Smithfield Meat Packaging Corp. for potential violations of the Humane Methods of Slaughter Act and humane handling regulations and take appropriate action, including promptly suspending slaughter at the facility. *See* 9 C.F.R. § 500.3(b).

²⁸ *Id.*

²⁹ Email from Redacted FSIS Inspector to Thomas Beck, FSIS, Alleged Inhumane Handling and Sanitation Violations at US 212 Beef Corp. (Apr. 20, 2021, 18:50:17).

³⁰ FSIS, Humane Handling Inspection Tasks between Apr. 1, 2021 - Sept. 30, 2021, https://www.fsis.usda.gov/sites/default/files/media_file/2022-04/InspectionTasks_LHH_FY21.xlsx.