



United States Department of Agriculture

July 1, 2013

TO: Dawn Sprouls, District Manager
Des Moines, Iowa

FROM: Daniel Engeljohn, Assistant Administrator
Office of Field Operations

SUBJECT: Approval of Decision Document Specific to Consideration for a Grant of
Inspection for Equine Slaughter by Responsible Transportation, LLC

Attached is the decision memo that I have stamped with today's date signifying my approval: National Environmental Policy Act Categorical Exclusion. Contained within this decision memo is a determination that there is no effect on endangered species and /or their critical habitats in response to the Endangered Species Act (ESA). Thus, a separate decision memo for the ESA determination is not needed.

Please file it with your documentation related to all the considerations associated with the request for a grant of inspection.

Attachment

Food Safety and Inspection Service
1400 Independence Avenue, SW
Washington, DC 20250
Voice 202-720-3473 Fax 202-720-3856
An Equal Opportunity Provider and Employer

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Decision Memo—National Environmental Policy Act Categorical Exclusion

Application of Responsible Transportation, LLC, for a Grant of Federal Meat Inspection Services

Decision

It is my decision to grant federal meat inspection services to Responsible Transportation, LLC.

Description

Responsible Transportation, LLC (Responsible Transportation), is a 34,600 sq ft brick-walled masonry building that is located on an 80.64-acre site at 22034 200th Street, Sigourney, Keokuk County, Iowa. The facility, built in 1977, was previously used by West Liberty Foods, LLC, for processing beef products. The facility is one-half mile from the nearest occupied house. Responsible Transportation filed an application for a Grant of Inspection on December 13, 2012. Mr. Keaton Walker is President of Responsible Transportation.

Proposed Action

The proposed action is to grant federal meat inspection services for commercial horse slaughter operations at Responsible Transportation. The Federal Meat Inspection Act (FMIA) requires government inspectors to conduct an ante-mortem inspection of all amenable species, including cattle, sheep, swine, goats, horses, mules and other equines (21 U.S.C. § 603); a post-mortem inspection of the carcasses and parts of all amenable species (21 U.S.C. § 604); and an inspection of meat food products during processing operations (21 U.S.C. § 605) in establishments that sell or distribute in commerce meat that is intended for human consumption. Horses, mules, and other equines have been among the livestock species that are amenable to the FMIA since it was amended by the Wholesome Meat Act in 1967.^{1 2} The FMIA and its implementing regulations in 9 CFR parts 302, 304, 307, 416, and 417 require establishments that wish to engage in the commercial slaughter of amenable species to produce meat intended for human consumption and sale or distribution in interstate commerce to apply to FSIS for a grant of federal inspection services, and they establish criteria for determining the eligibility of the applicant to receive inspection services.

FSIS is also required to conduct an examination and inspection of the method by which amenable species, including horses, are slaughtered and handled in connection with slaughter in order to ensure that the establishment is in compliance with the Humane Methods of Slaughter Act (21

¹FSIS regulations require that establishments that slaughter horses, mules, and other equines must be completely separate from any establishment that slaughters cattle, sheep, swine, or goats.

²FSIS temporarily suspended inspection of horse slaughter facilities from 2006 to 2012 because Congress prohibited FSIS from expending funds to pay for ante-mortem inspection of equines in each of those years, but the underlying statute requiring federal inspection of horse slaughter has never been amended or repealed. In 2012 Congress restored federal funding of ante-mortem inspection of horses at commercial horse slaughter plants. Therefore, issuing a grant of inspection for commercial horse slaughter is not precedent setting, but rather, a return to the status quo ante.

U.S.C. § 603) (HMSA). The HMSA was enacted to prevent the needless suffering of livestock, to improve products and economies in slaughter operations, and to produce other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. FSIS has implemented and enforces regulations under the HMSA (9 CFR part 313).³

The National Environmental Policy Act and FSIS's Categorical Exclusion

The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*) (NEPA) and the Council of Environmental Quality implementing regulations (40 CFR. parts 1501-1508) require all federal agencies to prepare an assessment of the environmental impact of a proposed agency action (called an environmental assessment, or EA) (40 CFR §§ 1501.3 and 1501.4(b)). Based on the EA, NEPA further requires federal agencies to prepare an environmental impact statement (EIS) for major federal actions significantly affecting the quality of the human environment (42 U.S.C. § 4332(2)(c) and 40 CFR § 1504.1(c)). However, federal agencies may identify classes of actions that normally do not require the preparation of either an EA or an EIS because such actions do not have a significant effect on the human environment, either individually or cumulatively (40 CFR § 1507.3(b)(2)). Classes of actions that have no significant environmental effect, either individually or cumulatively are said to be categorically excluded from NEPA requirements (40 CFR. § 1508.4). Despite allowing federal agencies to identify classes of action that are categorically excluded from NEPA requirements, NEPA still requires an agency to determine and inform the agency decision maker on whether or not there are any potential environmental impacts that may result from a proposed action of that agency.

USDA's NEPA implementing regulations are found in 7 CFR § 1b. These regulations list FSIS as an agency that conducts programs and activities that have been found to have no individual or cumulative effect on the human environment, such that FSIS is categorically excluded from the requirements of preparing procedures to implement NEPA, and its actions are categorically excluded from the preparation of an EA or an EIS unless the FSIS Administrator determines that an action may have a significant environmental effect (7 CFR § 1b.4).

When a federal agency's action is merely ministerial as opposed to discretionary and the agency lacks discretion to affect the outcome of its action, there is no major federal action that triggers NEPA requirements. A grant of federal inspection under the FMIA is purely ministerial because, if a commercial horse slaughter plant meets all of the statutory and regulatory requirements for receiving a grant of federal inspection services, FSIS has no discretion or authority under the

³The Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) is an animal welfare statute governing the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States. In 1998, the Secretary issued regulations (9 CFR part 88) that establish safety standards for conveyances being used to transport equines to slaughter; define the duties and responsibilities of owner/shippers prior to loading equines onto the conveyance, during the actual commercial transportation of said equines to the slaughter plant, and upon their arrival at a slaughter plant; and set forth paperwork and back tagging requirements for equines being commercially transported to slaughter. This program is administered by USDA's Animal and Plant Health Inspection Service, whose personnel historically have conducted their inspections of slaughter horses and the conveyances in which they are transported to slaughter upon the horses' arrival at a slaughter facility.

FMIA to deny the grant on other grounds or to consider and choose among alternative ways to achieve the agency's statutory objectives. Therefore, a grant of federal inspection services under the FMIA is not a major federal action that is subject to NEPA requirements.

A grant of federal inspection likewise does not and will not allow FSIS to exercise sufficient control over the commercial horse slaughter activities at Responsible Transportation such that the grant will constitute a major federal action that triggers NEPA requirements. The sole purpose of federal meat inspection is to protect public health and welfare by ensuring that any meat produced for human consumption and sale or distribution in commerce is wholesome, not adulterated, properly packaged, and properly labeled as to species, quantity, and point of origin, and the FMIA does not authorize FSIS to regulate a commercial horse slaughter facility's slaughter activities beyond that which is necessary to achieve this purpose. Accordingly, the FMIA authorizes FSIS inspectors to conduct ante-mortem inspection of horses to ensure that they are not dead or dying, diseased, or non-ambulatory, and that they are not inhumanely handled or slaughtered. It likewise authorizes FSIS inspectors to conduct post-mortem inspection of the carcasses and meat food products resulting therefrom to ensure that the carcasses and meat are wholesome, not adulterated, and fit for use as human food. In addition, the FMIA authorizes FSIS to require commercial slaughter plants to maintain certain sanitary conditions with respect to the conduct of commercial slaughter, meat preparation, and meat packaging operations, the proper storage of carcasses and the meat products derived therefrom, and the storage and proper disposal of condemned or inedible materials. The FMIA further authorizes FSIS to require commercial slaughter plants to develop hazard analysis and critical control point plans that identify and prevent or control for potential food safety hazards at each step of the slaughter process. All FSIS inspectors assigned to conduct federal meat inspection at Responsible Transportation's facility will perform these duties in accordance with the policies and procedures set forth in several FSIS directives and notices, including but not limited to FSIS Directive 6900.2 Rev. 2, *Humane Handling and Slaughter of Livestock*; FSIS Directive 6100.1, *Ante-Mortem Livestock Inspection*; FSIS Directive 6100.2, *Post-mortem Livestock Inspection*; and FSIS Directive 6130.1, *Ante-mortem, Post-mortem Inspection of Equines and Documentation of Inspection Tasks*. However, FSIS inspectors will not have any authority or control over the day-to-day operations of the slaughter plant save to the degree necessary to achieve only the agency's mission to protect public health by ensuring that horse meat intended for use as human food is safe to eat and properly labeled.

Even if FSIS did have sufficient authority and control over commercial slaughter activities at a horse slaughter establishment such that a grant of federal inspection to such an establishment could constitute a major federal action, federal ante-mortem and post-mortem inspection of horses at Responsible Transportation would not be the legally relevant cause of the establishment's commercial horse slaughter activities or the impacts, if any, that such slaughter activities might have on the environment. If the meat produced at a commercial horse slaughter plant is not intended for human consumption, or if it is intended for human consumption but for sale or distribution only in intrastate commerce rather than in interstate commerce, then the commercial horse slaughter and the effects thereof may proceed independently of a grant of federal ante-mortem and post-mortem inspection, and FSIS would have no ability to prevent them. In the present instance, Mr. Walker has indicated that he intends to prepare horse meat for human

consumption and that his intended market is outside the State of Iowa, so he may operate only subject to a grant of federal inspection.⁴ However, nothing in the FMIA precludes him from expanding his operation to include the preparation and sale of horse meat to pet food companies and zoos for non-human consumption. It thus is possible for Responsible Transportation to operate as a horse slaughter establishment, and possibly have an effect on the environment, without having a grant of federal inspection. Accordingly, a grant of federal inspection services is not and cannot be the legally relevant cause of either the commercial slaughter activity or its environmental impact, if any.

Based on the foregoing, a decision to grant federal inspection services to Responsible Transportation does not constitute major federal action that will significantly affect the quality of the human environment and thus does not trigger any requirements under NEPA. Nevertheless, given the high level of public interest in this particular issue, FSIS has examined several aspects of granting federal inspection services to Responsible Transportation to determine if the categorical exclusion applies to this action or if any unique conditions or extraordinary circumstances exist that would cause this action to have a significant environmental effect and trigger NEPA requirements. These aspects are the following:

-Impacts on Public Health and Safety. As explained above, federal inspection under the FMIA is intended solely to protect public health and safety by ensuring that meat and meat food products intended for use as human food are not adulterated or misbranded. However, the agency recognizes that the potential impacts of commercial horse slaughter on public health may cause concern with segments of the public. One such concern is the potential public health risks that could arise from the presence in horse meat of trace amounts of certain classes of drugs that have not been approved for use in animals that will or could be slaughtered to produce food for human consumption. The Humane Society of the United States and other horse protection groups contend that horses' status as companion animals that usually are not slaughtered in this country to produce human food means that most horses in the United States have been treated with antibiotics, anti-inflammatory drugs, growth hormones, and other substances that typically are not used on other food animals and for which the Federal Drug Administration has established no tolerances. These groups further contend that residues of these substances remain in horse tissues indefinitely, thus rendering any meat produced from U.S. horses unsafe for human consumption and constituting a threat to public health. FSIS has addressed this risk by implementing a new drug residue testing program that will screen the meat of slaughtered horses for drug residues before the meat is allowed to enter the food supply chain (FSIS Directive 6130.1, *Ante-mortem, Post-mortem Inspection of Equines and Documentation of Inspection Tasks*).

⁴ It would be possible for Mr. Walker to prepare horse meat products for human consumption and sale or distribution only in the State of Iowa in accordance with the terms of Iowa's meat inspection program, which is "at least equal to" the federal program. The products could be distributed solely within the State to consumers located within the State (9 CFR § 321.1).

Horse meat that tests positive for drug residues will be marked U.S. condemned and will not be allowed to enter the stream of commerce. Instead, the meat will be disposed of by sending it to a rendering facility, thereby ensuring that it endangers neither public health and safety nor the local environment. Additionally, as described below, an overlapping scheme of federal, state, and local environmental laws and ordinances will further ensure that the waste products generated by Responsible Transportation's commercial horse slaughter activities are properly disposed of and will not enter the human food supply chain or the local environment. Therefore, a decision to grant federal inspection to Responsible Transportation will safeguard public health and safety by ensuring that commercial horse slaughter at Responsible Transportation has no potential to have a significant impact on public health and safety.

--Wildlife Hazards. FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not create a wildlife hazard.

--Impacts on Wild and Scenic Rivers and U.S. Waters and Wetlands. FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not affect a river segment that is listed in the Wild and Scenic River System or National Rivers Inventory. FSIS also has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not impact federal or state regulated or non-jurisdictional wetlands.

--Impacts on Energy and Natural Resources. FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not have a significant impact on energy and other natural resource consumption.

--Impacts on Public Parks, Recreation Areas, Wildlife/Waterfowl Refuges, Historical Sites, and Other Publicly Owned Lands. FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not have any impacts on any publicly owned land from a public park, recreation area, wildlife or waterfowl refuge, or historical site of national, state, or local significance.

In its June 2011 report on the unintended consequences of the cessation of commercial horse slaughter in the United States, the General Accounting Office (GAO) found that there has been an increase in horse abandonment on private or state park land since 2007. It likewise found an increase in horse abandonment on federal lands, including national parks and Indian reservations. The abandonment of horses on these lands results in over-grazing that degrades the land and puts environmental stress on other species that compete with horses for the same food sources. Horse abandonment on these and other federal lands that maintain populations of wild horses increases the chance that the abandoned horses will introduce equine diseases to the wild herds. The increasing numbers of unwanted horses also complicate the Bureau of Land Management's efforts to manage herds of wild horses and burros on federal lands by making it more difficult for the agency to adopt out the horses and burros that it removes from federal lands. Based on the foregoing, commercial horse slaughter at Responsible Transportation and other horse slaughter plants has the potential to reduce the horse overpopulation in the United States while providing owners of unwanted horses with an economically viable and an environmentally sustainable

alternative to horse abandonment as a method of disposing of their unwanted horses.

FSIS also have made the following findings required by other laws:

--**Clean Air Act.** Section 176(c)(1) of the Clean Air Act (42 U.S.C. § 7401) requires federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards that the Environmental Protection Agency (EPA) has set for certain criteria pollutants, such as sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, lead, and particulate matter. *See* 40 CFR part 50. FSIS has determined that commercial horse slaughter activities at Responsible Transportation and/or federal inspection thereof will not increase the frequency or severity of any existing violations of standards for ambient air quality, result in any new violations of said standards, or prevent or delay the timely attainment of said standards in the area of concern.

--**Clean Water Act.** Following section 401(a) of the Clean Water Act (33 U.S.C. § 1341) (CWA), 9 CFR § 304.2(c)(1) requires any applicant for federal meat inspection at an establishment where the operations thereof may result in any discharge into navigable waters as defined by the CWA to provide the Administrator, FSIS, with certification, obtained from the State in which the discharge will originate, that there is reasonable assurance that said operations will be conducted in a manner that will not violate the applicable water quality standards. On June 25, 2013, Mr. Walker provided the Administrator, FSIS, with an attestation that horse slaughter operations at Responsible Transportation will not result in any discharge into any navigable waters as defined by CWA. Mr. Walker also provided the Administrator, FSIS, with a copy of Responsible Transportation's National Pollutant Discharge Elimination System (NPDES) General Permit that was issued pursuant to the authority of section 402(b) of the CWA (U.S.C. 1342(b)), Iowa Code 455B.174, and subrule 567-64.4(2), Iowa Administrative Code. The permit allows Responsible Transportation to discharge storm water associated with industrial activity. The discharge is subject to the terms and conditions detailed in the permit.

--**Endangered Species Act.** FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not have any impact, either directly or indirectly, on any federally or state-listed or proposed endangered species of flora and fauna or impact critical habitat. The U.S. Fish and Wildlife Service (FWS) lists nine endangered or threatened animal species that occur in Iowa and five threatened plant species that occur in the State.⁵ Three of these animal and plant species occur in Keokuk County.⁶ However none of these species will be adversely affected by operations at Responsible Transportation or federal inspection thereof, nor will these operations affect other biotic communities or habitat not protected by the Endangered Species Act because there is no suitable habitat for these species near Responsible Transportation's facility.

⁵ http://ecos.fws.gov/tess_public/pub/stateListingAndOccurrenceIndividual.jsp?state=IA.

⁶ http://www.fws.gov/midwest/endangered/lists/iowa_cty.html.

--**Migratory Bird Treaty Act.** FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not affect species protected under the Migratory Bird Treaty Act.

--**National Historic Preservation Act.** The National Register of Historic Places lists 12 sites located in the Sigourney, IA, area. According to information from the State Historical Society of Iowa and the National Register of Historic Places the property owned by Responsible Transportation is not on the list of historic places in Keokuk County, IA, and the listed historic site closest to Responsible Transportation, the Sigourney Public Library, is over two miles away from the slaughter facility. Therefore, FSIS has determined that commercial horse slaughter activities at Responsible Transportation or federal inspection thereof will not impact any historic or cultural property or resources protected by the National Historic Preservation Act.

In 2009, a coalition of northwest Indian tribes reported to the GAO that the increase in horse abandonments on tribal lands, combined with the sizable populations of wild horses that already existed on their lands, both increased the degradation of the land caused by over-grazing and complicated efforts to restore native and religiously-significant plant species on tribal lands. Commercial horse slaughter at Responsible Transportation and other commercial horse slaughter plants thus has the potential to have a beneficial effect on the cultural resources of American Indian tribes whose tribal lands are being degraded by a combination of an overpopulation of wild horses and large scale abandonment of unwanted horses on their lands.

--**Federal Farmland Protection Policy Act.** FSIS has determined that federal inspection of the slaughter activities at Responsible Transportation will not involve the acquisition or use of farmland protected by the Federal Farmland Protection Policy Act that would be converted to non-agricultural use.

--**Humane Methods of Slaughter Act.** As previously noted, Responsible Transportation's commercial horse slaughter operations will be subject to the humane handling requirements found in section 603(b) of the FMIA (21 U.S.C. § 603(b)) and the regulations promulgated thereunder (9 CFR part 313).

--**State and Local Laws.** As previously noted, Responsible Transportation's facility is located in the City of Sigourney, Keokuk County, IA.

Under the terms of a water supply operation permit issued February 25, 2013, by the Iowa Department of Natural Resources (IDNR), Responsible Transportation is authorized to operate a public water system under the applicable sections of the Iowa Code, including Chapter 455B and part 567 of the Iowa Administrative Code. The system is subject to monitoring requirements and general conditions detailed in the permit.

Under the conditions of a water use permit that originally was issued to West Liberty Foods, effective on September 20, 2001, and renewed on April 16, 2013, by IDNR, Responsible Transportation is authorized to withdraw water from three existing wells, ranging from 103 to 123 feet deep, that are located on land in the Northwest quarter of Section 30, T76N, R11W, Keokuk

County, IA. The water use permit allows Responsible Transportation to withdraw a maximum quantity of 18.25 million gallons per year at a maximum rate of 55 gallons per minute throughout each year for use in the operation of a meat processing plant.

Responsible Transportation's waste disposal system operates in accordance with an IDNR permit for a land application system that was issued March 1, 2013, pursuant to the authority of Iowa Code section 455B.174 and rule 567-64.3 of the Iowa Administrative Code.

Wastewater from Responsible Transportation's processing facility is treated in a lagoon system consisting of anaerobic lagoon and two aerobic storage lagoon cells. The treated wastewater is disposed of by land application using a center-pivot irrigation system. The 40-acre land application area is in the Northwest quarter of Section 30, T76N, R11W, Keokuk County, IA. A key condition of the permit is that no discharge into the waters of the State from the storage lagoon or the land application area is allowed. Other conditions are listed in the permit document.

Conclusion.

Based on the foregoing, FSIS finds no unique conditions or extraordinary circumstances of the proposed action to grant federal meat inspection services to Responsible Transportation that would cause this action to have a significant environmental effect. Therefore, in accordance with 7 CFR § 1b.4, the proposed action is categorically excluded from the preparation of an EA or an EIS.