



Food Safety and
Inspection Service

January 30, 2020

Office of Field Operations

**ORIGINAL VIA FED EX NEXT DAY AIR –
DELIVERY CONFIRMATION REQUESTED**

Philadelphia District
Mellon Independence
Center,
701 Market Street Suite
4100-A
Philadelphia, PA 19106

Mr. John D. Whiting, Owner
Wilmington Slaughter (Est. 8609)
305 Easy Street
New Wilmington, PA 16142

NOTICE OF SUSPENSION

Dear Mr. Whiting,

This letter confirms verbal notification provided to Mr. John D. Whiting, owner, by Mr. Michael Osifat, Deputy District Manager (DDM), at approximately 1230 hours on January 30, 2020, of the Food Safety and Inspection Service's (FSIS) decision to suspend the assignment of Inspection Program Personnel (IPP) for all Slaughter Hazard Analysis and Critical Control Point (HACCP) processes at **Wilmington Slaughter (Est. 8609)**, located in New Wilmington, PA. FSIS is issuing this notification in accordance with the Rules of Practice, Title 9 of the Code of Federal Regulations (9 CFR) Part 500.3(b).

Findings/Basis for Action

On January 30, 2020, at approximately 1015 hours, the Consumer Safety Inspector (CSI) observed the following egregious Humane Handling event at Wilmington Slaughter (Est. 8609). The CSI was standing on the kill floor at the time of witnessing the egregious event. The establishment lead person, moved a bovine bull, aged over 30 months with large horns and brown in color, into the stun box. After moving the animal, he proceeded onto the kill floor to retrieve the stunning rifle. He moved into position and shot the bull. The CSI was able to hear the shot and determine that the animal was not insensible as it was vocalizing loudly and thrashing in the stun box. The establishment employee attempted another shot with the same results. A third attempt yet had the same results. As with previous attempts, the CSI could hear the animal vocalizing and thrashing about. After the fourth stunning attempt, the animal was rendered insensible. Upon post-mortem inspection, the CSI observed four distinct holes in the skull, verifying that the animal, had indeed, had been shot four times. The establishment employee was utilizing a .22 magnum caliber rifle for all four stunning attempts. The establishment is receiving a Notice of Suspension (NOS) due to the lack of a proper-sized stunning device for the size of animal being stunned.

For firearm stunning, Regulations 9 CFR Part 313.16(a)(1) states that “The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animal shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort. 9 CFR Part 313.16(a)(3) states that “Immediately after the firearm is discharged and the projectile is delivered, the animal shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.” Further 9 CFR Part 313.16(b)(1)(iv) states “The shooting procedure is an exacting procedure and requires a well-trained and experienced operator. He must be able to accurately direct the projectile the projectile to produce immediate unconsciousness. He must use the correct caliber firearm, powder charge and type of ammunition to produce the desired results.”

Background/Authority

The Federal Meat Inspection Act (FMIA) [21 U.S.C. 603 sec. 3. (b)] states, “for 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, firm 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.”

Under the authorities of the FMIA, FSIS has prescribed rules and regulations required for establishments producing meat products, including the requirements pertaining to Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOP), Hazard Analysis and Critical Control Point (HACCP) 9 CFR Parts 416, 417, and other matters. FSIS has also developed Rules of Practice regarding the enforcement action that it may take and includes procedures for taking a withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a Grant of Inspection.

7 U. S. C. 1901

Humane Methods of Slaughtering 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 therefore declared to be 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.”

7 U. S. C. 1902

The Humane Methods of Slaughtering 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 Humane Slaughter of Livestock, as required by 9 CFR 313, and other matters.

Please provide this office with a written response concerning this ROS by addressing the following:

- Evaluate and identify the nature and cause of the incident.
- Explain the specific reason(s) why the event occurred.
- Describe the specific actions taken to eliminate the cause of the incident.
- Describe specific planned actions that you will take to prevent future reoccurrences.

Provide associated records that include monitoring and verification activities your establishment will use to ensure that changes are effectively implemented. We will determine further action, if any, based on your response.

You are reminded that as an operator of a federally inspected plant you are expected to comply with FSIS regulations and to take appropriate corrective actions to prevent the inhumane treatment of animals at your establishment. Please be advised you have the right to appeal this matter. If you wish to appeal, you should contact:

Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Ave. S.W.
Room 3157, South Building
Washington, DC 20250-3700
Telephone (202) 720-4614
Fax: (202) 690-3287

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
Enforcement and Litigation Division (ELD)
Office of Investigation, Enforcement and Audit (OIEA)
Food Safety and Inspection Service
United States Department of Agriculture
Patriot Plaza III, 9th Floor Cubicle 9-235A
355 E Street SW
1400 Independence Avenue, SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Facsimile: (202) 245-5097

If you have any questions regarding this matter, please feel free to contact Mr. Michael Osifat, Deputy District Manager (DDM) at michael.osifat@fsis.usda.gov or by phone at (215) 430-6318.

Sincerely,

JOSEPH SCHEIN

Dr. Lynda E. Lilyestrom
District Manager
Philadelphia District Office

 Digitally signed by JOSEPH SCHEIN
Date: 2020.01.30 15:39:30 -05'00'

CC:

FSIS - FO/Quarterly Enforcement Report

Mr. Mark Crowe, Director, CID, FSIS, OIEA, Washington, DC

Ms. Geraldine French, Acting EARO, FSIS, OFO, Washington, DC

Mr. Joseph Priore, Acting RD, FSIS, OIEA, Northeast Region

Dr. Lynda Lilyestrom, DM, FSIS, OFO, Philadelphia District Office

Mr. Michael Osifat, DDM, FSIS, OFO, Philadelphia District Office

Mr. Joseph Schein, DDM, FSIS, OFO, Philadelphia District Office

Mr. Sal Ibrahim, DDM, FSIS, OFO, Philadelphia District Office

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Official Files Establishment Folder – Est. 8609

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