



United State
Department of
Agriculture

Food Safety
and Inspection
Service

Office of
Field Operations

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September 12, 2019

**ELECTRONIC COPY PROVIDED
AND DELIVERED BY COURIER**

Mr. Paul Otten Owner
Establishment M27499
Wenneman Meat Company, Inc.
7419 State Route 15
St. Libory, IL 62282

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Otten:

This letter confirms verbal notification provided to you by Dr. Donald Fickey, Deputy District Manager, on September 12, 2019 at approximately 1130 hours CST, of the FSIS intent to withhold the marks of inspection and suspend the assignment of inspectors from your slaughter process at Wenneman Meat Company, Inc., establishment M27499, located at 7419 State Route 15 in St. Libory, Illinois. This action is based on your establishment's failure to effectively implement humane methods of slaughtering and handling animals in a manner that complies with the regulatory requirements prescribed by the Federal Meat Inspection Act (FMIA) and Humane Methods of Slaughter Act (HMSA). Your establishment is in violation of Title 9 of the Code of Federal Regulations (9 CFR) Section 313.16(a)(1) and 313.16(b)(1)(iii) regarding the humane slaughter of livestock. The Rules of Practice, 9 CFR 500.3(b), specify that FSIS may issue a suspension without providing prior notification if an establishment is handling or slaughtering animals inhumanely.

Background and Authority

The Federal Meat Inspection Act (21 U.S.C. 603 Section 3(b) states, "*for the purpose of 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, establishment 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.*"

The Humane Methods of Slaughter 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 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."

The Humane Methods of Slaughter 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 has been observed and identified, 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 the humane slaughter of livestock, as required by 9 CFR 313, and other matters. FSIS has also developed Rules of Practice regarding enforcement, within in 9 CFR 500. The Rules of Practice describe the types of enforcement action that FSIS may take a withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a Grant of Federal Inspection.

Findings/Basis for Action

The Consumer Safety Inspector (CSI) described the following incident. On September 12, 2019, at approximately 0920 hours, a bull was driven into the knock box. A 12-gauge shotgun with slug ammunition was used to attempt to stun the animal confined within the knock box. The knock box is not equipped with active restraint. The firearm operator discharged the firearm. The inspectors were in a safe location when a second gunshot was heard. The CSI proceeded to the knock box and saw the bull lying down. An establishment employee was using a battery powered electrical prod to attempt to get the bull to reposition his head. The CSI heard the animal vocalize after each time stimuli was applied. The prod was observed to be applied five times. A second CSI observed the bull was rhythmically breathing, had risen to a standing position, and attempting to move around within the knock box. The CSI retreated to a safe position and the employee discharge the firearm a third time, effectively stunning the bull. Three holes were palpated in the forehead of the animal. The establishment management was notified that the slaughter process was subject to a regulatory control action and Rejected tag B437497 was applied to the knock box.

The observations as described constitute a failure to comply with the regulatory requirements of 9 CFR 313.16(a)(1) which specifies: "*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;* and 9 CFR 313.16(b)(1)(iii) which specifies, in part, "*The stunning area shall be so designed and constructed as to limit the free movements of animals sufficiently to allow the operator to locate the stunning blow with a high degree of accuracy.*" The occurrence of this inhumane handling incident constitutes an egregious violation of the humane handling requirements specified within the provisions of 21 U.S.C. 603, Section 3 (b) of the FMIA, and 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

Summary and Conclusion

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" in the Federal Register Notice (54 Fed. Reg. 54625). On August 15, 2011, FSIS released FSIS Directive 6900.2 Revision 2, entitled, "*Humane Handling and*

Slaughter of Livestock." Additionally, on October 23, 2013, FSIS introduced new guidance, titled "*FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock.*" Within the guidance material is information intended to better ensure the humane treatment of livestock presented for slaughter. The guidance material provides a set of practices designed to minimize excitement, discomfort, and accidental injury regarding the humane handling of livestock to include the four components of a robust systematic approach to humane handling.

In cases where an egregious animal handling incident is observed by FSIS inspection program personnel (IPP), the Agency provides for regulatory discretion in the decision of the type of enforcement action issued if an establishment maintains a written systematic approach that meets the criteria for robustness.

Your establishment is currently operating under an animal handling and welfare program that provides for how your establishment will respond if an event of this nature occurs. The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your implementation of a written systematic approach for the humane handling of livestock in a manner consistent with the Agency expectations for consideration of a robust systematic approach. Based on the evaluation of this plan, your response in accordance with your animal handling program is expected to effectively address the regulatory issues identified within this letter. Before proceeding with any enforcement action, we are affording you the opportunity to demonstrate why a determination should not be made that your slaughter process is inadequate or to demonstrate that you have achieved regulatory compliance.

Please provide this office with a written response to this NOIE within three (3) working days (C.O.B. September 17, 2019) from the date of receipt of this letter. We will determine if any further actions are necessary based on your response. The corrective actions in your response should address the following:

1. Identify the specific reason(s) why the events described occurred.
2. Describe the specific action(s) that will be implemented to eliminate the cause of the incident and prevent future recurrences.
3. Describe the specific future monitoring activity or activities that your establishment will employ to ensure the actions implemented are effective.
4. Provide any supporting documentation and records maintained and associated with your proposed corrective actions and preventive measures.

If you have questions regarding this matter, you may contact (b) (6) or you may contact this office at (630) 620-7474 or by fax at (630) 620-7599.

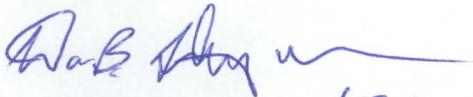
Please be advised that you have the right to appeal this matter. If you wish to appeal this action, contact:

Michael Watts
Executive Associate for Regulatory Operations
USDA, FSIS, OFO
Room 3168 - South Building
1400 Independence Avenue, SW
Washington, DC 20250
Telephone: (202) 205-0194

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
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 9-205
355 E. Street SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Fax: (202) 245-5097

Sincerely,



Paul V. Wolseley
District Manager
Chicago District

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