



Food Safety and
Inspection Service

January 29, 2021

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. Barry Gross, Plant Manager
Meatworks (EST 46351)
287 State Road
Westport, MA 02790

NOTICE OF SUSPENSION

Dear Mr. Gross,

This letter confirms verbal notification provided to Mr. Barry Gross, Plant Manager, by Mr. Michael Osifat, Deputy District Manager (DDM), at approximately 1015 hours on January 29, 2021, 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 **Meatworks (EST 46351)**, located in Westport, Massachusetts. 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 29, 2021, at approximately 0730 hours, the following egregious humane handling incident was observed by the Supervisory Public Health Veterinarian (SPHV) and the Consumer Safety Inspector (CSI). After the first cow of the day was loaded into the chute and head restraint, the first captive bolt stun attempt was ineffective as evidenced by the animal remained standing and alert with normal blinking and eye tracking. The second captive bolt attempt was immediately performed with the pre-positioned, back-up captive bolt device and again the animal did not lose consciousness as evidenced by the animal remaining standing and alert with normal blinking and eye tracking. The establishment employees then attempted to stun the cow with the first captive bolt that had been reloaded. After this attempt, the animal dropped slightly and closed its eyes, however within a couple of seconds opened its eyes again and had normal blinking and was alert looking around the room. On the fourth attempt, the establishment successful stunned the animal as the cow fully dropped, there was no blinking or eye tracking, and no voluntary movements were observed. The animal remained in this state throughout the rest of the bleeding and dressing procedures. On post-mortem investigation of the skull, there were three holes off the midline to the cow's left. that penetrated the sinus cavity. The fourth hole was 1/2 inch higher than the previous three and directly on midline that penetrated the cranium as evidenced by brain matter being observed.

A regulatory control action was taken and U.S. Reject tag # B42155644 was applied to the stun box due to the establishment's failure to comply with the regulations of 9 CFR 313.15(a)(1).

The establishment was operating under a Robust Systematic Approach however it was not properly implemented.

For captive bolt stunning, Regulation 9 CFR Part 313.15(a)(1) states that "The captive bolt stunner shall be applied to the livestock in accordance with this section so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort."

Background/Authority

The Federal Meat Inspection Act (FMIA) [21 U.S.C. 603 sec. 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, 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 NOS 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 Association for Regulatory Operations
USDA, FSIS, Field Operations
1400 Independence Ave. S. W.
Room 3161, South Building

Washington, DC 20250-3700
Telephone: 202-215-0001

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, Branch Chief
Enforcement Operations Branch (EOB)
Office of Investigation, Enforcement and Audit (OIEA)
Food Safety and Inspection Service
United States Department of Agriculture
Stop Code 3753, Patriot Plaza 3, Cubicle 9-253-A
1400 Independence Avenue, SW
Washington, DC 20250
Telephone: (202) 418-8921
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) 430-6218.

Sincerely,

MICHAEL OSIFAT  Digitally signed by MICHAEL OSIFAT
Date: 2021.01.29 11:11 01 -05'00'

Dr. Lynda E. Lilyestrom
District Manager
Philadelphia District Office

CC:

FSIS - FO/Quarterly Enforcement Report

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

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

Mr. Joseph Priore, 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

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Official Files Establishment Folder – Est. M46351

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