



August 29, 2020

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Mr. Larry Slenk, President/GM
Fillmore Beef Company, Inc.
M10036
5812 142nd Avenue
Holland, MI 49423

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Slenk:

This letter confirms verbal notification provided to Mr. Bill Snow, Vice President of Operations, by Dr. Tamara Davis, Deputy District Manager, on August 28, 2020, at approximately 1115 EDT, of the Food Safety and Inspection Service's (FSIS) intent to withhold the marks of inspection and suspend the assignment of inspectors from your slaughter process at Fillmore Beef Company, Inc., establishment M10036, located at 5812 142nd Avenue, in Holland, Michigan. 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 the Humane Methods of Slaughter Act (HMSA) of 1978. Your establishment is in violation of Title 9 of the Code of Federal Regulations (9 CFR), Section 313.15(a)(1). 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 Sec. 3 (b) states, in part, *"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 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 for establishments producing meat and poultry products to include the humane slaughter of livestock as required by 9 CFR 313, and other matters. FSIS has also developed Rules of Practice regarding enforcement, which can be found in 9 CFR 500. The Rules of Practice describe the types of enforcement actions that FSIS may take to include 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

On August 28, 2020, at approximately 1020 hours EDT, while conducting verification observations for stunning effectivity, the FSIS Consumer Safety Inspector (CSI) was alerted to the knock box area due to a prolonged time lapse between attempts to stun cattle. The CSI opened the kill floor door that separates the kill floor from the knock box. The CSI observed a steer, conscious, standing within the knock box, moving back and forth, with blood evident on the poll area. The employee who had been performing stunning was attempting a corrective action stun on the steer. The employee removed the cartridge from the captive bolt device, reloaded the device, and attempted to stun the steer a second and then third time. Each time the device did not discharge. The employee retrieved the backup captive bolt device from the immediate area and attempted to fire the device twice but it also did not discharge. The employee retrieved the primary captive bolt device, removed the cartridge, reloaded the device, placed and discharged the device, effectively rendering the steer unconscious at that time. Establishment management was informed that the slaughter process was under regulatory control and U.S. Reject Tag No. B43050268 was placed on the knock box.

The significant delay occurring between the initial and effective corrective action stun constitutes an egregious incident and is a violation of 21 U.S.C. 603, Section 3 (b) of the FMIA, and Sections 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

You have failed to meet the regulatory requirements of 9 CFR 313.15(a)(1) which states *“The captive bolt stunners 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.”*

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 provided an establishment maintains and implements a written systematic approach that meets the criteria for robustness.

Your establishment is currently operating under a written animal handling and welfare program that provides for how your establishment will respond if an event of this nature occurs. Further, during the occurrence of this incident, your employees were implementing the program as written. Although both captive bolt devices failed during this incident, your written program identifies captive bolt device maintenance performed weekly. Your written program records indicate that both devices were subject to routine maintenance on August 25, 2020 and were functioning properly and consistently since then and on this day. 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.

1. Identify the reason(s) why the event described occurred.
2. Describe the action(s) that will be implemented to eliminate the cause of the incident and prevent future recurrences.
3. Describe the future monitoring activity or activities that your establishment will conduct 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.

Please note, these proposed corrective actions and preventive measures should be specific in detail and include any time and/or date related commitments for completion.

You have the right to appeal this matter. Your appeal should be addressed to the following:

Mr. Robert Bane
Executive Associate for Regulatory Operations
U.S. Department of Agriculture
Food Safety and Inspection Service
Attn: Robert Bane, EARO
1400 Independence Ave, SW
Room 344-E, Whitten Building
Washington, DC 20250

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

If you have questions regarding this matter, you may contact (b) (6)

(b) (6) or you may contact this office at (630) 620-7474 or by fax at (630) 620-7599.

Sincerely,

TAMARA

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Dr. Tamara Davis
Deputy District Manager
FSIS Chicago District