



November 6, 2020

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

NOTICE OF SUSPENSION

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 November 6, 2020, at approximately 1030 hours EST, of the Food Safety and Inspection Service's (FSIS) decision to suspend the assignment of inspection program personnel from your slaughter process at Fillmore Beef Co., establishment M10036, located at 5812 142nd Avenue in Holland, MI. 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). Your establishment is in violation of Title 9 of the Code of Federal Regulations (9 CFR) Sections 313.15(a)(1) and 313.15(b)(1)(iii). 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

On November 6, 2020, at approximately 0925 hours EST, the FSIS Supervisory Public Health Veterinarian (SPHV) observed the following event. The SPHV heard what sounded like an animal drop followed by vocalizing and resumed movement. The SPHV peered through the door and could see a beef cow standing and it continued to vocalize. The animal was moving forward and backward in the knock box and was turning its head left and right. When the cow turned its head fully backward, the SPHV could see blood dripping from its nostril and blood could be seen dripping from a spot higher on its face. The employee stated to the SPHV that the animal had moved its head at the last second during the initial stunning attempt, and he confirmed that the captive bolt gun had made contact with the animal’s head. The cow proceeded to keep moving within the knock box and vocalizing while the establishment employee was attempting to place a second shot. The employee attempted a second and third shot, which were unsuccessful in rendering the animal unconscious. The SPHV handed the backup captive bolt gun to the employee, which was sitting on a ledge near where she was standing. The employee then attempted a fourth stun with the backup captive bolt gun, which also failed. A second establishment employee then took over and attempted to stun the animal three more times, with the seventh and final attempt being successful in rendering the cow unconscious, as evidenced by the animal immediately dropping to the floor. The captive bolt guns did not properly fire multiple times during this process; the animal was struck a total of three times. Observation of the skinned head confirmed the initial first stunning attempt was located higher on the head. Two other holes were also visible; one located laterally and one centered properly. Regulatory control tag B43050269 was placed on the knock box and Mr. Bill Snow, Vice President of Operations, was notified that the slaughter process was under regulatory control.

The occurrence of this inhumane handling incident as described is egregious and a violation of the humane handling requirements as prescribed by 21 U.S.C. 603, Section 3 (b) of the FMIA, and 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

You have failed to meet the 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;*” and 9 CFR 313.15(b)(1)(iii) which states 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.*”

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.

Although your establishment has previously developed and implemented a systematic approach to humane handling that was considered robust, you have failed to effectively implement your program consistently in a manner that demonstrates a continued history of sustained compliance with the humane handling regulations. Specifically, on August 28, 2020, a Notice of Intended Enforcement (NOIE) was issued for a similar incident in which it took six attempts with a captive bolt gun to effectively stun a steer, with two captive bolt guns failing to properly discharge a total of four times. The decision to issue a Notice of Suspension (NOS) is based on your current status of operating within the deferral period of an NOIE. The issuance of this NOS effectively closes the NOIE.

Please provide this office with a written response to address the regulatory issues identified within this letter. At a minimum, your corrective actions 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.

Your proposed corrective actions and preventive measures should include any times and/or dates for completion of these proposed activities.

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

Paul V. Wolseley
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service, USDA
1400 Independence Ave. SW
Room 3159 South Building
Washington, DC 20250
Office: (202) 708-9506
Cell: (630) 544-9805
paul.wolseley@usda.gov

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
Office of Investigation, Enforcement and Audit
Food Safety and Inspection Service
United States Department of Agriculture
Stop Code 3753, PP3, Cubicle 9-235-A
1400 Independence Ave. SW
Washington, DC 20250
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,

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FICKEY DONALD FICKEY
Date: 2020.11.06
13:23:03 -06'00'

Dr. Donald Fickey
District Manager
FSIS Chicago District