

Food Safety and
Inspection Service

Raleigh District Office

6020 Six Forks Road
Raleigh, NC. 27609
Voice: 919-844-8400
Fax: 1-844-839-6359

January 21, 2021

EMAIL

Mr. Michael Wagner, Owner/President
Wagner Meats, LLC, Est. M10804
604 North Main Street
Mt. Airy, MD 21771

NOTICE OF SUSPENSION

Dear Mr. Wagner,

This letter confirms the verbal notification given on January 21, 2021, at approximately 1033 hours, by the Food Safety and Inspection Service (FSIS) Inspection Program Personnel (IPP) of the suspension of the assignment of inspectors for slaughter operations at Wagner Meats, Est. M10804, herein after referred to as “your establishment.” This action was initiated in accordance with Title 9 of the Code of Federal Regulations (9 CFR) 500.3, after FSIS determined that your establishment failed to slaughter and handle animals humanely.

Background/Authority

The Federal Meat Inspection Act (FMIA) (Title 21 of the United States Code {21 U.S.C.} 603 et seq.) provides that 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 methods 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 slaughtering 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 establishments 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.

The Humane Methods of Slaughter Act of 1978 (7 U.S.C. 1901 et seq.) provides that 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.

Findings/Basis for Suspension

At approximately 0850 hours on Thursday, January 21, 2021, at Wagner Meats, Est. M10804, IPP identified an egregious humane handling non-compliance in which an establishment employee failed to render a heifer unconscious on the initial stun attempt and then shackled and hoisted a conscious animal. IPP observed as a heifer was brought to the knock box where an employee attempted to stun it using a .22 caliber rifle. The employee fired a shot, the heifer dropped to the ground, the gate to the knocking area was opened, and kill floor supervisor immediately prepared to hoist the animal. IPP was standing just outside the doorway to the kill floor while the establishment used the firearm and after the initial stun attempt, entered the kill floor to assess stunning effectiveness. As IPP walked closer to the animal, she noticed that it was rhythmically breathing, blinking, and tearing excessively. The kill floor supervisor was already beginning to hoist the rear limbs of the animal, and as he was hoisting the heifer, IPP observed that it exhibited tracking eye movement. IPP then tested the heifer's palpebral and corneal reflexes, which were intact, indicating that the heifer was conscious. IPP notified the kill floor supervisor that the animal was still conscious and needed to be stunned again. The kill floor supervisor instructed the employee who performed the stunning to get the rifle and stun it again. While the rifle was being retrieved, the kill floor supervisor continued to hoist the animal several more feet so that the heifer's head was not resting on the ground. The employee administered a second stun to the heifer using the same firearm, effectively rendering it unconscious; it remained unconscious through the remainder of the bleeding process. IPP applied US Retain/Reject Tag #B24794527 to the knock box, in accordance with 9 CFR 313.50(c), to prevent further slaughter of livestock. After consultation with the Raleigh District Office (RDO), the IIC notified establishment personnel of the suspension of the assignment of inspection at approximately 1033 hours.

This incident represents a violation of 9 CFR 313.16 (a)(1) which says, in part, that "The firearms shall be employed in the delivery of a bullet or projectile into the animal...so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut." This incident is considered egregious because the establishment failed to render the animal unconscious on the first stun attempt and there was no immediate attempt to re-stun the animal and because the animal was not rendered unconscious before it was shackled and hoisted in the air. The establishment has been identified as having a robust systematic approach to humane handling; however, the systematic approach was not being implemented at the time the incident occurred. Therefore, no regulatory discretion is being considered and the Suspension is being implemented.

The suspension action will remain in effect until you provide the Raleigh District Office with adequate written assurances, including corrective actions and further planned preventive measures, to assure that livestock at your establishment are slaughtered humanely. To resume inspected operations, you must submit corrective actions to my attention at the District Office. These corrective actions should include at a minimum the following:

1. Identify the assessment process used to determine the nature and cause of the noncompliances.
2. Identify what the assessment revealed as the likely cause of the system failure.
3. Describe the specific actions that will be taken to eliminate the cause of the failures.
4. Describe the future monitoring activities you will use to ensure that changes are implemented and are effective.

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 inhumane handling of livestock at your establishment. Please be advised that your failure to respond adequately to these issues may result in our initiating action to withdraw inspection from your establishment. Please also be advised that you have the right to appeal this matter.

In accordance with 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Sherri Johnson
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Avenue, SW
Room 1330A, South Building
Washington, DC 20250
Phone: (202) 379-6196

In addition, you may also request a hearing regarding this determination pursuant to FSIS' Rules of Practice (9 CFR 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
Stop Code 3753, PP3, Cubicle 9-235-A
1400 Independence Avenue, SW
Washington, D.C. 20250
Voice: (202) 418-8872
Fax: (202) 245-5097

It is our hope that this matter can be resolved quickly. If you have any questions, you may call me at 919-208-2945 or contact me via email at todd.furey2@usda.gov. You may also contact Dr. Arial Thompson, Deputy District Manager, at 919-208-2946. We urge your cooperation and voluntary compliance.

Sincerely,

**ARIAL
THOMPSON**

 Digitally signed by ARIAL
THOMPSON
Date: 2021.01.21 13:45:17 -05'00'

Todd Furey
District Manager
Raleigh, NC

cc:

P. Bronstein, AA/FO

H. Sidrak, DAA/FO

S. Johnson, EARO/FO

S. Safian, ELD/OIEA

L. Hortert, RD/CID/OIEA

R. Murphy, DDM/RDO/FO

M. Roling, DDM/RDO/FO

A. Thompson, DDM/RDO/FO

(b) (6)

Quarterly Enforcement Report
Establishment File (Est. M10804)