



United States Department of Agriculture

Food Safety and  
Inspection Service

Office of Field  
Operations  
Denver District Office

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Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303)236-9800  
Fax (303)236-9794

November 17, 2020

**SENT VIA FEDEX &  
ELECTRONIC MAIL**

Mr. Daniel Mominee, Owner  
Road 39 Ranch Meats, LLC  
Establishment M47288  
7035 Road 39  
Mancos, CO 81328  
Dan@road39ranch.com

## **NOTICE OF INTENDED ENFORCEMENT**

Dear Mr. Mominee,

This letter serves as official notification by the Food Safety Inspection Service (FSIS) of its intent to withhold the marks of inspection and suspend the assignment of FSIS Inspection Program Personnel (IPP) at your establishment, Rod 39 Ranch Meats, LLC, Establishment M47288, located in Mancos, Colorado. Dr. Jessica Van Hook, Deputy District Manager, verbally notified you of the suspension action. The decision to issue this notification was made in accordance with 9 CFR 500.3(b) (Rules of Practice), based on your failure to meet regulatory requirements in regard to livestock humane slaughter at your establishment.

### **Background Authority**

The *Federal Meat Inspection Act* (FMIA), 21 USC Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering establishment if FSIS 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 the *Humane Methods of Slaughter Act* (HMSA) of August 27, 1958, (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. FSIS has also developed Rules of Practice regarding enforcement prescribed in 9 CFR Part 500. The Rules of Practice describe the types of enforcement actions that FSIS may take, and include procedures for taking a withholding action and or suspension, with or without prior notification, as well as the procedures for filing a complaint to withdraw a Grant of Federal Inspection.

### **Finding/Basis for Action**

On Tuesday November 17, 2020, the FSIS Supervisory Public Health Veterinarian (SPHV) documented in a Noncompliance Record (NR) the following event at Est. M47288:

*At approximately 0830 hours the SPHV observed the following noncompliance. An Angus steer was in the stun box (a squeeze chute with head restraint device) with its head restrained to facilitate stunning using a .25 caliber hand-held captive bolt (HHCB) device. The stun operator applied the first stun attempt to the forehead and discharged the HHCB device. The steer did not lose consciousness. The SPHV observed eye blinking, eye tracking, breathing, and the animal remained standing and moving within the stun box. The steer did not vocalize but appeared agitated and blood was exiting the animals forehead from the stun hole. The SPHV observed the stun operator check for a palpebral response and immediately apply a second stun attempt just above the first stun attempt using another .25 caliber hand-held captive bolt device. The animal remained conscious. The SPHV observed eyes blinking and tracking, rhythmic breathing and the animal remained standing but did not vocalize. The SPHV observed the stun operator check for a palpebral response. The stun operator was unsure what to do next and asked for advice from the SPHV. The plant's slaughter plan has a .22 caliber handgun utilizing a round-tip slug as a backup method readily available at the stun box, the SPHV recommended using it. After clearing other employees from the area for safety, the stun operator immediately applied the gun higher up on the forehead and discharged the firearm, which rendered the steer effectively unconscious-*

*The SPHV verbally informed Mr. Dan Mominee, plant owner that the SPHV would have to report this incident through chain of command and took a regulatory control action on the knock box using US Reject Tag # B35873826. The SPHV allowed the establishment to continue processing the steer.*

*Once the head was removed, the SPHV inspected the skull and noted three holes in the frontal bone; two holes overlapping on the midline approximately 1/2 inch above the level of the eyes and a third hole approximately 1.5 inches above the level of the eyes.*

*There have been no noncompliance records issued for the same root cause since the establishment started slaughter operations on 11/10/2020.*

Prior to this incident, the establishment was determined not to have a Robust Systematic Approach to humane handling.

## Summary

The decision to issue a Notice of Intended Enforcement to your establishment is based on this noncompliance with regulatory requirements in Title 9 CFR 313.15(a)(1) *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.*

You are required to proffer the Denver District Office a written response of your analysis of the event, corrective actions and preventative measures within three working days from the receipt of this letter, no later than the close of business, November 20, 2020. Your response should include:

- A written description of the incident.
- The root cause of the incident.
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

Based on your response, FSIS will determine further action, if any, is necessary. In addition, failure to respond to this NOIE and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

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

Paul V. Wolseley  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service, USDA  
1400 Independence Ave. SW  
Room 1329 South Building  
Washington, DC 20250  
Office: (202) 708-9506  
Cell: (630) 544-9805  
[paul.wolseley@usda.gov](mailto:paul.wolseley@usda.gov)

In accordance with 9 CFR Part 500.5 (d), you may request a hearing concerning this action by contacting:

Scott C. Safian  
Enforcement and Litigation Division  
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

If you have any questions regarding this matter, you may contact the Denver District Office at (303)236-9800.

Sincerely,

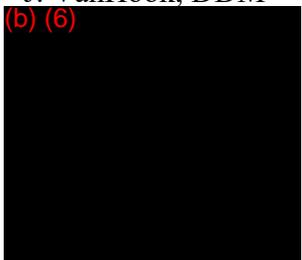
**VALERIE  
CLAY**

Digitally signed by  
VALERIE CLAY  
Date: 2020.11.17  
14:45:16 -07'00'

Ms. Valerie Clay  
District Manager  
USDA FSIS OFO  
Denver District Office  
[Valerie.Clay@usda.gov](mailto:Valerie.Clay@usda.gov)

cc: FO/QER  
Est. File  
R. Reeder, DDM  
S. Hoffman, DDM  
J. VanHook, DDM

(b) (6)

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S. Baucher, RD/OIEA