



March 28, 2022

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Mr. Bob Boliantz, Owner
E. R. Boliantz Co. Inc.
Est. M34114
1535 Cleveland Ave.
Ashland, OH 44805

NOTICE OF SUSPENSION

Dear Mr. Boliantz:

This letter confirms verbal notification provided to Operations Manager, Mr. Zane Gross, by Dr. Donald Fickey, District Manager, on March 28, 2022, at approximately 1500 hours EDT, of the Food Safety and Inspection Service's (FSIS) decision to withhold the marks of inspection and suspend the assignment of inspectors from your slaughter process at E. R. Boliantz Co. Inc., establishment M34114, located at 1535 Cleveland Avenue, in Ashland, Ohio. 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 requirements prescribed by the Federal Meat Inspection Act (FMIA) and the Humane Methods of Slaughter Act of 1978 (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 observed to be handling or slaughtering animals inhumanely.

Background and Authority

The Federal Meat Inspection Act, 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, 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, including the requirements pertaining to the humane slaughter of livestock in 9 CFR 313. 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 action 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 March 28, 2022, at approximately 1345 hours while performing HATS Category VIII Stunning Effectiveness, the FSIS Consumer Safety Inspector (CSI) observed an establishment employee using a handheld captive bolt device attempt to stun a bull. The bull was confined within the knock box but was not restrained in the head catch. The employee placed and discharged the captive bolt device onto the head of the free-standing bull, with the bolt striking and penetrating the skull. The bull was observed to remain conscious, standing, moving, and lowering its head in response. The employee reloaded the device and waited for the head to return to a position so that a corrective action stun could be placed. After a delay, the employee was able to place the device and attempt to stun the animal; however, the device did not fire and the bull continued to move its head freely, attempting to evade placement. The employee retrieved the preloaded backup captive bolt device from the immediate area, and again waited for the bull to present its head so the stun could be attempted. Once the head was in a position to place the device accurately, the employee placed and discharged the device, rendering the bull unconscious at that time. The knock box was tagged with U.S. Rejected tag B29703631 and establishment management was notified verbally that the slaughter process was under regulatory control.

The failure to effectively stun the animal with a single attempt is noncompliant. The animal was not sufficiently restrained to limit free movement and ensure accurate placement after the initial stunning attempt was observed to fail. This resulted in a significant delay administering the corrective action stun. Additionally, the failure of the captive bolt device to fire when reloaded contributed to the delay. The corrective action stun was not administered in a manner considered immediate. By definition, the occurrence of this inhumane handling incident as described is considered 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 in part, “*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 September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, 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 humane 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 if an establishment maintains a written systematic approach that meets the criteria for robustness. You do not maintain a written humane handling program that is considered robust at this time.

Please provide this office with a written response to this NOS with corrective actions and preventive measure to restore and maintain regulatory compliance. We will determine if any further actions are necessary based on your response. The corrective actions in your response 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.

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

Melissa Moore
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service, USDA
1400 Independence Ave. SW
South Building Room 3159
Washington, DC 20250
Cell: (202) 450-0330
melissa.moore1@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
Voice: (202) 418-8872
Fax: (202) 245-5097

If you have questions regarding this matter, you may contact (b) (6) (b) (6) (b) (6) (b) (6), or you may contact this office at (630) 620-7474 or by fax at (630) 620-7599.

Sincerely,
DONALD FICKEY
Digitally signed by DONALD FICKEY
Date 2022.03.28 16:06:29 -0500
Dr. Donald B. Fickey
District Manager
Chicago District