



April 27, 2023

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West Michigan Beef Co., LLC  
Est. M1816  
3007 Van Buren Street  
Hudsonville, MI 49426  
don@westmichiganbeef.com  
(616) 669-1212

## **NOTICE OF INTENDED ENFORCEMENT**

Attention: Mr. Don Vander Boon, Owner/Manager

This letter serves as official notification by the Food Safety and Inspection Service (FSIS) of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP), with prior verbal notification, for your Slaughter Process at West Michigan Beef Co., LLC, M1816, located at 3007 Van Buren Street in Hudsonville, Michigan. The decision to issue this enforcement action is in accordance with Title 9 of the Code of Federal Regulations (9 CFR), Part 500.3(b) Rules of Practice, based on the determination that your establishment did not handle or slaughter animals humanely. The evidence demonstrates failure to comply with the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*), and the regulatory requirements of 9 CFR Part 313.

### **Background / Authority**

The FMIA, Section 3(b), provides that to prevent the inhumane slaughtering of livestock, the Secretary shall appoint inspectors for the verification of the methods by which livestock are handled and slaughtered at establishments inspected under this Act. The Secretary may refuse to provide inspection or may cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any livestock have been handled or slaughtered by any method not in accordance with Sections 1901 to 1906 of Title 7 (HMSA) until the establishment furnishes assurances satisfactory to the Secretary that all handling and slaughtering of livestock is in accordance with such a method.

The HMSA provides that Congress finds 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 slaughter industry brings about improvement of products and economies in slaughter 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.

Under the authority of the Acts, FSIS has prescribed rules and regulations required for establishments handling and slaughtering livestock, as required by 9 CFR Part 313. FSIS has also developed the Rules of

Practice regarding administrative enforcement, 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, and for filing a complaint to withdraw a grant of inspection. Specifically, 9 CFR 500.3(b) states that FSIS may issue a suspension without providing prior notification due to handling or slaughtering animals inhumanely.

### **Findings / Basis for Action**

On April 27, 2023, at approximately 1000 hours EST, the Supervisory Public Health Veterinarian (SPHV) was conducting observations of stunning effectiveness. A Holstein cow with a large head consistent with hydrocephalus was driven into the knock box and the head restraint mechanism was engaged. The head restraint obstructed the poll area, so the establishment employee placed the bull type handheld captive bolt device on the forehead and discharged the device. This first shot was ineffective, and the animal remained conscious and blinking. Blood was observed flowing from the knock hole. A second preloaded backup captive bolt device was immediately placed and discharged adjacent to the first shot. The second attempt was also ineffective. The employee made two additional consecutive attempts to the forehead with the animal observed to remain conscious after each. The employee then released the head restraint, placed the handheld captive bolt device on the poll area of the head and discharged the device. The animal was observed to collapse and was rendered insensible at this time. Unconsciousness was verified by confirming the absence of a corneal reflex. Regulatory control of the slaughter process was taken by placing U. S. Reject tag B45499111 on the knock box and establishment management was notified of the noncompliance.

Post-mortem examination of the head revealed that the swollen top half of the head was filled with blood and fluid. There were three knock holes observed in the front of the skull consistent with where the shots were placed. These holes led into the pocket of blood and fluid and appeared to miss the brain completely.

These observations are noncompliant with the regulatory requirements of 9 CFR 313.15(a)(1) which require captive bolt stunners to be applied and result in immediate unconsciousness in the animals in a manner rendering them unconscious with a minimum of excitement and discomfort. Because of the prolonged discomfort and excitement of the animal resulting from the inability to render it insensible/unconscious after the application of the immediate corrective actions, this incident is considered egregious.

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 (69 FR 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. When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed.

Your establishment has previously developed and implemented a systematic approach to humane handling that was considered robust. Observations confirm you were implementing the plan accordingly.

### **Conclusion**

In accordance with the Rules of Practice specified in 9 CFR Part 500.3(b), FSIS is notifying you of our decision to defer withholding the marks of inspection and suspend the assignment of FSIS inspectors from your slaughter process.

Please provide a written response to the Chicago District Office within three (3) business days, inclusive of corrective actions and preventive measures, which address the following:

- Evaluate and identify the nature, and cause of the incident.
- Describe the specific actions taken to eliminate the cause of the incident and prevent future recurrences.
- Describe specific monitoring activities planned to ensure future compliance.
- Provide any supporting documentation and records maintained and/or associated with the proposed corrective actions and preventive measures.

Provisions of the FMIA outline FSIS' ability to refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing, when conditions exist where the handling and/or slaughter of livestock was not by a method in accordance with the Act(s). Evidence demonstrates your failure to meet regulatory requirements addressed in 9 CFR 313.15(a)(1), constituting a violation of the humane slaughter requirements, and supporting the conclusion that your handling of livestock violated the provisions of the FMIA and HMSA.

### **Appeal and Hearing Rights**

You have the right to appeal this matter and can do so by contacting:

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

Pursuant to 9 CFR 500.5(d), you may also request a hearing regarding this determination. 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, please contact:

Scott C. Safian, Director  
Enforcement Operations Staff (EOS)  
Office of Investigation, Enforcement and Audit (OIEA)  
Food Safety and Inspection Service  
United States Department of Agriculture  
Stop Code 3753, SB - Room 2148  
1400 Independence Avenue, SW  
Washington, DC 20250  
Telephone: (202) 418-8872  
Facsimile: (202) 245-5097  
E-mail: AEBCorrespondence@usda.gov

Mr. Don Vander Boon, Owner  
Est. M1816

Notice of Intended Enforcement  
Date: 04/27/2023

If you have any questions, please contact (b) (6) Veterinary Medical Specialist (DVMS), at (b) (6) or electronic mail at (b) (6) [@usda.gov](mailto:(b) (6)@usda.gov). Additionally, you may contact the Chicago District Office at (630) 620-7474 or by fax at (630) 620-7599.

Sincerely,

**GARY WELCHER**

Digitally signed by GARY  
WELCHER  
Date: 2023.04.27 14:03:36 -05'00'

Dr. Donald B. Fickey  
District Manager  
FSIS Chicago District