



January 16, 2023

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Mr. Brian Winner, Owner
Robert Winner Sons, Inc.
Est. M21572
8544 State Route 705
Yorkshire, OH 45388

NOTICE OF SUSPENSION

Dear Mr. Winner:

This letter confirms verbal notification provided to you by Dr. Tamara Davis, Deputy District Manager, on January 16, 2023, at approximately 1010 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 Robert Winner Sons, Inc., establishment M21572, located at 8544 State Route 705 in Yorkshire, 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 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 313.30(a)(4). 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 January 16, 2023, at approximately 0900 hours, the FSIS Supervisory Public Health Veterinarian (SPHV) described the following humane handling incident. While on the kill floor, the SPHV and the Consumer Safety Inspector (CSI) were alerted to the scald tank when the production manager lifted the lid from the tank and the in-plant inspection program personnel (IPP) heard squealing. The market hog inside the individual-sized tank was squealing, thrashing, and rapidly blinking its eyes. The production manager restuck the hog with a knife while it was in the scald tank. The squealing, thrashing, and rapid blinking then subsided, and the hog was insensible shortly after being restuck. The CSI took regulatory control of the process and placed U.S. Rejected tag number B35668535 on the knocking area.

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 313.30(a)(4) which states, “*The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.*”

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.

When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an egregious humane handling incident is observed. 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 accordingly. Specifically, when the animal was identified as conscious, there was no attempt made to render the animal unconscious and insensible to pain before proceeding with attempts to exsanguinate it using a knife. The decision to issue a NOS is based on the failure to implement the plan as written.

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.

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, SB – Room 2148
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) District Veterinary Medical Specialist (DVMS), at (b) (6); (b) (6), DVMS, at (b) (6), or you may contact this office at (630) 620-7474 or by fax at (630) 620-7599.

Sincerely,

TAMARA
DAVIS
Digitally signed by
TAMARA DAVIS
Date: 2023.01.16 12:27:56 -06'00' / For

Dr. Donald B. Fickey
District Manager
FSIS Chicago District