



Electronically Submitted on April 26, 2023
FedEx Tracking: 7719 6630
7275

Food Safety and
Inspection Service

April 26, 2023

Office of Field Operations

Philadelphia District
Mellon Independence
Center,
701 Market Street Suite
4100-A
Philadelphia, PA 19106

Mr. Samuel Rowse, Owner
The Local Butcher LLC (Est. M45176)
536 South Barnstead Road
Center Barnstead, New Hampshire 03225
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(603) 813-2054

NOTICE OF SUSPENSION

Attention: Mr. Samuel Rowse, Owner

This letter serves as official notification by the Food Safety and Inspection Service (FSIS) of our decision to withhold the federal marks of inspection and suspend the assignment of Inspection Program Personnel (IPP) at The Local Butcher, LLC, Establishment M145176 located at 536 South Barnstead Road in Center Barnstead, New Hampshire 03225. This letter follows verbal notification of the suspension action, provided by Dr. Chelsea Buckley, Deputy District Manager (DDM) to Mr. Jacob Nickerson, Plant Manager (Est. M45176) at approximately 0900 hours on Thursday, April 26, 2023. This action includes your Slaughter Hazard Analysis Critical Control Point (HACCP) processes employed at your establishment.

The decision to institute this enforcement action is in accordance with Title 9 of the Code of Federal Regulations (CFR), Rules of Practice, 500.3(b), 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 (9 CFR Part 313).

Background/Authority

The FMIA (21 USC 601 *et seq.*) provides it is essential to the public interest that the health and welfare of consumers be protected, by assuring meat products distributed to them are wholesome, not adulterated, and properly marked, and labeled. The Act gives FSIS the authority, as designated by the Secretary of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments and provide FSIS program personnel the authority to refuse to allow meat/meat food products to be marked, labeled, stamped, or

tagged as *inspected and passed*, to prevent the entry of adulterated products into commerce. Furthermore, the FMIA provides FSIS the authority to appoint inspectors to examine and inspect the method by which livestock are slaughtered and handled at slaughtering establishments.

The HMSA 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.

Under the authority of the Acts, FSIS has prescribed rules and regulations required for establishments slaughtering and handling 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 impose a suspension without providing prior notification due to handling or slaughtering of animals inhumanely.

Findings/Basis for Action

On Thursday, April 26, 2023, based on observations made by the Consumer Safety Inspector (CSI), the following noncompliance was documented in Noncompliance Record ZAZ4608045726N:

HATS Category IX—Conscious Animals on the Rail: On April 26, 2023, the following livestock humane handling noncompliance was observed. At approximately 0710 hours I observed the slaughter floor supervisor lead an Angus steer into the stunning box. After the steer was secured in the headlock and haltered, the floor supervisor used a .44 Remington rifle to stun the animal. The steer buckled after the shot and blood flowed from its nostrils. The supervisor then tested its eyes for corneal reflex in response to touch and, after determining that the animal was unconscious, he released the headlock and hoisted it. Moments after being hoisted, the supervisor stuck the animal for the first time. Only a thin trickle of blood flowed from the neck. After the first sticking, the steer regained consciousness. It showed righting reflex, vocalized, looked around with eye tracking, and began breathing rhythmically (not gasping, as its ribcage was visibly heaving, and puffs of bloody air were spraying out of its nostrils). After I pointed out these signs of consciousness to the supervisor, he immediately used a captive bolt stunner on the animal. This action did not render the steer unconscious, however, as it continued to present signs of righting reflex, eye movement, and rhythmic breathing. The supervisor then applied the captive bolt a second time, rendering the animal insensible, and it remained so thereafter. At this point, the animal was stuck for the second and final time. I

immediately rejected the stunning area with USDA tag No. B40462798 and informed Jacob Nickerson, the plant management and slaughter floor employees of the noncompliance and that slaughter would not continue today until I had submitted the report of the incident and had further instructions. The establishment has established a robust systematic approach to humane handling but was not following the robust approach at this time.

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" (69 Fed. Reg. 54625). On September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, "*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. 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.

Summary and Conclusion

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 slaughter and/or handling of livestock was not by a method in accordance with the Acts. Evidence demonstrates your failure to meet regulatory requirements addressed in 9 CFR 313.16(a)(1); 313.16(a)(3); 313.15(a)(1); and 313.15(a)(3), 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.

Please provide a written response, inclusive of written corrective action and preventative measures, by addressing the following:

- Evaluate and identify the nature, 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 preventative measures.

A determination of further administrative action will be made upon receipt and review of your submitted corrective actions and preventative measures. You are reminded that, as

an operator of a federally inspected establishment, you are expected to comply with FSIS regulations and to take appropriate corrective actions to prevent the production of adulterated products 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.

Appeal and Hearing Rights

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

Paul Wolseley
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
SB, Room 3160
1400 Independence Avenue, SW
Washington, DC 20250
Email: paul.wolseley@usda.gov
Phone: (202) 937-4761

Pursuant to 9 C.F.R. 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

If you have any questions regarding this matter, please feel free to contact Dr. Chelsea Buckley, DDM, via electronic mail at chelsea.buckley@usda.gov or by telephone at 267-807-7615. Additionally, you can contact the Philadelphia District Office at (800) 637-6681 or by fax at (215) 597-4217.

Sincerely,

Mr. Jason Orlando
District Manager

CHELSEA
BUCKLEY

Digitally signed by
CHELSEA BUCKLEY
Date: 2023.04.26
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Cc:

Mr. Paul Wolseley, EARO, FSIS, OFO, Washington, DC

Ms. Melissa Moore, EARO, FSIS, OFO, Washington, DC

Mr. Joseph Priore, RD, FSIS, OIEA, Northeast Region

Mr. Jason Orlando, DM, FSIS, OFO, Philadelphia District Office

Dr. Chelsea Buckley, DDM, FSIS, OFO, Philadelphia District Office

Mr. George Slobodjian, DDM, FSIS, OFO, Philadelphia District Office

Mr. Joseph Schein, DDM, FSIS, OFO, Philadelphia District Office

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