



August 25, 2020

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Mr. Eric Winkle, Plant Manager
Bob Evans Farms Inc.
Est. M6785
640 Birch Road
Xenia, OH 45385

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Winkle:

This letter confirms verbal notification provided to you by Dr. Tamara Davis, Deputy District Manager, on August 25, 2020, at approximately 0738 hours EDT, of the Food Safety and Inspection Service's (FSIS) intent to withhold the marks of inspection and suspend the assignment of inspectors from your slaughter process at Bob Evans Farms Inc., Establishment M6785, located at 640 Birch Road, Xenia, OH 45385. 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) 313.15(a)(3). The Rules of Practice, 9 CFR 500.3(b), specify that FSIS may issue a suspension without providing prior notification if it an establishment is 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."*

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 to include the humane slaughter of livestock as required by 9 CFR 313, and other matters. 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 actions 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 August 25, 2020, at approximately 0630 hours EDT, the FSIS Supervisory Public Health Veterinarian (SPHV) observed an employee stun a slow-moving sow that had become non-ambulatory and laid down in the drive alley before entering the electrical stunning chute. After the initial stun, the employee verified the animal was unconscious and proceeded to stick the sow to initiate exsanguination. Immediately after the stick, the sow vocalized and was observed to lift her head, blink naturally, and was breathing rhythmically with an increased respiratory rate. The employee recognized the animal had regained consciousness and applied a second stun with the available backup captive bolt device. The sow was verified to be unconscious and was stuck a second time to ensure rapid exsanguination. The SPHV informed the establishment that the slaughter process was under regulatory control and U.S. Reject Tag No. B 25141959 was applied to the electrical stunner.

The occurrence of this inhumane handling incident constitutes an egregious violation of the humane handling requirements and is a violation of 21 U.S.C. 603, Section 3 (b) of the FMIA, and Sections 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

You have failed to meet the regulatory requirements of 9 CFR 313.15(a)(3) which states, “*Immediately after the stunning blow is delivered the animals shall be in a state of complete unconsciousness and remain in this condition throughout 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 August 15, 2011, FSIS released FSIS Directive 6900.2 Revision 2, 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 animal 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 provided an establishment maintains and implements a written systematic approach that meets the criteria for robustness.

Your establishment is currently operating under an animal handling and welfare program that provides for how your establishment will respond if an event of this nature occurs. The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your implementation of a written systematic approach for the humane handling of livestock in a manner consistent with the Agency expectations for consideration of a robust systematic approach.

Please provide this office with a written response to this NOIE within three (3) working days from the date of your receipt of this letter. We will determine if any further actions are necessary based on your response. The corrective actions and preventive measures 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.

Please be advised that you have the right to appeal this matter. If you wish to appeal this action, contact:

Robert Bane
Executive Associate for Regulatory Operations
U.S. Department of Agriculture
Food Safety and Inspection Service
Attn: Robert Bane, EARO
1400 Independence Ave, SW
Room 344-E, Whitten Building
Washington, DC 20250

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, Director
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 9-205
355 E. Street SW
Washington, DC 20024-3221
Telephone: (202) 418-8872
Fax: (202) 245-5097

If you have questions regarding this matter, you may contact (b) (6)

(b) (6)

or you may contact this office at (630)

620-7474 or by fax at (630) 620-7599.

Sincerely,

TAMARA DAVIS

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Dr. Tamara Davis
Deputy District Manager
FSIS Chicago District Office