



United States Department of Agriculture

Food Safety and
Inspection Service

September 23, 2019

Office of Field
Operations
Denver District Office

**SENT VIA FEDEX &
ELECTRONIC MAIL**

1 Denver Federal
Center, Bldg. 45
P.O. Box 25387
Denver, CO 80225

Tyson Foods Inc.
Establishment M245L
1500 Plum Creek Pkwy
Lexington, NE 68850

Voice (303) 236-9800
Fax (303) 236-9794

NOTICE OF SUSPENSION (NOS)

Attention: (b) (6)

This letter serves as official notification by the FOOD Safety Inspection Service (FSIS) of the suspension of the assignment of inspectors at your establishment and the withholding of the marks of inspection for the slaughter operations, in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). The decision to issue this notification was made based on your failure to meet regulatory requirements regarding livestock humane slaughter at your establishment. You were verbally notified on September 23, 2019

Background Authority

The *Federal Meat Inspection Act* (FMIA), 21 USC Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering establishment if FSIS finds that any cattle, sheep, swine, goats, horses, mules or other equines have been slaughtered or handled in connection with slaughter at such establishments by any method not in accordance with the *Humane Methods of Slaughter Act* (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. FSIS has also developed Rules of Practice regarding enforcement prescribed in 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, as well as the procedures for filing a complaint to withdraw a Grant of Federal Inspection.

Finding/Basis for Action

The following information is provided to support this NOS: *“On 9/21/19 at approximately 2343, the Supervisory Public Health Veterinarian (SPHV), observed, as a steer left the stack and started down the bleed chain, prior to exsanguination, it attempted to right itself and blinked. An establishment employee noticed this steer at the same time the SPHV did and went to stun the steer with a hand-held captive bolt (HHBC) device. The chain continued to run, the steer continued to try to right itself, and the employee was unable to get a good shot to stun the steer. The SPHV instructed the establishment employees who were bleeding the animals to stop the line and they did. The employee placed the HHCB device on the steer’s skull, but the device did not fire. While the employee fixed the HHCB device, the steer vocalized twice. The employee placed the HHCB device on the skull again. This time the device fired. The animal was rendered insensible and exsanguinated....The SPHV tagged the knock box with USDA rejected tag B31963126...”* In addition, further investigation revealed that the animal was shackled and hoisted without being stunned.

This egregious act does not meet the regulatory requirements of 9 CFR 313.15(a) which states, *Application of stunners, required effect; handling. (1) 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... (3) 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.* Further, actions taken clearly showed that your establishment failed to handle and/or slaughter animals humanely, as required in the HMLSA which states in part, *(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut...*

This suspension action, without prior notification, is taken in accordance with the Rules of Practice, 9 CFR 500.3(b) which states, *FSIS also may impose a suspension without providing the establishment prior notification because the establishment is handling or slaughtering animals inhumanely.*

This Notice of Suspension is being issued to you rather than a Notice of Intended Enforcement even though your establishment employs a robust systematic approach to humane handling and slaughter. Your establishment failed to stun the animal prior to shackling and hoisting, and malfunction of your stun device to deploy an effective stun the first time on the rail (missed fire). You failed to follow or adequately implement your systematic approach program.

The suspension of the assignment of inspectors will remain in effect until such time as you provide adequate written assurance to this office of corrective actions and preventive measures to assure

that the handling and/or slaughter of animals will be done humanely and in accordance with the FMIA, and the regulations promulgated therein. You may submit your corrective and preventive actions to my attention at the Denver District Office. Your response should include;

A written description of the incident.

- The root cause of the incident.
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

Based on your response, FSIS will determine further action, if any, is necessary. In addition, failure to respond to this NOS and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

In accordance with Title 9 CFR 500.5(a)(5) you may appeal this action by contacting:

U.S. Department of Agriculture
Food Safety and Inspection Service
Attention: Keith Gilmore/Executive Associate for Regulatory Operations
1400 Independence Avenue, SW
Room 344-E, Whitten Building
Washington, DC 20250

If you have any questions regarding this matter, you may contact Dr. Deci McIver, District Veterinary Medical Specialist, at 303-236-9786 or the Denver District Office at (303) 236-9800.

Sincerely,

DAWN SPROULS

Digitally signed by DAWN
SPROULS
Date: 2019.09.23 10:06:35
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Dawn Sprouls, DVM
Acting District Manager
FSIS Denver District Office
Dawn.Sprouls@usda.gov

cc: FO/QR
Est. File
S. Hoffman, DDM
R. Reeder, DDM
J. Van Hook, DDM

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