



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Field
Operations

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

March 20, 2018

**ORIGINAL VIA FED EX NEXT DAY AIR –
DELIVERY CONFIRMATION REQUESTED**

Mr. Dennis Kistler, Owner
Kistler's Butcher Shop, (Est. 44101)
3692 Sherman's Valley Road
Loysville, PA 17047

NOTICE OF REINSTATEMENT OF SUSPENSION

Dear Mr. Kistler,

This letter confirms verbal notification by Mr. Michael Osifat, Deputy District Manager (DDM), on March 20, 2017, at approximately 12:35 P.M. of the Food Safety and Inspection Service's (FSIS) decision to reinstate the suspension of the assignment of Inspection Program Personnel (IPP) for the Slaughter Hazard Analysis Critical Control Point (HACCP) plan at your establishment **Kistler's Butcher Shop, (Est. 44101)**, located in Loysville, PA. FSIS determined that you again failed to handle livestock humanely, resulting in the commission of an egregious act. You are not in compliance with Title 9 of the Code of Federal Regulations (9 CFR) Parts 313.16. FSIS is taking this action in accordance with the Rules of Practice in 9 CFR Part 500.3(b).

Background/Authority

The Federal Meat Inspection Act (FMIA) [21 U.S.C 603 *et seq.*] provides that for the purpose of preventing the inhumane slaughtering of livestock, the Secretary shall appoint inspectors for that purpose to examine and inspect the method by which cattle, sheep, swine, goats, horses, mules, or other equines are slaughtered and handled 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 if animals (any cattle, sheep, swine, goats, horses, mules, or other equines) have been slaughtered or handled by any method not in accordance with sections 1901 to 1906 of Title 7 of the Humane Methods of Slaughter Act of 1978. Until the establishment furnishes assurance satisfactory to the Secretary, all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

The Humane Methods of Slaughter Act of 1978 (HMSA) (Section 1901, 1902, and 1906, Attachment 1) states that the slaughtering and handling of livestock are to be carried out only by humane methods. In that Act, congress determined (among other things) that the use of humane methods of handling and slaughtering livestock prevents needless suffering of animals and results in safer and better working conditions for employees in slaughter establishments.

Under the authorities of the Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, as contained in Regulations 9 CFR Part 313, and the Humane Methods of Slaughter Act of 1978. 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.

Findings/Basis for Reinstatement of Suspension

Today, March 20, 2018, at approximately 0750 hours, you stunned a beef cow, standing freely in the stun box, with a 410 shotgun. When Inspection Personnel started observing, after the end of firearm use, they observed that the cow was down in the stun box and you proceeded to cut the cow's throat. The top back leg and hoof was pushing against the side gate. You used your foot to move the hoof off the gate, opened the gate, and walked away. While Inspection was observing the cow, the blood was slowly pooling under it. They then began to hear the cow vocalize, observe it arch its back, and press its head back against the wall. The Supervisory Public Health Veterinarian (SPHV) walked closer and observed the cow breathing. A small corner of the tongue was sticking out of the mouth on the face up side of the head. The SPHV felt the tongue and it was tight. The animal continued to vocalize, press its head against the wall, and arch its back. Inspection immediately began walking out of the room to find Mr. Kistler and told his helper, who walked into the room, that the animal needed a second stun. Mr. Kistler could not be found immediately but walked into the room a few moments later. He gave a second stunning attempt with the 410 shotgun. The cow gave a few reflexive kicks and then was still. The stun box was tagged with U.S. Rejected tag #B34781999, to stop the slaughter process. The District Office was informed of the egregious incident.

For firearm stunning, Regulation 9 CFR Parts 313.16 states that firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animal shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

Previously on March 6, 2018, your Establishment was issued a Notice of Suspension for the egregious use of an electric prod. A Notice of Suspension in Abeyance was issued on March 9, 2018.

Based on this egregious stunning of a bovine with a firearm, and the March 6, 2018, NOS still being under abeyance, it was determined that the previous suspension be reinstated.

In order to resume inspected operations, you must submit corrective actions to my attention at the Philadelphia District Office. As an operator of a federally inspected plant, we expect you to comply with FSIS regulations and prevent inhumane handling of livestock 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.

You are reminded that as an operator of a federally inspected plant you are expected to comply with FSIS regulations and to take appropriate corrective actions to prevent the inhumane treatment of animals at your establishment. Please be advised you have the right to appeal this matter. If you wish to appeal, you should contact:

Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Ave. S.W.
Room 3157, South Building
Washington, DC 20250-3700
Telephone (202) 720-3697
Fax: (202) 690-3287

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:

Director
Enforcement and Litigation Division (ELD)
Office of Investigation, Enforcement and Audit (OIEA)
Food Safety and Inspection Service
United States Department of Agriculture
Stop Code 3753, PP3, Cubicle 8-235A
1400 Independence Avenue, SW
Washington, DC 20250
Telephone: (202) 418-8872
Facsimile: (202) 245-5097
Washington, DC 20250
Telephone: (202) 418-8872
Facsimile: (202) 245-5097

If you have any questions regarding this matter please feel free to contact (b) (6)

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Sincerely,

For *MARGA DOM*

Ms. Susan G. Scarcia
District Manager
Philadelphia District Office

Cc:

FSIS - FO/Quarterly Enforcement Report

Mr. James Borda, RD, FSIS, OIEA, Philadelphia, PA

Dr. Hany Sidrak, EARO, FSIS, OFO, Washington, DC

Ms. Susan Scarcia, DM, FSIS, OFO, Philadelphia District Office

Mr. Michael Osifat, DDM, FSIS, OFO, Philadelphia District Office.

Dr. Lynda Lilyestrom, DDM, FSIS, OFO, Philadelphia District Office

Mr. Salah Ibrahim, DDM, FSIS, OFO, Philadelphia District Office

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

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Official Files

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