



United States Department of Agriculture

Food Safety and
Inspection Service

Raleigh District Office

6020 Six Forks Road
Raleigh, NC. 27609
Voice: 919-844-8400
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August 24, 2020

EMAIL

Mr. Jimmy Mays, Owner
Wayne Mays Meat Processing, Est. M21848
541 East Main Avenue
Taylorsville, NC 28681

REVISED NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Mays:

This letter confirms the verbal notification given to you on August 24, 2020, at approximately 11:50am, by the Food Safety and Inspection Service (FSIS) Inspection Program Personnel (IPP) of the intent to suspend the assignment of inspectors for slaughter operations at Wayne Mays Meat Processing, Establishment M21848. This action was initiated in accordance with Title 9 of the Code of Federal Regulations (9 CFR) 500.3, after FSIS determined that your establishment failed to slaughter and handle animals humanely.

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." These documents describe the four components of a systematic approach to humane handling. A review of your systematic approach to humane handling reveals documentation and activities consistent with the four components of a "robust" system as defined. The decision to issue an (NOIE) in lieu of a Notice of Suspension is based on a review of FSIS records identifying your compliance with humane handling regulations; the historical absence and infrequent occurrence of humane handling violations at your establishment; and the successful design and consistent implementation of a robust systematic approach to humane handling.

Background and Authority

The FMIA (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, firm 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 HMSA 7 U.S.C 1901 states, “The Congress finds that the use of humane methods in the slaughter 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.

The HMSA 7 U.S.C 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. Either of the following two methods of slaughtering and handling are hereby found to be humane:

(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; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.”

The HMSA 7 U.S.C 1906 states, “Nothing in this chapter (Humane Methods of Slaughter Act of 1978 – Title 7 of the U.S. Code, Chapter 48) shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter. For the purposes of this section the term “ritual slaughter” means slaughter in accordance with section 1902(b) of this title.”

Under the authorities of the above Acts, FSIS has prescribed rules and regulations for establishments engaged in the slaughter of livestock and the production of meat products,

including requirements pertaining to humane handling of livestock in connection with slaughtering operations in 9 CFR 313. FSIS has also developed Rules of Practice regarding 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 Federal inspection.

Findings/Basis for Action

Inspection program personnel (IPP) identified an egregious Humane Handling incident at M21848, Wayne Mays Meat Processing, at approximately 11:45am on the morning of August 24, 2020. IPP observed an establishment employee load a sow into the knock box to be stunned. As the employee was preparing to stun the sow using a .22 Magnum rifle, IPP retreated to a safe location. IPP heard the first stun attempt, which was immediately followed by vocalization from the sow. As IPP prepared to enter the kill floor again, he observed the employee taking aim to administer a second stun attempt. Following the second stun attempt using the same .22 Magnum rifle, IPP again heard vocalization from the sow. Another member of IPP approached the knock box and observed the sow vocalizing and still standing in the knock box. The employee administered a third stun attempt, again using the same .22 Magnum rifle, which effectively rendered the sow unconscious and the sow remained unconscious through the remainder of the slaughter process. IPP observed the head of the sow and visualized three (3) distinct bullet holes, indicating that all three stun attempts struck the sow. IPP placed US Retain/Reject Tag No. B35852892 on the knock box in accordance with 9 CFR 313.50(c) and notified the Supervisor of the pending enforcement action at approximately 11:50am.

The occurrence of this inhumane handling incident as observed supports a conclusion that your methods of handling livestock violated the provisions of 21 U.S.C. 603, Section 3 (b) of the FMIA, and 7 U.S.C 1901 of the HMSA of 1978. You have failed to meet the requirements of 313.16(a)(1) which says, in part, that “The 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 incident is considered egregious because there were multiple attempts, especially in the absence of immediate corrective measures, to stun an animal versus a single blow or shot that renders an animal immediately unconscious.

However, a review of your systematic approach to humane handling reveals documentation and activities consistent with the four components of a “robust” system as defined in FSIS Directive 6900.2, Revision 2. The decision to issue an (NOIE) in lieu of a Notice of Suspension is based on a review of FSIS records identifying your compliance with humane handling regulations; the historical absence and infrequent occurrence of humane handling violations at your establishment; and the successful design and consistent implementation of a robust systematic approach to humane handling. Furthermore, the Raleigh District Office determined that your establishment is operating under an animal handling program that provides for how your establishment will respond if an unforeseeable event of this type occurs; and there is no basis for concern that the planned response in your animal handling program will not effectively address the problem.

Summary and Conclusion

For these reasons, the suspension of your slaughter process is warranted as provided in 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*”. Before we proceed with the suspension enforcement action, we are affording you the opportunity to demonstrate that the egregious act described above was an anomaly, and that your corrective and preventive measures were thorough and implemented in a manner to prevent recurrence of the incident.

Please provide this office with a written response concerning this Notice of Intended Enforcement (NOIE) within three (3) working days from the date of your receipt of this letter. We will determine further action, if any, based on your response. The corrective actions 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 taken to eliminate the cause of the incident and prevent future recurrences.
3. Describe specifically the future monitoring activity (ies) that your establishment will use to ensure that the actions taken are effective.

It is our hope that this matter can be resolved quickly. If you have any questions, you may call me at 919-208-2945 or contact me via email at todd.furey2@usda.gov. You may also contact Dr. Roger Murphy, Deputy District Manager, at 919-208-2947. We urge your cooperation and voluntary compliance.

Sincerely,

TRAVIS AUXIER Digitally signed by TRAVIS AUXIER
Date: 2020.08.24 14:58:58 -04'00'

Todd Furey
District Manager
Raleigh, NC

cc:

P. Bronstein, AA/FO

H. Sidrak, DAA/FO

M. Watts, EARO/FO

S. Safian, ELD/OIEA

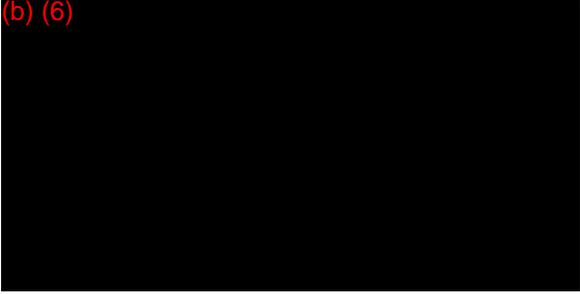
L. Hortert, RD/CID/OIEA

R. Murphy, DDM/RDO/FO

M. Roling, DDM/RDO/FO

A. Thompson, DDM/RDO/FO

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Quarterly Enforcement Report
Establishment File (Est. M21938)