



United State
Department of
Agriculture

Food Safety
and Inspection
Service

Office of
Field Operations

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July 3, 2018

**ELECTRONIC COPY PROVIDED
AND DELIVERED BY COURIER**

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

NOTICE OF SUSPENSION

Dear Mr. Winkle:

This letter confirms verbal notification provided to you by Dr. Mounira Naguib, Deputy District Manager, on July 3, 2018, at approximately 0835 hours EDT, of the Food Safety and Inspection Service's (FSIS) decision 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 of animals in a manner that complies with the requirements prescribed by the Federal Meat Inspection Act (FMIA) and the Humane Methods of Slaughter Act of 1978 (HMSA). Your establishment is in violation of Title 9 of the Code of Federal Regulations (9 CFR), Section 313.15(a)(1). The Rules of Practice, 9 CFR 500.3(b), specify that FSIS may issue a suspension without providing prior notification if an establishment is observed to be 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 Slaughtering 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 Slaughtering 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 required for establishments producing meat and poultry products, including the requirements pertaining to 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 action 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 July 3, 2018, at approximately 0630 hours EDT, the FSIS Supervisory Public Health Veterinarian (SPHV) was performing verification observations of the procedure for captive bolt stunning when Bob Evans Farms (BEF) personnel observed a disabled or slow sow down in the hind legs and in a sitting position. BEF personnel attempted to walk the sow to an isolation pen, but the sow went down and remained in the sitting position. BEF personnel elected to stun the sow with a captive bolt stunner at that location. Two employees trained in the stunning procedure, and a member of establishment management, were assembled. An additional establishment employee was brought in to help restrain the sow. Two captive bolt devices were brought to the area as well as extra ammunition. Marks were placed on the sow’s forehead to identify proper captive bolt placement. The captive bolt device was discharged into the location of the mark on the head. The sow was observed to remain in a seated position, blinking, continued rhythmically breathing, and vocalized loudly. Establishment personnel immediately recognized that the sow was conscious and prepared to take a second shot. A second trained employee picked up the second captive bolt stunner and placed it on the sow’s forehead and discharged the device. This attempt was ineffective. The sow remained conscious, in a seated position, blinked, continued breathing, vocalized loudly, and attempted to back away from the area. BEF personnel again recognized that the sow was conscious. The member of BEF management had reloaded the second captive bolt device, placed and discharged the device into the head, placing the device more rostral on the sow’s forehead. The sow was observed to drop to the floor. BEF personnel assessed the sow for signs of sensibility by looking at the eyes, pricking the nose, looking for rhythmic breathing, and assessing for vocalizations. Finding none, an establishment employee stuck the sow to bleed. The SPHV notified a member of BEF management that a regulatory control of the slaughter process was taken at this time and US Rejected Tag No. B35 654348 was applied to the electrical stunner on the kill floor.

The repetitive occurrence of this inhumane handling incident constitutes an egregious violation of the humane handling requirements and supports a conclusion that your handling of livestock is in violation of the provisions of 21 U.S.C. 603, Section 3 (b) of the FMIA, and 7 U.S.C. 1901 and 1902 of the HMSA of 1978.

You have failed to meet the requirements of 9 CFR 313.15(a)(1) which states in part, *“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.”*

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.

Although your establishment has previously developed and implemented a systematic approach to humane handling in a manner that was considered robust, you have failed to effectively implement your program consistently in a

manner that demonstrates a good history of compliance with the humane handling regulations. Specifically, on March 21, 2018, a NOIE was issued for a similar incident, requiring three (3) attempts with a captive bolt device to effectively stun a sow. The decision to issue a NOS is based on your current status of operating within a deferral period of the NOIE. The issuance of the NOS effectively closes the NOIE.

Please provide this office with a written response to this NOS to include 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.
5. Conduct a review of and assess the corrective actions proffered in response to the NOIE to assure you are not submitting previously proffered corrective actions that have proven to be ineffective.

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:

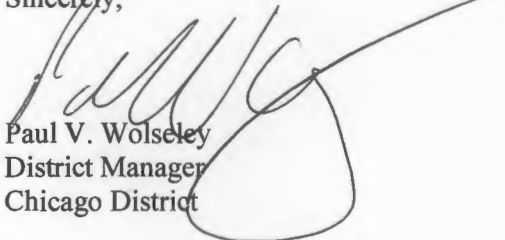
Dr. Keith Gilmore
Executive Associate for Regulatory Operations
USDA, FSIS, OFO
210 Walnut Street, Room 923
Des, Moines, IA 50309
Telephone: (515) 727-8907 or (785) 766-9830

You have the right to a hearing regarding this determination pursuant to the FSIS' Rules of Practice, 9 CFR 500. The Rules of Practice were published in the Federal Register Vol. 64, No. 228 on November 29, 1999. As specified in 9 CFR 500.5, 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, please 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 8-235A
1400 Independence Avenue, SW
Washington, DC 20250
Telephone: (202) 418-8872
Fax: (202) 245-5097

If you have questions regarding this matter, you may contact (b) (6) [REDACTED], or you may contact this office at (630) 620-7474 or by fax at (630) 620-7599.

Sincerely,


Paul V. Wolseley
District Manager
Chicago District