



March 25, 2022

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AND DELEVERED BY COURIER**

Mr. Paul Monahan, Plant Manager  
BEF Foods, Inc.  
Establishment M952  
200 North Wolcott Street  
Hillsdale, MI 49242

## **NOTICE OF INTENDED ENFORCEMENT**

Dear Mr. Monahan:

This letter confirms verbal notification provided to Mr. Ryan Kill, Operations Manager, by Dr. Donald Fickey, District Manager, on March 25, 2022, at approximately 0625 hours EDT, of the Food Safety and Inspection Service's (FSIS) intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP) from your slaughter process at BEF Foods, Inc., (BEF) Establishment M952, located at 200 North Wolcott Street in Hillsdale, Michigan. 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 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), Sections 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, in part, *"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."*

The 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 FSIS may take including withholding actions and/or suspensions, with or without prior notification, and for filing a complaint to withdraw a Grant of Federal Inspection.

### **Findings/Basis for Action**

On March 25, 2022, at approximately 0540 hours EDT, the FSIS Supervisory Public Health Veterinarian (SPHV) was conducting verification observations for captive bolt stunning. A BEF employee observed a down sow laying in a position between the side of a holding pen and gate, blocking the gate from opening. The employee elected to use a handheld captive bolt device to humanely euthanize the sow. The employee placed and discharged the captive bolt device onto the head of the sow. The attempt struck the sow and was ineffective. The sow remained conscious and momentarily rose to a sitting position. The employee reloaded the device and attempted a second stun. The attempt struck the sow and was ineffective. The sow remained conscious, thrusting itself forward using the front legs, with the rear limbs remaining beneath the hindquarters. The employee reloaded the captive bolt device and administered a third attempt. The attempt struck the sow and was ineffective. The sow remained conscious and in a sitting position. A second BEF employee proceeded from the holding pen area to the electrical stunning area to retrieve another handheld captive bolt device. The second employee returned with the device and administered a fourth stun. The fourth attempt effectively stunned the sow, rendering the animal unconscious at that time. The SPHV notified BEF management that the slaughter process was under regulatory control and US Rejected Tag No. B45284992 was applied to the knock box.

The occurrence of this inhumane handling incident is considered egregious in nature and a violation of the humane handling requirements 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 September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, 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 IPP, the Agency provides for regulatory discretion when deciding the enforcement action to be issued, provided an establishment maintains and implements a written systematic approach that meets the criteria for robustness.

Your establishment is currently operating under a written animal handling and welfare program that provides for how your establishment will respond if an event of this nature occurs. Further, during the occurrence of this incident, your employees were implementing the program as written. 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.

Based on the evaluation of this plan, your response in accordance with your animal handling program is expected to effectively address the regulatory issues identified within this letter. Before proceeding with any enforcement action, we are affording you the opportunity to demonstrate why a determination should not be made that your slaughter process is inadequate or to demonstrate that you have achieved regulatory compliance.

Please provide a written response to the FSIS Chicago District Office within three (3) working days of the date of this letter. Your response should address the following:

1. Identify the reason(s) the incident occurred.
2. Describe the action(s) to be implemented that will eliminate the cause and prevent recurrence.
3. Describe the monitoring activity or activities that your establishment will conduct to ensure the actions implemented are effective.
4. Provide any supporting documentation and records associated with these proposed corrective actions and preventive measures.

Please note, the actions as proposed should be specific in detail and include any time and/or date related commitments for completion.

You have the right to appeal this matter. Your appeal should be addressed to the following:

Melissa Moore  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service, USDA  
1400 Independence Ave. SW  
South Building Room 3159  
Washington, DC 20250  
Cell: (202) 450-0330  
[melissa.moore1@usda.gov](mailto:melissa.moore1@usda.gov)

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, Branch Chief  
Enforcement Operations Branch  
Office of Investigation, Enforcement and Audit  
Food Safety and Inspection Service  
United States Department of Agriculture  
Stop Code 3753, PP3, Cubicle 9-235-A  
1400 Independence Ave. SW  
Washington, DC 20250  
Voice: (202) 418-8872  
Fax: (202) 245-5097

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

Sincerely,

GARY  
WELCHER

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for

Dr. Donald B. Fickey  
District Manager  
FSIS Chicago District