



United State  
Department of  
Agriculture

Food Safety  
and Inspection  
Service

Office of  
Field Operations

Chicago District Office  
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Lombard, IL 60148  
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March 22, 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 INTENDED ENFORCEMENT**

Dear Mr. Winkle:

This letter confirms verbal notification provided to you by Dr. Tamara Davis, Deputy District Manager, on March 21, 2018, at approximately 1250 hours EDT, of the Food Safety and Inspection Service's (FSIS) intent 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 regulatory requirements prescribed by the Federal Meat Inspection Act (FMIA) and the Humane Methods of Slaughter Act (HMSA). Your establishment is in violation of Title 9 of the Code of Federal Regulations (9 CFR) 313.15(a)(1). The Rules of Practice, 9 CFR 500.3(b), specify that FSIS may impose a suspension without providing prior notification if it determined that an establishment is 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 March 21, 2018, at approximately 1250 hours EDT, a FSIS Supervisory Public Health Veterinarian (SPHV) observed an egregious event while performing animal handling verification activities at your establishment. The SPHV observed establishment employees attempt to stun a sow that was non-ambulatory disabled and condemned as moribund on antemortem inspection while the sow was sitting with her forelimbs holding the front half of her body upright and her rear end resting on the floor. Establishment personnel marked the sow's forehead for captive bolt placement and had two employees, each with a sort board, restrain the sow. The stunning operator aligned the captive bolt gun on the sow's forehead and discharged. Following the stunning attempt, the sow was dazed; her forelimbs went rigid, her neck was extended, and her eyes rolled back. A few seconds later, the sow began to blink. Establishment personnel attempted to sweep the sow's forelimbs out from under her in order to stick her to bleed, but the sow resisted attempts to lie down. Once the sow began to resist, she then vocalized two to three times. She also regained her balance and remained upright in the front. The establishment supervisor handed a backup pre-loaded captive bolt gun to the stunning operator. The device was placed on the sow's forehead and discharged. After this second stunning attempt, the sow remained standing in the forelimbs, resisted efforts to be swept off her feet again, vocalized, and blinked. The first captive bolt gun was reloaded and handed to the stunning operator who then placed the device and fired. This third stunning attempt rendered the animal insensible. The sow collapsed to the floor and did not respond to physical stimuli to her eye, nose, and forelimbs. The sow was then stuck to bleed. The SPHV took verbal regulatory control and notified (b) (6), that slaughter could not continue at this time. US Reject Tag No. B 35 654347 was applied to the electrical stunner.

The occurrence of this inhumane handling incident constitutes an egregious violation of the humane handling requirements and supports a conclusion that your handling of livestock violated 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**

The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your development and implementation of a systematic approach to humane handling in a manner that is considered robust. Furthermore, the FSIS Chicago District Office has 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. Based on the evaluation of this plan, your response in accordance with your animal handling program is expected to effectively address the issues identified. Thus, 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 this office with a written response concerning this 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 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.

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:

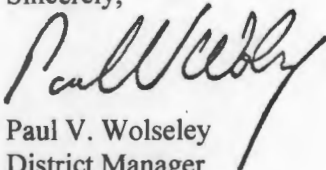
Dr. Keith Gilmore  
Executive Associate for Regulatory Operations  
USDA, FSIS, OFO  
210 Walnut Street, Room 923  
Des, Moines, IA 50309  
Telephone: (515) 727-8907 or (785) 766-9830

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), 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