Overview

• Enforcement Actions
  – How are determinations made
  – Most common findings
  – Findings year to date

• General Response Guidance
  – NOIE
  – NOS
  – NRs and MOIs

• Disputing Facts
Humane Handling Verification Activities

• HATS Categories: Humane Activities Tracking System. These address all regulatory aspects of humane handling and slaughter and are verified by inspection personnel.

1. Inclement Weather
2. Truck Unloading
3. Water and Feed Availability
4. Ante-mortem inspection
5. Suspect and Disabled
6. Electric Prod/ Alternative Object Use
7. Slips and Falls
8. Stunning Effectiveness
9. Conscious Animals on the Rail
Potential Enforcement Actions

• The agency will evaluate certain information during an animal handling issue to determine whether a Notice of Intended Enforcement or Suspension is warranted.
  – Recent Humane Handling Issues
  – Consistently meeting the humane handling requirements
  – Operating under a robust systematic approach
  – Demonstrating robustness of program through records and providing record access to IPP
### Systematic Vs. Robust Systematic

<table>
<thead>
<tr>
<th>Systematic</th>
<th>Robust</th>
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<tr>
<td>1. Asses the ability of their livestock handling and slaughter practice to minimize distress and injury to livestock.</td>
<td>In addition to a systematic Approach, FSIS would consider a program to be robust if the following were also available:</td>
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<td>2. Design facilities and implement handling practices that minimized distress and injury to livestock.</td>
<td>1. Written Procedures</td>
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<td>3. Periodically evaluate facilities and handling methods to ensure that they continue to minimize distress and injury to livestock.</td>
<td>2. Written Records</td>
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<td>4. When necessary, modify facilities and handling methods to ensure that they continue to minimize distress and injury to livestock.</td>
<td>3. FSIS Review</td>
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Robust: Can help prevent problems creating records of your efforts
If program is robust, a NOIE will be issued instead of a Suspension for an egregious event.
Enforcement Actions 2019

- 37 enforcement actions from January 2019 to present
  - 10 NOIE
  - 27 Suspension
Enforcement Actions cont.

• The majority of enforcement actions were due to failure to render unconscious on first stun.

• Two cases were due to dragging an unconscious animal and hitting a cow with a shovel.

• Humane Handling Report
Common issues

– Back up stun didn’t work/misfire
– Needed to go home and get the back up
– Located in another room
– Door to where back up stunner was kept was locked
RESPONDING TO NOTICE OF INTENDED ENFORCEMENT AND NOTICE OF SUSPENSION LETTERS
What This Means For a Plant

• If an egregious event occurs:
  – Details about what signs were observed by IPP or by plant personnel are critical
  – Video surveillance helps
  – Prompt second stuns of an animal that is not fully conscious
    • Have back up stunner readily available and nearby.
  – Robust program will help
    • Generally, egregious acts will result in NOIE instead of NOS if company operates under Robust systematic program.
NOIE and NOS Response Process

• Expect the District to ask additional questions
  – Have someone review the response before sending if possible.
• Respond promptly with additional information and clarification
  – NOIE response is required within 3 days otherwise it may lead to suspension if no response is received or no meaningful response is provided in a timely manner.
  – NOS doesn’t have this time restriction but the longer you take to respond, the longer you are shut down.
• Back and forth can be minimized by:
  – Including proposed dates for action not yet done
  – Including all referenced documents and programs
• This is normal.
Examples of Questions that may be asked during Enforcement Action

• Agency response may imply that you need to implement something new or increase verification. It's ok to push back if they are unnecessary.

• Ex: “Please clarify if you will increase the trailer unloading verification frequency.
  – If humane handling enforcement action was for a miss-stun, pushing back on keeping trailer unloading frequency is appropriate.

• Ex: “Please clarify what training will be provided for all employees.
  – Do all employees need to be trained? Or just those directly related to enforcement action?
Be mindful of your responses

• If you proffer to do something, the agency will hold you to it. These are viewed as corrective actions/preventive measures and they will be verified during the deferral or abeyance period.
  – Check with head departments. Can corrective action be done?
    • Maintenance:
      – Can equipment be repaired by the timeframe proffered?
      – Can the proffered equipment change be performed?
      – Do you need to order a piece of equipment?
    • Human Resources:
      – Can training be performed on the dates proffered?
      – Will everyone be present on training days?
      – Documentation of training?
      – Employee changes
    • New Policies:
      – Implementation date
      – Sign offs
      – Training
Next Steps after your responses are adequate

• Company will be placed in either deferral or abeyance.

• Verification plan will be generated.

• Inspector will verify that you are doing everything you said you would do.

• 30, 60, 90 day follow ups will occur.

• Enforcement action will close if company performs corrective actions appropriately and there are little to no non compliances.
APPEALS
Appealing After Abeyance or Deferral

• Can appeal after responding and getting NOIE or suspension in abeyance

• Explain why...
  – “Full operation was our key priority, but upon further consideration, we thought it appropriate to appeal
  – Avoid long delays
If you plan to appeal...

- Do not apologize or express regret for failure
  - Instead, “we regret the agency found it necessary...”
  - Appeal to EARO, info found at the end of enforcement letter

In accordance with 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Executive Associate for Regulatory Operations
USDA/FSIS/OFO
Room 3157, South Agriculture Building
1400 Independence Ave., SW
Washington, DC 20250-3700
Telephone: 202-720-3697
Facsimile: 202-690-3287

[Link to EARO contact info]
What to Include In Appeals

• Photos
• Videos
• Time between first stun and final effective stun
• Statements from any personnel involved, when helpful
Choose Your Language Carefully

• *This*: The animal was unconscious
• *Or this*: It was clear that the animal was unconscious based upon the absence of rhythmic breathing, no righting reflex, no corneal reflex, tongue hanging straight out, etc.
Seek Outside Input

• Call Meat Institute
• Disclose all facts, enforcement history up front
• When more help needed (i.e., boots on the ground), call consultants – NAMI staff can help you connect
RESPONDING TO NRS, WEEKLY MEETINGS AND MOIS
Review NRs Issued In Detail

- Appeal informally or formally (discuss strategies), anytime irrelevant or repetitive citations are listed in block 6 of the NR.
- Address any inaccuracies, opinion, subjective information, or irrelevant information in block 10 narrative through appeal process.
Use Weekly Meetings for Dialogue

• Raise systematic approach
  – Solicit concerns
• Communicate changes in personnel, equipment, procedures
• Tell them about training – like this conference
• Review MOIs that chronicle weekly meetings
  – Respond if inaccurate or incomplete
• Best option is responding through PHIS access
What to Include In Appeals

• Photos
• Videos
• Time between first stun and final effective stun
• Statements from any personnel involved, when helpful
• Analyze the head after a failed captive bolt
  – Photograph point of entry
  – Split skull and photograph the path/depth of bolt
Writing Your Appeals

• Be firm, but respectful – stick to the facts!
• When you reference agency policy, quote it
• Be organized
  – Explain
  – Use subheads for various key points/arguments
  – Summarize your messages at the end
  – Attach all supporting documents
  – Attach entire appeal history as it moves up the chain
• Do not use the appeal process as complaint vehicle, that is a different process – see FSIS Directive 4735.7
Where to Send Responses and Appeals

• Appeals should be written
• Follow FSIS chain of command
  – May start with the author or first level supervisor
• Use FSIS appeal compliance guide
  – Provides normally expected timelines
  – Provides appropriate chain of command to follow
  – Sets standards applied by FSIS for agency personnel
• Be sure to have the mailing address of the Frontline Supervisor and District Office on hand
• Use your NAMI Regulatory Services Staff for assistance!
Thank you!

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