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Changing the World for Animals

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October 28, 2020

Submitted electronically to:

terri.nintemann@fsis.usda.gov

Paul.Kiecker@fsis.usda.gov (cc)

Terri Nintemann, Deputy Administrator
Office of Policy and Program Development
United States Department of Agriculture
Food Safety and Inspection Service
331-E Jamie Whitten Building
1400 Independence Avenue, SW
Washington, D.C. 20250

Dear Deputy Administrator Nintemann,

On behalf of Animal Outlook (“AO” — formerly Compassion Over Killing), I write to renew our request urging you to revoke Amick Farms’ (P-7927) poultry line speed waiver for failure to operate according to good commercial practices (“GCP”) as required by 9 CFR 381.65(b).

I. Background

On September 24, 2019, AO wrote to FSIS Under Secretary for Food Safety, Dr. Mindy Brashears, requesting revocation of Amick Farm’s poultry line speed waiver.¹ Our letter cited AO’s 2018 investigation of Amick Farms which revealed birds being punched, shoved, and thrown on the slaughter line, as well as slowly drowning in electrified stunning baths during equipment break-downs.² In addition, the letter referenced previous GCP incidents at Amick Farms, including both noncompliance records (“NR”) and Memoranda of Interviews (“MOI”) involving birds picked up by their wings and tossed in the air as well as other incidents of “humane handling noncompliance.”

On behalf of Under Secretary Brashears, you responded to our letter on December 2, 2019 but declined to revoke Amick Farms’ line speed waiver, stating that:

¹ See attached AO Letter to Mindy Brashears, Sep. 24, 2019.

² ANIMAL OUTLOOK, *Amick Farms: High Speed Chicken Slaughterhouse Exposed*, <https://animaloutlook.org/investigations/amick-farms/#:~:text=Amick%20Farms%3A%20High%2DSpeed%20Chicken%20Slaughterhouse%20Exposed&text=Powerful%20investigative%20footage%20by%20Animal,dangerously%20fast%20kill%20line%20speeds> (last visited Oct. 26, 2020).

According to FSIS records, P7927 has had no Good Commercial Practice (GCP) incidents documented since September 2018, the date when establishments had to meet the new criteria for the line speed waiver. From that date forward, the establishment has operated in accordance with the GCP's and has thus far demonstrated its ability to maintain the line speed waiver criteria.³

As discussed below, we hereby renew our request to revoke Amick Farms' line speed waiver based on recent information obtained through FSIS.

II. Records obtained by AO through a FOIA request reveal repeated GCP violations at Amick Farms over the past several months that warrant revocation of its line speed waiver.

The Poultry Products Inspection Act ("PPIA") states plainly in 9 CFR 381.65(b) that "Poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding."⁴

Importantly, FSIS has explicitly mandated compliance with this requirement in the criteria for poultry line speed waivers. According to FSIS' September 28, 2018 Federal Register notice, "to be eligible for a line speed waiver, establishments must also have not had an NR for violation of GCPs (9 CFR 381.65(b)) in the past 120 days."⁵ Thus, an establishment's ability to maintain a line speed waiver is directly tied to its ability to avoid GCP incidents.

Across numerous documents — including Federal Register Notices, directives, and guidance documents — FSIS has repeatedly identified when GCP incidents occur in violation of 9 CFR 381.65(b). FSIS has stated that an NR is warranted for GCP incidents in the following circumstances:

- When "birds are dying other than by slaughter"⁶
- "When noncompliance occurs repeatedly, or when an establishment fails to prevent adulterated product from being produced or shipped."⁷
- "[W]hen an ongoing pattern or trend develops where birds are not being slaughtered in a manner that results in thorough bleeding of the carcasses, that results in birds entering

³ See attached Letter from Terri Nintemann, Assistant Administrator – Office of Policy and Program Development, Dec. 2, 2019.

⁴ 9 CFR § 381.65(b).

⁵ *Petition To Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System; Criteria for Consideration of Waiver Requests for Young Chicken Establishments To Operate at Line Speeds of Up to 175 Birds per Minute*, 83 Fed. Reg. 49,048 (Sept. 28, 2018).

⁶ *Ibid.*

⁷ UNITED STATES DEPARTMENT OF AGRICULTURE, *Food Safety and Inspection Service – Quarterly Enforcement Reports*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/regulatory-enforcement/quarterly-enforcement-reports/qer-q3-fy2020> (last visited Oct. 27, 2020).

the scalding before their breathing has stopped, or that otherwise involves their being handled in a systematic way that results in their dying otherwise than by slaughter.”⁸

- “[I]f the birds are not being appropriately bled out, with the establishment's handling practices resulting in the production of adulterated product.”⁹
- “[W]hen IPP observe frequent or repeated instances of birds not being slaughtered in a manner that results in thorough bleeding of the carcasses or of birds still breathing when they enter the scalding, and the process that the establishment is employing is not able to prevent these problems from reoccurring.”¹⁰

On October 23, 2020, FSIS fulfilled AO's FOIA request for records “pertaining to Good Commercial Practice incidents involving Amick Farms (Establishment Number P7927).” In fulfillment, FSIS provided records listing multiple GCP violations at Amick Farms, including the following:¹¹

- **April 29, 2020:** “In the Picking Room area at the prescalding line #2 at approximately 1627 hours, I observed a bird still breathing when entering the scalding. At 1629 hours, I observed another bird entering the scalding still breathing. Both birds were conscious and had uncut necks. [REDACTED] was immediately notified of my observation. The corrective action of the Establishment was to replace the back-up cutter on line #2 with a more experienced back-up cutter.”
- **June 18, 2020:** “In the Picking Room area at the prescalding line #1 at approximately 1656-1658 hours, I observed 5 birds still breathing when entering the scalding. All birds were conscious and had uncut necks. [REDACTED] was immediately notified of my observation. The corrective action of the Establishment was to replace the back-up cutter on kill line #1 with a more experienced back-up cutter.”

These records bolster AO's prior request to revoke Amick Farms' line speed waiver. In your December 2, 2019 letter, you declined our request on the grounds that Amick Farms has “demonstrated its ability to maintain line speed waiver criteria” as it “*has had no Good Commercial Practice (GCP) incidents* documented since September 2018.” By your agency's own records, this statement is no longer true.

As documented by FSIS, in the span of only fifty days, the exact same issue — a complete failure in back-up cutting — occurred on two separate slaughter lines, resulting in *at least* seven individual birds entering the scalding tanks fully conscious. The conclusion is undeniable— Amick Farms is simply unable to maintain process control and accordingly, has failed to meet FSIS' requirements for maintaining a line speed waiver. As such, Amick Farms' line speed waiver should be revoked immediately.

⁸ UNITED STATES DEPARTMENT OF AGRICULTURE, *FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices* (July 3, 2018).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ See attached Table: MOI's in Response to FOIA 2021-017 (Oct. 13, 2020).

Puzzlingly, the aforementioned incidents were recorded by FSIS personnel as MOI's and not NR's. However, this classification is directly at odds with every single FSIS definition advising when an NR should be issued (as detailed above) including: (1) "birds dying other than by slaughter," (2) "repeated non-compliance," (3) "failure to prevent adulterated products from being produced," (4) an "ongoing pattern . . . that results in birds entering the scalders before their breathing has stopped," (5) birds "not being appropriately bled out," (6) "handling practices resulting in the production of an adulterated product," and (7) "birds still breathing when they enter the scalders."

In fact, FSIS Directive 6110.1, *Verification of Poultry Good Commercial Practices*, even provides an example for when an NR (versus an MOI) should be issued and the fact pattern is nearly identical to the incidents that occurred at Amick Farms:

On Monday, February 5, 2018 at approximately 06:08 hours, I, Dr. Jones IIC, observed the following noncompliance of regulation 381.65(b). While performing a Good Commercial Practices verification, thirty (30) cadaver birds were observed at the rehang station, between 06:00 and 06:10 hours. *The cadaver birds were removed from the rehang station, and none of the birds had a bleeding cut on the neck.*¹²

Accordingly, these incidents are more than sufficient to justify waiver revocation. Time and again, Amick Farms has demonstrated that it is simply incapable of maintaining process control. The aforementioned GCP incidents serve only to further emphasize the same, disturbing trends and operational deficiencies documented previously in AO's investigation of Amick Farms as well as FSIS very own records. Moreover, these records directly negate your December 2, 2019 justification for allowing Amick Farms to maintain its line speed waiver. As such, we once again urge you to revoke Amick Farms' line speed waiver.

If you have any questions regarding this request, please contact me at (804) 307-4102 or wlowrey@animaloutlook.org. I look forward to receiving your response to this request and thank you for your consideration.

Sincerely,



Will Lowrey
Counsel
Animal Outlook

¹² UNITED STATES DEPARTMENT OF AGRICULTURE, *FSIS Directive 6110.1, Verification of Poultry Good Commercial Practices* (July 3, 2018).

EstNbr	EstName	MOINbr	Date	Task Code	TaskName	Status	MOI Agenda
P7927	AMICK FARMS, LLC	YGC0018043 429G	29APR2020	04C05	Poultry Good Commercial Practices	Finalized	<p>Est. P-7927, Amick Farms LLC, April 29, 2020 18:30 hours. In attendance: [redacted] and [redacted] in the Picking Room area at the prescaler line #2 at approximately 1627 hours. I observed a bird still breathing when entering the scalders. At 1629 hours, I observed another bird entering the scalders still breathing. Both birds were conscious and had uncut necks. [redacted] was immediately notified of my observation. The corrective action of the Establishment was to replace the back-up cutter on line #2 with a more experienced back-up cutter. Prescaler line #2 was rechecked at 1823 hours and was found acceptable. I notified [redacted] that this MOI will be forwarded to the District Office and the District Veterinary Medical Specialist (DVMS) in case additional follow-up is recommended. Respectfully, [redacted] P-7927 Amick Farms LLC</p>
P7927	AMICK FARMS, LLC	YGC2021060 418G	18JUN2020	04C05	Poultry Good Commercial Practices	Finalized	<p>Est. P-7927, Amick Farms LLC, June 18, 2020 17:03 Hours. In attendance: [redacted] and [redacted] in the Picking Room area at the prescaler line #1 at approximately 1656-1658 hours. I observed 5 birds still breathing when entering the scalders. All birds were conscious and had uncut necks. [redacted] was immediately notified of my observation. The corrective action of the Establishment was to replace the back-up cutter on kill line #1 with a more experienced back-up cutter. Prescaler line #1 was rechecked at 1725 hours and was found acceptable. I've notified [redacted] that this MOI will be forwarded to the District Office and the District Veterinary Medical Specialist (DVMS) in case additional follow-up is recommended. Respectfully, [redacted] P-7927 Amick Farms LLC</p>



United States Department of Agriculture

Food Safety and
Inspection Service

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20250

DEC 02 2019

Mr. Will Lowrey
Compassion Over Killing
P.O. Box 9773
Washington, D.C. 20016

Dear Mr. Lowrey:

Thank you for your letter of October 1, 2019, to Deputy Under Secretary Mindy Brashears concerning the poultry handling practices and the line speed waiver of Amick Farms (Establishment P7927). I appreciate the opportunity to reply.

According to FSIS records, P7927 has had no Good Commercial Practices (GCP) incidents documented since September 2018, the date when establishments had to meet the new criteria for the line speed waiver. From that date forward, the establishment has operated in accordance with GCPs and has thus far demonstrated its ability to maintain the line speed waiver criteria.

Again, thank you for writing.

Sincerely,

A handwritten signature in cursive script that reads "Terri Nintemann".

Terri Nintemann
Assistant Administrator
Office of Policy and Program Development



P.O. Box 9773, Washington, DC 20016

October 1, 2019

Dr. Mindy Brashears
Deputy Under Secretary for Food Safety
United States Department of Agriculture
Rm. 210-W, Jamie L. Whitten Building
12th Street and Jefferson Drive SW
Washington, DC 20250

Dear Dr. Brashears,

On behalf of Compassion Over Killing (“COK”), I am writing to follow up on COK’s request from December 2018 that the Food Safety and Inspection Service revoke the slaughter line speed waiver for Amick Farms (P-7927) (“Amick”).

Amick is one of the twenty young poultry slaughter plants that were part of the original pilot program allowing for reduced inspection and increased line speeds, the HACCP-based Inspection Models Project (“HIMP”).¹ In September 2018, after the transition to the New Poultry Inspection System (“NPIS”), the agency announced that Amick and the other nineteen former chicken HIMP plants would be required to meet new criteria in order to continue running their slaughter lines at an increased speed of 175 birds per minute (“bpm”).² One such criterion is compliance with good commercial practices (“GCPs”). If Amick or any other poultry plant “is unable to meet any of the criteria within 120 days,” then “FSIS may revoke its line speed waiver.”³

¹ USDA, FSIS, *HACCP-Based Inspection Models Project* (Mar. 24, 2015), <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/haccp/haccp-based-inspection-models-project/history-HIMP>.

² *Petition to Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System; Criteria for Consideration of Waiver Requests for Young Chicken Establishments to Operate at Line Speeds of Up to 175 Birds per Minute*, 83 Fed. Reg. 49,048 (Sept. 28, 2018).

³ *Id.* at 49,052.

Amick has a long and continuous history of violating GCPs, as the agency's own records and a recent investigation by COK both show. In 2018, a COK investigator was employed at Amick and documented the plant's consistent failure to slaughter poultry "humanely" and "in accordance with good commercial practices."⁴ (COK notified the agency and provided documentary evidence of its investigation on October 24, 2018.⁵) Specifically, COK's investigation showed birds being punched, shoved, and thrown on the slaughter line, as well as slowly drowning in electrified stunning baths during equipment break-downs.⁶ COK also obtained evidence that birds were scalded alive in vats of hot water.⁷ Following COK's investigation, Amick's president acknowledged that these actions were "clear violations of [its] animal welfare policies."⁸

COK's investigation was far from the first time that Amick had failed to follow GCPs. In May 2018, a federal inspector issued a noncompliance report to Amick after seeing employees picking up birds by wings and tossing them in the air.⁹ In addition, on at least two other occasions in recent years, Amick received Memoranda of Interviews for "humane handling noncompliance and violation of NCC guidelines."¹⁰ Yet despite those repeated warnings by the agency, Amick still has failed to correct its violations of GCPs.

In analogous circumstances, the agency recently revoked the line speed waiver of Claxton Poultry Farms ("Claxton")—another one of the original 20 HIMP plants—after Claxton failed to meet the agency's *salmonella* performance standards.¹¹ Claxton apparently asked to reduce its line speeds temporarily to "minimize potential animal

⁴ See *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. 56,624, 56,624–25 (Sept. 28, 2005).

⁵ See Letter from Keith Jamieson, Counsel, COK to Larry Hortert, Regional Director, U.S. Department of Agriculture, Food Safety & Inspection Service, Office of Investigation, Enforcement, & Audit, Southeast Region (Oct. 24, 2018) (hereinafter "FSIS Addendum").

⁶ COK, *Amick Farms: High-Speed Chicken Slaughterhouse Exposed* (Nov. 16, 2018), <http://cok.net/inv/amick/>.

⁷ *Id.*

⁸ Justin Wm. Moyer, *Maryland chicken plant investigated after video shows alleged animal abuse*, Wash. Post, Nov. 16, 2018, https://www.washingtonpost.com/local/public-safety/maryland-chicken-plant-investigated-after-video-shows-alleged-animal-abuse/2018/11/16/48b61512-e91f-11e8-85cb-5d266381f5b4_story.html.

⁹ Amick Noncompliance Report (May 15, 2018), *attached as Ex. 1 to FSIS Addendum*.

¹⁰ Amick Memorandum of Interview (Sept. 6, 2016), *attached as Ex. 4 to FSIS Addendum*; see also Amick Memorandum of Interview (Apr. 8, 2016), *attached as Ex. 2 to FSIS Addendum*.

¹¹ Catherine Boudreau, *USDA Revokes a Poultry Plant's Line-Speed*, Politico (Mar. 29, 2019), <https://www.politico.com/newsletters/morning-agriculture/2019/03/29/usda-revokes-a-poultry-plants-line-speed-waiver-564222>.

welfare issues.”¹² Like Claxton, Amick has a history of noncompliance and “animal welfare issues,” which show that the plant cannot meet the agency’s new criteria for a line speed waiver. In addition, Amick has shown an inability to demonstrate consistent process control—a requirement for participation in NPIS¹³— due to its frequent line breakdowns and hanging of dead birds for processing.¹⁴

In short, Amick grossly falls short of adhering to GCPs, and I reiterate COK’s request that the agency revoke Amick’s line speed waiver. I have reattached to this letter COK’s December 2018 memorandum to the agency, which outlined the findings from COK’s investigation and enclosed some of Amick’s previous citations for loss of process control and failure to follow GCPs.

Please notify me at your earliest convenience whether the agency intends to revoke the line speed waiver as COK has requested. I look forward to hearing from you.

Best regards,

A handwritten signature in cursive script, appearing to read "Will Lowrey".

Will Lowrey
Counsel
Compassion Over Killing

Enclosures

¹² *Id.*

¹³ See *Modernization of Poultry Slaughter Inspection*, 79 Fed. Reg. 49,566, 49,567 (Aug. 21, 2014).

¹⁴ See FSIS Addendum, *supra*, at 10; Amick Noncompliance Report, *supra*.