



Animal Welfare Institute

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January 18, 2023

Via Email

Office of Policy and Program Development
Food Safety and Inspection Service
U.S. Department of Agriculture
Washington, DC
FSISPetitions@usda.gov

**RE: Petition for Revision of Directive 8160.1, the Custom Exempt Review Process,
Regarding Oversight of Humane Handling and Slaughter of Animals at Custom-
Exempt Slaughter Establishments**

I. Introduction

During the past decade, several attempts have been made in Congress and state legislatures to expand the scope of “custom” (also referred to as “custom-exempt”) slaughter. These bills attempt to increase the number of slaughter establishments in the United States that are exempt from inspection for the killing of animals and/or the processing of carcasses. Passage of such legislation would in effect allow the retail sale of uninspected meat, with potential impacts on both food safety and animal welfare. To better understand the ramifications of expanding custom-exempt slaughter, in 2020, the Animal Welfare Institute (AWI) initiated a review of the practice in terms of its impact on the treatment of animals at slaughter and the extent of oversight by the U.S. Department of Agriculture’s Food Safety and Inspection Service (FSIS).

II. Interests of the Petitioner

AWI is a Washington, DC-based nonprofit founded in 1951. Since its creation, AWI has been dedicated to reducing animal suffering caused by people. AWI seeks better treatment of animals everywhere—in the laboratory, on the farm, in commerce, at home, and in the wild. This work includes efforts to improve the welfare of animals used in agriculture. In furtherance of its mission to alleviate animal suffering, AWI promotes higher-welfare farming systems and works to raise awareness about the cruel realities of conventional, industrial animal agriculture.

As part of AWI's goal to promote improved farming systems, the organization advocates on behalf of animals at slaughter. AWI educates its members and the public about conditions animals face at slaughter by monitoring enforcement of the Humane Methods of Slaughter Act (HMSA) at both the federal and state level, conducting investigations, and publishing and regularly updating its reports *Legal Protections for Farm Animals at Slaughter*, *Humane Slaughter Update: Federal and State Oversight of the Welfare of Farm Animals at Slaughter*, and *The Welfare of Birds at Slaughter in the United States*. AWI advocates for improved enforcement of laws and the expansion of protections for animals at slaughter via regulation, legislation, and voluntary industry standards.

III. Factual Background

In 2009, the FSIS revised its Custom Exempt Review Process Directive, 8160.1 ("the Directive") to clarify that the HMSA applies at these facilities. The Directive instructed FSIS personnel to assess several factors, including any egregious acts or repeated noncompliance with humane slaughter, to determine whether the custom-exempt facility being reviewed is handling animals in a humane manner. However, it has been unclear to what degree – if at all – this policy change protects farm animals killed under custom-exempt slaughter.

In 2020, AWI initiated research to determine whether applying the HMSA to custom-exempt slaughter has provided adequate protection to the animals killed at these establishments. We submitted Freedom of Information Act (FOIA) requests related to the USDA's oversight of the custom-exempt process. This included requesting (1) all custom-exempt review forms for calendar year 2019, (2) a list of federal custom-exempt establishments in 2019-2020, and (3) a list of plants losing eligibility for custom-exempt status in 2019 and 2020. We also reviewed FSIS inspection records (Noncompliance Records and Memorandums of Interview (MOI)) issued in 2018-2020 to federally inspected slaughter plants that also perform custom-exempt slaughter. Finally, we submitted questions related to the custom-exempt review process to the FSIS through its "AskFSIS" web-based application, and we reviewed AskFSIS queries submitted by others, including FSIS inspection personnel and custom-exempt slaughter establishments, during 2018 and 2019.

After AWI initiated its review of custom-exempt slaughter in early 2020, FSIS revised the Directive in September 2020 and again in April 2022 (see Exhibit 1). However, these revisions have not addressed AWI's concerns regarding the treatment of animals at custom-exempt establishments that initially prompted the review. Moreover, we have no reason to believe that a review of more recent enforcement records would lead to a different result.

Below are the findings of AWI's research. (See pages 3-4 and 6-8 of Exhibit 2 for details.)

A. Reviews of custom-exempt establishments are not being regularly conducted.

- B. Inspectors may not be observing the handling and slaughter of birds at custom-exempt establishments.
- C. Inspectors are not observing slaughter when reviews are conducted at custom-exempt livestock slaughter establishments.
- D. Very few humane violations are recorded during custom-exempt reviews.
- E. Some federally inspected plants use custom status to avoid receiving violations.
- F. Establishments suspended from federal inspection are allowed to continue slaughtering animals if they possess a custom exemption.
- G. Animal neglect and abuse is occurring at custom-exempt establishments.

IV. Requested Action

AWI requests that the following changes be made to the FSIS's Custom-Exempt Review Process (Directive 8160.1):

- A. The Directive should make clear that custom-exempt reviews are to be scheduled for a date and time when *slaughter* (not *slaughter or processing*) is being performed so that FSIS inspection personnel may observe antemortem handling, stunning, and slaughter of animals.
- B. Regulations of the HMSA currently identified as mere "voluntary welfare practices" under the Directive should be upgraded to requirements.
- C. The Directive should instruct inspectors conducting custom-exempt reviews in federally inspected establishment to document any observed HMSA or PPIA good commercial practice violations in a Memorandum of Interview.
- D. To close the loophole that custom-exempt slaughter offers to operations that are also federally inspected, the FSIS should clarify in the Directive and elsewhere that an animal must be declared for federal inspection at arrival on the premises of the establishment (as opposed to at antemortem inspection).
- E. The Directive should require that inspectors who observe incidents of possible animal neglect or abuse of custom-exempt animals while performing federal inspection or a custom-exempt review contact the appropriate local or state authorities to notify them that the state's animal cruelty law may have been violated.
- F. The Directive should be revised to require the suspension of eligibility to perform

custom-exempt slaughter for any establishment under suspension of federal inspection for violation of humane handling and/or food safety regulations. In addition, any establishment that loses its grant of federal inspection should also lose its eligibility to perform custom-exempt slaughter.

V. Conclusion

Custom-exempt slaughter in the United States poses a serious risk to animal welfare. All evidence reviewed by AWI points to animals at custom-exempt establishments being at high risk for inhumane treatment. Custom-exempt plants are not regularly reviewed, and in many cases when they are reviewed, slaughter itself is not observed. Very few HMSA violations are documented in custom-exempt reviews, despite the fact that federal inspection records indicate that serious non-compliances are occurring. Plants suspended from federally inspected slaughter are still allowed to perform custom-exempt slaughter. Eligibility to conduct custom-exempt slaughter is rarely if ever removed.

From the information AWI obtained from the USDA, we have concluded that the FSIS's purported application of the federal humane slaughter law to custom-exempt slaughter has had little or no positive effect on the welfare of animals subject to custom-exempt slaughter. The FSIS does not apply the HMSA to custom-exempt slaughter in any meaningful way.

The FSIS should revise its Custom-Exempt Review Process Directive to better protect animals and to avoid misleading the public regarding its supervision of this form of slaughter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dena Jones", with a stylized flourish at the end.

Dena Jones
Director, Farm Animal Program
Animal Welfare Institute

Attachments

Exhibit 1

USDA-FSIS Directive 8160.1, Custom Exempt Review Process

April 2022

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

8160.1
Revision 1

4/25/22

CUSTOM EXEMPT REVIEW PROCESS

I. PURPOSE

- A. This directive provides instructions to Office of Investigations, Enforcement and Audit (OIEA), Compliance and Investigations Division (CID), Compliance Investigators (CIs) on how to conduct reviews of custom exempt facilities that are not located at official establishments.
- B. This directive provides instructions to Office of Field Operations (OFO), Inspection Program Personnel (IPP), on how to conduct reviews of custom exempt facilities that operate at official establishments.
- C. This directive provides the methodologies that OIEA CID Regional Directors (RDs) or designees, OFO District Managers (DMs) or designees, and the OIEA Enforcement Operations Staff (EOS) are to apply when determining actions based on custom exempt review findings, documentation, and referral.
- D. This directive has been revised to incorporate the instructions from FSIS Notice 67-20, *Retail Exempt and Custom Exempt Tasks in the Public Health Information System*, for IPP to submit copies of FSIS Form 8160-1, *Exempt Facility Review Report*, to the District Office and to reflect current Public Health Information System (PHIS) functionality.

KEY POINTS:

- *Requirements applicable to custom exempt facilities and operations*
- *Frequencies of custom exempt reviews*
- *Methods for conducting and documenting reviews of custom exempt facilities and operations*
- *Roles and responsibilities of CIs, IPP, RDs and DMs*

II. CANCELLATION

FSIS Directive 8160.1, *Custom Exempt Review Process*, 9/28/2020
FSIS Notice 67-20, *Retail Exempt and Custom Exempt Tasks in the Public Health Information System*, 12/16/2020

III. BACKGROUND

DISTRIBUTION: Electronic

OPI: OPPD

A. The Federal Meat Inspection Act ([FMIA](#)) (21 U.S.C. 623(a)) and the Poultry Products Inspection Act ([PPIA](#)) (21 U.S.C. 464(c)(1)(B)), identify the custom slaughtering and preparation activities that are exempt from Federal inspection. The slaughtering or preparation of an owner's animal exclusively for use in the household of such owner, by him and members of his household and his nonpaying guests and employees, is exempt from Federal inspection.

B. The FMIA (21 U.S.C. 623(d)) and the PPIA (21 U.S.C. 464(e)) provide that the adulteration and misbranding provisions apply to articles that are exempted from inspection. The regulations also state that adulteration provisions of the Acts apply to products exempt from inspection, including custom exempt product ([9 CFR 303.1\(f\)](#) and [381.10\(a\)\(4\)](#)).

C. In order to maintain sanitary conditions and prevent the production of adulterated product, FSIS has promulgated regulations for custom exempt operations in [9 CFR 303.1](#) and [381.10\(a\)\(4\)](#). Under these regulations, operators who conduct custom exempt livestock operations must prepare meat food products under sanitary conditions in compliance with [9 CFR 303.1\(a\)\(2\)\(i\)](#). The sanitation regulations in [9 CFR 416.1](#) through [9 CFR 416.6](#), except for [9 CFR 416.2\(g\)\(2\) through \(6\)](#), apply to livestock facilities that conduct custom exempt operations, because products not produced under the sanitary conditions required in these regulations would be considered adulterated. If custom exempt livestock operations are conducted at a location within a Federal establishment, all of the provisions of [9 CFR part 416](#) apply. Poultry custom exempt operations must slaughter and process under such sanitary standards, practices and procedures as will result in the preparation of poultry products that are sound, clean and fit for human food, per [9 CFR 381.10\(a\)\(4\)](#).

NOTE: The Sanitation Performance Standards in [9 CFR 416.1 through 416.6](#) are not incorporated by reference into the poultry custom exempt regulations. A facility may adopt these provisions to meet the sanitary standards cited in [9 CFR 381.10\(a\)\(4\)](#).

D. Custom exempt livestock meat food products cannot contain [Specified Risk Materials](#) (SRMs) because such materials adulterate products. Non-ambulatory disabled cattle delivered by the owner are not eligible for custom slaughter or processing. The Agency allows custom exempt operators to slaughter for human food cattle that become non-ambulatory disabled after they are delivered by the owner to the custom exempt slaughter facility if the operator does not observe any other condition that would render the animal unfit (i.e., adulterated) for human food. (See: [\[Docket No. FSIS-2008-0022\]](#)).

E. Inedible materials, including SRMs, resulting from custom exempt slaughter or processing must be disposed of in accordance with [9 CFR 303.1\(b\)\(4\)](#), [325.11\(a\)](#), and [381.193\(a\)](#).

F. The FMIA (21 U.S.C. 623(a)) and [9 CFR 316.16](#) require custom exempt livestock meat food products to be plainly marked "Not for Sale" immediately after being prepared and to be kept so identified until delivered to the owner. The PPIA has no explicit labeling requirements for custom exempt poultry products; however, [9 CFR 381.10\(a\)\(4\)](#) requires the shipping containers of such poultry products to bear the owner's name and address and the statement "Exempted – P.L. 90-492."

G. Custom exempt livestock slaughter operators must comply with the Humane Methods of Slaughter Act ([HMSA](#)). Poultry slaughter is not included in the HMSA. Poultry custom exempt slaughter operators are required to slaughter poultry in accordance with [Good Commercial Practices \(70 FR 56624\)](#). Custom exempt poultry slaughter operators are required to slaughter in compliance with the PPIA (21 U.S.C. 458(a)(1)). If birds hung on the slaughter line die prior to slaughter due to mishandling or are killed in a manner that does not comply with the good commercial practices regulation ([9 CFR 381.65\(b\)](#)), the custom slaughter operation would not meet the requirements of the PPIA.

H. The FMIA (21 U.S.C. 642) requires custom exempt livestock operators to keep such records as will fully and correctly disclose all transactions involved in their custom exempt business and all applicable recordkeeping requirements in [9 CFR 303.1\(b\)\(3\)](#) and [part 320](#). The PPIA (21 U.S.C. 460(b)) requires custom exempt poultry operators to keep such records as are properly necessary for the effective enforcement of the PPIA and all applicable recordkeeping requirements in [9 CFR 381 Subpart Q](#).

I. For custom exempt livestock operations conducted at Federal establishments, the FMIA (21 U.S.C. 623(a)) requires that custom exempt livestock meat food products are separated at all times from inspected livestock meat food products at facilities that operate under both inspection and the custom exemption. Separation can be achieved through time or space. The PPIA (21 U.S.C. 464(c)(1)(B)) only exempts the custom exempt poultry operator from the inspection requirements if they do not engage in the business of buying or selling poultry products capable for use as human food. However, custom exempt poultry slaughter and processing can occur at a federally inspected livestock establishment.

J. The amenable livestock species that are subject to FSIS custom exempt regulations are cattle, sheep, swine and goats, per [9 CFR part 301](#). The amenable poultry species subject to FSIS custom exempt regulations are domesticated chickens, turkeys, ducks, geese, guineas, ratites, or squabs per [9 CFR 381.1](#).

NOTE: There are no custom exemptions provided for shell eggs or egg products in the Egg Products Inspection Act ([EPIA](#)) (21 U.S.C. 1044). There are no custom exemptions for Siluriformes (catfish). Non-amenable species are not required to be inspected; therefore, the custom exemption provisions do not apply to them.

IV. STATE COOPERATIVE INSPECTION PROGRAMS CUSTOM EXEMPT REVIEWS

A. States that maintain their own “at least equal to” Meat and Poultry Inspection (MPI) programs conduct reviews of custom exempt operations in a manner that is at least equal to the Federal system. FSIS, OIEA, Federal State Audit Staff (FSAS), monitors the custom exempt review programs in these states as part of its review of the overall state programs. For more information on State reviews, refer to [FSIS Directive 5720.2](#), *State Cooperative Inspection Programs*, and [FSIS Directive 5720.3](#), *Methodology for Performing Scheduled and Targeted Reviews of State Meat and Poultry Inspection Programs*.

B. States that do not maintain their own inspection programs may enter into special cooperative agreements with FSIS to conduct custom exempt reviews if beneficial to FSIS. The FSIS Administrator will approve such special cooperative agreements.

V. CONDUCTING REVIEWS OF CUSTOM EXEMPT FACILITIES TO DETERMINE COMPLIANCE

A. CIs and IPP are to conduct reviews at custom exempt slaughter and processing operations to determine if the operator complies with applicable statutory and regulatory requirements. During the review, CIs and IPP are to assess compliance in each of the nine categories listed below by considering the questions in each section. The information gathered is to be documented on [FSIS Form 8160-1](#), *Exempt Facility Review Report*, which replaces FSIS Form 5930-1. This form can be found on the FSIS Intranet in the [8,000-series forms](#). Users need an e-authentication account to access this form. See [Section VII](#) (OIEA) and [Section VIII](#) (OFO) for additional documentation instructions. FSAS is to provide the States with FSIS Form 8160-1.

B. CIs and IPP are to conduct periodic reviews of custom exempt slaughtering and processing operations, at official establishments (IPP) or other facilities (CIs), generally at a frequency of once-per-year.

C. CIs are to prioritize their reviews of custom exempt slaughtering and processing operations at in-commerce locations in accordance with the instructions in [FSIS Directive 8010.1](#), *Methodology for Conducting In-Commerce Surveillance Activities*, Chapter II.

D. IPP are to perform reviews of custom exempt slaughtering and processing operations at Federal establishments sometime during the calendar year when they receive the annual PHIS Custom Exempt task. IPP are to follow the instructions found in [FSIS Directive 13.000.1](#), *Scheduling In-Plant Inspection Tasks in The Public Health Information System (PHIS)*, Section XII, A, for documenting task results. IPP are to complete FSIS Form 8160-1 as instructed in Section V., A., above and Section VIII. below.

E. When determining whether to conduct additional reviews (i.e., more than yearly) of a custom exempt slaughtering and processing operation, either an in-commerce location or one at a Federal establishment, OIEA and OFO supervisory personnel are to consider the following factors:

1. Nature of custom exempt operations and products produced under custom exemption;
2. Custom exempt review findings, including compliance or noncompliance with sanitation, humane slaughter, recordkeeping, and other regulatory requirements;
3. Custom exempt review findings of adulterated or misbranded products;
4. Issuance of enforcement letters, such as a Letter of Warning (LOW) by OFO DM or OIEA RD, based on findings of noncompliance during custom exempt reviews;
5. Issuance of enforcement letters, such as a Notice of Warning (NOW) by OIEA RD or OIEA EOS, for violations of statutory or regulatory requirements (e.g., sale of custom exempt product, misbranding, or noncompliance with recordkeeping requirements);
6. Issuance of a Notice of Ineligibility (NOI) by OIEA, based on findings of serious or repeated noncompliance during custom exempt reviews;
7. An administrative consent agreement between FSIS and the custom exempt operator to resolve a NOI;
8. Another legal order, settlement agreement, or binding requirement, such as an administrative consent decree, civil consent decree, or criminal plea agreement; and
9. Other relevant compliance information.

F. The OIEA EOS Director or designee, the OIEA RD or designee, and the OFO DM or designee are to coordinate the frequency and scope of reviews or follow-up reviews at custom exempt slaughtering and processing operations based on significant findings of noncompliance, issuance of LOW, NOW, or NOI, or because of an applicable administrative consent agreement or other legal order, agreement, or requirement.

G. During the routine annual review, CIs and IPP are to assess compliance with all the statutory and regulatory requirements in each of the nine categories listed below by considering the questions in each section and then selecting Yes, No, or N/A and including comments in the Comment box of FSIS Form 8160-1.

H. IPP and CIs are not to use FSIS Form 8160-1 to document questions regarding recommended practices. Discussions and findings related to recommended practices are to be documented in the Findings tab of the PHIS Custom Exempt task (IPP) or in the Assurance Net (ANet) Surveillance Record (CIs).

1. Review of Livestock Humane Slaughter Requirements, Livestock Animal Welfare Practices and Poultry Good Commercial Practices

- a. The FMIA (21 U.S.C. 610(b)) prohibits slaughtering or handling livestock in connection with slaughter in any manner not in accordance with sections 1901 to 1906 of Title 7 (HMSA). FSIS personnel are to consider the following questions to determine if the operator is handling livestock in a humane manner:
 - i. Are all livestock rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut?
 - ii. Are the methods of slaughtering and handling in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument?
 - iii. Are disabled animals dragged while still conscious?
- b. FSIS recommends that custom exempt livestock operators adopt the following additional, voluntary welfare practices related to the questions i.-iv. listed below. Although these practices are not strictly required, the Agency is interested in communicating these voluntary practices to the custom exempt operator if they are not already conducting them. CIs and IPP are to document this communication and the findings as described in paragraph H. CIs and IPP are to consider the following questions during their review about these voluntary livestock welfare practices:
 - i. Are animals provided water and feed in the pens?
 - ii. Is the facility maintained in good repair to prevent injury to animals?
 - iii. Are livestock driven with a minimum of excitement and discomfort?
 - iv. Are disabled animals separate from ambulatory animals?
- c. Poultry that die otherwise than by slaughter are considered adulterated per the PPIA (21 U.S.C. 453(g)(5)). Poultry products are more likely to be adulterated if they are killed in a manner inconsistent with Good Commercial Practices ([9 CFR 381.65\(b\)](#)). CIs and IPP are to consider the following questions about the recommended treatment of poultry at slaughter:
 - i. Are employees provided training in the handling of live poultry?

- ii. Is feed and water withdrawal kept to the minimum level consistent with good processing practices?
- iii. Is the facility appropriately designed and maintained for bird delivery to the facility?
- iv. Are holding areas equipped with an adequate number of fans to ensure proper ventilation for birds?
- v. Is stunning equipment (if applicable) and killing equipment constantly monitored to ensure proper functioning for humane processing?
- vi. Are poultry dead before entering the scalding?
- vii. Do facility personnel and equipment handle poultry in a manner that minimizes broken legs and wings?

2. Review of Recordkeeping and Documentation

- a. FSIS personnel are to determine if the operator keeps such records as will fully and correctly disclose all transactions involved in their business, as required by the Acts and the records that are required by the applicable 9 CFR regulatory requirements. See [Section III, H](#) above for the recordkeeping requirements. CIs and IPP are to consider the following recordkeeping questions:
 - i. Are the required records kept that document the number and kinds of custom livestock slaughtered, the quantities and types of custom product prepared, and the names and addresses of the owners of the livestock and product ([9 CFR 303.1\(b\)\(3\)](#), [9 CFR part 320](#))?
 - ii. Are the required records for poultry operations ([9 CFR 381.175](#)) maintained?
 - iii. For custom exempt livestock facilities, are the required records maintained from the state or local health agency documenting water potability ([9 CFR 416.2\(g\)\(1\)](#)) and that the sewage systems are adequate ([9 CFR 416.2\(e\)](#), and [416.2\(f\)](#))?
 - iv. For custom exempt livestock facilities, are the required records that demonstrate that the chemicals used in the facility are safe for the food processing environment ([9 CFR 416.4\(c\)](#)) maintained?
 - v. Are the required records maintained, including shipping papers if custom exempt products were transported at the owner's direction to another custom exempt facility for further processing ([9 CFR 303.1\(b\)\(3\)](#), [320](#), and [381.175](#))?
 - vi. Are records kept onsite for two years after December 31 of the year in which the record was made ([9 CFR 320.3](#) and [381.177](#))?
- b. FSIS recommends that custom exempt livestock operators keep voluntary records to demonstrate they are meeting the adulteration provisions of the FMIA (21 U.S.C. 623(d)) with respect to SRMs. CIs and IPP are to consider the following questions:
 - i. Does the custom operator keep records that document the ages of slaughtered

cattle (less than 30 months or 30 months of age and older), that cattle were ambulatory at the time they were farm-dressed or delivered to slaughter, and that SRMs were disposed of properly?

- ii. Does the custom operator keep records that document the custom operator did not observe any condition that would render the cattle unfit for human food, or if they became non-ambulatory disabled after they were delivered to the facility?

3. Review of Sanitary Operations

- a. FSIS personnel are to determine whether the custom exempt facility is maintained in a sanitary condition as required to prevent adulteration of product. See [Section III. C](#) above for the requirements. CIs and IPP are to consider the following sanitation questions:
 - i. Are the food contact surfaces, equipment, and utensils cleaned and sanitized as frequently as necessary to prevent insanitary conditions and the adulteration of product?
 - ii. Are nonfood contact surfaces, equipment, and utensils cleaned and sanitized as necessary to prevent insanitary conditions and the adulteration of product?
 - iii. Are cleaning compounds, sanitizing agents, processing aids, and other chemicals used by the operator safe and effective under the conditions of use?
 - iv. Are products protected from adulteration during processing, handling, storage, loading and unloading, and transportation?
 - v. Are inedible containers conspicuously marked to prevent use for storing edible products?
 - vi. Is there evidence of direct product adulteration?
- b. FSIS personnel are to determine if the maintenance of the facilities used to slaughter and process custom exempt product prevents the adulteration of product. See [Section III. C](#) above for the requirements. CIs and IPP are to consider the following facility questions:
 - i. Are the buildings, including structures, rooms, and compartments kept in good repair, and are they of sufficient size to allow for processing, handling, and storage of products?
 - ii. Are the walls, floors, and ceilings maintained in sanitary condition?
 - iii. Do the walls, floors, ceilings, doors, windows, and other outside openings prevent the entrance of vermin and rodents, such as flies, rats, and mice?
 - iv. Does the operator process, handle, and store edible products and inedible products in a manner that will prevent product adulteration, cross-contamination, or the creation of insanitary conditions?
 - v. Are inedible products properly denatured?

- vi. Do conditions exist that may lead to direct product contamination or adulteration?
- c. FSIS personnel are to determine if the facility's dressing rooms, lavatories and toilets are maintained in a sanitary condition. See [Section III, C](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Are the dressing rooms, toilet rooms, and urinals (sufficient in number, ample in size and conveniently located) kept in a sanitary condition, in good repair and are separate from the rooms and compartments in which products are processed, stored, or handled?
 - ii. Do the lavatories have running hot and cold water, and have soap and towels placed in or near toilet and urinal rooms and other places as necessary?
 - iii. Are refuse receptacles constructed and maintained in a sanitary manner?

4. Review of Pest Control:

- a. FSIS personnel are to determine if the grounds about the custom exempt facility prevent conditions that could lead to insanitary conditions or adulteration of product. See [Section III, C](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Are the outside areas of the facility maintained in a manner that will prevent harborage and breeding of pests?
 - ii. Are areas within the facility maintained in a manner to prevent the harborage and breeding of pests?
 - iii. Is there evidence of pest activity in the facility that might lead to product adulteration or contamination, or create insanitary conditions?
 - iv. Does the operator use pesticides safely?

5. Review of Inedible Material Control:

- a. FSIS personnel are to determine if the custom exempt operator handles inedible material, including SRMs, to prevent the creation of insanitary conditions and the diversion of inedible animal product into human food channels. See [Section III, E](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Are cattle which were non-ambulatory at the time they were delivered for slaughter disposed of as inedible material?
 - ii. Does the operator handle and dispose of inedible products properly?
 - iii. Does the operator remove and dispose of SRM from cattle in a manner that prevents adulteration of product and the creation of insanitary conditions?

6. Review of Marking and Labeling Control:

- a. FSIS personnel are to determine if the custom exempt operator appropriately marks and labels to prevent misbranding. See [Section III, F](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Are custom exempt products kept separate from any products for sale by maintaining identity of the products as appropriate?
 - ii. Are custom exempt meat or meat food products promptly marked or labeled “Not for Sale”?
 - iii. Are field-dressed or farm-dressed carcasses or parts clearly marked “Not for Sale” upon entering the facility?
 - iv. Do shipping containers of custom exempt poultry bear the owner’s name and address and the statement “Exempted -- P.L. 90-492”?
 - v. Are livestock meat or meat food products marked “Not for Sale” in letters at least 3/8” high ([9 CFR 316.16](#) and [317.16](#))?

NOTE: The wording may be on a tag or card securely attached to the meat, the immediate container, or paper wrapping the meat. If the wording is inked directly onto the meat it must meet the requirements of [9 CFR 316.5](#).

7. Review of Pathogen Control:

- a. FSIS personnel are to determine if the custom exempt operator prevents the adulteration of products by controlling microbial pathogens, such as *Salmonella*, *E. coli* O157:H7, *Listeria monocytogenes* and *Clostridium perfringens*. See [Section III, B](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Is contamination prevented?
 - ii. Are ready-to-eat products cooked to a time and temperature that will kill pathogens?
 - iii. Are heated or cooked products cooled in a manner to prevent growth of pathogens?

8. Review of Water Supply

- a. FSIS personnel are to determine if the custom exempt facility has a potable supply of running water to prevent the adulteration of food products. See [Section III, C](#) above for the requirements. CIs and IPP are to consider the following questions:
 - i. Does the water supply at a custom exempt livestock facility comply with the National Primary Drinking Water regulations (40 CFR part 141)?
 - ii. Does the water supply used in processing custom exempt poultry result in the preparation of poultry products that are sound, clean and fit for human food ([9 CFR 381.10\(a\)\(4\)](#))?

- iii. Are sufficient quantities of water, at a suitable temperature and under adequate pressure, provided for cleaning equipment and for use throughout the facility?
- iv. Are non-potable water pipes separate from potable water pipes?
- v. Does the operator properly identify potable water pipes vs. non-potable water pipes?
- vi. Does the operator reuse water for any purpose?

9. Review of Sewage and Waste Disposal:

- a. FSIS personnel are to determine if the custom exempt facility properly removes sewage and waste materials to prevent the adulteration of food products ([9 CFR 303.1\(a\)\(2\)\(i\)](#), [381.10\(a\)\(4\)](#), and, for custom exempt livestock facilities, [9 CFR 416.2\(e\) and \(f\)](#)). CIs and IPP are to consider the following questions:
 - i. Does the plumbing system properly transport sewage and disposable waste from the facility?
 - ii. Does the plumbing system provide adequate floor drainage?
 - iii. Does the facility have plumbing that prevents back-flow conditions and cross connections between piping systems that discharge wastewater or sewage, and piping systems that carry water for product manufacturing?
 - iv. Does the plumbing prevent the backup of sewage and sewer gases?
 - v. Is the sewage disposal system a private system which requires approval by a state or local health authority, and is a letter or certificate of approval available?
 - vi. Is there evidence of direct product contamination?

VI. REQUIREMENTS FOR CUSTOM EXEMPT OPERATIONS AT LOCATIONS WITH OFFICIAL ESTABLISHMENTS

A. In addition to the general requirements above that apply to all custom exempt operations, there are requirements that only apply to custom exempt operations conducted at locations with official livestock establishments. In addition to the IPP responsibilities in [Section VIII, A](#), below, IPP are to consider the following questions:

- 1. Do the custom operations comply with all of the provisions of [9 CFR part 416](#), including the [416.11-416.16](#) Sanitation Standard Operating Procedures (SSOP) regulations?
- 2. Are the inspected products kept separate and apart from custom prepared products, per [9 CFR 303.1\(a\)\(2\)\(ii\)](#) and [305.2\(a\)](#), including that the establishment segregates live animals intended for custom exempt slaughter from animals designated for inspected slaughter?

NOTE: If an official livestock establishment chooses to present livestock for FSIS inspection, they are subject to all regulatory requirements for inspection including but not limited to; ante- and post-mortem

inspections, humane slaughter, sanitary dressing, SSOPs, HACCP, and zero tolerance.

3. Are carcasses and parts from custom livestock slaughter clearly marked “Not for Sale,” or are the shipping containers of custom exempt poultry marked “Exempted P.L. 90-492” ([9 CFR 303.1\(a\)\(2\)\(iii\)](#), [316.16](#), [317.16](#) and [381.10\(a\)\(4\)](#))?
4. Are facilities and equipment used for the preparation of any federally inspected products cleaned and sanitized after custom operations have been completed, and do employees change outer garments as necessary before the operator prepares federally inspected products?
5. Does the operator maintain the required records, including Sanitation SOP records required by [9 CFR 416.16](#)?

B. IPP are not to issue a [Noncompliance Record](#) during custom exempt reviews, including if Sanitation SOP recordkeeping noncompliance is observed. If noncompliance exists, mark this category on FSIS Form 8160-1 as unacceptable, and document the findings on the form.

VII. OIEA PERSONNEL RESPONSIBILITIES AND ACTIONS

A. OIEA CIs are to:

1. Prepare for the annual custom review by following the instructions found in [FSIS Directive 8010.1](#).
2. Perform reviews at in-commerce facilities conducting custom exempt slaughtering or processing operations in accordance with the methods in this directive;
3. Document the findings of the custom exempt review in ANet Surveillance module, Surveillance Record, Special Projects tab, by:
 - a. Answering the yes/no questions under the Custom Exempt Review section;
 - b. Providing comments in each of the associated comment boxes;
 - c. Providing any needed additional information regarding observations and findings in the ANet Surveillance Record;
 - d. Attaching the FSIS Form 8160-1 in the File Attachments tab; and
 - e. Completing and/or updating other ANet information by following the instructions in [FSIS Directive 8010.1](#).
4. Inform the custom exempt operator of both the acceptable and unacceptable review findings, provide the custom exempt operator a hard copy of FSIS Form 8160-1 and discuss, as necessary, other information (e.g., regulatory requirements, compliance findings, future reviews, issuance of correspondence).
5. Discuss findings from the custom exempt review with supervisory personnel and obtain further instructions, if any, including continued verification through future custom exempt reviews.

6. Initiate an investigation by following the instructions found in [FSIS Directive 8010.2, *Investigative Methodology*](#) if apparent violations of the FMIA, PPIA, or related laws and regulations are observed. Violations that may require further action include, but are not limited to, the following:
 - a. The sale of custom exempt product;
 - b. The distribution of adulterated product;
 - c. Misbranding;
 - d. Recordkeeping; or
 - e. Inhumane handling or slaughter.
7. Follow the instruction in [FSIS Directive 8010.1](#), Chapter VI, II, Other Irregularities, if they observe apparent violations or other irregularities involving non-amenable products or facility conditions not subject to FSIS jurisdiction during the review.
8. Initiate official product control action, as appropriate, when there is reason to believe that the products are adulterated or misbranded. Refer to [FSIS Directive 8410.1, *Detention and Seizure*](#), for the procedures that FSIS program personnel are to follow when detaining meat or poultry products.

B. OIEA RD or designees are to:

1. Direct CIs' actions, as necessary, through supervisory investigators, to plan and conduct reviews of custom exempt slaughtering and processing operations at in-commerce locations and establishments, based on surveillance priorities in [FSIS Directive 8010.1](#).
2. Evaluate findings from custom exempt reviews and determine action, if any, including continued verification through future custom exempt reviews, issuance of warning letters for noncompliance, referral to EOS, or other action, by following instructions in [FSIS Directive 8010.5, *Case Referral and Dispositions*](#).
3. Issue a LOW to the custom exempt operator for findings of noncompliance with custom exempt requirements. The LOW should state that the failure to take prompt and appropriate corrective action may result in a recommendation to pursue additional administrative, civil, or criminal sanctions.
4. Review ROIs and other case documentation for violations of the FMIA or PPIA, as necessary, to determine the appropriate enforcement action or case referral. Take action for violations, including, but not limited to, surveillance, investigation, product control, issuance of NOW, referral to EOS, or referral to another agency, following the methods outlined in [FSIS 8,000-series directives](#).
5. Refer ROI cases to OIEA EOS, using methods in [FSIS Directive 8010.5](#), when documentation shows repeated or serious noncompliance with custom exempt requirements.

VIII. OFO RESPONSIBILITIES AND ACTIONS

A. IPP are to:

1. Prepare for the review by scheduling the annual PHIS Custom Exempt task on a day when the establishment will be conducting custom exempt slaughter or processing.
2. Perform reviews at custom exempt slaughtering or processing operations located at official establishments in accordance with the methods in this directive.
3. Document the findings of the review in PHIS, Custom Exempt task, by:
 - a. Selecting the appropriate information on the Activity tab and selecting the regulations verified as part of the review on the Regulations tab;
 - b. Providing information regarding observations and findings not included in FSIS Form 8160-1 in the Findings tab;
 - c. E-mailing a scanned copy of FSIS Form 8160-1 to the District Case Specialist or designee;
 - d. Completing and/or updating other applicable fields in the task, as necessary; and
 - e. Completing the task after a. through d. above are complete. IPP are to complete the task even if a noncompliance is noted during the review since noncompliances are not documented in the Custom Exempt task in PHIS.
4. Discuss findings from custom exempt review with supervisory personnel (e.g., the Frontline Supervisor (FLS)) and obtain further instructions, if any, including continued verification through future custom exempt reviews.
5. Inform the custom exempt operator and FSIS supervisory personnel (e.g., the FLS) when IPP observe apparent noncompliance during the review that is subject to the laws and regulations of other Federal, State, or local agencies.
6. Initiate official product control action, including retention of products as appropriate, when there is reason to believe that the exempt products are adulterated or misbranded. IPP are to seek guidance from their supervisor, as needed, on subsequent actions.
7. Inform the custom exempt operator of both the acceptable and unacceptable review findings, provide the custom exempt operator a hard copy of FSIS Form 8160-1, and discuss other information as necessary (e.g., regulatory requirements, noncompliance findings, future reviews). IPP are not to document this conversation in PHIS. The content of the discussion is already documented in FSIS Form 8160-1, so additional documentation is not needed.
8. Conduct follow-up reviews as directed by the DM or designee (e.g., the FLS). IPP are to add a directed task when instructed by a supervisor to perform additional reviews.
9. Report serious (egregious situation) or repeated noncompliance with humane handling or slaughter requirements to the District Veterinary Medical Specialist (DVMS) through the supervisory channels as necessary as described in [FSIS Directive 6900.2](#), *Humane Handling and Slaughter of*

Livestock.

10. Refer to [FSIS Directive 5100.3](#), *Administrative Enforcement Reporting System*, for IPP roles and responsibilities for implementation and documentation of administrative enforcement actions taken by the DO, if any.

B. DMs or designees are to:

1. Direct IPP actions through supervisory channels to review custom exempt establishments, as necessary.
2. Coordinate with EOS reviews based on significant findings of noncompliance, issuance of LOW, NOW, or NOI, or because of an applicable administrative consent agreement or other legal order, agreement, or requirement.
3. Evaluate findings from custom exempt reviews and determine action, if any, including continued verification through future custom exempt reviews, issuance of warning letters for noncompliance, referral to EOS, or other action, by following instructions in [FSIS Directive 8010.5](#). The DM may contact the appropriate Federal, State, or local agencies to inform them of any apparent violations or irregularities under their jurisdiction and provide support to such authority, except as provided for in paragraph 5 below.
4. Issue a LOW to the custom exempt operator for noncompliance with custom exempt requirements per the instructions in [FSIS Directive 5100.3](#), Section VIII, B. The LOW should state that the failure to take prompt and appropriate corrective action may result in a recommendation to pursue additional administrative, civil, or criminal sanctions.
5. Refer Administrative Enforcement Report (AER) or other case documentation to OIEA CID or EOS in accordance with [FSIS Directive 8010.5](#), when documentation shows:
 - a. Repeated or serious noncompliance with custom exempt requirements or other violations of the FMIA or PPIA;
 - b. Repeated or serious noncompliance, such as an egregious situation with humane handling; and
 - c. Potential criminal violations, including distribution of adulterated meat, fraud, sale of uninspected meat, and slaughter of animals that were non-ambulatory at the time of delivery to the custom exempt facility. OFO personnel are not to conduct investigation into criminal matters.
6. Confirm the OFO District Case Specialist or designee enters the custom exempt review and other case documentation into ANet in accordance with the instructions in [FSIS Directive 5100.3](#).

IX. OIEA EOS RESPONSIBILITIES AND ACTIONS

The EOS Director or designee is to take one or more of the following actions, as appropriate:

1. Review the ROI, AER, or other case documentation referred to EOS for criminal, civil, or

administrative enforcement action and make a determination on the appropriate action (e.g., take or initiate administrative enforcement action to terminate custom exempt privileges; issue a NOW, a Letter of Information (LOI), or other enforcement correspondence; close case with no action; or take other action) by following instructions in [FSIS Directive 8010.5](#).

2. Take administrative enforcement action, when necessary, to terminate custom exempt eligibility by issuing a “Notice of Ineligibility for Custom Exempt Status” (NOI) to custom exempt operators.
3. Refer the ROI, AER, or other case documentation to Office of General Counsel for case follow-up (e.g., NOI response, hearing preparation, consent agreement negotiations).
4. Issue “Show Cause” letters (SCL) to provide custom exempt operators the opportunity to present views and information regarding allegations prior to the initiation of administrative proceedings. EOS may determine, on a case-by-case basis, that SCLs are not necessary when in the public interest.

NOTE: Only EOS will issue SCLs.

5. Coordinate follow-up surveillance, investigation, or other activities, based on custom exempt findings, compliance history, NOI, settlement agreements, or otherwise as necessary, with the OIEA RD or OFO DM.
6. Take other action, as appropriate, following the methods in [FSIS Directive 8010.5](#).

X. QUESTIONS

Refer questions regarding this directive to your supervisor, or to the Office of Policy and Program Development through [askFSIS](#) or by telephone at 1-800-233-3935. When submitting a question, complete the [web form](#) and select General Inspection Policy for the inquiry type.

NOTE: Refer to [FSIS Directive 5620.1](#), *Using askFSIS*, for additional information on submitting questions.



Assistant Administrator
Office of Policy and Program Development

Exhibit 2

*Animal Welfare Institute Report – Custom-Exempt Slaughter: A License
to Neglect and Abuse Farm Animals*

January 2023



CUSTOM-EXEMPT SLAUGHTER:

A License to Neglect and Abuse Farm Animals

During the past decade, several attempts have been made in Congress and state legislatures to expand the scope of a little-known form of killing animals for food known as “custom” or “custom-exempt” slaughter. These bills attempt to expand the number of slaughter establishments in the United States that are exempt from inspection for the killing of animals and/or the processing of carcasses. Passage of such legislation would in effect allow the retail sale of uninspected meat, with potential negative impacts on both food safety and animal welfare. To better understand the ramifications of expanding custom-exempt slaughter, the Animal Welfare Institute (AWI) initiated a review of the practice and its impact on the treatment of animals at slaughter.

How Custom-Exempt Slaughter Operates

The “exempt” in custom-exempt signifies that these operations are excused from continuous inspection, unlike operations subject to state or federal inspection, where government officials are on the premises whenever slaughter

is being conducted. Custom-exempt plants serve hunters who want to process wild animal carcasses; they also slaughter cattle, pigs, sheep, and goats for anyone who wants meat for themselves, their household, or nonpaying guests. Because the meat is intended for personal use only, packages of custom slaughtered and/or processed beef, pork, lamb, or goat meat must be labeled “NOT FOR SALE,” and the meat cannot be sold, traded, or given away, such as to a food bank. The rationale behind the minimal oversight of custom slaughter is that consumers of the meat are generally aware of its origins, and the food safety risk to the broader public is low since the meat is not being distributed for sale.

The Risks of Uninspected Meat

The purpose of meat inspection is to reduce the risk of foodborne illness. The Centers for Disease Control and Prevention (CDC) estimates that, each year in the United States, foodborne diseases kill 3,000 people, hospitalize 128,000, and sicken 48 million. In plants subject to routine meat

inspection, state or federal agricultural officials must be present whenever slaughter is taking place to ensure that Sanitation Standard Operating Procedures are being followed.

This does not occur in custom-exempt plants. With custom-exempt slaughter, inspectors need not be present. In fact, inspection typically occurs only once or twice a year in the form of a “custom-exempt review.” While custom-exempt slaughterhouses are expected to comply with federal food safety regulations, inspectors are not routinely on the premises to ensure that they do so. Consequently, should the scope of custom-exempt slaughter be expanded and an outbreak of foodborne illness occur, the impact could be much greater.

How the USDA Oversees Humane Slaughter at Custom-Exempt Plants

In 2009, the US Department of Agriculture’s Food Safety and Inspection Service (FSIS) revised its Custom Exempt Review Process Directive (8160.1) to clarify that the Humane Methods of Slaughter Act (HMSA) applies at these facilities. The directive instructed FSIS personnel to assess several factors, including any egregious acts or repeated noncompliance with

humane slaughter, to determine whether the custom-exempt facility being reviewed is handling livestock in a humane manner. However, it has been unclear to what degree—if at all—this policy change protects farm animals killed under custom-exempt slaughter.

Further, in September 2020, the FSIS again revised the custom-exempt directive to distinguish regulatory requirements from voluntary recommendations for humane slaughter. The only humane slaughter requirements identified are that (1) the animals must be effectively stunned to render them insensible to pain, (2) appropriate methods must be used when ritual slaughter is involved, and (3) conscious animals must not be dragged. Conversely, such actions as providing water and feed, maintaining the facility in good repair, handling animals without excitement and discomfort, and segregating disabled animals are identified merely as recommendations. In characterizing these animal welfare practices as “not strictly required,” the FSIS is suggesting that its own regulations (specifically those related to the Humane Methods of Slaughter Act) are voluntary and not legally binding in custom-exempt establishments. A minor 2022 revision of the directive did not modify the characterization of these practices as recommendations or substantively change the facility review process.

AWI’s Survey

In 2020, AWI initiated research to determine whether applying the HMSA to custom-exempt slaughter has provided adequate protection to the animals killed at these establishments. We submitted Freedom of Information Act (FOIA) requests related to the USDA’s oversight of the custom-exempt process. This included requesting (1) all custom-exempt review forms for calendar year 2019, (2) a list of federal custom-exempt establishments in 2019 and 2020, and (3) a list of plants losing eligibility for custom-exempt status in 2019 and 2020. We also reviewed FSIS inspection records (Noncompliance Records and Memorandums of Interview (MOI)) issued 2018–2020 to federally inspected slaughter plants that also perform custom-exempt slaughter. Finally, we submitted questions related to the custom-exempt review process to the FSIS through its “AskFSIS” web-based application, and we reviewed AskFSIS queries submitted by others, including FSIS inspection personnel and custom-exempt slaughter establishments, during 2018 and 2019.



The Findings

Reviews of custom plants are not being conducted –

The FSIS custom-exempt directive states that inspection personnel are to conduct reviews at custom-exempt establishments “generally at a frequency of once per year.” In response to our FOIA request, the FSIS provided us with 144 review forms for 2019. However, only 27 of those forms were from federal custom-exempt establishments—fewer than 10 percent of the 285 federal custom-exempt establishments in operation that year. The remainder of the reviews were conducted by federal inspectors at state-level plants in states that do not operate a meat inspection program. It is unclear why so few federal custom-exempt plants were reviewed.

AWI asked the FSIS FOIA office about the low number of review documents received in response to our request and submitted an AskFSIS query regarding the low number of custom-exempt reviews apparently conducted. We were notified that the FSIS Office of Field Operations and the FOIA office were attempting to determine if AWI had received a complete set of records; however, no additional records were ever provided.

Inspectors may not be observing the handling and slaughter of birds at custom plants – Of the 144 establishment reviews provided to AWI, 24 indicated that the plant slaughtered birds. However, only one of those reviews included observations related to the treatment of birds. While the Humane Methods of Slaughter Act regulations do not cover the slaughter of birds, the USDA oversees the process through its verification of poultry slaughter “good commercial practices” (GCP). The 2020 revision of the FSIS custom-exempt directive and the 2022 update specifically require that poultry custom-exempt slaughter operators comply with GCP: “If birds hung on the slaughter line die prior to slaughter due to mishandling or are killed in a manner that does not comply with the good commercial practices regulation (9 CFR 381.65(b)), the custom slaughter operation would not meet the requirements of the PPIA [Poultry Products Inspection Act].”

Inspectors are not observing slaughter at custom livestock plants – Of the custom-exempt slaughter plants reviewed in 2019, FSIS inspectors documented observing the actual killing of animals at only 45 (less than a third) of them. Moreover, a significant number of reviews indicated the inspector was aware that slaughter would not even be conducted on the day of the visit. This is particularly disturbing considering that rendering animals insensible to pain through stunning, along with not dragging disabled animals while conscious, are the only humane slaughter practices actually *required* at custom-exempt plants, according to the FSIS 2020 directive and the 2022 update. (As stated above, all other animal welfare practices, such as providing food and water and using a minimum amount of force to move animals, are identified as voluntary.)



Given that the FSIS appears to be doing reviews infrequently—and when they do conduct a review, slaughter is often not observed—many years may pass before inhumane slaughter practices at a custom-exempt plant are uncovered. This situation was partially addressed by a change in the 2022 update that instructs inspection personnel to schedule “the annual PHIS Custom Exempt task on a day when the establishment will be conducting custom exempt slaughter or processing” (emphasis added). Unfortunately, the revised language continues to allow custom-exempt reviews to be conducted when no animals are being slaughtered.

Very few humane violations are recorded during custom-exempt reviews – Of the 144 custom-exempt reviews for the year 2019 provided to AWI, only six cited any animal welfare concerns. Nine violations of HMSA regulations were recorded, including four instances of failure to provide water access, three safety hazards, one uncovered holding pen, and one overcrowded holding pen.

While it is possible that custom-exempt plants have few animal welfare violations, this seems very unlikely. It is more likely that violations go unreported. The FSIS Humane Handling and Slaughter of Livestock Directive (6900.2, rev. 3) specifically instructs inspection personnel at federally inspected plants who observe inhumane handling or slaughter of a custom-exempt animal to document the incident on an MOI, and enforcement records for federally inspected plants do, in fact, mention HMSA violations affecting custom-exempt animals. (See Exhibit at the end of this report.) In the custom-exempt directive, however, there is no such instruction.

Federal plants use custom status to dodge violations –

According to FSIS records, some plants that perform both federally inspected and custom-exempt slaughter are claiming that all animals on the premises are intended for custom slaughter until just before they are killed. Because inspectors lack the authority to take regulatory control actions (such as halting slaughter or rejecting a piece of equipment or area of the plant) in response to a violation involving a custom



animal, these plants may be avoiding legal consequences for inhumanely handling animals during unloading or while they are kept in holding pens, a period that sometimes lasts weeks.

In response to an AskFSIS query from AWI, the FSIS indicated that an animal's inspection status "should be determined prior to presenting the animal for FSIS antemortem inspection in order to maintain clear separation between custom and inspected operations." However, it is evident from FSIS inspection reports that federally inspected and custom-exempt animals are sometimes mixed together in holding pens and other areas of an establishment, providing an opportunity for loss of FSIS inspection control.

Plants suspended from federal slaughter are allowed to operate as custom – Because enforcement actions are not taken at custom-exempt plants, these establishments may continue to hold and slaughter animals even if federal inspection has been suspended or withdrawn. For example, the FSIS took legal action in 2019 to permanently withdraw federal inspection from Harmon Brothers Meat in Warsaw, Kentucky, after the plant was suspended from performing federal slaughter on four different dates following egregious humane slaughter violations. In addition, according to 2016–2018 records, Harmon Brothers Meat was cited for more humane slaughter violations (34) than any other livestock slaughter plant classified as "very small." Despite this atrocious record, the plant was allowed to continue killing animals for custom-exempt slaughter.

In another example, Brooksville Meat Fabrication, a federally inspected and custom-exempt operation in Brooksville, Kentucky, was cited at least 10 times for serious violations of humane handling and slaughter regulations during a six-month

period in 2013. In November 2013, the FSIS's Enforcement and Litigation Division prepared a complaint to indefinitely suspend and permanently withdraw the grant of federal inspection, finding that the establishment was "unfit to engage in a business requiring Federal inspection under the FMIA [Federal Meat Inspection Act]." In March 2014, a USDA administrative law judge signed the withdrawal order. Brooksville Meat Fabrication continued to kill animals, however, as a custom-exempt slaughterhouse. Allowing an establishment deemed incompetent to slaughter animals under *constant* supervision to continue slaughtering animals under *no* supervision defies all logic and common sense.

AWI staff are not the only ones baffled by the FSIS's policy of allowing suspended federal plants to continue to conduct custom-exempt slaughter. At least five individuals submitted questions to AskFSIS related to this issue in 2019. One senior FSIS veterinary officer seeking guidance from FSIS's policy office noted: "For state plants in NC [North Carolina] that receive a NOS [Notice of Suspension], their Custom Exempt status for slaughter is also suspended, because their state animal welfare regulations apply to all animals. In these cases, establishments cannot run either inspected or custom animals while under Suspension." The veterinary specialist also explained that the discrepancy creates confusion for inspection program personnel and asked why the federal inspection program does not follow the same policy as the state of North Carolina. "It seems logical that if an establishment has failed to follow the humane handling regulatory requirements on the federal side, they should be made to demonstrate their ability to correct that failure before being allowed to operate on either side of inspection."

To confirm that the FSIS is not taking any action to curtail the ability of plants with a history of egregious inhumane handling to perform custom-exempt slaughter, AWI requested all Notices of Ineligibility (NOIs) issued to custom-exempt plants during 2019 and 2020. The FSIS did not provide any NOIs, indicating that no custom-exempt plants lost their eligibility to operate during this period.

Animal neglect and abuse is occurring at custom plants –

The records AWI reviewed suggest that animals destined for custom-exempt slaughter are being beaten, held in deplorable conditions, and deprived of food and water for extended periods. In some cases, the animals are dying as a result. (See examples in the attached Exhibit.) Current FSIS policy allows for this mistreatment, in part, because *not* beating and *not* starving animals are considered mere recommendations. FSIS policy considers the provision of food, water, and a safe environment as voluntary, even though animals at custom-exempt establishments may be held on the premises for an extended period, often several days or even weeks. Moreover, AWI has seen no evidence that FSIS personnel refer these instances of animal neglect or abuse, which are likely violations of state animal cruelty laws, to appropriate state authorities.

Conclusion and Recommendations

Expanding custom-exempt slaughter in the United States poses a serious risk to both food safety and animal welfare. AWI is unfortunately accustomed to witnessing and uncovering many forms of animal abuse, and the treatment of custom-slaughtered farm animals surely ranks among the worst. All evidence we reviewed points to animals at custom-exempt establishments being at high risk for inhumane treatment. Custom-exempt plants are not regularly reviewed, and in many cases when they are reviewed, slaughter itself is not observed. Very few HMSA violations are documented in custom-exempt reviews, despite the fact that federal inspection records indicate that serious noncompliances are occurring. Plants suspended from federally inspected slaughter are still allowed to perform custom-exempt slaughter. Eligibility to conduct custom-exempt slaughter is rarely if ever removed.

From the information AWI obtained from the USDA, we have concluded that the FSIS's purported application of the federal humane slaughter law to custom-exempt slaughter has had little or no positive effect on the welfare of animals subject to custom-exempt slaughter. The evidence presented in this report suggests that the FSIS does not apply the HMSA to custom-exempt slaughter in any meaningful way.

Changes are desperately needed to the government's approach to this type of slaughter. If these changes are not made, the USDA should rescind its 2009 proclamation that the Humane Method of Slaughter Act applies at custom-exempt establishments to avoid misleading the public regarding its supervision of this form of slaughter.

AWI offers the following recommendations for the FSIS's oversight of custom-exempt slaughter:

- The FSIS custom-exempt directive should make clear that custom-exempt reviews are to be scheduled for a date and time when *slaughter* (not *slaughter or processing*) is being performed so that FSIS inspection personnel may observe antemortem handling, stunning, and slaughter of animals.
- Practices required under HMSA regulations for federal inspection but identified as mere "voluntary welfare practices" under the custom-exempt directive should be required for custom-exempt slaughter as well.
- The custom-exempt directive should instruct inspectors conducting custom-exempt reviews in federally inspected establishments to document any observed HMSA or PPIA good commercial practice violations in a Memorandum of Interview.
- To close the loophole that custom-exempt slaughter offers to operations that are also federally inspected, the USDA should clarify that an animal must be declared for federal inspection at arrival on the premises of the establishment (instead of at antemortem inspection).
- Inspectors who observe neglect or abuse of custom-exempt animals while performing federal inspection or a custom-exempt review should contact the appropriate local or state authorities to notify them that the state's animal cruelty law may have been violated.
- The custom-exempt directive should be revised to require the suspension of eligibility to perform custom-exempt slaughter for any establishment under suspension of federal inspection for violation of humane handling and/or food safety regulations. In addition, any establishment that loses its grant of federal inspection should also lose its eligibility to perform custom-exempt slaughter.





Examples of Inhumane Incidents at Custom-Exempt Slaughter Plants

Below are examples of USDA inspector memorandums illustrating that custom-exempt animals are afforded a lower level of care—and less legal protection—than animals designated for federally inspected slaughter.

LACK OF WATER AND/OR FOOD

No water was available to a hog in a holding pen who had been identified as for custom-exempt slaughter. The inspector noted: “This was a custom hog so an NR [Noncompliance Record] was not issued.”

—Central KY Custom Meats, Inc. (M27257), Liberty, KY, 5/7/2018

A large hog and a mature sheep lacked access to water as the water trough in the pen was empty. “The issuance of this MOI [Memorandum of Interview] is based upon the fact that the animals observed above were declared for custom exempt slaughter; otherwise, this observation would have been documented in a Noncompliance Record.”

—Loretto Butcher Shop (M40246), Loretto, KY, 8/7/2018

A holding pen containing approximately 20 pigs varying in size from roughly 20 pounds to over 500 pounds were found to be without water. The floor was nearly entirely covered with approximately one inch of soupy, liquid manure. According to the inspector’s note, if all animals were to lie down simultaneously, some would have to lie in the liquid. “The above animals had not been declared for Federal Inspection at the time of these observations. The owner of the establishment considers all animals in the holding pens to be custom exempt until such time as they may be declared for federal inspection.”

—Faulkner Meats (M44779), Taylorsville, KY, 11/21/2018

A holding pen with lambs too numerous to count was observed without adequate water; the water trough contained 3 inches of dark brown, manure-contaminated liquid. Two dead lambs were found with their bodies decomposing, and a strong ammonia smell emanated from the pen. A dead goat and a dead pig were found in other pens. The inspector noted that the outside temperature was 90 degrees, with no functioning fans in the pens, and that the Livestock Heat Index was estimated to be in the “danger” to “emergency” category. The inspector also observed that the situation involved custom-exempt animals. —Spencer County Butcher Block (M44779), Taylorsville, KY, 7/7/2020

During a custom-exempt slaughter inspection, the following non-compliances were observed: 1. One uncovered pen of nine large bovines contained no feed or water. 2. One covered pen of eight large bovines contained no feed or water. 3. One covered pen of ten large bovines contained no feed or water.

—Hamzah Slaughter House (M10805), Williamsport, MD, 8/5/2020

Two custom hogs were being held in a pen with no access to water. “All Federal animals had water access.”

—Moonlight Meat Processing Inc. (M33845), Williamsburg, KY, 8/10/2020

UNSANITARY OR CROWDED CONDITIONS IN PENS

A pen containing approximately 34 sheep, lambs, and goats was found to be without a source of water. A pen of mature sheep held overnight had insufficient room for all animals to lie down. Another holding pen was covered in a soupy, manure-inedible hay mixture. “As the animals observed had not been presented for Federal Inspection, the above cited [custom-exempt] Directive justifies the issuance of this MOI [Memorandum of interview] in place of a Noncompliance Record.”

—Harmon Brothers Meat (M7356), Warsaw, KY, 5/30/2018

A pen holding three calves was found to have an approximately 3-inch floor covering of liquid manure and no access to water. A pen holding a large boar (roughly 500 lbs.) was found to have a liquid manure floor covering and no access to water. And a pen holding numerous lambs was found to be overcrowded—there was insufficient room for the lambs to lie down. “The animals in question had not been presented for federal inspection.”

—Faulkner Meats (M44779), Taylorsville, KY, 6/8/2018

A holding pen with goats and lambs contained a dead goat and water of questionable drinking quality; the water was brown with fecal material present. Another dead goat was observed outside a storage room. An adjacent holding pen with goats and lambs was densely populated; most of the floor was covered in liquid feces, and the water was of even more questionable drinking quality. The inspector noted that the establishment was suspended

from federal slaughter due to an egregious violation but was still allowed to perform custom-exempt slaughter.

—Harmon Brothers Meat (M7356), Warsaw, KY, 4/26/2019

A large boar was observed without access to water in a holding pen. Another pen of lambs and sheep was observed with feces covering the floor. Bedding was minimal and mostly wet. Urine was also observed in one area of the pen, and the fur of most of the animals was contaminated with fecal matter. One lamb was observed in a moribund state. One small automatic waterer was functional but insufficient for the volume of animals (too numerous to count) in the pen.

—Faulkner Meats (M44779), Taylorsville, KY, 5/22/2019

The hog pen was found to have approximately 75% of the floor covered in roughly one inch of liquid feces. The water containers were likewise coated in feces and contained a small volume of some type of black liquid (feces?); the bedding covering the remaining 25% of the floor was wet. Multiple sheep pens were found with roughly 2-3 inches of packed manure and no visibly clean bedding. “The animals in question had not been declared for federally inspected slaughter. The establishment considers all animals in the holding pens to be custom exempt until declared for federal inspection.”

—Spencer County Butcher Block (M44779), Taylorsville, KY, 11/27/2019

SAFETY HAZARDS

Hogs designated for custom slaughter were observed in a holding pen that had a broken metal divider with exposed bolts and sharp edges, presenting a risk of injury to the pigs. A worker refused the inspector’s suggestion to move the animals to another pen. The inspector explained: “I did not take regulatory control action due to the fact the current animals in the holding pen were custom exempt. In the future, if federally inspected animals were in a pen with broken railing it would be a violation.”

—Mountain Meat Packing Inc (M4979), Fruita, CO, 6/24/2020

INADEQUATE CARE OF SICK AND DISABLED ANIMALS

A holding pen of pigs who had been in the barn since the previous week had a soupy manure-covered floor, a small quantity of questionable quality drinking water, and one pig who appeared to have an orbital wound from the loss of an eye. A holding pen of sheep who had been in the barn for a week or more had several disabled animals among the normal population. Some were observed crippled to the point of being barely able to rise and walk. The inspector noted, “The animals observed today had not been declared for federal inspection.”

—Harmon Brothers Meat (M7356), Warsaw, KY, 7/10/2018

A pen of five beef calves was found without access to water.

Above a pen of beef calves, a foam insulation panel was hanging precariously. A pen containing sheep and goats too numerous to count held overnight had questionable room to lie down. A pen of sheep and goats was found to have one dead goat. A pen holding hogs was found to have approximately 50% of the flooring covered in 1-2 inches of soupy manure; approximately 25% covered in wet bedding; and approximately 25% in borderline-acceptable bedding. The plastic drums being used as feed troughs contained some type of “slop” as a food source. “Two hogs were observed ambulatory disabled amongst the normal population; one possibly having a hip injury, the other a swollen rear distal extremity with an open wound and walking three-legged lame.”

—Spencer County Butcher Block (M44779), Taylorsville, KY, 12/11/2019

EXCESSIVE FORCE USED TO MOVE ANIMALS

A Jersey cow was observed to fall when one of her front limbs fell into a gap while exiting a truck. A second, sight-impaired steer proceeded to walk over top of the downed Jersey, then down the chute. The Jersey managed to get up and proceed down the chute. The sight-impaired steer reversed direction, came up the chute and fell into the gap, becoming entrapped between the chute and the truck. The trapped animal began vocalizing and thrashing about. After some time, plant workers placed a rope about the neck of the entrapped steer and attempted to drag the conscious animal out of the gap and back onto the unloading ramp. In the process of trying to free the steer, the unloading ramp collapsed, and the animal fell approximately three feet to the ground.

—Faulkner Meats (M44779), Taylorsville, KY, 9/13/2018



Inspector noted that slaughter plant was given multiple copies of the USDA directive for custom-exempt operations. While reviewing animal handling procedures, the inspector observed plant employees attempting to move a group of eight large bovines up an alley, make a 90-degree left turn, then up a sloped concrete loading ramp. A worker “chose to utilize a combination of yelling, beating on the tin roof above the animals and repeated electrical prod usage to the bovines to continue forward.”

—Hamzah Slaughter House (M10805), Williamsport, MD, 8/3/2020

An establishment employee was observed striking a steer in the face with a broom and kicking the animal in the rear to force him to turn around. An inspector inquired if the animal was declared for federal inspection or custom-exempt slaughter. Establishment personnel stated custom-exempt slaughter. The same worker previously observed striking and kicking the steer was seen with a water hose running at full stream, first spraying the animal’s hindquarters and then his face.

—Faulkner Meats (M44779), Taylorsville, KY, 9/20/2019

LACK OF STUNNING OR INEFFECTIVE STUNNING

A goat was diagnosed to be in a moribund state. The senior veterinary medical officer declared that the goat needed to be euthanized based upon his condition. Inspection personnel informed the establishment of the situation. Plant workers killed the goat by cutting his throat, allowing the animal to expire by exsanguination. Cutting of the throat is not considered an acceptable method of euthanasia in a federally inspected facility. However, “the owner of the establishment considers all animals held in the barn to be custom exempt, thus the basis for this MOI.” [Note: If an animal under federal inspection is mistreated in this way, the USDA immediately suspends operations at the plant.]

—Faulkner Meats (M44779), Taylorsville, KY, 10/24/2018

An inspector observed a large hog being shot five times with a firearm before the animal was rendered unconscious for slaughter. After each unsuccessful attempt, the worker left the stunning area to retrieve another cartridge from a nearby vehicle. The worker commented to the inspector: “It’s custom, guy. No need to worry about it!”

—Sanchez Slaughterhouse (M12455), Kapaa Kauai, HI, 2/24/2020



Please see other AWI reports for additional information about the treatment of farm animals at slaughter in the United States and how this treatment is monitored by the federal and state departments of agriculture. These reports include the following:

Legal Protections for Farm Animals at Slaughter

Humane Slaughter Update: Federal and State Oversight of the Welfare of Farm Animals at Slaughter

The Welfare of Birds at Slaughter in the United States: The Need for Government Regulation

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