

**Travis Sides**

13th Judicial District Attorney  
400 Warner Street  
Fort Morgan, Colorado 80701

Dear District Attorney Sides,

On behalf of Animal Equality and Animal Partisan, we submit for your approval the enclosed request for criminal charges against Colorado Lamb Processors, LLC, for the misdemeanor offense of animal cruelty in violation of C.R.S.A. § 18-9-202.

We would like to emphasize that the subject of this request is both the Hide-On-Supervisor and the *business entity itself*, given its high managerial agents engaged in animal cruelty, and a clear lack of oversight allowed for the animal cruelty documented herein to occur.

As described in detail in the enclosed, Colorado Lamb Processors, LLC, is criminally liable for these offenses by operation of the State of Colorado's law of corporate criminal liability, C.R.S.A. § 18-1-606.

Thank you so much for your attention on this important matter. Please reach out to us with any questions via the contact information below.

Sincerely,



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BEFORE THE DISTRICT ATTORNEY OF THE 13<sup>TH</sup> JUDICIAL DISTRICT

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SUBMITTED BY ANIMAL EQUALITY AND ANIMAL PARTISAN

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**Request for criminal charges against Colorado Lamb Processors, LLC**

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## I. INTRODUCTION

On behalf of Animal Equality<sup>1</sup> and Animal Partisan<sup>2</sup>, we submit this correspondence alleging violations of the State of Colorado’s animal cruelty laws (specifically, C.R.S.A. § 18-9-202(1)(a) and §18-9-202(1.5)(a)) by Colorado Lamb Processors, LLC as a business entity. The subjects of this complaint are both the Hide-On-Supervisor and the *business entity itself* for their active role in the animal cruelty documented herein.

Colorado Lamb Processors, LLC, d/b/a “Colorado Lamb Processors,” with its Colorado headquarters at 1625 Agripark Road, Brush, Colorado 80723, operates a slaughter and meat processing facility located at the above-mentioned address.<sup>3</sup> The company appears to be owned by the Harper, Rule, and Raftopoulos families (“Owners”) and has been in operation since January 2018.<sup>4</sup>

In the following paragraphs, we will show that the Hide-On-Supervisor violated Colorado’s animal cruelty statute by improperly stunning a lamb multiple times and, additionally, that Colorado Lamb Processors is criminally liable for the animal cruelty that took place at its facility.

Colorado’s animal cruelty statute states that “A person commits cruelty to animals if he or she knowingly, recklessly, or with criminal negligence . . . mistreats . . . any animal.”<sup>5</sup> By improperly stunning the lamb, the Hide-On-Supervisor’s actions satisfy all of the elements of animal cruelty insofar as (1) the lamb in the case at hand is a species that meets the statute’s definition of “animal” which includes “any living dumb animal”; (2) the Hide-On-Supervisor’s actions meet the mens rea requirements of both reckless and criminal negligence and; (3) the Hide-On-Supervisor’s actions satisfy the actus reus requirement of mistreatment as his actions “caused and unreasonably permitted the continuation of unnecessary or unjustified pain or suffering” in the lamb.

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<sup>1</sup> Animal Equality is a nonprofit animal protection organization whose mission is to create a world where animals used in agriculture are protected and respected. Animal Equality works toward this mission by engaging with public officials, private companies, and members of the public through investigations, campaigns, legal and legislative advocacy, and consumer education.

<sup>2</sup> Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.

<sup>3</sup> *Colorado Lamb Processors, LLC*, Opencorporates, [https://opencorporates.com/companies/us\\_co/20181072796](https://opencorporates.com/companies/us_co/20181072796) (last visited May 30, 2023); see also *Colorado Lamb Processors*, USDA Food and Safety Inspection Service, <https://www.fsis.usda.gov/inspection/fsis-inspected-establishments/colorado-lamb-processors> (last visited May 30, 2023) (listing “meat slaughter and “meat processing” under the company’s activities).

<sup>4</sup> *Colorado Lamb Processors, LLC*, Buzzfile, <https://www.buzzfile.com/business/Colorado-Lamb-Processors,-LLC-970-629-0053> (last visited May 26, 2023); see also *Short Story: Colorado Lamb Processors Now Open*, Western Livestock Journal, [https://www.wlj.net/top\\_headlines/story-short-colorado-lamb-processors-now-open/article\\_5f9b4dfa-04c6-11eb-acab-2ba25ded1038.html](https://www.wlj.net/top_headlines/story-short-colorado-lamb-processors-now-open/article_5f9b4dfa-04c6-11eb-acab-2ba25ded1038.html) (Oct. 16, 2020).

<sup>5</sup> C.R.S.A. § 18-9-202(1)(a).

Additionally, we will show that Colorado Lamb Processors is criminally liable for animal cruelty pursuant to Colorado’s Corporate Liability statute, C.R.S.A. § 18-1-606(1)(b), as (1) a high managerial agent of the business entity, in this case, the Hide-On-Supervisor, engaged in criminal conduct while acting within the scope of his employment; (2) a high managerial agent, in this case, the Slaughter Floor Manager, knowingly tolerated the unlawful conduct; and (3) the governing body knowingly tolerated the unlawful conduct.

## II. FACTS GIVING RISE TO THE COMPLAINT

On March 28, 2023, a Supervisory Public Health Veterinarian (“SPHV”) from the US Department of Agriculture’s Food Safety Inspection Service (“USDA FSIS”) was stationed at Colorado Lamb Processors’ facility located at 1625 Agripark Road, Brush, Colorado 80723.<sup>6</sup> While at this facility, the SPHV documented numerous violations of humane slaughter methods and witnessed clear instances of animal cruelty involving a lamb being improperly loaded onto a conveyor belt while still fully conscious.<sup>7</sup> This lamb was left to suffer in agony after employees—including a supervisor—erroneously stunned the lamb three times, causing the lamb to bleed from his/her nose, struggle, and cry out, before the lamb finally lost consciousness.<sup>8</sup> This incident was thoroughly documented in the USDA’s Notice of Intended Enforcement (“NOIE”) Report, included below as Appendix A.

According to the NOIE report, on the above-mentioned date, the SPHV observed a “conscious lamb sitting upright and looking around while on the conveyor in front of the sticker<sup>9</sup> [employee]”.<sup>10</sup> At this point, the SPHV noted, the lamb should have “arrived in a stunned unconscious state . . .”<sup>11</sup> When the Colorado Lamb Processors employees noticed the lamb was sitting upright and fully conscious, they requested the assistance of the SPHV and asked him what to do.<sup>12</sup> The SPHV informed the employee that a supervisor needed to be immediately contacted and that the lamb would need to be rendered unconscious and either “plac[ed] back in line for

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<sup>6</sup> Appendix A: Notice of Intended Enforcement–Colorado Lamb Processors, UNITED STATES DEPARTMENT OF AGRICULTURE, p.2 (Mar. 28, 2023).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The sticker employee’s job consists of “Sever[ing] [the] jugular vein of previously stunned animals with a knife to prepare animals for butchering.” *Animal Sticker: A Description for the Animal Sticker Job*, Job Descriptions, <https://job-descriptions.org/animal-sticker.html> (last visited May 26, 2023).

<sup>10</sup> Appendix A, *supra* note 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

electrical stunning” or else stunned with “their backup hand-held captive bolt (“HHCB”) device<sup>13</sup>, in order to proceed with the slaughter day.”<sup>14</sup>

After an undisclosed amount of time, the Hide-On-Supervisor arrived with the HHCB device.<sup>15</sup> This Supervisor delivered a stun to the lamb who was still sitting upright on the conveyor while forcefully grasping the lamb by his/her left ear and mandible to restrain him/her.<sup>16</sup> The fully conscious lamb struggled against this restraint and remained upright, chewing his/her cud, blinking, with blood pouring out of his/her nose.<sup>17</sup> Because the lamb was still conscious despite two previous attempts to stun the animal, the Supervisor reloaded the HHCB device and delivered yet another unsuccessful shot to the lamb, to which the lamb immediately began showing “more signs of distress” by “moving its head around quickly.”<sup>18</sup> The lamb, at this point, was still fully conscious, the SPHV having assessed him/her by touching the lamb’s cornea and noting that the lamb responded by “repeatedly blinking, rhythmically breathing, still bleeding through its nose but not vocalizing.”<sup>19</sup> After these unsuccessful stun attempts by the Hide-On-Supervisor, the Slaughter Floor Manager was then called to the scene.<sup>20</sup> Once at the scene, the Slaughter Floor Manager reloaded the HHCB device and delivered yet another shot to the lamb, who was finally rendered unconscious.<sup>21</sup> At this point, the lamb had been improperly shot three times, with the fourth finally accomplishing the stun. It was later recorded by the SPHV that the lamb had “three penetrating stun holes” on the side of his/her head.<sup>22</sup> Meaning, on two occasions prior to the final successful stun, the lamb endured the pain of a metal rod slamming into and penetrating his/her skull and potentially damaging brain tissue but failing to render him/her unconscious.

Following this scene, the SPHV verbally notified the Slaughter Floor Manager that a “Regulatory Control Action” would be put into place and that “no more lambs should be stunned until the floor was released...”<sup>23</sup> The facility was issued the Notice of Intended Enforcement (“NOIE”) for violation of federally regulatory requirements<sup>24</sup> that included:

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<sup>13</sup> A HHCB is a device used to stun animals that fires a retractable bolt against the animal’s skull. One study published in the Meat Science Journal described the device as follows: “The mode of action of a penetrating captive bolt is concussion and trauma to the brain. A metal rod is ejected from the muzzle of the captive bolt gun via a supply of pressurized air. The bolt is propelled through the animal’s skull into the brain tissue, after which the bolt is retracted.” See H. Kline, et al, *Effect of captive bolt gun length on brain trauma and post-stunning hind limb activity in finished cattle Bos taurus*, Meat Science Journal (2019), [https://www.sciencedirect.com/science/article/pii/S0309174018306983#:~:text=The%20mode%20of%20action%20of,retracted%20\(Finnie%2C%201997\).](https://www.sciencedirect.com/science/article/pii/S0309174018306983#:~:text=The%20mode%20of%20action%20of,retracted%20(Finnie%2C%201997).) (last visited Aug. 24. 2023).

<sup>14</sup> Appendix A, *supra* note 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

- (1) Violation of Title 9 CFR 313.2(f)<sup>25</sup>
- (2) Violation of Title 9 CFR 313.15 (a)(1)<sup>26</sup>
- (3) Violation of Title 9 CFR 313.15(b)(1)(iii)<sup>27</sup>

Just nine days later, on April 6, 2023, the USDA sent a letter to Colorado Lamb Processors confirming the agency's deferral on a decision for enforcement action based on the violations committed by the company.<sup>28</sup> This letter is included below as Appendix B. Ultimately, Colorado Lamb Processors was allowed to conduct business as usual and no individual nor the company faced any consequences for causing the lamb to needlessly suffer.

### III. LEGAL ANALYSIS

#### **A. Colorado Lamb Processors' actions and omissions – which caused a lamb to experience a bolt driven into his/her skull repeatedly while fully conscious – violate Colorado's animal cruelty law.**

##### **1. Colorado's Animal Cruelty Statute**

Colorado's animal cruelty law prohibits a wide range of conduct and affords protection to an equally wide range of species from acts that constitute abuse. Colorado Lamb Processors' actions, both through the conduct of high managerial agents and through the failure of its governing body to implement appropriate training protocols and oversight, fall squarely within the ambit of Colorado's animal cruelty law and should be prosecuted.

##### *a. Covered Species*

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<sup>25</sup> Title 9 CFR 313.2(f) reads: "Stunning methods approved in § 313.30 shall be effectively applied to animals prior to their being shackled, hoisted, thrown, cast, or cut."

<sup>26</sup> Title 9 CFR 313.15 (a)(1) reads: "The captive bolt stunners shall be applied to the livestock in accordance with this section so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort."

<sup>27</sup> Title 9 CFR 313.15(b)(1)(iii) reads: "The stunning area shall be so designed and constructed as to limit the free movements of animals sufficiently to allow the operator to locate the stunning blow with a high degree of accuracy. All chutes, alleys, gates and restraining mechanisms between and including holding pens and stunning areas shall be free from pain-producing features such as exposed bolt ends, loose boards, splintered or broken planking, and protruding sharp metal of any kind. There shall be no unnecessary holes or other openings where feet or legs of animals may be injured. Overhead drop gates shall be suitably covered on the bottom edge to prevent injury on contact with animals. Roughened or cleated cement shall be used as flooring in chutes leading to stunning areas to reduce falls of animals. Chutes, alleys, and stunning areas shall be so designed that they will comfortably accommodate the kinds of animals to be stunned."

<sup>28</sup> Appendix B: Letter of Deferral–Colorado Lamb Processors, UNITED STATES DEPARTMENT OF AGRICULTURE, p.2 (Mar. 28, 2023).

Colorado's animal cruelty law defines "animal" as "any living dumb creature . . ."<sup>29</sup> The statute does not carve out any exemption for animals used in agriculture, and thus the definition of "animal" undoubtedly applies to the lamb at issue here.

*b. Actus Reus*

Colorado's animal cruelty statute states that "a person,"<sup>30</sup> which includes a limited liability company like Colorado Lamb Processors, who mistreats an animal is subject to criminal punishment.

The cruelty statute defines "mistreatment" as "every act or omission that causes or unreasonably permits the continuation of unnecessary or unjustified pain or suffering."<sup>31</sup>

*c. Mens Rea*

The mens rea for mistreatment is "knowingly, recklessly, or with criminal negligence . . ."<sup>32</sup> According to Colorado's model criminal jury instructions, "a person acts '*knowingly*' . . . when he [she] is aware that his [her] conduct is practically certain to cause the result."<sup>33</sup> A person is said to act *recklessly* when "he [she] consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists."<sup>34</sup> Finally, a person acts with *criminal negligence* when, "through a gross deviation from the standard of care that a reasonable person would exercise, he [she] fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists."<sup>35</sup> Any one of these can satisfy the mens rea requirement for "mistreatment" of animals, and thus establish the crime of animal cruelty.

*d. "Unnecessary" or "Unjustifiable"*

Finally, to constitute an offense, the animal's resulting pain or suffering must have been "unnecessary or unjustifiable." These terms are not defined in the animal cruelty statute, so we "look first to the plain meaning of the words employed".<sup>36</sup> Pursuant to Black's Law Dictionary, the term "unnecessary" should be construed to mean "Not required under the circumstances; not

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<sup>29</sup> C.R.S.A. § 18-9-201(2).

<sup>30</sup> Colo. Rev. Stat. § 15-14-702(6) defines "Person" as "an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity."

<sup>31</sup> C.R.S.A. § 18-9-201(3).

<sup>32</sup> C.R.S.A. § 18-9-202(1)(a)

<sup>33</sup> CJI[CO] F:195 Knowingly or Willingly (emphasis added).

<sup>34</sup> CJI[CO] F:308 Recklessly (emphasis added).

<sup>35</sup> CJI[CO] F:79 Criminal Negligence (emphasis added).

<sup>36</sup> *People v. Banks*, 9 P.3d 1125 (Colo.2000).

necessary.”<sup>37</sup> The term “unjustifiable” should similarly be construed to mean “Legally or morally unacceptable; devoid of any good reason that would provide an excuse or defense.”<sup>38</sup>

*e. Penalties*

“Mistreating” an animal under C.R.S.A. § 18-9-202(1)(a) constitutes a class 1 misdemeanor.<sup>39</sup> Class 1 misdemeanors are punishable by up to 364 days in jail or a fine of up to \$1,000 or both.<sup>40</sup>

2. Applied to the present facts

The act of improperly stunning the lamb by the Hide-On-Supervisor meets every element of Colorado’s animal cruelty statute and should be prosecuted. The fact that the lamb was an animal who was used in agriculture or was ultimately destined for slaughter has no bearing on whether a crime was committed. We respectfully ask the District Attorney to file criminal charges against Colorado Lamb Processors as a limited liability company and against the Hide-On-Supervisor for animal cruelty.

*a. The Hide-On-Supervisor*

The Hide-On-Supervisor’s actions constitute criminal animal mistreatment for the reasons laid out below.

First, the lamb at issue qualifies as an “animal” protected by Colorado’s animal cruelty statute as the statute covers every “living dumb creature.”<sup>41</sup>

Second, by improperly stunning the lamb on two separate occasions, the Hide-On-Supervisor caused the animal to be “mistreated” insofar as his actions *caused* the lamb to experience pain and/or suffering.<sup>42</sup> According to the USDA NOIE report, the Hide-On-Supervisor grabbed the conscious lamb by the mandible and left ear, to which the animal showed clear signs of distress by struggling against his grip.<sup>43</sup> The terrified animal was then shot in the skull with a metal bolt by the Hide-On-Supervisor which proved to be insufficient to render the lamb unconscious.<sup>44</sup> After this shot, the lamb showed clear signs of being in immense pain, as blood poured out of the lamb’s nose.<sup>45</sup> Despite this, the Hide-On-Supervisor once again shot the lamb in the skull with a metal

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<sup>37</sup> UNNECESSARY, Black’s Law Dictionary (11th ed. 2019).

<sup>38</sup> UNJUSTIFIABLE, Black’s Law Dictionary (11th ed. 2019).

<sup>39</sup> C.R.S.A. § 18-9-202(2)(a).

<sup>40</sup> C.R.S.A. § 18-1.3-501(1)(a).

<sup>41</sup> C.R.S.A. § 18-9-201(2).

<sup>42</sup> C.R.S.A. § 18-9-201(3) (emphasis added).

<sup>43</sup> Appendix A, *supra* note 6 at p. 2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*



bolt, and again the animal was not rendered unconscious.<sup>46</sup> More blood poured from the lamb's nose and he/she began to show even more signs of distress and agony as he/she quickly moved his/her head around.<sup>47</sup> Indeed, scientific studies involving assessment of pain in sheep reflect that the types of reactions described above are indicative of pain and suffering. According to a study conducted by the Farm Animal Welfare Education Center (FAWEC), indications of pain in sheep include vocalization, changes in facial expressions, and trembling."<sup>48</sup> Clearly, the lamb was in an immense amount of pain and experienced intense suffering, as the USDA NOIE report reveals that the lamb exhibited behavior that has been proven to indicate pain and suffering in sheep.

Third, the Hide-On-Supervisor's two failed stun attempts not only *caused* the lamb unnecessary pain and suffering, but his actions also *unreasonably permitted the continuation* of pain and/or suffering.<sup>49</sup> The USDA NOIE report notes that the lamb had been loaded onto the conveyor belt fully conscious after a first failed stun.<sup>50</sup> Due to this facility partaking in Halal slaughter, this first initial electrical stun would have likely been from a head-only electric stun.<sup>51</sup> This type of stun is typically done by administering an electrical current through the animal's head which will cause the current to "pass through the animal's brain to induce an epileptic seizure."<sup>52</sup> If done correctly, the animal will be rendered immediately unconscious, where it must be bled within a maximum interval of 30 seconds to avoid the animal regaining consciousness.<sup>53</sup> If done incorrectly, like it was clearly done in the case at hand, "[It] will be painful for the animal. It will feel a large electric shock or heart attack symptoms, even though it may be paralyzed and unable to move."<sup>54</sup> With all of this in mind, there is little doubt that by the time the lamb reached the sticker employee, he/she was already in pain and was suffering. The Hide-On-Supervisor had the opportunity to end the animal's suffering by administering a proper stun, but instead he failed to do so—twice.<sup>55</sup> Therefore by improperly stunning the lamb on two separate occasions, he directly permitted for the continuation of the lamb's pain and suffering.

Fourth, the pain and suffering the lamb experienced at the hands of the Hide-On-Supervisor was both unnecessary and unjustifiable, thus fully satisfying the definition of mistreatment.<sup>56</sup> To support this conclusion, one need only to look to the Humane Methods of Slaughter Act

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Assessment of Pain in Sheep*, Universitat Autònoma de Barcelona, <https://www.fawec.org/en/technical-documents-sheep/238-assessment-pain-sheep> (last visited Jun. 14, 2023).

<sup>49</sup> C.R.S.A. § 18-9-201(3) (emphasis added).

<sup>50</sup> Appendix A, *supra* note 6 at p. 2.

<sup>51</sup> *Pros and Cons of Different Stunning Methods from a Halal Perspective: A Review*, Nat'l Library of Med., <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8633638/#:~:text=For%20that%20reason%2C%20head%2Donly,does%20not%20kill%20the%20animal> (last visited Sept. 10, 2023).

<sup>52</sup> *Electrical Stunning of Sheep*, Temple Grandin, <https://www.grandin.com/meat/sheep/elec.stun-2.html> (last visited Sept. 10, 2023).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Appendix A, *supra* note 6 at p. 2.

<sup>56</sup> C.R.S.A. § 18-9-201(3).

(“HMSA”). The HMSA sets forth regulations that federally inspected facilities, like Colorado Lamb Processors, are to follow during the slaughter process. Pursuant to the HMSA:

No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are 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; or

(b) by slaughtering 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 and handling in connection with such slaughtering.<sup>57</sup>

The HMSA makes it exceptionally clear that sheep should not feel pain during the slaughter process to comply with the public policy of the United States. This would suggest that if a sheep experiences *any* pain during the slaughtering process, much like the lamb did in the case at hand, this pain is unnecessary and unjustifiable as it goes directly against public policy. Therefore, the Hide-On-Supervisor’s actions clearly caused the lamb unnecessary and unjustifiable pain, as federal regulations have specifically mandated that the animal should feel absolutely no pain and should certainly not experience pain that would cause excitement and discomfort, such as the lamb felt in the case at hand which was shown when the lamb thrashed his/her head, fought against the Hide-On-Supervisor, and vocalized.<sup>58</sup>

Fifth, the requisite mens rea requirements for criminal animal cruelty are met. As a reminder, we do not have to show that there was any intent by the Hide-On-Supervisor to mistreat the animal, rather a mere showing that the Hide-On-Supervisor’s actions were either *reckless* (by showing that he “disregard[ed] a substantial and unjustifiable risk that a result w[ould] occur or that a circumstance exist[ed]”<sup>59</sup>) or that he was criminally *negligent* (“through a gross deviation from the standard of care that a reasonable person would exercise, he [she] fail[ed] to perceive a substantial and unjustifiable risk that a result w[ould] occur or that a circumstance exist[ed]”)<sup>60</sup> suffices.

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<sup>57</sup> 7 U.S.C.A. §§ 1902 (a)—(b).

<sup>58</sup> Appendix A, *supra* note 6 at p. 2.

<sup>59</sup> CJI[CO] F:308 Recklessly.

<sup>60</sup> CJI[CO] F:79 Criminal Negligence.

The Hide-On-Supervisor's actions meet the mens rea qualifications of both "recklessly" and "negligently". The USDA NOIE report makes it clear that the Hide-On-Supervisor improperly stunned the lamb not once, but twice after the lamb was loaded onto the conveyor belt while still fully conscious.<sup>61</sup> The report notes that after the first stun, the lamb remained upright and was clearly in pain and distressed.<sup>62</sup> However, despite failing to stun the lamb on the first attempt, the Hide-On-Supervisor used the same erroneous technique to shoot the lamb a second time, fully disregarding the substantial risk that this would further cause the lamb incredible agony and could also be unsuccessful. Based on the record, the Supervisor did not check the stunning device, did not request that a new stunning device be brought to him in case the one used was malfunctioning, did not seek help from another employee to ensure a successful stun, and did not ever have the lamb removed from the conveyor belt and taken immediately back to the line to the stunning platform.<sup>63</sup> The Hide-On-Supervisor did not take any of these precautions despite his first unsuccessful stun, but instead opted to stun the lamb in the exact same improper manner and with the exact same improper result.<sup>64</sup>

These actions and omissions reflect a clear and conscious disregard of the substantial and unjustifiable risk that the exact same result would occur, and the lamb would continue to suffer because of it; thus, the Hide-On-Supervisor acted "recklessly". In addition, by failing to implement any corrective measures between the first and second failed stun attempts, his actions constituted "a gross deviation from the standard of care that a reasonable person would exercise," thus meeting the standard for criminal *negligence* as well.

In sum, the Hide-On-Supervisor (1) mistreated the lamb—an animal undeniably protected by the law—in a cruel manner by repeatedly improperly stunning the lamb, (2) causing the animal unnecessary and unjustifiable pain and intense suffering, and (3) did so recklessly and/or negligently, as evidenced by his failure to adjust his technique in any manner to achieve a successful stun, especially after the first failed attempt. Accordingly, the Hide-On-Supervisor committed animal cruelty and should be criminally charged.

*b. Colorado Lamb Processors as a limited liability company*

In addition to the Hide-On-Supervisor, Colorado Lamb Processors as a "business entity" is subject to criminal liability. We respectfully ask the District Attorney to file separate animal cruelty charges against the business entity itself.

- i. Colorado Lamb Processors should be charged criminally pursuant to Colorado's business entity liability statute.

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<sup>61</sup> Appendix A, *supra* note 6 at p. 2.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

In Colorado, a “business entity” is defined as “a corporation or other entity that is subject to the provisions of title 7, C.R.S. . . .”<sup>65</sup> Colorado Lamb Processors qualifies as a business entity pursuant to the corporate liability statute, as it is an entity that is subject to the provisions of title 7 under Colorado Revised Statutes.<sup>66</sup> Colorado Lamb Processors is a Limited Liability Company (“LLC”) registered with the Colorado Secretary of State’s Office with an incorporation date of January 24, 2018.<sup>67</sup>

Furthermore, a business entity can be criminally charged with an offense if:

The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the governing body or individual authorized to manage the affairs of the business entity or by a high managerial agent acting within the scope of his or her employment or in behalf of the business entity.<sup>68</sup>

In the case at hand, Colorado Lamb Processors can be criminally liable on any one of the following grounds: (1) a high managerial agent of the business entity, in this case, the Hide-On-Supervisor, engaged in criminal conduct while acting within the scope of his employment; (2) a high managerial agent, in this case, the Slaughter Floor Manager, knowingly tolerated the unlawful conduct; and (3) the governing body knowingly tolerated the unlawful conduct. Liability exists on all grounds, as is explained in the following sections.

*(A) Liability premised on the acts of a high managerial agent*

The Hide-On-Supervisor qualifies as a “high managerial agent” whose criminal acts within the scope of his employment are automatically imputed to his employer. A “high managerial agent” is defined to include an employee whose responsibilities include “supervision in a managerial capacity of subordinate employees.”<sup>69</sup>

The Hide-On-Supervisor clearly qualifies as a high managerial agent. According to the NOIE report, the Hide-On-Supervisor was the individual who was called to assist the employees after the USDA inspector discovered that the lamb had been loaded onto the conveyor belt while still conscious.<sup>70</sup> The Hide-On-Supervisor was the one who brought the stunning device and was in charge of making sure the lamb was rendered unconscious.<sup>71</sup> Moreover, the title of “supervisor”

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<sup>65</sup> C.R.S.A. §18-1-606(1)(a).

<sup>66</sup> C.R.S. §§7-80-101–7-80-1101.

<sup>67</sup> *Colorado Lamb Processors, LLC*, Opencorporates, [https://opencorporates.com/companies/us\\_co/20181072796](https://opencorporates.com/companies/us_co/20181072796) (last visited May 29, 2023).

<sup>68</sup> C.R.S.A. § 18-1-606(1)(b).

<sup>69</sup> C.R.S.A. §18-1-606(2)(a).

<sup>70</sup> Appendix A, *supra* note 6 at p. 2.

<sup>71</sup> *Id.*

suggests that the Hide-On Supervisor's responsibilities include "supervision in a managerial capacity of subordinate employees."<sup>72</sup>

Next, the Hide-On-Supervisor was acting within the scope of his employment at Colorado Lamb Processors. Colorado law notes that whether an act is committed within the scope of employment "depends upon whether that conduct was 'necessarily incidental' to his employment."<sup>73</sup> As Colorado Lamb Processors is in the business of animal slaughter and the sale of meat, the Hide-On-Supervisor's act was done within the scope of his employment for the corporation. Specifically, the USDA NOIE report shows that the Hide-On-Supervisor improperly stunned the lamb in an attempt to render the lamb unconscious before the lamb was to be processed for slaughter.<sup>74</sup> Attempting to stun the lamb is clearly conduct that is "necessarily incidental" to the slaughterhouse employment of the Hide-On-Supervisor by Colorado Lamb Processors.

In sum, the crime of animal mistreatment committed by the Hide-On-Supervisor as a high managerial agent is imputed to Colorado Lamb Processors by operation of C.R.S.A. § 18-1-606(1)(b), and the company should be charged with this crime.

*(B) Liability premised on the failures of a high managerial agent*

Not only do the actions of high managerial agents impute liability onto a corporation, but also the failures of high managerial agents. In the case at hand, Colorado Lamb Processors is subject to criminal liability due to the Slaughter Floor Manager "knowingly tolerating" the Hide-On-Supervisor's actions while acting within the scope of his employment.

The Slaughter Floor Manager clearly qualifies as a "high managerial agent." According to online sources, an abattoir manager or slaughterhouse manager, "supervises and coordinates activities of workers engaged in slaughtering, skinning, and dressing cattle, hogs, and sheep on killing floor of abattoir: Directs and trains workers in use of knife, air-knife, saws, and other handtools."<sup>75</sup> Additionally, from the USDA NOIE Report, it is evident that the Slaughter Floor Manager has a supervisory role over the Hide-On-Supervisor, as the Manager, while acting within the scope of his/her employment, was the one who stepped in after the Hide-On-Supervisor repeatedly failed to stun the lamb and was the one who delivered the final stun to the lamb.

According to the USDA NOIE Report, when the employees noticed that the lamb was conscious while on the conveyor belt, they looked to the SPHV (an employee of the USDA and not Colorado Lamb Processors) for guidance and received no assistance from either the Hide-On-Supervisor or

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<sup>72</sup> C.R.S.A. §18-1-606(2)(a); see also *Supervisor*, Cambridge Dictionary Online (2023) ("a person whose job is to supervise someone or something"); C.R.S. § 24-50.5-102(5) in another context regarding state employee laws ("‘Supervisor’ means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.") (emphasis added).

<sup>73</sup> *Lytle v. Kite*, 728 P.2d 305, 310 (Colo. 1986).

<sup>74</sup> Appendix A, *supra* note 6 at p. 2.

<sup>75</sup> *Abattoir Supervisor: A description for the abattoir supervisor job*, JOB DESCRIPTIONS, <https://job-descriptions.org/abattoir-supervisor.html> (last visited Sept. 12, 2023).

the Slaughter Floor Manager until the SPHV directed the employees to call a supervisor.<sup>76</sup> What's more, even when the Hide-On-Supervisor arrived on scene and proceeded to fail to stun the lamb, the Slaughter Floor Manager did not arrive and did not take over until after the second failed stun.<sup>77</sup> By then, the lamb had already been subjected to immense suffering at the hands of employees whom the Slaughter Floor Manager was supposed to be in charge of. The Slaughter Floor Manager knowingly tolerated the abuse of the lamb through his inaction and his failures. Because of this, Colorado Lamb Processors is criminally liable.

*(C) Liability premised on the failures of the company's governing body*

In addition to corporate criminal liability being imputed on Colorado Lamb Processors due to the actions of the Hide-On-Supervisor, Colorado Lamb Processors is separately subject to criminal liability on the grounds that its governing body "knowingly tolerated" the abuse of the lamb, by failing to impose proper protocols, training procedures, and oversight.<sup>78</sup>

The facts set forth in the USDA report indicate that the business entity, through its governing body, failed to ensure that the workers at Colorado Lamb Processors received proper training and failed to ensure that proper protocols were put into place to ensure that conscious lambs were not loaded onto the conveyor belt.

According to the USDA report, when the employees noticed that the lamb was conscious while on the conveyor belt, they looked to the SPHV for guidance, instead of moving into action and/or following any set of guidelines set forth by the company.<sup>79</sup> The USDA veterinarian was the one who informed the employees that the lamb needed to be rendered unconscious as soon as possible.<sup>80</sup> Although the USDA NOIE report stated that Colorado Lamb Processors had a "robust systematic approach to humane handling of livestock," this approach clearly has not been implemented at the facility. Faced with a still-conscious lamb, the bewildered employees had to be told what to do by an employee of the USDA; they did not know how to handle this basic situation themselves.<sup>81</sup> This indicates a lack of proper training to ensure that employees knew how to swiftly act in the situation where an animal was conscious on the conveyor belt.

Moreover, when the Hide-On-Supervisor was called upon to stun the lamb with the HHCB device, he was unable to successfully do so even after *two* attempts.<sup>82</sup> These two failed stun attempts occurred directly after an employee on the line clearly failed to properly stun the lamb before loading him/her onto the belt, with the result being the lamb arriving at the sticker fully conscious.<sup>83</sup> Again, this suggests that proper training was knowingly not put into place by

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<sup>76</sup> Appendix A, *supra* note 6 at p. 2.

<sup>77</sup> *Id.*

<sup>78</sup> C.R.S.A. § 18-1-606(1)(a).

<sup>79</sup> Appendix A, *supra* note 6.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

Colorado Lamb Processors' governing body, as it is difficult to believe that not one, but two employees including the Hide-On Supervisor, a high managerial agent, had they been properly trained, could fail to perform their tasks to such an extent and so close in time.

It is unthinkable that a business entity would be unaware of what training protocols have been put into place and it is incomprehensible that, in the case of Colorado Lamb Processors, so many employees could not properly perform their jobs had they been provided the proper training. Thus, it is quite evident that Colorado Lamb Processors did not provide proper training to its employees and, because of this, it knowingly tolerated the mistreatment of the lamb.

Therefore, Colorado Lamb Processors' governing body knowingly tolerated the abuse of this lamb by failing to ensure proper procedures were put into place and their staff were properly trained.

For all the reasons stated above, C.R.S.A. § 18-1-606 applies here, and Colorado Lamb Processors, as a business entity, should be charged with animal cruelty.

ii. Policy considerations warrant charging Colorado Lamb Processors for animal cruelty

In addition to the applicability of Colorado's black letter corporate criminal liability statute, public policy weighs strongly in favor of charging Colorado Lamb Processors as a business entity for the animal cruelty described in the above sections.

As legal scholars have explained, "the act of the agent, while exercising the authority delegated to [him], may be controlled, in the interest of public policy, by imputing his act to his employer and imposing penalties upon the corporation for which he is acting in the premises."<sup>84</sup>

Indeed, in one view, corporate "liability for statutory offenses is not grounded on culpability or guilt, but rather is intended to bring the full weight of society pressure to bear on the corporation to ensure that its employees and agents act responsibly."<sup>85</sup>

If Colorado Lamb Processors were immunized from criminal liability for these acts, it would lack any and all incentive to deter them, which would inevitably result in more instances of lambs suffering at their facility.

In fact, we are already seeing that the failure to hold Colorado Lamb Processors criminally liable for their actions has created a lack of incentive for them to change their operations, which has resulted in a similar incident where a lamb was improperly stunned and needlessly suffered. This is documented in the USDA NOIE included below as Appendix C. The NOIE notes that a mere nine months after the incident in March, on December 18, 2023, a USDA inspector observed a

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<sup>84</sup> H. Lowell Brown, *Vicarious Criminal Liability of Corporations for the Acts of Their Employees and Agents*, 41 Loy. L. Rev. 279, 281 (1995).

<sup>85</sup> *Id.* at 292.

lamb regain consciousness while on the conveyor belt at Colorado Lamb Processors' facility.<sup>86</sup> During this incident, the lamb actually stood completely upright and attempted to flee before an employee threw their body on top of the lamb to keep the lamb immobile.<sup>87</sup> It wasn't until two supervisors arrived on scene and stunned the animal with a backup HHCB device that the lamb was rendered insensible.<sup>88</sup> Again, the facility was ordered to cease operations and was notified of their noncompliance of regulatory requirements in Title 9 CFR 313.30(a)(4).<sup>89</sup> Similar to the previous incident, only eleven days later, on December 29, 2023, the USDA sent a letter to Colorado Lamb Processors confirming the agency's deferral on a decision for enforcement action based on the violations committed by the company.<sup>90</sup> This letter is included below as Appendix D. Colorado Lamb Processors was allowed to conduct business as usual again and has not faced any consequences for causing yet another lamb to needlessly suffer. State action is warranted not only because Colorado Lamb Processors violated Colorado's Animal Cruelty law, but because it has clearly shown that it will *continue* to repeat its actions and violate Colorado law.

For all these reasons in both law and policy, Colorado Lamb Processors is legally culpable and should be held criminally liable for the mistreatment of the lamb described in this document.

**B. The “accepted agricultural animal husbandry practices” exception in Colorado’s animal cruelty statute does not preclude criminal liability.**

Colorado law contains an exemption to cruelty charges for “accepted agricultural animal husbandry practices,” however, the exemption does not apply here. According to C.R.S.A. § § 18-9-201.5(1):

Nothing in this part 2 [Cruelty to Animals] shall affect *accepted animal husbandry practices* utilized by any person in the care of companion or livestock animals or in the extermination of undesirable pests as defined in articles 7, 10, and 43 of title 35, C.R.S.<sup>91</sup>

Here, this exemption can be very quickly ruled as inapplicable. Clearly, the acts of Colorado Lamb Processors were not “accepted agricultural animal husbandry practices,” because the acts resulted in a violation of the federal Humane Methods of Slaughter Act and issuance by the USDA of an NOIE.

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<sup>86</sup> Appendix C: Notice of Intended Enforcement–Colorado Lamb Processors, UNITED STATES DEPARTMENT OF AGRICULTURE, p.2 (Dec. 18, 2023).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Title 9 CFR 313.30(a)(4) reads: “The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.”

<sup>90</sup> Appendix D: Letter of Deferral–Colorado Lamb Processors, UNITED STATES DEPARTMENT OF AGRICULTURE, p.2 (Dec. 29, 2023).

<sup>91</sup> C.R.S.A. § 18-9-201.5(1) (emphasis added).



Furthermore, the American Meat Institute Foundation's *Recommended Animal Handling Guidelines and Audit Guide for Cattle, Pigs, and Sheep* clearly shows that Colorado Lamb Processors did not adhere to accepted agricultural animal husbandry practices. The guidelines note that "when stunning is done correctly, the animal feels no pain and it becomes *instantly unconscious*."<sup>92</sup> It additionally states that "A good stunner operator learns not to chase the animal's head. He takes the time to aim and get one good, effective shot."<sup>93</sup>

Not only did the company's acts result in a federal order requiring the facility to shut down operations for the day, but their actions clearly do not meet the recommended animal handling guidelines. Thus, Colorado Lamb Processors' conduct was clearly not "accepted," and it cannot avail itself of this statutory exemption.

### III. CONCLUSION

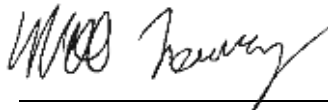
Because of the actions and inactions of both the Hide-On-Supervisor and Colorado Lamb Processors, a lamb's final moments were spent in agony. It does not matter that this lamb was destined for slaughter or that the Hide-On-Supervisor did not act with malice or cruel intent. What *does* matter is that the Hide-On-Supervisor, a high managerial agent under Colorado's corporate liability statute, did recklessly and with criminal negligence mistreat the lamb when he failed to properly stun the lamb not once, but *twice*. What also matters is that Colorado Lamb Processors knowingly tolerated these actions through clear lack of protocols, trainings, and oversight.

In light of the above, we respectfully ask that both Colorado Lamb Processors as a business entity, and the Hide-On-Supervisor and be criminally charged for animal cruelty.

Regards,



Chris Carraway  
Legal Counsel  
The Animal Activist Legal Defense Project  
At the University of Denver Sturm College of Law  
CCarraway@law.du.edu  
(919) 272-1295



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<sup>92</sup> *Recommended Animal Handling Guidelines and Audit Guide for Cattle, Pigs, and Sheep*, AMERICAN MEAT INST., <https://www.grandin.com/RecAnimalHandlingGuidelines.html> (last visited Sept. 12, 2023) (emphasis added).

<sup>93</sup> *Id.*

Will Lowrey  
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*Maggie Marshall*

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# **APPENDIX A**



Food Safety and  
Inspection Service

March 28, 2023

Office of Field  
Operations  
Denver District Office

**SENT VIA ELECTRONIC MAIL**

1 Denver Federal  
Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303) 236-9800  
Fax (303) 236-9794

(b) (6), Establishment Administrator  
Colorado Lamb Processors  
Establishment M47194  
1625 Agripark Rd  
Brush, CO 80723  
(b) (6)@cololamb.com

#### **NOTICE OF INTENDED ENFORCEMENT (NOIE)**

Dear (b) (6)

This letter serves as official notification by the Food Safety Inspection Service (FSIS) of its intent to withhold the marks of inspection and suspend the assignment of FSIS Inspection Program Personnel (IPP) at your establishment, Colorado Lamb Processors, Establishment M47194, located in Brush, Colorado. Dr. Robert Reeder, District Manager, verbally notified you of the Notice of Intended Enforcement (NOIE) on March 28, 2023. The decision to issue this notification was made in accordance with Title 9 of the Code of Federal Regulations (9 CFR) Part 500.3(b) (Rules of Practice), based on your failure to meet regulatory requirements regarding livestock humane slaughter at your establishment.

#### **Background Authority**

The *Federal Meat Inspection Act* (FMIA), Title 21 of the United States Code (21 USC) Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering establishment if FSIS finds that any cattle, sheep, swine, goats, horses, mules or other equines have been slaughtered or handled in connection with slaughter at such establishments by any method not in accordance with the *Humane Methods of Slaughter Act* (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. FSIS has also developed Rules of Practice regarding enforcement prescribed in 9 CFR Part 500.

The Rules of Practice describe the types of enforcement actions that FSIS may take and include procedures for taking a withholding action and or suspension, with or without prior notification, as well as the procedures for filing a complaint to withdraw a Grant of Federal Inspection.

#### **Finding/Basis for Action**

On March 28, 2023, the FSIS Supervisory Public Health Veterinarian (SPHV) documented in a Noncompliance Record (NR) the following event at Est. M47194:

##### *"HATS Category VIII: Stunning Effectiveness"*

*While completing a Livestock Humane Handling Task at Colorado Lamb Processors on March 28, 2023 at approximately 11:32am, I, the SPHV, observed a conscious lamb sitting upright and looking around while on the conveyer in front of the sticker, during Halal slaughter, that utilizes electrical stunning before cutting the throat of the animals for bleeding. [The lamb should have arrived in a stunned unconscious state at this point in the slaughter process.] The sticker and the employee in charge of bringing the animals down the conveyer motioned for the SPHV to come assist with the situation. Upon arriving at the bleeding conveyer, the aforementioned employees asked the SPHV what to do. The sticker at this point in time was exclaiming that there had been an initial electrical current stun delivered to the animal, however the animal did not appear to be in distress, as it was calmly sitting sternal on the table while chewing cud, eyes tracking, and blinking. The SPHV informed the employees to contact their supervisor and that the animal would need to be rendered insensible as soon as possible, either by placing the animal back in line for electrical stunning or with their backup hand-held captive bolt (HHCB) device, in order to proceed with the slaughter day. The Hide-On Supervisor arrived at the bleeding conveyer, while loading the backup HHCB device, and delivered stun #2 to the animal while the animal was sitting sternal on the conveyor in front of the sticker and restrained manually by firmly grasping the left ear and mandible, which the animal struggled against. Following the stun, the SPHV observed the animal remain upright on the table, blinking, chewing cud, with blood pouring out of its nose. At this time, the SPHV advised the Hide-On Supervisor to deliver another stun immediately. After reloading the HHCB device, a third stun (second HHCB stun) was delivered to the animal. The animal continued to remain upright, this time showing more signs of distress by moving its head around quickly. The SPHV assessed the blinking reflex by touching the cornea, and the animal responded by repeatedly blinking, rhythmically breathing, still bleeding through its nose but not vocalizing. The Slaughter Floor Manager arrived at the location of the animal, reloaded the HHCB device and delivered a 4<sup>th</sup> stun (third HHCB stun) to the animal, rendering the animal unconscious.*

*The SPHV verbally notified the Slaughter Floor Manager that a Regulatory Control Action would be taken by placing a US Reject tag B41418881 on the restrainer, and that no more lambs should be stunned until the floor was released, but all stunned animals could be run through to the cooler. Upon inspection of the dressed head, three penetrating stun holes were observed. The Denver District Management Team was notified through supervisory channels. This noncompliance is being associated with MOI#GXL2215015926G issued on 1/26/2023. This establishment operates under a robust systematic approach to livestock humane handling."*

## Summary

This event is a noncompliance of regulatory requirements in:

- Title 9 CFR 313.2(f) - *Stunning methods approved in 313.30 shall be effectively applied to animals prior to their being shackled, hoisted, thrown, cast or cut.*
- Title 9 CFR 313.15(a)(1) - *The captive bolt stunners shall be applied to the livestock in accordance with this section so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.*
- Title 9 CFR 313.15(b)(1)(iii) - *The stunning area shall be so designed and constructed as to limit the free movements of animals sufficiently to allow the operator to locate the stunning blow with a high degree of accuracy. All chutes, alleys, gates and restraining mechanisms between and including holding pens and stunning areas shall be free from pain-producing features such as exposed bolt ends, loose boards, splintered or broken planking, and protruding sharp metal of any kind. There shall be no unnecessary holes or other openings where feet or legs of animals may be injured. Overhead drop gates shall be suitably covered on the bottom edge to prevent injury on contact with animals. Roughened or cleated cement shall be used as flooring in chutes leading to stunning areas to reduce falls of animals. Chutes, alleys, and stunning areas shall be so designed that they will comfortably accommodate the kinds of animals to be stunned."*

The decision to issue a NOIE in lieu of a Notice of Suspension (NOS) is based on your establishment implementing a robust systematic approach to humane handling of livestock.

You are required to proffer the Denver District Office a written response of your analysis of the event, corrective actions and preventative measures within three (3) working days from the receipt of this letter, no later than the close of business, March 31, 2023. Your response should include:

- A written description of the incident.
- The root cause of the incident.
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

Based on your response, FSIS will determine further action, if any, is necessary. In addition, failure to respond to this NOIE and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

In accordance with Title 9 CFR 500.5(b)(4), you may appeal this action by contacting:

Paul Wolseley, Executive Associate for Regulatory Operations  
OFO, FSIS, USDA  
1400 Independence Avenue, SW  
SB, Room 3160  
Washington, DC 20250  
Email: [Paul.Wolseley@usda.gov](mailto:Paul.Wolseley@usda.gov)  
Phone: (202) 937-4761

If you have any questions regarding this matter, you may contact the Denver District Office at (303)236-9800.

Sincerely,

ROBERT

Digitally signed by ROBERT  
REEDER  
Date: 2023.03.28 15:54:31 -0600

Dr. Robert Reeder  
District Manager  
USDA FSIS OFO  
Denver District Office  
[Robert.Reeder@usda.gov](mailto:Robert.Reeder@usda.gov)

cc: FO/QUER  
P. Wolseley, EARO  
R. Reeder, DM  
D. James, DDM  
J. Monteverde, DDM  
J. VanHook, DDM  
(b) (6), SPHV  
(b) (6), SCS  
(b) (6), CSI  
(b) (6), DVMS  
(b) (6), DVMS  
(b) (6), DCS  
S. Baucher, RD/OIEA

## **APPENDIX B**





Food Safety and  
Inspection Service

Office of Field  
Operations  
Denver District Office

1 Denver Federal  
Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303)236-9800  
Fax (303)236-9794

April 6, 2023

**SENT VIA ELECTRONIC MAIL**

(b) (6), Establishment Administrator  
Colorado Lamb Processors  
Establishment M47194  
1625 Agripark Rd  
Brush, CO 80723  
(b) (6)@cololamb.com

**LETTER OF DEFERRAL (LOD)**

Dear (b) (6)

On March 28, 2023, the Food Safety Inspection Service (FSIS) issued your establishment, Colorado Lamb Processors, Est. M47194, a Notice of Intended Enforcement (NOIE) in accordance with FSIS Rules of Practice, Title 9 CFR 500.3(b), based on your failure to meet regulatory requirements regarding livestock humane slaughter at your establishment.

On March 31, 2023, the Denver District Office received a written response from your firm. After reviewing your response, FSIS requested clarification on April 3, 2023. On April 5, 2023, the Denver District Office received your firm's clarifications. FSIS has carefully reviewed your responses and determined that, based on your proposed modifications and plan of action, FSIS will defer a decision on an enforcement action pending verification by FSIS inspection personnel that Colorado Lamb Processors, Est. M47194, has effectively implemented its proposed measures. The decision pertaining to this enforcement action will be based upon the plant's validation, verification, and execution of these actions. Plant personnel should continue to monitor operations to prevent additional inhumane failures from occurring.

Please be advised that as a federally inspected establishment, you are expected to comply with the Federal Meat Inspection Act (FMIA) and all applicable FSIS regulations. Your failure to comply with the regulatory requirements, or to effectively implement the measures addressed in your written responses, may result in FSIS initiating further enforcement actions, and/or other appropriate administrative or legal actions.

FSIS will design a verification plan to confirm that your establishment is implementing the corrective actions you provided in your responses to the NOIE. The FSIS Verification Plan is designed to ensure that your establishment fully

implements the revisions to your humane handling program and other corrective actions stated in your submissions, including all monitoring activities at your establishment and that these revisions and actions are effective in assuring future regulatory compliance.

FSIS will provide you a copy of the verification plan. Please be advised that only FSIS can amend the verification plan. If your establishment wishes to modify your proposed corrective actions during the deferral period, please submit these changes, in writing, to FSIS for approval prior to making any changes in your actions.

If you have questions regarding this matter, please contact the Denver District Office at (303) 236-9800.

Sincerely,

**JESSICA  
VANHOOK**

Digitally signed by  
JESSICA VANHOOK  
Date: 2023.04.06  
08:58:07 -06'00'

for

Dr. Robert Reeder  
District Manager  
USDA FSIS OFO  
Denver District Office

cc: F/O QER  
Est. File  
P. Wolseley, EARO  
D. James, DDM  
J. Monteverde, DDM  
J. VanHook, DDM  
(b) (6) SPHV  
(b) (6) SCS  
(b) (6) CSI  
(b) (6) DVMS  
(b) (6) DVMS  
(b) (6) DCS  
S. Baucher, RD/OIEA

# **APPENDIX C**



United States Department of Agriculture

Food Safety and  
Inspection Service

December 18, 2023

Office of Field  
Operations  
Denver District Office

**SENT VIA  
ELECTRONIC MAIL**

1 Denver Federal  
Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303) 236-9800  
Fax (303) 236-9794

(b) (6), Establishment Administrator  
Colorado Lamb Processors  
Establishment M47914  
1625 Agripark Rd  
Brush, CO 80734  
(970)381-0141  
(b) (6)@cololamb.com

Attention: (b) (6), Establishment Administrator

#### **NOTICE OF INTENDED ENFORCEMENT (NOIE)**

This letter serves as official notification by the Food Safety and Inspection Service (FSIS) of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP), with prior oral notification provided by Dr. Jessica VanHook, Deputy District Manager on December 18, 2023, at Colorado Lamb Processors, Establishment M47194, located in Brush, CO. The decision to institute this enforcement action is in accordance with Title 9 Code of the Federal Regulations (CFR) Rules of Practice 500.3(b) (Rule of Practice), based on your establishment's failure to meet regulatory requirements regarding livestock humane slaughter.

#### **Background / Authority**

The Federal Meat Inspection Act (FMIA) (21 USC 603 (b)) and Poultry Products Inspection Act (PPIA) (21 USC 451 et seq.) provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering establishment if FSIS finds that any cattle, sheep, swine, goats, horses, mules or other equines have been slaughtered or handled in connection with slaughter at such establishments by any method not in accordance with the *Humane Methods of Slaughter Act* (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the delegated authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9



CFR Part 313. FSIS has also developed the Rules of Practice regarding enforcement (Title 9 CFR, Part 500). The Rules of Practice describe the types of enforcement action that FSIS may take and include procedures for taking a withholding action and/or suspension, with or without prior notification, and for filing a complaint to withdraw a Federal Grant of Inspection. FSIS can refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing.

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

On December 18, 2023, the FSIS Supervisory Consumer Safety Inspector (SCSI) documented in a Noncompliance Record (NR) the following event at Est. M47194:

*“On Monday, December 18, 2023, at approximately 0800 hours while observing on the kill floor, I, the SCSI, observed a lamb coming through the window from the stun box to the bleed table that was unconscious, following an electrical current stun, which returned to consciousness. The lamb was stiff and in right lateral recumbency as it exited the brisket conveyor restraint and slid down the ramp to the Halal bleed table. As the establishment employee went to flip the lamb into left lateral recumbency on the table for the Halal shochet to make his ritual cut, the lamb stood completely up on the table and tried to escape. A plant employee immediately covered the lamb with his body so that the lamb could not escape. A floor supervisor retrieved the backup hand-held captive bolt (HHCB) device, then the Slaughter Supervisor arrived and retrieved the backup HHCB device from the floor supervisor and render the manually restrained animal insensible with one stun attempt with the HHCB device. I tagged the stun area at 0806 hours with USDA Rejected Tag B45969866. I verbally informed the HACCP Coordinator of the incident, and that the establishment could clear out the line but nothing else could be slaughtered until we got further instructions.*

*The Denver District Management Team was notified through supervisory channels. There have been no noncompliance records issued for the same root cause within the past 90 days.”*

Prior to this incident, the establishment was determined to have a Robust Systematic Approach to humane handling.

#### **Conclusion**

In accordance with the Rules of Practice specified in 9 CFR Part 500.3(b), FSIS is notifying you of our intent to suspend the assignment of FSIS inspectors. This event is a noncompliance of regulatory requirements in Title 9 CFR 313.30 (a)(4) *The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.*

The decision to issue a NOIE in lieu of a Notice of Suspension (NOS) is based on your establishment implementing a robust systematic approach to humane handling and the details of the incident.

Please provide the Denver District Office with a written response concerning this NOIE within three (3) business days from the date of your receipt of this letter, no later than close of business

**December 21, 2023.** We will determine further action, if any, based on your response. Your response should include:

- A written description of the incident.
- The root cause of the incident.
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

Based on your response, FSIS will determine further action, if any, is necessary. In addition, failure to respond to this NOIE and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

You may submit your response by fax to (303-236-9794), or by electronic mail. In the event FSIS takes a withholding action or imposes a suspension, in accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

William Griffin  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service  
United States Department of Agriculture  
SB, Room 3164  
1400 Independence Avenue, SW  
Washington, DC 20250  
Email: [William.Griffin1@usda.gov](mailto:William.Griffin1@usda.gov)  
Phone: (202) 961-7156

If you have any questions, you can contact the Denver District Office at (303) 236-9800 or by fax at (303) 236-9794.

Sincerely,

ROBERT  
REEDER

Digitally signed by ROBERT  
REEDER  
Date: 2023.12.18 11:27:29  
-0700'

Dr. Robert Reeder  
District Manager  
USDA FSIS OFO  
Denver District Office  
[Robert.Reeder@usda.gov](mailto:Robert.Reeder@usda.gov)

cc: W. Griffin, EARO  
R. Reeder, DM

(b) (6), Establishment, Administrator  
Colorado Lamb Processors, EST. M47194

Notice of Intended Enforcement  
December 18, 2023

S. Smith, OIEA Regional Director  
J. VanHook, DDM  
D. James, DDM  
J. Monteverde, DDM  
(b) (6), SELAO  
(b) (6), DVMS  
(b) (6), SPHV  
(b) (6), SCSi  
(b) (6), CSI  
FO/Quarterly Reports

# **APPENDIX D**





United States Department of Agriculture

Food Safety and  
Inspection Service

Office of Field  
Operations  
Denver District Office

1 Denver Federal  
Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303)236-9800  
Fax (303)236-9794

December 29, 2023

**SENT VIA  
ELECTRONIC MAIL**

(b) (6), Establishment Administrator  
Colorado Lamb Processors  
Establishment M47194  
1625 Agripark Rd  
Brush, CO 80723  
(b) (6)@cololamb.com

#### **LETTER OF DEFERRAL (LOD)**

Attention Mr. Quam,

On December 18, 2023, the Food Safety Inspection Service (FSIS) issued your establishment, Colorado Lamb Processors, Est. M47194, a Notice of Intended Enforcement (NOIE) in accordance with FSIS Rules of Practice, Title 9 CFR 500.3(b), based on your failure to meet regulatory requirements regarding livestock humane slaughter at your establishment.

On December 21, 2023, the Denver District Office received a written response from your firm via electronic mail. After reviewing your response, FSIS requested clarification on December 22, 2023, via electronic mail. On December 28, 2023, the Denver District Office received your firm's clarifications. FSIS has carefully reviewed your responses and determined that, based on your proposed modifications and plan of action, FSIS will defer a decision on an enforcement action pending verification by FSIS inspection personnel that Colorado Lamb Processors, Est. M47194, has effectively implemented its proposed measures. The decision pertaining to this enforcement action will be based upon the plant's validation, verification, and execution of these actions. Plant personnel should continue to monitor operations to prevent additional inhumane failures from occurring.

Please be advised that as a federally inspected establishment, you are expected to comply with the Federal Meat Inspection Act (FMIA) and all applicable FSIS regulations. Your failure to comply with the regulatory requirements, or to effectively implement the measures addressed in your written responses, may result in FSIS initiating further enforcement actions, and/or other appropriate administrative or legal actions.

FSIS will design a verification plan to confirm that your establishment is implementing the corrective actions you provided in your responses to the NOIE. The FSIS Verification Plan is designed to ensure that your establishment fully

implements the revisions to your humane handling program and other corrective actions stated in your submissions, including all monitoring activities at your establishment and that these revisions and actions are effective in assuring future regulatory compliance.

FSIS will provide you a copy of the verification plan. Please be advised that only FSIS can amend the verification plan. If your establishment wishes to modify your proposed corrective actions during the deferral period, please submit these changes, in writing, to FSIS for approval prior to making any changes in your actions.

If you have questions regarding this matter, please contact the Denver District Office at (303) 236-9800.

Sincerely,

**ROBERT  
REEDER**

Digitally signed by ROBERT  
REEDER  
Date: 2023.12.29 09:21:54  
-0700

Dr. Robert Reeder  
District Manager  
USDA FSIS OFO  
Denver District Office

cc: F/O QER  
Est. File  
W. Griffin, EARO  
D. James, DDM  
J. Monteverde, DDM  
J. VanHook, DDM  
(b) (6), SPHV  
(b) (6), SCS  
(b) (6), CSI  
(b) (6), DVMS  
S. Smith, RD/OIEA