

## Decision Memo—National Environmental Policy Act Categorical Exclusion

### Application of Rains Natural Meats for a Grant of Federal Meat Inspection Services

#### **Decision**

It is my decision to grant federal meat inspection services to Rains Natural Meats.

#### **Description**

Rains Natural Meats is a small (5,300 square-foot) meat and poultry slaughter and processing facility located at 23795 260th Street, Gallatin, Daviess County, Missouri. Its nearest neighbor is located approximately one-quarter mile to the south of the facility. The facility was built on a five-acre site in 1998. Its current owner, Mr. David Rains, received a grant of inspection on November 30, 1998, for processing (breaking, boning, fabricating, formulating, and slicing) meat and poultry products. The grant was updated on June 9, 2003, to include the slaughter and processing of cattle, calves, sheep, goats, swine, and ratites. The grant was updated again on April 22, 2004, to include the processing of young chickens, mature chickens, turkeys, geese, ducks, and guinea. On January 15, 2013, Rains Natural Meats filed an application with FSIS to modify its grant of inspection to receive inspection services for the commercial slaughter of horses, mules, and other equines.

#### **Proposed Action**

The proposed action is to grant federal meat inspection services for commercial horse slaughter operations at Rains Natural Meats. The Federal Meat Inspection Act (“FMIA”) requires government inspectors to conduct an ante-mortem inspection of all amenable species, including cattle, sheep, swine, goats, horses, mules and other equines (21 U.S.C. § 603); a post-mortem inspection of the carcasses and parts of all amenable species (21 U.S.C. § 604); and an inspection of meat food products during processing operations (21 U.S.C. § 605) in establishments that sell or distribute in commerce meat that is intended for human consumption. Horses, mules, and other equines have been among the livestock species that are amenable to the FMIA since it was amended by the Wholesome Meat Act in 1967.<sup>1 2</sup> The FMIA and its implementing regulations in 9 CFR Parts 302, 304, 307, 416, and 417 require establishments that wish to engage in the commercial slaughter of amenable species to produce meat intended for human consumption and sale or distribution in interstate commerce to apply to the Food Safety Inspection Service (“FSIS”)

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<sup>1</sup>FSIS regulations require that establishments that slaughter horses, mules, and other equines must be completely separate from any establishment that slaughters cattle, sheep, swine, or goats.

<sup>2</sup>FSIS temporarily suspended inspection of horse slaughter facilities from 2006 to 2012 because Congress prohibited FSIS from expending funds to pay for ante-mortem inspection of equines in each of those years, but the underlying statute requiring federal inspection of horse slaughter has never been amended or repealed. In 2012 Congress restored federal funding of ante-mortem inspection of horses at commercial horse slaughter plants. Therefore, issuing a grant of inspection for commercial horse slaughter is not precedent setting, but rather, a return to the status quo ante.

for a grant of federal inspection services, and they establish criteria for determining the eligibility of the applicant to receive inspection services.

FSIS is also required to conduct an examination and inspection of the method by which amenable species, including horses, are slaughtered and handled in connection with slaughter in order to ensure that the establishment is in compliance with the Humane Methods of Slaughter Act (21 U.S.C. § 603) (“HMSA”). The HMSA was enacted to prevent the needless suffering of livestock, to improve products and economies in slaughter operations, and to benefit producers, processors and consumers by expediting an orderly flow of livestock and livestock products in interstate and foreign commerce (7 U.S.C. § 1901). FSIS has implemented and enforces regulations under the HMSA (9 C.F.R. Part 313).<sup>3</sup>

### **The National Environmental Policy Act and FSIS’s Categorical Exclusion**

The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*) (“NEPA”) and the Counsel of Environmental Quality implementing regulations (40 C.F.R. Parts 1501-1508) require all federal agencies to prepare an assessment of the environmental impact of a proposed agency action (called an environmental assessment, or “EA”) (40 C.F.R. §§ 1501.3 and 1501.4(b)). Based on the EA, NEPA further requires federal agencies to prepare an environmental impact statement (“EIS”) for major federal actions significantly affecting the quality of the human environment (42 U.S.C. § 4332(2)(c) and 40 C.F.R. § 1504.1(c)). However, federal agencies may identify classes of actions that normally do not require the preparation of either an EA or an EIS because such actions do not have a significant effect on the human environment, either individually or cumulatively (40 C.F.R. § 1507.3(b)(2)). Classes of actions that have no significant environmental effect, either individually or cumulatively, are said to be categorically excluded from NEPA requirements (40 C.F.R. § 1508.4). Despite allowing federal agencies to identify classes of action that are categorically excluded from NEPA requirements, NEPA still requires an agency to determine whether or not there are any potential environmental impacts that may result from a proposed action of that agency and so inform the agency decision maker.

USDA’s NEPA implementing regulations are found in 7 C.F.R. § 1b. These regulations list FSIS as an agency that conducts programs and activities that have been found to have no individual or cumulative effect on the human environment, such that FSIS is categorically excluded from the requirements of preparing procedures to implement NEPA, and its actions are categorically

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<sup>3</sup>The Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) is an animal welfare statute governing the commercial transportation of equine for slaughter by persons regularly engaged in that activity within the United States. In 1998, the Secretary issued regulations (9 C.F.R. Part 88) that establish safety standards for conveyances being used to transport equines to slaughter; define the duties and responsibilities of owner/shippers prior to loading equines onto the conveyance, during the actual commercial transportation of said equines to the slaughter plant, and upon their arrival at a slaughter plant; and set forth paperwork and back tagging requirements for equines being commercially transported to slaughter. This program is administered by USDA’s Animal and Plant Health Inspection Service, whose personnel historically have conducted their inspections of slaughter horses and the conveyances in which they are transported to slaughter upon the horses’ arrival at a slaughter facility.

excluded from the preparation of an EA or an EIS unless the FSIS Administrator determines that an action may have a significant environmental effect (7 C.F.R. § 1b.4).

When a federal agency's action is merely ministerial as opposed to discretionary and the agency lacks discretion to affect the outcome of its action, there is no major federal action that triggers NEPA requirements. A grant of federal inspection under the FMIA is purely ministerial because, if a commercial horse slaughter plant meets all of the statutory and regulatory requirements for receiving a grant of federal inspection services, FSIS has no discretion or authority under the FMIA to deny the grant on other grounds or to consider and choose among alternative ways to achieve the agency's statutory objectives. Therefore, a grant of federal inspection services under the FMIA is not a major federal action that is subject to NEPA requirements.

A grant of federal inspection likewise does not and will not allow FSIS to exercise sufficient control over the commercial horse slaughter activities at Rains Natural Meats such that the grant will constitute a major federal action that triggers NEPA requirements. The sole purpose of federal meat inspection is to protect public health and welfare by ensuring that any meat produced for human consumption and sale or distribution in commerce is wholesome, not adulterated, properly packaged, and properly labeled as to species, quantity, and point of origin, and the FMIA does not authorize FSIS to regulate a commercial horse slaughter facility's slaughter activities beyond that which is necessary to achieve this purpose. Accordingly, the FMIA authorizes FSIS inspectors to conduct ante-mortem inspection of horses to ensure that they are not dead or dying, diseased, or non-ambulatory, and that they are not inhumanely handled or slaughtered. It likewise authorizes FSIS inspectors to conduct post-mortem inspection of the carcasses and meat food products resulting therefrom to ensure that the carcasses and meat are wholesome, not adulterated, and fit for use as human food. In addition, the FMIA authorizes FSIS to require commercial slaughter plants to maintain certain sanitary conditions with respect to the conduct of commercial slaughter, meat preparation, and meat packaging operations, the proper storage of carcasses and the meat products derived therefrom, and the storage and proper disposal of condemned or inedible materials. The FMIA further authorizes FSIS to require commercial slaughter plants to develop hazard analysis and critical control point plans that identify and prevent or control for potential food safety hazards at each step of the slaughter process. All FSIS inspectors assigned to conduct federal meat inspection at Rains Natural Meat's facility will be guided in the performance of their duties by the policies and procedures set forth in FSIS directives and notices, including but not limited to FSIS Directive 6900.2 Rev. 2, *Humane Handling and Slaughter of Livestock*; FSIS Directive 6100.1 *Ante-Mortem Livestock Inspection*; FSIS Directive 6100.2, *Post-mortem Livestock Inspection*; and FSIS Directive 6130.1, *Ante-mortem, Post-mortem Inspection of Equines and Documentation of Inspection Tasks*.<sup>4</sup> However, FSIS inspectors will

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<sup>4</sup> FSIS directives and notices are internal documents, similar to operating procedures, that the agency uses to provide official instructions to agency personnel on how to carry out their duties with respect to agency policies. Directives "provide specific instructions or establish new procedures that Agency personnel need to follow to implement FSIS requirements . . . . Directives provide instructions to FSIS personnel, not the public or industry. Directives identify the specific Agency personnel that are to carry out the activities in the directive." See FSIS Directive 1230.1, *FSIS Issuance System*; see also page 4 of FSIS training module

not have any authority or control over the day-to-day operations of the slaughter plant save to the degree necessary to achieve only the agency's mission to protect public health by ensuring that horse meat intended for use as human food is safe to eat and properly labeled.

Even if FSIS did have sufficient authority and control over commercial slaughter activities at a horse slaughter establishment such that a grant of federal inspection to such an establishment could constitute a major federal action, federal ante-mortem and post-mortem inspection of horses at Rains Natural Meats would not be the legally relevant cause of the establishment's commercial horse slaughter activities or the impacts, if any, that such slaughter activities might have on the environment. As noted above, federal inspection under the FMIA is required for any meat that is produced for human consumption and for sale or distribution in interstate commerce, and Rains Natural Meats has operated for about 10 years under a grant of inspection for the commercial slaughter of amenable species other than horses that has not been revoked or otherwise terminated. Rains Natural Meats could resume the slaughter of other amenable species under its existing grant of inspection, so a decision not to grant Rains Natural Meats' current application for federal inspection of commercial horse slaughter would not result in the shuttering of the slaughter plant or reduce its alleged environmental impacts. Furthermore, a modification of the existing grant of inspection so that it applies exclusively to the commercial slaughter of horses would not be a substantial change to the agency's actions pursuant to the grant, but would preserve the status quo because FSIS inspectors would continue to follow the policies and procedures under the FMIA and implementing regulations, regardless of the amenable species being slaughtered. It also would not be a substantial change to Rains Natural Meats' commercial slaughter activities but would preserve the status quo because the environmental impacts resulting from the commercial slaughter of horses, if any, would not be significantly different from those resulting from the commercial slaughter of other amenable species. Finally, if the meat produced at a commercial horse slaughter plant is not intended for human consumption, or if it is intended for human consumption but for sale or distribution only in intrastate commerce rather than in interstate commerce, then the commercial horse slaughter and the effects thereof may proceed independently of a grant of federal ante-mortem and post-mortem inspection, and FSIS would have no ability to prevent them. In the present instance, Mr. Rains has indicated that he intends to prepare horse meat for human consumption and that his intended market is outside the State of

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"FSIS as a Public Health Regulatory Agency: Regulatory Framework", updated January 2012, at [http://www.fsis.usda.gov/wps/wcm/connect/4db3c6aa-e911-45b0-ab51-db8d5483fe26/PHVt-Regulatory\\_Framework.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/4db3c6aa-e911-45b0-ab51-db8d5483fe26/PHVt-Regulatory_Framework.pdf?MOD=AJPERES). As such, directives and notices do not have the force and effect of the agency's regulations that are found in 9 C.F.R. §§ 300-599. See FSIS "Policy Pal" dated April 27, 2011, at <http://www.fsis.usda.gov/wps/wcm/connect/fsis-content/rss/policy-pals>. Directives and notices also are not enforceable by third parties. Therefore, FSIS directives and notices and the issuance thereof, by their very nature, do not constitute major federal actions that significantly affect the human environment and trigger NEPA requirements. Even if directives and notices and the issuance thereof were major federal actions, they would be categorically excluded from NEPA requirements pursuant to 7 C.F.R. § 1b.3(a)(1), which excludes "policy development, planning and implementation which relate to routine activities" from NEPA requirements. Directives and notices are also categorically excluded from NEPA requirements pursuant to the categorical exclusion applicable to the agency as a whole that is found in 7 C.F.R. § 1b.4(b)(6).

Missouri, so he may operate only subject to a grant of federal inspection, but nothing in the FMIA precludes him from expanding his operation to include horse meat that will be produced for human consumption and sold and distributed solely within the State of Missouri.<sup>5</sup> Likewise, nothing in the FMIA precludes him from expanding his operation to include the preparation and sale of horse meat to pet food companies and zoos for non-human consumption. It thus is possible for Rains Natural Meats to operate as a horse slaughter establishment, and possibly have an effect on the environment, without a grant of federal inspection. Accordingly, a grant of federal inspection services is not and cannot be the legally relevant cause of either the commercial slaughter activity or its environmental impact, if any.

Based on the foregoing, a decision to grant federal inspection services to Rains Natural Meats does not constitute major federal action that will significantly affect the quality of the human environment and thus does not trigger any requirements under NEPA. Nevertheless, given the high level of public interest in this particular issue, FSIS has examined several aspects of granting federal inspection services to Rains Natural Meats to determine if the categorical exclusion applies to this action or if any unique conditions or extraordinary circumstances exist that would cause this action to have a significant environmental effect and trigger NEPA requirements. These aspects are the following:

**–Impacts on Public Health and Safety.** As explained above, federal inspection under the FMIA is intended solely to protect public health and safety by ensuring that meat and meat food products intended for use as human food are not adulterated or misbranded. However, the agency recognizes that certain segments of the public have raised concerns about the potential impacts of commercial horse slaughter on public health. One such concern is the potential public health risks that could arise from the presence in horse meat of trace amounts of certain classes of drugs that have not been approved for use in animals that will or could be slaughtered to produce food for human consumption. The Humane Society of the United States (“the Humane Society”) and other horse protection groups contend that horses’ status as companion animals that usually are not slaughtered in this country to produce human food means that most horses in the United States have been treated with antibiotics, anti-inflammatory drugs, growth hormones, and other substances that typically are not used on other food animals and for which the Federal Drug Administration has established no tolerances. These groups further contend that residues of these substances remain in horse tissues indefinitely, thus rendering any meat produced from U.S. horses unsafe for human consumption and constituting a threat to public health.

FSIS strongly disagrees with the Humane Society’s assertions. The fact that a drug or other chemical was administered to an animal does not, by itself, mean that the meat and meat food products from the animal will be adulterated because the administration of a substance does not necessarily affect the meat or meat food products derived from that animal. Residues do not remain in animals forever but are eliminated from the body over time. Specifically, drugs that are

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<sup>5</sup> It would be possible for Mr. Rains to prepare horse meat products for human consumption and sale or distribution only in the State of Missouri in accordance with the terms of Missouri’s meat inspection program, which is “at least equal to” the federal program. The product could be distributed solely within the State to consumers located within the State (9 C.F.R. § 321.1).

administered to horses are excreted from their systems and eventually leave no detectable residues. If no detectable residue remains in a horse at the time of slaughter, the meat from that horse is not adulterated because there is no reason to believe that the meat will harm consumers or is otherwise unfit for use as human food. Even the administration of a drug or chemical that has not been approved for use in animals that are used as human food does not mean that meat from a horse treated with that substance is adulterated if the horse is subsequently slaughtered to produce meat for human consumption. The meat will be adulterated only if it contains residues of the drug or chemical in question at the time of slaughter. Therefore, FSIS finds no basis in either science or law for the proposition that treating horses with the drugs cited by the Humane Society renders their meat permanently tainted and thus adulterated as defined by the FMIA.<sup>6</sup>

Even assuming, *arguendo*, that the Humane Society's position has both legal and scientific merit, FSIS is confident that it can detect chemical residues in meat intended for human consumption and prevent the sale and distribution of meat containing such residues in commerce. Since 1967, FSIS's inspection program has included testing for chemical compounds such as veterinary drugs, pesticides, and environmental contaminants to ensure that meat and meat food products do not contain residues that would cause them to be adulterated and thus render them unsafe for use as human food. FSIS has set forth its drug residue testing policy with respect to horses in FSIS Directive 6130.1, *Ante-mortem, Post-mortem Inspection of Equines and Documentation of Inspection Tasks*). Pursuant to this directive, FSIS inspectors select a carcass for sampling based on their professional judgment and public health criteria, including observable signs and symptoms of animal diseases, producer history, or results from random scheduled sampling. After FSIS personnel collect a sample, the carcass is retained pending the results of laboratory testing. A violation occurs when a FSIS laboratory detects a residue that exceeds an established tolerance or action level. Horse meat that tests positive for drug residues will be marked U.S. condemned and will not be allowed to enter the stream of commerce. Instead, the meat will be disposed of by sending it to a rendering facility, thereby ensuring that it endangers neither public health and safety nor the local environment.<sup>7</sup>

Additionally, Mr. Rains has taken steps to address this issue by buying slaughter horses only from members of an equine quality assurance group. The horses purchased by this group will be maintained for at least 45 days prior to slaughter to ensure that no drugs are administered. The group member will sign an affidavit indicating that the horses are free of drugs. The establishment will also conduct blood tests on each horse before slaughter and have the samples analyzed for ivermectin and phenylbutazone levels.

The Food and Drug Administration ("FDA"), under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.), is the federal agency responsible for evaluating, approving, and establishing tolerances or action levels for drugs and other chemical substances used in all livestock, including but not limited to antibiotics, avermectins, milbemycins, beta-agonists, and sulfonamides. FDA also is the agency that is responsible for conducting any NEPA analysis that is required for the evaluation and approval of the use of the aforementioned drugs in equines and other animals that

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<sup>6</sup> See FSIS Petition Response to Bruce Wagman, dated June 28, 2013, at p. 2.

<sup>7</sup> See *Id.* at pp. 2-5.

are used as human food, and FSIS has no jurisdiction in such matters. Accordingly, FDA's drug approval process includes a NEPA analysis of how the environment will be affected by an animal drug after it is approved.<sup>8</sup> Therefore, to the degree that a NEPA analysis is necessary for the drugs that may be used in animals used as human food, FDA has already conducted this analysis as part of its drug approval process.

As described below, an overlapping scheme of federal, state, and local environmental laws and ordinances will further ensure that the waste products generated by Rains Natural Meats' commercial horse slaughter activities are properly disposed of and will not enter the human food supply chain or the local environment. Therefore, a decision to grant federal inspection to Rains Natural Meats will safeguard public health and safety by ensuring that commercial horse slaughter at Rains Natural Meats has no more potential to have a significant impact on public health and safety than did the commercial slaughter of cattle, pigs, sheep, and goats that preceded it.

--**Wildlife Hazards.** FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not create a wildlife hazard.

--**Impacts on Wild and Scenic Rivers and U.S. Waters and Wetlands.** The Eleven Point River is the only river in Missouri that is designated as wild and scenic.<sup>9</sup> The Eleven Point River is located more than 300 miles away from Rains Natural Meats' facility. Thus, FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not affect a river segment that is listed in the Wild and Scenic River System or National Rivers Inventory.

FSIS also has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not impact federal or state regulated or non-jurisdictional wetlands. The closest river to Rains Natural Meats is the Grand River and it is located over 1.5 miles south of the facility. The commercial slaughter of other amenable species occurred more or less continuously at Rains Natural Meats' facility for more than 10 years with no discernible effects on the Grand River. The establishment will continue to operate under its waste management agreement with the City of Gallatin, which requires all blood and organs to be removed and disposed of by a rendering facility in Des Moines, Iowa. Therefore, the establishment's waste cannot spill or seep into the groundwater contaminating nearby rivers or wetlands.

--**Impacts on Energy and Natural Resources.** FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not have a significant impact on energy and other natural resource consumption.

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<sup>8</sup> See, for example, FDA's approval of the oral administration of phenylbutazone to horses subject to a categorical exclusion (74 Fed. Reg. 1146 (Jan. 12, 2009)). See also FDA's 2007 approval of the topical application of a phenylbutazone paste to horses subject to a categorical exclusion (72 Fed. Reg. 60,550 (Oct. 25, 2007)). See generally,

<http://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm219207.htm>.

<sup>9</sup> <http://www.rivers.gov/rivers/missouri.php>.

**--Impacts on Public Parks, Recreation Areas, Wildlife/Waterfowl Refuges, Historical Sites, and Other Publicly Owned Lands.** FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not have any impacts on any publicly owned land from a public park, recreation area, wildlife or waterfowl refuge, or historical site of national, state, or local significance.

In its June 2011 report on the unintended consequences of the cessation of commercial horse slaughter in the United States, the General Accounting Office (“GAO”) found that there has been an increase in horse abandonment on private or state park land since 2007. It likewise found an increase in horse abandonment on federal lands, including national parks and Indian reservations. The abandonment of horses on these lands results in over-grazing that degrades the land and puts environmental stress on other species that compete with horses for the same food sources. Horse abandonment on these and other federal lands that maintain populations of wild horses increases the chance that the abandoned horses will introduce equine diseases to the wild herds. The increasing numbers of unwanted horses also complicate the Bureau of Land Management’s efforts to manage herds of wild horses and burros on federal lands by making it more difficult for the agency to adopt out the horses and burros that it removes from federal lands. Based on the foregoing, commercial horse slaughter at Rains Natural Meats and other horse slaughter plants has the potential to reduce the horse overpopulation in the United States while providing owners of unwanted horses with an economically viable and an environmentally sustainable alternative to horse abandonment as a method of disposing of their unwanted horses.

FSIS also has made the following findings required by other laws:

**--Clean Air Act.** Section 176(c)(1) of the Clean Air Act (42 U.S.C. § 7401) requires federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards that the Environmental Protection Agency (“EPA”) has set for certain criteria pollutants, such as sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, lead, and particulate matter. *See* 40 C.F.R. Part 50. FSIS has determined that commercial horse slaughter activities at Rains Natural Meats and/or federal inspection thereof will not increase the frequency or severity of any existing violations of standards for ambient air quality, result in any new violations of said standards, or prevent or delay the timely attainment of said standards in the area of concern.

**--Clean Water Act.** Following section 401(a) of the Clean Water Act (33 U.S.C. § 1341) (“CWA”), 9 CFR §304.2(c)(1) requires any applicant for federal meat inspection at an establishment where the operations thereof may result in any discharge into navigable waters as defined by the CWA to provide the Administrator, FSIS, with certification, obtained from the State in which the discharge will originate, that there is reasonable assurance that said operations will be conducted in a manner that will not violate the applicable water quality standards. On September 3, 2013, Mr. Rains provided the Administrator, FSIS, with an attestation that equine slaughter operations at Rains Natural Meats will not result in any discharge into any navigable waters as defined by CWA. Mr. Rains also provided the Administrator, FSIS, with copies of letters from Darling International Inc., a rendering company, and the City of Gallatin agreeing to dispose of Rains Natural Meats’ liquid and solid waste.



**--Endangered Species Act.** FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not have any impact, either directly or indirectly, on any federally or state-listed or proposed endangered species of flora and fauna or impact critical habitat. The U.S. Fish and Wildlife Service lists one endangered and one threatened animal species (i.e., the Indiana bat and the Topeka shiner) that occur in Daviess County, Missouri.<sup>10</sup> Indiana bats summer along streams and rivers in north Missouri, and hibernate through the winter in caves and abandoned mines (never in houses) in the Ozarks,<sup>11</sup> whereas, Topeka shiners live pools of small streams with clear water and sand, gravel or rubble bottoms in central Missouri and northward into the prairie region.<sup>12</sup> Rains Natural Meats is not located near caves or streams; thus, there is no suitable habitat for these species in and around Rains Natural Meats' facility. Therefore, none of these species will be adversely affected by operations at Rains Natural Meats or Federal inspection thereof, nor will these operations affect other biotic communities or habitat not protected by the Endangered Species Act.

It should be noted that any grant of federal inspection for commercial horse slaughter at Rains Natural Meats will not be the issuance of a new grant, but instead will be a modification of an existing grant of inspection for the commercial slaughter of other amenable species under the FMIA (e.g., cattle, sheep, goats, and pigs) at the same facility. The commercial slaughter of other amenable species occurred more or less continuously at Rains Natural Meats' facility for more than 10 years with no discernible effects on listed endangered species or their designated critical habitat. Furthermore, there will be no significant difference between the methods that Rains Natural Meats will use to conduct commercial horse slaughter at its facility and the methods that it previously used to conduct the slaughter of other amenable species. Therefore, there is no reason to believe that the conversion of Rains Natural Meats' facility to a dedicated commercial horse slaughter plant will have any more impact on endangered species and their critical habitat than did the prior commercial slaughter of other amenable species.

**--Migratory Bird Treaty Act.** FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not affect species protected under the Migratory Bird Treaty Act.

**--National Historic Preservation Act.** The National Register of Historic Places lists three sites located inside Daviess County, Missouri,<sup>13</sup> but these historic sites are located more than six miles away from where Rains Natural Meats' slaughter facility is located. Therefore, FSIS has determined that commercial horse slaughter activities at Rains Natural Meats or federal inspection thereof will not impact any historic or cultural property or resources protected by the National Historic Preservation Act.

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<sup>10</sup> <http://www.fws.gov/midwest/endangered/lists/missouri-cty.html>.

<sup>11</sup> <http://www.fws.gov/midwest/Endangered/mammals/inba/index.html>.

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<http://www.fws.gov/mountain-prairie/species/fish/shiner/TopekaShiner5YearReview01222010Final.pdf>.

<sup>13</sup> <http://www.dnr.mo.gov/shpo/Daviess.htm>.

In 2009, a coalition of northwest Indian tribes reported to the GAO that the increase in horse abandonments on tribal lands, combined with the sizable populations of wild horses that already existed on their lands, both increased the degradation of the land caused by over-grazing and complicated efforts to restore native and religiously-significant plant species on tribal lands. Commercial horse slaughter at Rains Natural Meats and other commercial horse slaughter plants thus has the potential to have a beneficial effect on the cultural resources of American Indian tribes whose tribal lands are being degraded by a combination of an overpopulation of wild horses and large scale abandonment of unwanted horses on their lands.

--**Federal Farmland Protection Policy Act.** FSIS has determined that federal inspection of the slaughter activities at Rains Natural Meats will not involve the acquisition or use of farmland protected by the Federal Farmland Protection Policy Act that would be converted to non-agricultural use.

--**Humane Methods of Slaughter Act.** As previously noted, Rains Natural Meats' commercial horse slaughter operations will be subject to the humane handling requirements found in section 603(b) of the FMIA (21 U.S.C. § 603(b)) and the regulations promulgated thereunder (9 C.F.R. Part 313). FSIS never suspended Rains Natural Meats for humane handling violations during its previous commercial slaughter of other amenable species.

--**State and Local Laws.**

Rains Natural Meats' waste disposal is governed by Missouri's Solid Waste Management Law ("SWML") (Mo. Rev. Stat. 260.005 *et seq.*). It is a violation of the SWML to store, process, or dispose of solid waste in an unapproved manner and to dispose of any solid waste in a place other than an approved solid waste processing facility (Mo. Rev. Stat. 260.210. 1). Pursuant to the SWML, Rains Natural Meats will collect all blood and organs after stunning and evisceration and store the materials in barrels. Darling International, Inc., a rendering company, will regularly collect the barrels and deliver them to its rendering facility in Des Moines, Iowa, where they will be rendered according to local, state, federal laws.

Rains Natural Meats' disposal of wastewater is governed by Missouri's Clean Water Law (Mo. Rev. Stat. 640.006 *et seq.*). In accordance with the Clean Water Law, Rains Natural Meats will discharge its wastewater into the City of Gallatin's wastewater collection system which consists of over 191 miles of sanitary sewer lines and 22 sanitary sewer pumping stations.<sup>14</sup> This system will transport water from Rains Natural Meats to the Gallatin Wastewater Treatment Plant for processing and eventual discharge of a high quality effluent back into Old Hickory Lake. The wastewater treatment plant has an organic treatment capacity of 12.5 million gallons per day. The plant is also capable of being operated in "Storm Mode" with a resulting hydraulic capacity in excess of 30 million gallons per day, while meeting all National Pollutant Discharge Elimination System effluent limitations set by the EPA.<sup>15</sup>


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<sup>14</sup> <http://www.gallatinutilities.com/wastewater.html>.

<sup>15</sup> <http://www.gallatinutilities.com/wwtp.html>.

**Conclusion.**

Based on the foregoing, FSIS finds no unique conditions or extraordinary circumstances of the proposed action to grant federal meat inspection services to Rains Natural Meats that would cause this action to have a significant environmental effect. Therefore, in accordance with 7 C.F.R. § 1b.4, the proposed action is categorically excluded from the preparation of an EA or an EIS.

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