



Food Safety
and Inspection
Service

March 22, 2023

Electronically Signed copy emailed March 22, 2023

Office of Field
Operations
Des Moines
District Office

Sailer's Food Market and Meat Processing
Establishment M157
600 W. Winter Ave.

Neal Smith
Federal
Building
210 Walnut
Street

Elmwood, Wisconsin 54740
jake@sailersmeats.com
715-639-2191

Room 985
Des Moines,
IA 50309-2123

Attention: Jake Sailer, Owner

NOTICE OF SUSPENSION

Voice
515.727.8960
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515.727.8991

This letter serves as official notification by the Food Safety and Inspection Service (FSIS) of our decision to withhold the federal marks of inspection and suspend the assignment of Inspection Program Personnel (IPP) at Sailer's Food Market and Meat Processing, Est. M157, located at 600 W. Winter Ave. Elmwood, WI. This letter follows verbal notification of the suspension action, provided by (b) (6) Supervisory Public Health Veterinarian, to (b) (6), HACCP Coordinator at approximately 1100 on March 22, 2023. This action includes your Slaughter Hazard Analysis Critical Control Point (HACCP) processes employed at your establishment.

The decision to institute this enforcement action is in accordance with Title 9 of the Code of Federal Regulations (CFR), Rules of Practice 500.3(b), based on the determination that your establishment did not handle or slaughter animals humanely. The evidence demonstrates failure to comply with the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*), and the regulatory requirements (9 CFR Part 313).

Background/Authority

The FMIA (21 USC 601 *et seq.*) provides it is essential to the public interest that the health and welfare of consumers be protected, by assuring meat products distributed to them are wholesome, not adulterated, and properly marked, and labeled. The Act gives FSIS the authority, as designated by the Secretary of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments and provide FSIS program personnel the authority to refuse to allow meat/meat food products to be marked, labeled, stamped, or tagged as *inspected and passed*, to prevent the entry of adulterated products into commerce. Furthermore, the FMIA provides FSIS the authority to appoint inspectors to examine and inspect the method by which livestock are slaughtered and handled at slaughtering establishments.

The HMSA provides that Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.

Under the authority of the Acts, FSIS has prescribed rules and regulations required for establishments slaughtering and handling livestock, as required by 9 CFR Part 313. FSIS has also developed the Rules of Practice regarding administrative enforcement, 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, and for filing a complaint to withdraw a grant of inspection. Specifically, 9 CFR 500.3(b) states that FSIS may impose a suspension without providing prior notification due to handling or slaughtering of animals inhumanely.

Findings/Basis for Action

On March 22, 2023, at approximately 0855 hours, Inspection Program Personal (IPP), was performing HATS Category VIII, Stunning Effectiveness, and observed the following noncompliance. An establishment employee attempted to stun a beef animal, in the stunning restrainer with its head in the head gate, with a handheld captive bolt gun. After the initial stunning attempt, the animal was conscious, standing, became agitated, and vocalized. The same employee reloaded the same handheld captive bolt gun and attempted a second stun. The animal remained conscious, standing, tossing its head, and vocalizing. A different employee left the slaughter floor, during the first attempt, to retrieve a .22 rifle and stunned the animal a third time with no effect. The animal was conscious, standing, agitated, tossing its head, and vocalized. A third employee picked up the same captive bolt gun and stunned the animal a fourth time, rendering the animal unconscious. A regulatory control action was taken by applying US Reject Tag No B38122837 to the stunning restrainer. (b) (6) Slaughter Floor Foreman, was informed of the regulatory control action and that the management team of the District Office would be informed of the noncompliance.

During post-mortem inspection of the head, IPP observed there were four holes present. One hole was approximately 1.5 inches to the left of the poll, the second was at the base of the V of the poll. The other two holes were approximately along the midline of the skin in the upper line of the medial canthus of the eyes but one on each side of the midline.

The multiple stunning attempts is a noncompliance with regulation 9 CFR 313.15(a)(1) and 313.16(a)(1).

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" in the Federal Register (69 FR 54625). On September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, entitled, "*Humane Handling and Slaughter of Livestock*." Additionally, on October 23, 2013, FSIS introduced new guidance, titled "*FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock*." Within the guidance material is information intended to better ensure the humane treatment of livestock presented for slaughter. The guidance material provides a set of practices designed to minimize excitement, discomfort, and accidental injury regarding the humane handling of livestock to include the four components of a robust systematic approach to humane handling.

When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed. You do not currently maintain a written humane handling program for consideration.

Summary and Conclusion

Provisions of the FMIA outline FSIS' ability to refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative

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Sailer's Food Market and Meat Processing, Est. M157

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hearing, when conditions exist where the slaughter and/or handling of livestock was not by a method in accordance with the Act(s). Evidence demonstrates your failure to meet regulatory requirements addressed in 9 CFR 9 CFR 313.15(a)(1) and 313.16(a)(1), constituting a violation of the humane slaughter requirements, and supporting the conclusion that your handling of livestock violated the provisions of the FMIA and HMSA.

Please provide a written response, inclusive of written corrective action and preventative measures, by addressing the following:

- Evaluate and identify the nature, cause of the incident.
- Describe the specific actions taken to eliminate the cause of the incident and prevent future recurrences.
- Describe specific monitoring activities planned to ensure future compliance.
- Provide any supporting documentation and records maintained and/or associated with the proposed corrective actions and preventative measures.

A determination of further administrative action will be made upon receipt and review of your submitted corrective actions and preventative measures. You are reminded that, as an operator of a federally inspected establishment, you are expected to comply with FSIS regulations and to take appropriate corrective actions to prevent the production of or adulterated products at your establishment. Please be advised that your failure to respond adequately to these issues may result in our initiating action to withdraw inspection from your establishment.

Appeal and Hearing Rights

You have the right to appeal this matter and can do so by contacting:

Sherry N. Johnson
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
SB, Room 1330A
1400 Independence Avenue, SW
Washington, DC 20250
Email: sherry.johnson@usda.gov
Phone: (202) 379-6196

Pursuant to 9 CFR 500.5(d), you may also request a hearing regarding this determination. Should you request a hearing, FSIS will file a complaint that will include a request for an expedited hearing. If you wish to request a hearing regarding this determination, please contact:

Scott C. Safian, Director
Enforcement Operations Staff (EOS)
Office of Investigation, Enforcement and Audit (OIEA)
Food Safety and Inspection Service
United States Department of Agriculture
Stop Code 3753, SB - Room 2148
1400 Independence Avenue, SW
Washington, DC 20250

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Sailer's Food Market and Meat Processing, Est. M157

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Telephone: (202) 418-8872
Facsimile: (202) 245-5097
E-mail: AEBCorrespondence@usda.gov

If you have questions regarding this matter, please feel free to contact the Des Moines District Office at 515-727-8960 or District Veterinary Medical Specialists (DVMS) (b) (6) or (b) (6)

Sincerely,

MARK JOHNSON
Digitally signed by
MARK JOHNSON
Date: 2023.03.22
14:56:33 -05'00' (for)

Dawn Sprouls
District Manager

cc: EARO, Sherri N. Johnson, sherri.johnson@usda.gov
DM, Dr. Dawn Sprouls, dawn.sprouls@usda.gov
DDM Jeff Jacobsen, jeffery.jacobsen@usda.gov
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