



Food Safety and
Inspection Service

September 12, 2023

Office of Field
Operations
Des Moines
District Office

Electronically mailed on September 12, 2023

Neal Smith
Federal Building
210 Walnut Street
Room 985
Des Moines, IA
50309-2123

Russ Heinrichs, Establishment Manager
Farmers Union Industries, LLC, Est. M21898
P.O. Box 77
Estherville, Iowa 51334
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Voice
515.727.8960
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NOTICE OF INTENDED ENFORCEMENT

Attention: Russ Heinrichs

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), with prior oral notification, at Establishment M21898, Farmers Union Industries, LLC., located at 2421 9th Avenue South, Estherville, Iowa 51334. This letter follows verbal notification of the Notice of Intended Enforcement (NOIE), by (b) (6), Front Line Supervisor, to Russ Heinrichs, Owner at approximately 6:20pm on September 12, 2023. This action includes the 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 observed, egregious, inhumane handling incident 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 regulatory requirements (9 CFR Part 313).

Background

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

At approximately 1558 hours on September 12, 2023, while performing a Routine Livestock Humane Handling task observing HATS Category VIII: Stunning Effectiveness at the restrainer belt, IPP observed the stunning employee attempted to stun a hog in the restrainer with the simultaneous application of two electrical stunning wands to the head and thorax. When he touched the hog with the wands the animal was observed to become stiff momentarily. The hog was conscious and began vocalizing and tried to climb over the hog in front of it. The employee at the stunning station immediately applied a stun with the pneumatic captive bolt stunner, when another hog entered the restrainer jostling the hog he was attempting to stun. After this stun application with the pneumatic captive bolt stunner the hog stopped vocalizing, remained conscious and was then observed tracking movement with its eyes and blinking normally. The employee then immediately grabbed the handheld captive bolt stunner and administered a third stun which rendered the animal unconscious. There were two captive bolt wounds on the head. One was approximately 1 inch to the left of the midline and approximately 1 inch above the level of the eyes. The second wound was on the midline. This is noncompliant with 9 CFR 313.30(a)(3) and 313.15(a)(1) in that the establishment failed to render this animal unconscious on the first attempt with the electrical stunner and on the first attempt with the captive bolt stunner. Immediate regulatory control was taken by stopping production and notifying the SPHV of the incident. The stunning station was tagged with US Rejected tag # B45700488. Barn Manager (b) (6) was immediately notified of the incident, that the stun area was tagged, and that USDA IPP would be contacting the District Office for further guidance.

Conclusion

After consideration of the facts surrounding this incident, the Des Moines District Office has determined that a NOIE be issued for your slaughter operations, in lieu of a Notice of Suspension (NOS), as per the Rules of Practice 9 CFR Part 500.3(b) and 9 CFR Part 313.50(b). When an

establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed. Although your establishment has previously developed and implemented a systematic approach to humane handling that was considered robust, you have failed to effectively implement your program accordingly.

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.

In accordance with FSIS' Rules of Practice, regulation 9 CFR Part 500.3(b), we are affording you the opportunity to demonstrate why a determination should not be made that your slaughter process is inadequate or to demonstrate that you have achieved regulatory compliance. Please provide this office with a written response to this NOIE within three (3) working days from the date of your receipt of this letter. We will determine if any further actions are necessary based on your response.

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 immediate suspension action.

Your proposed corrective actions and preventive measures should include any times and/or dates for completion of these proposed activities.

Russ Heinrichs, Establishment Manager
Farmers Union Industries, LLC. Est. M21898

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September 12, 2023

Appeal and Hearing Rights

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

Sherri N. Johnson, Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Avenue, SW
South Building, Room 1330A
Washington, DC 20250
sherri.johnson@usda.gov
Phone number: 202-379-6196

We urge your cooperation and voluntary compliance. If you have questions regarding this matter, please feel free to contact the Des Moines District Office at 515-727-8960, (b) (6), District Veterinary Medical Specialist (DVMS), at (b) (6), or (b) (6), DVMS, at (b) (6)

Sincerely,

AUBREY WILLIAMS Digitally signed by AUBREY WILLIAMS
Date: 2023.09.12 20:58:57 -05'00'

Dawn Sprouls, DVM
District Manager
USDA FSIS OFO
Des Moines District

Russ Heinrichs, Establishment Manager
Farmers Union Industries, LLC. Est. M21898

Notice of Intended Enforcement
September 12, 2023

cc:

sherri.johnson@usda.gov

Dawn.Sprouls@usda.gov

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