



Food Safety and
Inspection Service

February 23, 2024

Office of Field
Operations
Des Moines
District Office

Electronically mailed on February 23, 2024

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Des Moines, IA
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NOTICE OF REINSTATEMENT OF SUSPENSION

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) for all slaughter operations at Farmers Union Industries, LLC., Establishment M21898, located at 2421 9th Avenue South, Estherville, Iowa 51334. This letter follows verbal notification of the reinstatement of suspension action, provided by (b) (6), Frontline Supervisor, to Mr. Russ Heinrichs, Establishment Manager, at approximately 1340 hours on February 23, 2024.

This action is taken in accordance with the Rules of Practice regulation 9 Part Code of Federal Regulations (CFR) Part 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

The Federal Meat Inspection Act (FMIA) (Title 21 of the United States Code {21 U.S.C.} 603 *et seq.*) provides that for the purpose of preventing the inhumane slaughtering of livestock, the secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the methods by which amenable species cattle, sheep, swine, goats, horses, mules, or other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this Act. The Secretary may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Secretary finds that any cattle, sheep, swine, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such

establishment by any method not in accordance with the Humane Methods of Slaughter Act (HMSA) (72 Statute, 862; Title 7 U.S.C. 1901 to 1906) until the establishment furnishes assurances satisfactory to the Secretary that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such methods.

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 1250 hours, while performing a HATS Category VIII task, Stunning Effectiveness, as part of a Verification Plan for a Notice of Suspension (NOS), IPP observed the following noncompliance. In the stunning room, an establishment employee attempt to stun a market 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 stiffened momentarily. The stunning wand, that initiates the stun cycle, broke at the base of the unit. The hog remained conscious, vocalizing, and struggling in the restrainer. IPP observed the hog exhibiting rhythmic breathing and blinking normally. The employee immediately applied a second stun with a preloaded handheld captive bolt (HHCB) device, which effectively rendered the hog unconscious. IPP took a regulatory control action and informed the employee to stop stunning and placed a U.S. Reject tag # B-45701099 to the restrainer. This is noncompliant with 9 CFR 313.30(a)(3) and 313.30(b)(3). IPP then informed Operations Manager (b) (6) and QA Manager (b) (6) of the forthcoming noncompliance and called (b) (6) for further guidance.

On September 12, 2023, the establishment was issued a Notice of Intended Enforcement due to an egregious humane handling incident. The stunning attempt in the restrainer with two electrical stunning wands was ineffective and the immediate follow up stun with the pneumatic captive bolt stunner was ineffective. The third stun attempt with the HHCB stunner rendered the animal unconscious.

On December 18, 2023, the establishment was issued a Notice of Suspension due to an egregious humane handling incident. The stunning attempt of a disabled ambulatory hog in the stunning room with a HHCB device was ineffective and the hog continued to walk around the enclosed area. After the establishment employee retrieved the mobile electrical stunner from the barn, the hog was rendered unconscious with two electrical stunning probes on one wand being applied first behind the ears and then on the heart.

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 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 detailed in 9 CFR 313.30 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.

The establishment does have a humane handling program that meets the four criteria as described in the Federal Register Notice of September 9, 2004, but is currently under Abeyance of a Notice of Suspension that was issued on December 18, 2023. Based on the above findings, the Des Moines District Office has made a decision to reinstate the suspension of the assignment of inspectors for your slaughter operations, as per the Rules of Practice regulation 9 CFR Part 500.3(b).

The suspension of the assignment of inspectors will remain in effect until such time as you provide to this office adequate written corrective actions and preventive measures to address the noncompliance detailed in this Notice of Reinstatement of Suspension (NROS), to assure that the handling and/or slaughter of animals will be done humanely and in accordance with the FMIA, HMSA, and the regulations promulgated therein.

You may provide this office written corrective actions and preventive measures concerning the NROS and we will determine further action, if any, based upon your response. If you choose to address this issue, your written response should include:

1. An initial assessment of the incident, including determination of the cause.
2. Immediate corrective actions taken.
3. Measures to prevent reoccurrence.
4. Any training of employees, materials used, and associated records.
5. Type of monitoring activity(s) to be conducted and associated monitoring records.

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.

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

Notice of Reinstatement of Suspension
February 23, 2024

Please be advised that based on your past history of noncompliance concerning inhumane handling of livestock the Des Moines District Office may be consulting with the Office of Investigation, Enforcement and Audit, Enforcement and Litigation Division which may result in the removal of your Grant of Inspection.

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: (b) (6)

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
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 Specialist (b) (6)

Sincerely,



Digitally signed by Todd C.
Gervig
Date: 2024.02.23 16:16:48 -0600'

for Mr. Jeffery Jacobsen
District Manager
USDA FSIS OFO
Des Moines District