



United States Department of Agriculture

Food Safety and
Inspection Service

Office of Field
Operations
Des Moines
District Office

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

Voice
515.727.8960
Fax 515.727.8991

August 5, 2024

ELECTRONIC MAIL on August 5, 2024

Paul Benson
Bensen & Turner Foods, Inc.
Est. M2437
3145 State Highway 59
Waubun, Minnesota 56589
(b) (6) @gmail.com
218-849-8684

NOTICE OF SUSPENSION

Attention: Paul Benson, Owner

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 Bensen & Turner Foods, Inc., Est. M2437, located at 3145 State Highway 59 Waubun, MN. This letter follows verbal notification of the suspension action, provided by Public Health Veterinarian, (b) (6) to Paul Benson, Owner at approximately 2:30pm on August 5, 2024.

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 about 11:55 hours while performing HATS verification of category VIII, Stunning Effectiveness, inspection program personnel (IPP) observed the following noncompliance: There was a black heifer in the restrainer that was moving around and throwing her head. The establishment employee waited for her to stop moving her head and then applied the handheld captive bolt (HHCB) to the animal's head and discharged the HHCB. IPP observed that the animal had thrown its head at the last minute, and the captive bolt went sideways and IPP observed the bolt travel under the skin of the animal's head. The animal was observed still standing throwing its head and moving in the restrainer. The employee reloaded the HHCB device and applied another stun. This was also ineffective, the animal vocalized, was still standing and observed fighting against the restrainer. At this time the employee had the 22-caliber pistol and gave inspection time to withdraw to a safe area. The animal was then shot with the 22-caliber pistol and the animal dropped to the floor and was rendered unconscious. IPP checked the animal, and the eye did not blink when the eye was touched after the 22-caliber pistol was used. The hide was removed from the head to allow the stun sites to be examined. The two handheld captive bolt wounds were side by side in the center of the forehead right between the eyes. The 22-caliber pistol wound was two inches above the handheld captive bolt wounds toward the poll.

This is a violation of 9 CFR 313.15(a)(1). IPP took a regulatory control action and placed a U.S. Reject tag MP-35 #B45259471 on the restrainer. IPP notified Paul Benson, Owner of the forthcoming noncompliance and that FSIS IPP would be contacting the District Office for further guidance.

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 addressed in 9 CFR 313.15(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.

The establishment does not have a robust humane handling program. Based on the above findings, the Des Moines District Office has made a decision to suspend 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 NOS, 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.

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 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:

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

Paul Benson, Owner
Bensen & Turner Foods, Inc., Est. M2437

Notice of Suspension
August 5, 2024

Washington, DC 20250
sherri.johnson@usda.gov
Phone number: 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:

Dr. Ashley Etue, Acting
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: EOSCorrespondence@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) at (b) (6)

(b) (6)

Sincerely,

**MARK
JOHNSON**

Digitally signed by
MARK JOHNSON
Date: 2024.08.05
15:28:54 -0500

(for)

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