



United States Department of Agriculture

Food Safety and
Inspection Service

February 27, 2023

Signed copy electronically delivered

Office of Field
Operations
Des Moines District
Office

(b) (6)
Cimpl's Inc.
1000 Cattle Drive
Yankton, South Dakota 57078

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

NOTICE OF INTENDED ENFORCEMENT

Voice 515.727.8960
Fax 515.727.8991

Dear, (b) (6) :

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on February 27, 2023, of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP) at Establishment M2460, Cimpl's Inc., herein referred to as the/your establishment. This action is taken in accordance with the Rules of Practice, 9 CFR 500.3(b). This action was initiated due to your firm's failure to maintain or implement required controls to prevent the inhumane handling and slaughtering of livestock at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.15(a)(1). This is in violation of 21 U.S.C. 603(b) of the Federal Meat Inspection Act, the Humane Methods of Slaughter Act of 1978, and the regulations promulgated thereunder.

You are required to respond to this notice adequately, in writing, addressing the regulatory noncompliance in this notice. Failure to respond adequately within three (3) business days from the date of receipt of this notice may result in the suspension of the assignment of inspectors at your establishment. FSIS will evaluate your response and will determine if any further administrative enforcement action will be necessary.

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 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 slaughtering 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 establishments by any method not in accordance with sections 1901 to 1906 of Title 7 until the establishment furnishes assurances, satisfactory to the Secretary, that all Slaughtering and handling in connection with livestock shall be in accordance with such a method.

The Humane Methods of Slaughter Act of 1978 (7 U.S.C. 1901 et seq.) 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.

FSIS has also developed Rules of Practice regarding enforcement prescribed in 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, as well as the procedures for filing a complaint to withdraw a Grant of Federal Inspection.

Findings/Basis for Action

On February 27, 2023, at approximately 0848 hours, while performing a Hats Category VIII task (Stunning Effectiveness), IPP observed the following non-compliance. A mature black Angus bull entered the restrainer. Stunning personnel securely restrained the head of the animal. The initial stun attempt was applied using a pneumatic captive bolt stunning apparatus. IPP observed that the animal remained conscious, it did not drop and the animal was still standing in the restrainer. IPP observed stunning personnel apply a second stun attempt with the same device. The animal remained conscious, it remained standing in the restrainer, as stunning personnel checked the left eye the animal was blinking with no vocalization from the animal. Stunning personnel applied a third stun using the same pneumatic stunning apparatus as the first two attempts, which effectively rendered the animal unconscious. At this time Inspection Program Personnel (IPP) applied U.S. Retain/Reject tag #B39492669 to the Restrainer. IPP informed Harvest Floor Supervisor of the non-compliance, and then returned to the Inspection office and relayed the findings to the District Office through supervisory channels for further guidance.

This is noncompliant with regulation 9 CFR 313.15(a)(1). Prior to this noncompliance, the establishment operated under a robust systematic approach to humane handling.

Conclusion:

According to the FSIS Rules of Practice laid out in 9 CFR 500.3(b), FSIS may impose a suspension without providing prior notification because an establishment is handling or slaughtering animals inhumanely. Alternatively, FSIS may issue a withholding action or suspension with prior notification in certain cases based on considerations of establishment history of compliance with the humane handling regulations, demonstration of implementation of a robust systematic approach to humane handling, whether suspension is necessary to prevent inhumane handling from continuing, and whether the egregious noncompliance represents a rare finding or an anomaly in an otherwise well-functioning system.

The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your implementation of a written humane handling program in a “robust” manner and history of compliance with the humane handling regulations.

Before proceeding with any enforcement action, 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.

The corrective actions and preventive measures in your response should address the following:

1. An initial assessment of incident/determine the cause.
2. Immediate corrective actions taken.
3. Preventive measures to prevent reoccurrence.
4. Any training of employees and materials used.
5. Type of monitoring activity for stunning, along with a documentation record.

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

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Sherry 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
SB, Room 1330A
Washington, DC 20250
Phone: (202) 379-6196

You are reminded that as an operator of a federally inspected establishment, you are expected to comply with FSIS regulations, regarding the humane handling and slaughter of livestock. 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 or District Veterinary Medical Specialists (DVMS) (b) (6) or (b) (6)

Sincerely,

MARK
JOHNSON
Digitally signed by
MARK JOHNSON
Date: 2023.02.27
15:15:21 -0600 (for)

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