



## United States Department of Agriculture

---

Food Safety and  
Inspection Service

March 2, 2023

Digitally signed copy electronically delivered

Office of Field  
Operations  
Des Moines District  
Office

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

Adam Bode, Plant Manager  
New Angus, LLC  
13-135<sup>th</sup> ST., SW  
Aberdeen, SD 57401

### NOTICE OF INTENDED ENFORCEMENT

Voice 515.727.8960  
Fax 515.727.8991

Dear Mr. Bode:

This serves as official notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on March 2, 2023 of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel at establishment New Angus, LLC, Est.# M45471, located at 13-135<sup>th</sup> ST., SW, Aberdeen, SD, herein referred to as the/your establishment. This action is taken in accordance with the Rules of Practice, 9 Code of Federal Regulations (CFR) Part 500.3(b), which states that FSIS may take a withholding action or impose a suspension without providing an establishment prior notification if it is handling or slaughtering animals inhumanely. The Notice of Intended Enforcement (NOIE) is being issued to your establishment due to an observation of an egregious humane handling incident that occurred at your establishment on March 2, 2023 for failure to meet the regulatory requirements of 9 CFR 313.15(a)(1)&(a)(3).

#### **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.

Under the authorities of the Acts, FSIS has prescribed rules and regulations for the humane slaughtering of livestock, as contained in regulations Title 9 CFR, Part 313, and the HMSA. 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 3/2/2023, at approximately 1149 hours, while verifying HATS Category VIII – Stunning Effectiveness, IPP observed the following noncompliance issue: IPP observed a shackled and hoisted animal that had already received an initial stun regain consciousness.

The animal began kicking and wrestling as it made it to the sticking platform. The first sticker began trying to hold the animal but was unable to apply the stick as the animal was trying to right itself and pull away from the sticker.

The sticker then called for another employee that was present on the sticking platform to help hold the animal and to apply a secondary stun, but again the animal was struggling to right itself and kicking too much for two people to hold and apply the secondary stun.

The second sticker employee (and third employee total) then also tried to hold the animal by the ears to apply the secondary stun but could not hold the animal still enough to apply the stun while on a moving chain.

It was clear by the controlled movements the animal was trying to turn its head and twist away from the employees to right itself. IPP verbally notified the secondary sticker to stop the chain and rejected the area with USDA Reject Tag#B45243085.

After the line was stopped, the three employees managed to apply the second stun rendering the animal unconscious.

IPP requested the Supervisory Public Health Veterinarian (SPHV) review the establishments corrective actions for the humane handling violation.

The SPHV reviewed the stun locations and determined that two were located on the midline of the forehead with one stun wound two inches lower than the other wound.

Review with Plant Manager Mr. Ricardo Aguila regarding the issue occurrence was that the assigned stunning employee had previously failed to be certified and was therefore still in training. Plant Manager Mr. Ricardo Aguila verbally notified us that he would move the stunning employee and place the senior stunning employee back at this location as part of the corrective actions.

Review of recent previous memorandums of interview show MOI#VUE5808033401G issued 3/1/2023 discussed concerns regarding the potential of improper stuns due to the employee's lack of supervision.

This is a violation of the FMIA (21 U.S.C.) 603, regulations 9 CFR 313.15(a)(1)&(a)(3) and the HMSA of 1978.

### **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). This decision is based on information that your establishment has developed and implemented a humane handling program that meets the criteria described in the Federal Register Notice of September 9, 2004, for a systematic approach to handling of livestock for slaughter and that program was being implemented at the time of the observed incident. Additionally, the compliance history concerning humane handling at your establishment has consistently been compliant with the humane handling regulations.

According to the FSIS Rules of Practice laid out in regulation 9 CFR Part 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.

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. 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.

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. Please be advised that you have the right to appeal this matter. If you wish to appeal, you should contact:

Attention: Sherri N. Johnson  
Acting 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  
Office number: 202-379-6196  
[sherri.johnson@usda.gov](mailto:sherri.johnson@usda.gov)

In addition, you may also request a hearing regarding this determination pursuant to FSIS Rules of Practice, regulation 9 CFR Part 500. The Rules of Practice were published in the Federal Register, Vol. 64, No. 228, on November 29, 1999. As specified in Section 500.5(d), 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, you should contact:

Attention: Scott C. Safian, Director  
Enforcement Operations Staff  
Office of Investigation, Enforcement and Audit  
Food Safety and Inspection Service  
United States Department of Agriculture  
Stop Code 3753, SB-Room 2148  
1400 Independence Avenue, SW  
Washington, DC 20250  
Phone number: 202-418-8872  
Fax number: 202-245-5097

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,

**RANDALL**  
**KUMPOST**

Digitally signed by  
RANDALL KUMPOST  
Date: 2023.03.02  
17:59:54 -06'00'

(for)

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