



Food Safety and
Inspection Service

December 29, 2023

Office of Field
Operations
Des Moines
District Office

Electronically mailed on December 29, 2023

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

Adam Bode, Plant Manager
New Angus, LLC, Est. M45471
P.O. Box 190
Aberdeen, South Dakota 57402
abode@demkotarb.com
605-262-2333

Voice
515.727.8960
Fax 515.727.8991

NOTICE OF SUSPENSION

Attention: Adam Bode

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 New Angus, LLC., Establishment M45471, located at 13 - 135th Street SW, Aberdeen, South Dakota 57401. This letter follows notification via phone of the suspension action, provided by (b) (6), Frontline Supervisor, to Mr. Adam Bode, Establishment Manager and (b) (6), QA Manager at approximately 1320 hours on December 29, 2023.

This action is taken in accordance with the Rules of Practice regulation 9 Part Code of Federal Regulations (CFR) Part 500.3(b) due to an egregious inhumane handling incident that occurred at your establishment on December 29, 2023. 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 0718 hours, while walking through the establishment's hide-on slaughter area, IPP observed the following noncompliance with HATS Category IX - Conscious Animals on the Rail. IPP observed a bovine that was on the rail after being shackled and hoisted by one hind leg. The animal was righting itself in a rolling motion, attempting to move away from an establishment area Supervisor. The Supervisor was standing on the left side of the bovine in the blood pit, past the sticker location and holding the left ear. The bovine had not been bled and there were no cuts on the throat area. The tongue was not hanging out of the mouth, and the animal was not vocalizing.

IPP observed the area Supervisor trying to stun the animal with a knife to the back of the head by cutting through the hide and then trying to insert the knife between the neck and cervical area. While the Supervisor was cutting with the knife, the bovine deliberately attempted to move away from the Supervisor by moving its head in an upwards rolling motion but was restricted due to being shackled.

IPP called for the line to be stopped at 0720 hours and provided U.S. Reject tag No. B45243252 to the area Supervisor. The area Supervisor then applied the hand-held captive bolt stunner and rendered the animal unconscious with the line stopped. As the animal was not rendered unconscious on the first attempt, this is noncompliant with 9 CFR 313.15(a)(1). IPP notified Harvest Foreman (b) (6) of the noncompliance and that USDA IPP would be contacting the District Office for further guidance.

While IPP waited for the SPHV, the establishment restarted the line and IPP needed to request it to be stopped again. IPP notified Foreman (b) (6) that restarting the line violated the Regulatory Control action.

At approximately 0732 hours, the SPHV observed one large hole, 11/16" wide, centered at 5" from the pole of the head. The medial canthus of the eye was at 8" and two smaller holes approximately half the main bolt size were 3 1/4" below the pole. The plant offered to split the skull along the midline to be able to determine the path of the stunning attempts. The larger furrow of the main stun bolt was angled slightly rostral just grazing the front of the cerebrum. Both smaller secondary tunnels were parallel and angled slightly rostral passing through the cerebrum to the most rostral part of the brain stem.

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 313.15(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 have a humane handling program that meets the four criteria as described in the Federal Register Notice of September 9, 2004, but is not considered to be robustly implemented at this time. 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.

You may provide this office written corrective actions and preventive measures concerning the NOS 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. 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
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,

**MARK
JOHNSON**

Digitally signed by
MARK JOHNSON
Date: 2023.12.29
15:27:36 -06'00'

(for)

Dawn Sprouls, DVM

Adam Bode, Plant Manager
New Angus, LLC. Est. M45471

Notice of Suspension
December 29, 2023

District Manager
USDA FSIS OFO
Des Moines District

cc:

sherri.johnson@usda.gov

Dawn.Sprouls@usda.gov

mark.johnson5@usda.gov

(b) (6) [@usda.gov](mailto: @usda.gov)

(b) (6) [@usda.gov](mailto: @usda.gov)

shaun.smith@usda.gov

(b) (6) [@usda.gov](mailto: @usda.gov)

(b) (6) [@usda.gov](mailto: @usda.gov)

fo/quarterlyenforcementreport@usda.gov