



April 26, 2023

JMF Slaughter (Mobile Unit)
Establishment M47369
835 Chileno Valley Road
Petaluma, CA 94952
Email: jmfslaughter@yahoo.com
Telephone Number: (707) 888-3388

ELECTRONIC MAIL on April 26, 2023

Attention: John Manuel Fagundes, Owner

NOTICE OF REINSTATEMENT OF SUSPENSION

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) at JMF Slaughter (Mobile Unit), Establishment M47369, located at 835 Chileno Valley Road Petaluma, CA 94952. This letter follows verbal notification of the suspension action, provided by Virginia Felix, Deputy District Manager (DDM), to you, Mr. John Fagundes, Owner, at approximately 1545 hours on April 25, 2023. This action includes your Slaughter Hazard Analysis Critical Control Point (HACCP) process employed at your establishment.

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). This is based on the determination that your establishment did not handle or slaughter animals humanely in accordance with Title 9 CFR 313.30(a)(4). 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).

These observations indicate that the corrective actions and preventative measures you proffered in your response to the Notice of Suspension (NOS) initiated on February 13, 2023, which was also issued for your establishment's failure to handle or slaughter animals humanely, were ineffective and/or not implemented.

Background/Authority

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

On April 25, 2023, at 1247 hours while observing Humane Handling Activities Tracking System (HATS) Category VIII - Stunning Effectiveness, the Consumer Safety Inspector (CSI) observed (b) (6), Stunning Operator, had a market swine loaded in the restrainer to be electrically stunned. The wooden board, which was proffered in response to the Notice of Suspension issued on February 13, 2023, was placed against the animal. Behind the animal, another employee was holding a plastic hog board in order to reduce movement. The stunner applied the first electric shock to the animal's head and effectively rendered it unconscious. The animal went down immediately after the wand was removed, and was convulsing with the forelimbs extended and there was no vocalization or eye tracking. Your employee pulled the animal from the restrainer so that the chest stun could be subsequently applied.

The CSI observed that (b) (6) tried to apply the chest stun but was unable to make contact with the chest due to the animal's reflexive kicking movements while unconscious. The CSI then observed the animal regain consciousness, stand up without difficulty, and walk at a normal speed towards the office area, approximately 20 feet away. While a second operator restrained the animal, (b) (6) took the captive bolt stunner and applied a stun, effectively rendering the animal unconscious as it went down with no signs of vocalization or eye tracking.

The CSI notified you, Mr. John Fagundes, Owner, that no further stunning would be allowed due to the inhumane handling of livestock. The CSI applied U.S. Rejected tag # B45136920 to the restrainer to stop further stunning of animals.

This is an egregious act of inhumane handling of animals in connection with slaughter, as the stunned animal did not remain in a state of surgical anesthesia. Your establishment does not currently have a Robust Systematic Approach for humane handling and slaughter of livestock.

This is a violation of Title 9 CFR 313.30(a)(4), which states, “*The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.*” This constitutes failure to adhere to the regulatory requirements of the humane handling and slaughter of livestock, as required by the Federal Meat Inspection Act, 21 U.S.C. 603(b), the Humane Methods of Slaughter Act, and the regulations promulgated thereunder.

These ongoing repetitive and reoccurring findings of failing to handle or slaughter animals humanely indicate that your proffered corrective actions in response to the previous Notice of Suspension (NOS) issued on February 13, 2023, have failed to effectively address the noncompliance.

Previously, on February 13, 2023, the Alameda District Office notified your establishment of the withholding of the marks of inspection and suspension of the assignment of inspectors at your facility in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action was initiated due to your firm’s similar failure to maintain or implement required controls to prevent the inhumane handling and slaughter of a market swine at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.15(a)(1). These events were 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. This previous incident on February 13, 2023, involved the animal’s movements which prevented employees from stunning, which is similar to the current incident.

In response to the NOS, your establishment submitted corrective actions from February 13, 2023, through February 15, 2023. As detailed in your verification plan dated February 16, 2023, your establishment proffered to perform maintenance and repairs on your captive bolt gun, reduce the space for hog stunning, and conduct employee training. As stated in the Notice of Suspension Held in Abeyance verbally issued on February 14, 2023, and dated February 16, 2023, your establishment’s failure to comply with regulatory requirements or effectively implement your commitments and agreements, may result in the reinstatement of the suspension of inspection in your establishment.

However, the latest findings of inhumane handling indicate your corrective actions as proffered and implemented have failed to prevent the recurrence of the noncompliance.

FSIS inspection program personnel (IPP) have also documented noncompliance regarding inhumane handling for market swine.

- On March 1, 2023, the Supervisory Public Health Veterinarian (SPHV) documented NR# OZK5814030401N, for your establishment’s failure to effectively stun a market swine in accordance with Title 9 CFR 313.15(a)(1). While conducting slaughtering of market

swine in your restrainer, your employees attempted to apply a captive bolt stun to the animal but were unsuccessful during the first attempt. Your establishment explained that you believed it was unsuccessful due to the animal moving its head. As described in the NR, the animal was moving freely and pushing up against a wooden board multiple times and dodging employee attempts to stun it. The wooden board was a measure you had proffered in response to the NR, to reduce space for hog stunning. Similar to the previous incident occurring on February 13, 2023, as well as during this most recent incident on April 25, 2023, stunning could not be conducted due to the animal's movements.

Moreover, FSIS IPP issued the following Memoranda of Interview (MOIs) during the abeyance period, related to your failure to implement your proffered corrective actions in response to the NOS.

Specifically, you had proffered to conduct daily management review of your "*Stunner PM Log*." FSIS IPP documented four MOIs as listed below for your failure to conduct this review.

- MOI# OZK4018021823G, dated February 23, 2023
- MOI#OZK2707021328G, dated February 28, 2023
- MOI# OZK4615031808G, dated March 8, 2023
- MOI# OZK5014031117E, dated March 17, 2023

On February 24, 2023, the Alameda District management team contacted you via electronic mail (e-mail) regarding your establishment's failure to abide by the commitments you made in response to the NOS, issued on February 13, 2023.

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" in the Federal Register (69 FR 54625). On September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, entitled, "*Humane Handling and Slaughter of Livestock*." Additionally, on October 23, 2013, FSIS introduced new guidance, titled "*FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock*." Within the guidance material is information intended to better ensure the humane treatment of livestock presented for slaughter. The guidance material provides a set of practices designed to minimize excitement, discomfort, and accidental injury regarding the humane handling of livestock to include the four components of a robust systematic approach to humane handling.

When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed. You do not currently maintain a robust written humane handling program for consideration. While you maintain a systematic approach to humane handling, that approach is not considered robust, as was discussed with you in November 2021. Furthermore, during an open humane handling enforcement action, animal welfare programs are no longer considered robust. As discussed,

your establishment was currently operating under an abeyance period for the NOS issued on February 13, 2023, when the most recent egregious event occurred on April 25, 2023.

Summary and 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 313.30 (a)(4), 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.

Please provide a written response, inclusive of written corrective action and preventative measures, by addressing the following:

- Evaluate and identify the nature, cause of the incident.
- Describe the specific actions taken to eliminate the cause of the incident and prevent future recurrences.
- Describe specific monitoring activities planned to ensure future compliance.
- Provide any supporting documentation and records maintained and/or associated with the proposed corrective actions and preventative measures.

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
SB, Room 1330A
1400 Independence Avenue, SW
Washington, DC 20250
Email: sherri.johnson@usda.gov
Phone: (202) 379-6196

John Manuel Fagundes, Owner
JMF Slaughter (Mobile Unit), Est. M47369

Notice of Reinstatement of Suspension
April 26, 2023

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 any questions, please call the Alameda District Office at (510) 769-5712, by fax at (844) 622-0081, or via electronic mail at AlamedaDistrictOffice@usda.gov.

Sincerely,

*/s/ Virginia Felix, DVM
Deputy District Manager
(for)*

William Griffin
District Manager

cc: S. Johnson, EARO
(b) (6), Humane Handling Enforcement Coordinator
S. Baucher, OIEA Regional Director
V. Felix, DDM
F. Gillis, DDM
G. Abreu, DDM
(b) (6), SEIAO
(b) (6), DCS
(b) (6), Acting DVMS
(b) (6), Acting FLS
(b) (6), EIAO
IIC, SPHV at Est. M47369
FO/Quarterly Reports