



United States Department of Agriculture

Food Safety and
Inspection Service

Office of Field
Operations
Des Moines District
Office

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August 20, 2022

Digitally-signed copy sent electronically

John Roswech, Owner
South 40 Farms, LLC
9214 Highway 21
Mott, ND 58846

NOTICE OF REINSTATEMENT OF SUSPENSION

Dear Mr. Roswech:

This letter confirms verbal notification provided by the Des Moines District Office, Food Safety and Inspection Service (FSIS), on August 19, 2022, of the decision to reinstate the suspension of porcine/swine slaughter inspection program personnel (IPP) at Establishment 47494, South 40 Farms, LLC., in Mott ND, 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 FSIS may take a withholding action or impose a suspension without providing an establishment prior notification if it is handling or slaughtering animals inhumanely. FSIS is taking this action due to on-going incidents of ineffective stuns including the egregious inhumane handling incident that occurred at your establishment on August 19, 2022.

Background/Authority

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 9 CFR Part 313, and the HMSA of 1978. FSIS has also developed Rules of Practice regarding enforcement prescribed in regulations 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

Humane handling noncompliance has occurred on each of the last three consecutive swine slaughter days: June 17, 2022, August 11, 2022, and August 19, 2022.

Specifically:

On June 17, 2022. At approximately 1018 hours MT on 6/17/22, while verifying HATS Category VIII- Stunning Effectiveness, IPP observed a market swine put into the restrainer. The restrainer has a metal insert that restricts the movements gradually as the animal moves closer to the stunning area, where the shoulder squeeze/restraint can be used. The head is free to move while in both restraints. The establishment was employing a hand-held captive bolt (HHCB) device to do the stunning. After the initial stunning attempt, IPP noted the animal was conscious. The animal was standing on its front feet, with the hindquarters on the floor of the restrainer. The animal vocalized, had controlled head movements, and was looking around tracking movement, while sitting upright in the restrainer. The employee retrieved the second HHCB. A second stun was applied. The second stun rendered the animal unconscious.

On August 11, 2022, at approximately 1030 while verifying HATS Category VIII- Stunning Effectiveness, IPP noted that the establishment stunner was operating a 6-shot .22 revolver. IPP stepped into the neighboring room while the stunner operator attempted to stun. while in the next room IPP heard the .22 pistol discharge followed by a loud vocalization from the animal. Upon immediate investigation, IPP saw that the animal was conscious. The market swine was loudly vocalizing with repetition and having controlled movement within the restricted area in the loading chute leading up to the restrainer. The second shot was effective at stunning the swine.

On August 19, 2022, at approximately 1:30pm while IPP was verifying HATS Category VIII- Stunning Effectiveness during swine slaughter, IPP noted that the establishment stunner was operating a 6-shot .22 revolver. IPP stepped into the neighboring room while the stunner operator attempted to stun. While in the next room IPP heard the .22 pistol discharge followed by a loud vocalization from the conscious animal. The market swine was loudly vocalizing with repetition. The second stun was implemented. IPP heard animal movement but as IPP was following safety protocols for firearm usage IPP was unable to see the animal. A third stun was implemented and upon return to the stunning area IPP confirmed that the animal was unconscious. IPP placed U.S. Reject tag B-45 639328 on the entrance of the loading chute leading to the restrainer. IPP then notified Owner John Roswech of their observations and of the forthcoming noncompliance record and that IPP will be contacting the Des Moines District Office through the supervisory chain for further guidance. This is a non-compliance with 9 CFR 313.16(a)(1).

Post-mortem examination revealed that one wound was about 2 inches above the line between the eyes and approximately 1 inch to the left of center forehead with a depth of zero (bullet still in the skull). (as IPP look at head). Another wound was 1 inch above a line between the eyes and approximately .25 inch to the left of center forehead with a depth of .25 inches. (as IPP look at head). Another wound was about in the center of the forehead and approximately .5 inches above the line between the eyes.

This noncompliance record is being associated with a similar noncompliance that was documented on 08/11/2022 (ref. NR# KLG1013084411N/1). The establishment failed to implement the corrective actions or the measures implemented were inadequate to prevent recurrence. Continued failure to meet regulatory requirements may lead to further enforcement action as described in 9 CFR 500.4.

The corrective actions proffered for the June 17, 2022, noncompliance were as follows: 1) use a different method to restrain the hogs by using a sorting board to restrain the hog against the chute wall. 2) Re-train the employees on stunning procedures. 3) Daily and weekly stunning audits. 4) Daily tracking of the servicing and cleaning of the captive bolt guns.

The corrective actions proffered for the August 11, 2022, noncompliance were as follows: 1) get better restraints. 2) set chute up better. 3) get U-panel to hold hog. 4) Be more prepared for animal we are killing.

A trend of noncompliance exists in that proffered corrective actions were either not properly implemented or ineffective during three separate ineffective stunning incidents, one on each of your last three consecutive hog slaughter days. In addition, your establishment is currently operating under the terms of a Notice of Suspension Held in Abeyance (NOSA) as a result of an egregious inhumane handling incident, with a beef animal, that occurred April 20, 2022.

Conclusion;

The observations detailed above indicate repetitive violations of the humane handling requirements specified within the provisions of 21 U.S.C. 603, Section 3(b) of the FMIA, and 7 U.S.C. 1901 and 1902 of the HMSA of 1978 and the regulatory requirements outlined in 9 CFR 313.16(a)(1) and 313.16(b)(1)(iii).

The repetitive nature of these instances of noncompliance leaves the agency without assurance that your establishment is willing and/or able to humanely stun and slaughter porcine/swine.

The suspension of the assignment of porcine/swine inspectors will remain in effect until such time as you provide to this office adequate written corrective actions and preventive measures to assure that the handling and/or slaughter of swine will be done humanely and in accordance with the FMIA, HMSA, and the regulations promulgated therein.

You may provide this office written corrective and preventive measures concerning the NROS and we will determine further action, if any, based upon your response. Your written response should include:

1. An initial assessment of the incident, including determination of 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 required 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:

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
Office number: 202-379-6196
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:

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
Office: (202) 418-8872
Fax: (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)

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Sincerely,

RANDALL
KUMPOST Digitally signed by
RANDALL KUMPOST For Dr. Sprouls
Date: 2022.08.20
13:04:47 -05'00'

Dawn Sprouls, D.V.M.
District Manager
Des Moines District
USDA/FSIS