



November 7, 2024

Kleemeyer & Merkel, Inc.

M5439

68 Britten Road

Green Village, New Jersey 07935

(b) (6)@aol.com; (b) (6)@aol.com

973-377-0875

ELECTRONIC MAIL on November 7, 2024

Attention: Timothy Nugent (Owner), Bill Kleemeyer (Manager)

NOTICE 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 Kleemeyer & Merkel, Inc., M5439, located at 68 Britten Road, Green Village, NJ 07935. This letter follows verbal notification of the suspension action, provided by (b) (6) Supervisory Public Health Veterinarian (SPHV), to Bill Kleemeyer (Manager) at approximately 1551 hours on November 6, 2024. This action includes your Slaughter Hazard Analysis Critical Control Point (HACCP) processes 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), based on the determination that your establishment did not handle or slaughter animals humanely. 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/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

At approximately 1055 hours on Wednesday, November 6, 2024, IPP at your establishment identified an egregious humane handling noncompliance in which a calf was observed to be conscious on the rail after it had been stunned. A calf was electrically stunned, and approximately 30 seconds after it was pushed down the rail while bleeding out, the SPHV observed the calf rhythmically breathing. At this point, the SPHV bent down to check the eyes for signs of eye tracking, but did not observe any. Shortly after, the calf began to thrash, paddle, and kick its limbs, then exhibited a righting reflex where it repeatedly lifted and held its head up for an extended period. The calf also repeatedly extended its front legs as if to place them on the ground, all of which continued for at least 20 seconds. The SPHV alerted establishment personnel that the animal had returned to consciousness; however, no establishment employee on the kill floor responded to or acted on the request to take a corrective action, but instead went to retrieve the kill floor manager. The SPHV then asked the Consumer Safety Inspector (CSI) to tag the knock box. Before the tag could be applied, the kill floor manager entered the kill floor, but by then, the calf had stopped moving and was no longer exhibiting a righting reflex or rhythmic breathing. The SPHV informed the manager that the animal had returned to consciousness earlier, and the manager reacted by testing the calf for corneal reflexes and stating that the calf appeared to be unconscious. After a brief discussion about the SPHV's observations, the manager made an additional cut to the animal's neck to further facilitate bleeding. U.S. Retain/Reject tag 487852 was then applied to the knock box. Official notification of the pending enforcement action was given to the Manager at approximately 1551 hours.

This incident is noncompliant with 9 CFR 313.30(a)(4), which says, in part: "*The stunned animal shall remain in a state of surgical anesthesia through shackling, sticking, and bleeding.*" These findings are considered egregious because the animal was observed to be conscious after it had been stunned, shackled, hoisted and cut.

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.

This establishment does have a documented Robust Systematic Approach for Humane Handling; however, the employees failed to follow the program when stunning the animal, and employees failed to provide an immediate corrective action when they were notified that the animal had returned to consciousness. Therefore, this Notice of Suspension was initiated.

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 313.16(a)(3), 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:

William Griffin
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
South Building, Room 3164
1400 Independence Avenue, SW
Washington, DC 20250
Email: William.Griffin1@usda.gov
Phone: 202-961-7156

Timoty Nugent, Owner
Kleemeyer & Merkel, Inc.

Notice of Suspension
November 7, 2024

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 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 contact Heather Havens, Deputy District Manager (DDM) via telephone at 510-872-1333 or via electronic mail at Heather.Havens@usda.gov. Additionally, you can contact Raleigh District Office at 919-844-8400.

Sincerely,

**HEATHER
HAVENS** Digitally signed by
HEATHER HAVENS
Date: 2024.11.07
08:12:53 -05'00'

Todd Furey
District Manager

cc: W. Griffin, EARO/FO
J. Priore, RD/CID/OIEA
(b) (6), HHEC/FO
T. Furey, DM/RDO/FO
R. Murphy, DDM/RDO/FO
H. Havens, DDM/RDO/FO
A. Thompson, DDM/RDO/FO
D. Lilly, DCS/RDO/FO
(b) (6)/RDO/FO
(b) (6), SEIAO/RDO/FO
(b) (6) FLS/RDO/FO
(b) (6), SPHV/RDO/FO
Quarterly Enforcement Report
Establishment File (Est. M5439)