



United States Department of Agriculture

Food Safety and
Inspection Service

January 24, 2023

Office of Field
Operations
Denver District Office

SENT VIA ELECTRONIC MAIL

1 Denver Federal
Center, Bldg. 45
P.O. Box 25387
Denver, CO 80225

Mr. Daniel Dykstra, Plant Manager
KW Properties LLC, Est. M838
705 Peyton Avenue
Creighton, Nebraska 68729
Creightonlocker2022@gmail.com

Voice (303) 236-9800
Fax (303) 236-9794

NOTICE OF SUSPENSION

Dear Mr. Dykstra,

This letter confirms the verbal notification provided to your establishment, KW Properties LLC, Est. M838, located in Creighton, Nebraska, on Tuesday, January 23, 2023, by the Food Safety Inspection Service (FSIS), Denver District, of the suspension of the assignment of inspectors and the withholding of the marks of inspection at your establishment for slaughter operations. Dr. Jessica VanHook, Deputy District Manager, verbally notified you of the suspension. This action was initiated in accordance with Title 21 of the United States Code (USC), Section 603(b) and Title 9 of the Code of Federal Regulations (CFR) Part 500.3(b) (Rules of Practice).

Background Authority

The Federal Meat Inspection Act (FMIA), 21 USC Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering establishment if FSIS finds that any cattle, sheep, swine, goats, horses, mules or other equines have been slaughtered or handled in connection with slaughter at such establishments by any method not in accordance with the Humane Methods of Slaughter Act (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. 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.

Finding/Basis for Action

On Tuesday, January 23, 2023, the FSIS Consumer Safety Inspector (CSI) documented in a Noncompliance Record (NR) the following event at Est. M838:

"While observing stunning operations at approximately 1320, the CSI observed establishment personnel load a steer into the stunning area. An establishment employee utilized a .22 caliber long rifle to apply a stun attempt to the steer; the steer remained standing after the stun attempt. The establishment employee then applied a second stun attempt with the same firearm, after which the steer continued to stand and began tossing its head side to side and rearing back in the stunning area. The establishment employee then utilized a .22 magnum firearm to apply a third stun attempt. The steer remained standing and the CSI noted bleeding from the steer's nose as well as the steer vocalizing loudly. The establishment employee applied a fourth stun attempt with the .22 magnum; the steer remained standing and was vocalizing, but not tossing its head. Another establishment employee reloaded the .22 caliber long rifle and applied a fifth stun attempt to the steer; this resulted in the animal being rendered insensible. The steer remained insensible through the subsequent bleeding process.

On post-mortem examination, the CSI observed a cluster of four penetrating holes in the skull in a tight cluster just rostral of the cranial vault and a fifth penetrating hole in the skull approximately 1½" above the cluster that penetrated the cranial vault.

The establishment does not operate under a robust systematic approach to humane handling. A review of PHIS did not identify any previous noncompliance's with a similar root cause."

Summary

The decision to suspend the assignment of inspectors at your establishment is based on this noncompliance with 9 CFR 313.16(a)(1). This is an inhumane noncompliance, whereby a bovine was unsuccessfully stunned multiple times with ineffective corrective actions.

The suspension of the assignment of inspectors will remain in effect until such time as you provide the Denver District Office adequate written corrective actions and preventative measures to ensure that livestock at your establishment are handled and slaughtered humanely, and in accordance with the FMIA, the HMSA, and 9 CFR 313 regulations.

These should include:

- A written description of the incident.
- The root cause of the incident
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're

planning to use.

- Any monitoring procedures, including any documentation records.

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Paul Wolseley
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Avenue, SW
Room 1329, South Building
Washington, D.C. 20250
Tel: 202-708-9506
Paul.Wolseley@usda.gov

In accordance with 9 CFR Part 500.5 (d), you may request a hearing concerning this action by contacting:

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

If you have any questions regarding this matter, you may contact the Denver District Office at (303)236-9800.

Sincerely,

**ROBERT
REEDER**

Digitally signed by ROBERT
REEDER
Date: 2023.01.24 19:20:42 -0700

Dr. Robert Reeder
District Manager
USDA FSIS OFO
Denver District Office
Robert.Reeder@usda.gov

cc: FO/QER
Est. File
D. James, DDM

J. Monteverde, DDM

J. VanHook, DDM

(b) (6) FLS
(b) (6) SCSI

(b) (6) CSI
(b) (6) DCS
(b) (6) DVMS

(b) (6) DVMS

S. Smith, RD/OIEA