



United States Department of Agriculture

Food Safety and
Inspection Service

November 29, 2018

Office of Field
Operations
Des Moines District
Office

Signed Original sent via FedEx
Signed copy Hand Delivered

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

Elkton Locker and Grocery, Inc.
Steve Hammer, Plant Manager
127 Elk Street
Elkton, South Dakota 57026

Voice 515.727.8960
Fax 515.727.8991

NOTICE OF SUSPENSION

Dear Mr. Hammer:

This letter confirms verbal notification given to you by the Des Moines District, Food Safety and Inspection Service (FSIS) on November 29, 2018, of our decision to suspend the assignment of FSIS inspection program personnel (IPP) at your firm, Est. 34384, Elkton Locker and Grocery, Inc., located at 127 Elk Street, Elkton, South Dakota. This action is taken in accordance with the Rules of Practice, 9 CFR 500.3(b), which indicates that FSIS may take a withholding action or impose a suspension without providing an establishment prior notification if it is handling or slaughtering animals inhumanely such as occurred at your establishment on November 29, 2018.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 603 *et seq*) provides for the purpose of preventing the inhumane slaughtering of livestock. This Act 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 this Act. They also provide FSIS program personnel the authority to temporarily suspend 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* of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901-1906), until the establishment furnishes assurances satisfactory to FSIS that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of the Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, as contained in Regulations 9 CFR Part 313, and the Humane Methods of Slaughter Act of 1978. 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.

Findings/Basis for Action

At approximately 9:50 AM on November 29, 2018, while verifying HATS task category VIII, stunning effectiveness, FSIS Inspection Program Personnel (IPP) observed a lamb standing with its head in the stun chute ready to be stunned. When the front gate to the stunning chute was opened after the first attempt with the .22 caliber rimfire magnum, the lamb was sitting on its knees, still conscious and looking around. IPP observed a bloody wound on the lamb's head. The company employee made a second attempt with .22 magnum rifle to stun the animal. After the 2nd shot the lamb was still on its knees looking around the room and coughing. The wound on the head was larger with blood coming out of it. At this point another employee was called from the cut room and successfully stunned the lamb. The lamb fell to the floor and was confirmed to be unconscious. After the 3rd attempt, a U.S. Rejected Tag was placed on the stunning box at approximately 9:53 AM and the District Office was informed of the incident for further guidance.

This is a violation of the Federal Meat Inspection Act (FMIA) (21 U.S.C.) 603, Regulations 9 CFR 313.16 and the Humane Methods of Slaughter Act of 1978.

Justification

The establishment does not have a humane handling program that meets the four criteria as described in the Federal Register Notice of September 9, 2004. Based on the above findings, the Des Moines District Office has determined to suspend the assignment of inspectors for your slaughter operations, as per the Rules of Practice 9 CFR 500.3(b) and as specified in 9 CFR 313.16.

If you choose to respond with corrective and preventive measures please provide this office with a written response concerning the Notice of Suspension (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 incident/determine 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.

You are reminded that as an operator of a federally inspected plant, you are expected 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:

Dr. Keith Gilmore
Executive Associate for Regulatory Operations
USDA FSIS OFO
210 Walnut St., Room 923
Des Moines, IA 50309
Tel: 515-727-8970
Blackberry: 785-766-9830

In addition, you may also request a hearing regarding this determination pursuant to FSIS Rules of Practice, 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
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
United States Department of Agriculture
Stop Code 3753, PP3, Cubicle 8-243A
1400 Independence Avenue, SW
Washington, DC 20250
Telephone No: 202-418-8872
Fax number: (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,



Dr. Dawn Sprouls, DVM
District Manager
USDA FSIS OFO DO
Des Moines District