



United States Department of Agriculture

Food Safety and
Inspection Service

May 4, 2020

Office of Field
Operations
Des Moines District
Office

Signed Original sent via Electronic Mail
Signed copy Hand Delivered

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

(b) (6)
Agri Star Meat and Poultry, LLC
220 West Street
Postville, IA 52162

Voice 515.727.8960
Fax 515.727.8991

NOTICE OF SUSPENSION

Dear (b) (6) :

This letter confirms verbal notification given to you by the Des Moines District Office, on May 4, 2020 of the Food Safety and Inspection Service's (FSIS) decision to suspend the assignment of FSIS Inspection Program Personnel (IPP) for the slaughter process at Est. M4653A, Agri Star Meat and Poultry, LLC., located at 220 West Street, Postville, IA, herein referred to as the/your establishment. This Notice of Suspension (NOS) is based on your failure to prevent inhumane handling and slaughter of livestock at your facility as required by 9 CFR 313.16(a)(1).

Background

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* of August 27, 1958 (72 Stat, 862; 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 a method.

Under the authorities of the Acts, FSIS has prescribed rules and regulations for the humane slaughtering of livestock, as contained in 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 0550 hours, the Supervisory Public Health Veterinarian (SPHV), observed the following egregious noncompliance while conducting a HATS Category VIII – Stunning Effectiveness task in the barn; An establishment employee made a stunning attempt with a firearm on a non-ambulatory disabled steer. The animal was up on its front legs at the time of the attempt and remained conscious, up with its head moving, after the first stun attempt. A second attempt was made with the same firearm, but the animal remained conscious, standing on its front legs and moved its front end in a controlled movement one step to the side. Blood was visible in the saliva coming from the steer’s mouth after the second attempt. A different establishment employee went to retrieve more ammunition, for the gun, from the lock box in the maintenance office. During this time, the SPHV examined the animal, who remained up on its front end throughout the time from initial stun. The SPHV observed an entry wound surrounded by gun powder residue in line between the eyes. The steer tracked the SPHV’s movement and responded to stimulus; no vocalization was made. When the ammunition was retrieved a third stunning attempt was made with the same firearm by a second establishment employee, which rendered the animal unconscious. The SPHV tagged the restrainer using U.S. Reject tag B36806410 and (b) (6). (b) (6) was notified of the noncompliance. The head was examined on postmortem, revealing three entry wounds. One was centered and level between the eyes. One was about ½ inch caudal and toward the left eye, and the third was an inch caudal to the second and a quarter inch further left. The (b) (6) (b) (6) and (b) (6) were informed that the District Office would be contacted through supervisory channels for further guidance.

Conclusion

The observations detailed above indicate an egregious violation 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 fail to

comply with the regulatory requirements of 9 CFR 313.16(a)(1) which specifies: *"The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animal shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort."*

In cases where an egregious animal handling incident is observed by FSIS IPP and an establishment maintains a written systematic approach to humane handling that meets the criteria of robustness, the Agency provides regulatory discretion in the decision of the type of enforcement action issued. Although you maintain a written program that has met these criteria, you were not implementing it accordingly and the discretionary decision is to issue a NOS.

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

1. An initial assessment of incident/determine the cause.
2. Immediate corrective actions taken.
3. Preventive measures to prevent recurrence.
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 establishment, 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:

**U.S. Department of Agriculture
Food Safety and Inspection Service
Attention: Paul Wolseley
Executive Associate for Regulatory Operations
1400 Independence Avenue, SW
Room 3440E, Whitten Building
Washington, DC 20250**

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

If you have questions regarding this matter, please feel free to contact (b) (6)
(b) (6) or (b) (6)
(b) (6) or the Des Moines District Office, at 515-727-8960.

Sincerely,

THOMAS
BECK

Digitally signed by THOMAS
BECK
Date: 2020.05.04 14:25:43
-05'00'

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