



United States Department of Agriculture

Food Safety and
Inspection Service

April 21, 2022

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Office of Field
Operations
Des Moines District
Office

Andrzej Zubek
Andy's Meats Inc.
N1651 County Road Cx
Endeavor, Wisconsin 53930

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

NOTICE OF SUSPENSION

Voice 515.727.8960
Fax 515.727.8991

Dear Mr. Zubek:

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on April 21, 2022, of our decision to suspend the assignment of inspection program personnel (IPP) for beef slaughter at Establishment 45629, Andy’s Meats Inc., in Endeavor, WI, herein referred to as the/your establishment. 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. FSIS is taking action due to an egregious inhumane handling event that occurred at your establishment on April 21, 2022.

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* (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

On April 21, 2022, at approximately 1030 while observing HATS category VIII, Stunning Effectiveness, the following non-compliance was observed by IPP. The fourth steer of the day was placed in the stunning area. It was smaller than the typical steer and would not place its head into the head restraint. Establishment Manager Andy Zubek decided to attempt to stun the animal with its head free. IPP observed Mr. Zubek attempt to stun the steer with a handheld captive bolt device (HHCB). The animal immediately fell to the floor but was lying with its head and neck up and blinking its eyes. When another IPP entered the room, the animal tracked his movement with its eyes. IPP observed blood on the animal's forehead. Mr. Zubek then reached through the bars of the stunning area to apply a second attempt to stun the steer with the same HHCB, after which the animal was still lying with its head up and tracking with its eyes. At that time another establishment employee noted that the animal was still conscious and Mr. Zubek then entered the knock box and applied the third attempt with the same HHCB, which rendered the animal unconscious. Establishment personnel recognized immediately that the animal had not been effectively stunned after the first and second attempts and applied the effective third stun with no direction from IPP. IPP placed reject tag #007234 on the knock box and informed Mr. Zubek of the noncompliance and forthcoming NR and that the Des Moines District Office would be contacted for further guidance.

Examination of the head showed two holes located on the midline of the skull. The larger of the two was located about 1 cm below a line drawn between the lateral canthi of the eyes. Palpation of this hole revealed two tracts from two stunning attempts. The second hole was about 2.5 cm above the line drawn between the lateral canthi.

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 the regulatory requirements outlined in 9 CFR 313.15(a)(1) and 313.15(b)(1)(iii).

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 made determined to suspend the assignment of inspectors for your beef slaughter operations, as per the Rules of Practice 9 CFR 500.3(b).

The suspension of the assignment of inspectors for beef slaughter 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 animals 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 NOS 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:

Attention: Sherri N. Johnson
Acting 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:

Attention: 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, PP3, Cubicle 9-235-A
1400 Independence Avenue, SW
Washington, DC 20250
Phone number: 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)

Sincerely,

**JEFFERY
JACOBSEN**

Digitally signed by
JEFFERY JACOBSEN
Date: 2022.04.21
15:49:06 -0500

for

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