



United States Department of Agriculture

Food Safety and
Inspection Service

April 20, 2022

Digitally-signed copy hand-delivered

Office of Field
Operations
Des Moines District
Office

John Roswech, Owner
South 40 Farms, LLC
9214 Highway 21
Mott, ND 58846

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. Roswech:

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on April 20, 2022, of our decision to suspend the assignment of inspection program personnel (IPP) at Establishment 47494, South 40 Farms, LLC., in Mott ND, 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 as egregious inhuman handling event that occurred at your establishment on April 20, 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 20, 2022, at approximately 0920 hours, while verifying HATS Category VIII – Stunning Effectiveness, IPP observed a Longhorn steer and heifer moved into a pen large enough for a truck/trailer to pull through for unloading purposes normally and unrestrained. The inspector left the area per firearm safety protocols. Upon hearing the firearm discharge, IPP immediately returned to an area where he could visually inspect the animal (approximately 30 feet away) and observed the plant employee again aiming the .22 standard caliber firearm, as both the heifer and the steer were both on their feet. The animals did not vocalize. (b) (6) stepped back to safety and again heard the firearm discharge. IPP immediately returned to the area where he could visually inspect the animal (approximately 30 feet away) and observed the plant employee was again aiming the same .22 standard caliber firearm to shoot, as both the heifer and the steer were on their feet. The animals did not vocalize. IPP stepped back to safety and heard a third shot fired. IPP immediately returned to the same area. The steer was observed on the ground, on its side, with all four limbs rigidly extended. The heifer was still standing and observed excitedly moving around the pen. The establishment employees then moved the heifer to an adjacent pen. While moving the heifer IPP observed that the steer lost its rigidity and there was controlled lifting of its head as it attempted to sit up by rocking on its side. The plant employee (b) (6) noticed this right away and stated that he was going to apply another shot while the steer was on the ground. IPP went to safety again and the firearm was heard discharging a fourth time. IPP immediately returned to the area and upon closer examination of the steer he confirmed that the animal was unconscious. Blood was present from three holes in the skull of the animal. The restrainer was tagged with U.S. Reject tag number B45 639453. (b) (6) and John Roswech (Owner) were notified of the noncompliance.

Three stun wounds were observed on postmortem examination: one stun attempt was 2 inches toward the crown of the head from center and .75 inch to the left of a line in the center of the head. This shot was .75 inches deep. A second stun attempt was 1.5 inches left of center and 1 inch deep. A third stun attempt was in the middle of the eye/ear cross pattern and was 1.375 inches deep. All stun attempts were made using the same .22 caliber that uses a single shot firing mechanism with a clip to hold extra ammunition.

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 313.16(a)(1) and 313.16(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 determined to suspend the assignment of inspectors for your slaughter operations, as per the Rules of Practice 9 CFR 500.3(b).

The suspension of the assignment of inspectors 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)
(b) (6)

Sincerely,



Digitally signed by Todd C.
Gerwig
Date: 2022.04.20 16:34:43 -05'00'

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