



United States Department of Agriculture

Food Safety and  
Inspection Service

September 12, 2022

Digitally-signed copy emailed

Office of Field  
Operations  
Des Moines District  
Office

Rick Petersen, Plant Manager  
Tyson Fresh Meats, Inc.  
501 N. Elk Run Road  
Waterloo, Iowa 50703

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. Petersen:

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on September 12, 2022, of our decision to suspend the assignment of inspection program personnel (IPP) at Establishment 244W, Tyson Fresh Meats, Inc., 501 N. Elk Run Road Waterloo, Iowa, 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 September 12, 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 September 12 at 18:34, IPP was walking to the barn to perform antemortem inspection (HATS Category IV) when IPP observed a noncompliance with Electric Prod/Alternative Object Use (HATS Category VI). As IPP entered the room containing the CO<sub>2</sub> stunning chambers, IPP observed that the door to the south chamber loading area (immediately before the gondola opening) was open. Live hogs were being moved from the area. Three hogs were still in the gondola, a dead hog in the back caught by the snout in the mechanism of the gondola, and two live animals: one trapped by the hind limb at the gondola entrance, the other on the opposite side of the gondola with its head facing out. The hog with its head facing out was stunned via handheld captive bolt gun (HHCB) soon after IPP arrived. The front edge of the gondola was not flush with the floor, rather raised approximately two inches from level. The entrapped hog's right hind leg was wedged in this gap between the lip of the gondola and the floor. Its head was facing the back left corner of the gondola. At the point of entrapment, the hog's tibia was fractured just proximal to the hock and displaced greater than 90 degrees, such that the distal limb was facing into the gondola pit. A team member reached in to pull the entrapped hog by its forelimb to the front of the gondola so that its head could be accessed; IPP observed this hog breathing and conscious, exhibiting tracking eye movement. It was rendered insensible via HHCB. Immediately outside of the chamber loading area was a dead, captive bolt stunned hog that had an acute right hind limb fracture in the same anatomical location as that of the entrapped hog.

At 18:36 hours, IPP told (b) (6) and (b) (6) that stunning was suspended, and IPP took a regulatory control action, placing US Rejected tags NO. B-45731006, -007 across the alleys to the north and south stunning chambers. This incident represents noncompliance with 9CFR 313.5(b)(2). IPP informed (b) (6) that the incident would be documented on a noncompliance report, and IPP would be contacting the district office 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 the regulatory requirements outlined in 9 CFR 313.5(b)(2).

Although the establishment does have a robust systematic approach to humane handling that meets the four criteria described in the Federal Register Notice of September 9, 2004, it was not properly implemented at the time of the incident. Based on the above findings, the Des Moines District Office has determined a suspension of the assignment of inspectors for your slaughter operations is appropriate, 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 actions and preventive measures to address the noncompliance detailed above 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. Measures to prevent reoccurrence.
4. Any training of employees, materials used, and record documenting the employees trained.
5. Type of monitoring activities, along with the record for documenting those activities.

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](mailto: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, SB - Room 2148  
1400 Independence Avenue, SW  
Washington, DC 20250  
Office: (202) 418-8872  
Fax: (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)  
(b) (6)

or (b) (6)

Sincerely,

**JEFFERY  
JACOBSEN**

Digitally signed by JEFFERY  
JACOBSEN  
Date: 2022.09.13 00:04:37 -0500

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