



United States Department of Agriculture

Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone: (510) 769-
5712

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September 7, 2019

Mr. Steven Lau, President
Yosemite Foods, Inc.
Establishment M/P 548A
4221 East Mariposa Road, Suite A
Stockton, CA 95215

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Email: StevenL@yosemitefoods.com

(b) (6)

NOTICE OF SUSPENSION

Dear Mr. Lau:

This letter confirms the verbal notification provided to your establishment on September 7, 2019, by the Food and Safety Inspection Service (FSIS), Alameda District, of the suspension of the assignment of inspectors at your establishment and the withholding of the marks of inspection for the slaughter operations, in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action is initiated due to your firm's failure to maintain or implement required controls to prevent the inhumane handling and slaughtering of livestock at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.5(a)(3). This is not compliant with 21 U.S.C. 603(b) of the Federal Meat Inspection Act, the Humane Methods of Slaughter Act of 1978, and the regulations promulgated thereunder.

Background/Authority

The Federal Meat Inspection Act (FMIA) (21 USC 603 et seq.) provides for preventing the inhumane slaughtering of livestock that FSIS has the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examine and inspect the method by which cattle, sheep, swine, goats, horses, mules or other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under the Act. FSIS may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughter 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 establishment by any method not in accordance with sections 1901 to 1906 of U.S.C. Title 7 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 a method.

Under the authorities of the Act, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, as contained in Title 9 CFR Part 313, and the Humane Methods of Slaughter Act of 1978. FSIS has also developed Rules of Practice regarding enforcement prescribed in Title 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 and Basis for Action:

On September 7, 2019, while observing the slaughter processes at Establishment M/P 548A, the FSIS Supervisory Public Health Veterinarian (SPHV) observed that the establishment allowed a market hog to regain consciousness after carbon dioxide (CO2) stunning. This led the animal to remain conscious during sticking.

At the CO2 stunning area, the SPHV observed a hog that was shackled and hoisted, exhibiting rhythmic breathing. Specifically, the hog was taking a breath approximately once every two seconds, and exhibiting intermittent natural blinking approximately once every five seconds. Your company does not have an employee stationed to assess consciousness from the time the animal exits the CO2 stunning area to until the animal reaches the sticking area. The SPHV observed that an establishment employee shackling hogs started yelling to the (b) (6) (b) (6) that something needed to be done to this hog, as the hog was approximately 10-12 feet down the shackle line. (b) (6) started looking at all the hogs surrounding him. The employee continued to yell at (b) (6) that something needed to be done about the hog. (b) (6) then grabbed the correct hog by the ear and waved his hand in front of the hog's eye but did not touch the eye to assess consciousness. The employee again yelled that something needed to be done about the hog as it continued to blink and breathe rhythmically. (b) (6) then directed to the sticking employee to go ahead and stick the animal.

At this direction, the employee yelled that he was not supposed to stick an animal that was awake. However, the sticking employee proceeded to stick the animal without checking for any signs of consciousness prior to sticking. The SPHV observed that upon being stuck, the hog immediately arched its back and lifted its head to right itself. The hog squeezed its eyes shut and was kicking frantically and vocalizing. The SPHV immediately indicated to (b) (6) that the animal needed to be stunned because it was conscious, and signaled (b) (6) (b) (6) who was standing near the control area for the CO2 stunner, to cease stunning. The SPHV observed establishment employees successfully stun the animal with a hand-held captive bolt gun approximately five seconds later, and the hog stopped vocalizing. The SPHV then tagged the knock box with U.S. Rejected tag #B-45032320 and contacted Alameda District Office management.

This is an egregious act of inhumane handling of animals in connection with slaughter, as the market hog did not remain unconscious after stunning. Your establishment has only been operating at this facility for several days, and has not had sufficient time to prove the robustness of your written systematic approach to humane handling and slaughter.

In addition, your written “*Humane Handling Guidelines*” program states, “*Due to the distance between the shackling and sticking stations, sensibility of the animals will be monitored by trained personnel at all times during production. If no employee is available to monitor sensibility, the line will be stopped to ensure no animal goes unmonitored. Note: If an animal begins to show signs of regaining consciousness (i.e. 1- natural spontaneous blinking; 2- rhythmic breathing; 3-righting reflex; -4-vocalization), the animal will immediately be rendered unconscious via captive bolt gun and documented on form YFHH001.5 Captive Bot Monitoring (Bleed Line).*” The observations made during this incident of inhumane handling indicate your establishment employees failed to implement these instructions as written.

This is an egregious noncompliance of Title 9 CFR 313.5(a)(3), which states in part “*On emerging from the carbon dioxide tunnel, the animals shall be in a state of surgical anesthesia and shall remain in this condition throughout shackling, sticking, and bleeding...*” This constitutes failure to adhere to the regulatory requirements of the humane handling and slaughter of livestock, as required by the Federal Meat Inspection Act, 21 U.S.C. 603(b), the Humane Methods of Slaughter Act, and the regulations promulgated thereunder.

The Federal Meat Inspection Act 21 U.S.C. Section 603(b) provides legal authority to suspend operations at any establishment where animals have not been handled in a humane manner as described in 7 U.S.C. 1901 where it states, “*It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.*” In accordance with Title 9 CFR 500.3(b), the suspension of inspection at an establishment without prior notification for inhumane handling practices is warranted, as specified in Title 9 CFR 313 and under authority of 21 U.S.C. 621.

Based on the above findings and your failure to meet statutory and regulatory requirements for the humane handling and slaughter of livestock, and in accordance with Title 9 CFR 500.3(b), FSIS is suspending the assignment of inspectors and withholding the marks of inspection for the slaughter operations at your establishment. This letter confirms the verbal notification of the suspension of the assignment of inspectors for the slaughter operations that FSIS provided to your establishment on September 7, 2019.

The suspension of the assignment of inspectors will remain in effect until you can proffer to the FSIS, Alameda District Office, adequate written assurances including corrective actions and preventative measures to assure that livestock at your establishment are handled and slaughtered humanely, in accordance with the FMIA, The Humane Methods of Slaughter Act, and regulations promulgated thereunder.

In addition, failure to respond to this Notice of Suspension and failure to assure that animals at your establishment are handled and slaughtered humanely in accordance with the statutory and regulatory requirements may result in further administrative enforcement actions.

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

U.S. Department of Agriculture
Food Safety and Inspection Service
Attention: Keith Gilmore/Executive Associate for Regulatory Operations
1400 Independence Avenue, SW
Room 344-E, Whitten Building
Washington, DC 20250

In accordance with Title 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

Scott C. Safian, Director
Enforcement and Litigation Division
Office of Investigation, Enforcement and Audit
Food Safety and Inspection Service
United States Department of Agriculture
Stop Code 3753, PP3, Cubicle 9-235A
1400 Independence Avenue, SW
Washington, DC 20250
Voice: (202) 418-8872
Fax: (202) 245-5097

If you have any questions, please call the Alameda District Office at (510) 769-5712.

Sincerely,

*/s/ Dr. Virginia Felix, DDM
(for)*

Yudhbir Sharma, DVM
District Manager

cc:

A. Amin, DDM
S. Beckett, DDM
V. Felix, DDM
E. Gillis, DDM

(b) (6)

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K. Gilmore, EARO
S. Baucher, IEA, RD
USDA IIC, Est. M/P548A
FO/QR