



United States Department of Agriculture

Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone: (510) 769-5712

Fax: (844) 622-0081

November 2, 2020

Mr. Anthony DiMaria, Owner
Charlie DiMaria & Sons
Establishment 934 M
9531 Beverly Road
Pico Rivera, CA 90660

**CERTIFIED RETURN
RECEIPT REQUESTED**

E-mail: anthonymeats@gmail.com

NOTICE OF SUSPENSION

Dear Mr. DiMaria:

This letter confirms the verbal notification that was provided to your establishment on November 2, 2020, by the Food Safety and Inspection Service (FSIS), Alameda District, of the withholding of the marks of inspection and the suspension of the assignment of inspectors for the Slaughter, operations at your establishment 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 slaughter animals in accordance with Title 9 CFR Part 313.2(a), 313.2(b) and 313.2(d)(1). This is noncompliance 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 the purpose of 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 November 2, 2020, at approximately 0600 hours, the FSIS Supervisory Public Health Veterinarian (SPHV) observed your establishment's failure to conduct handling of livestock in accordance with the regulatory requirements, causing pain and suffering of an animal. Specifically, the SPHV noticed that as a trucker was opening the back of a trailer to unload cattle, there was a down and lateral cow lying on the floor of the trailer at the entrance of the trailer door. There were two ambulatory cows that were straddling the abdomen of this down cow. The SPHV, when she witnessed this, immediately notified (b) (6), of the down cow lying on the floor at the entrance of the trailer and informed him that the unloading had to stop until the establishment addressed this non-ambulatory cow. (b) (6) attempted to make the cow move by hitting her on the face and head with a paddle, which resulted in the cow lifting her head. The trucker also hit this cow in the face and head with a paddle, but the cow did not stand up.

Despite the SPHV's repeated instructions to halt the unloading and to address the down cow, your establishment continued to conduct unloading of the cows while the down cow was lying at the entrance. Although the trucker was aware of this cow's condition and that she was lying on the floor at the entrance of the trailer, he continued to unload the cows by hitting several cows on the back, which resulted in the remaining cows stepping on and over this down cow while moving to exit the trailer. The moving cows were kicking the down cow in the face and body as they exited the trailer. The trucker also used his paddle to hit ambulatory cows inside the trailer, on the head and the face in an attempt to unload the truck. The cows moved in the direction of the down cow to exit the trailer.

After at least three to four ambulatory cows exited the trailer, the down cow eventually was able to stand up and walk away.

The SPHV notified Mr. Todd Manning, General Manager, of these findings of noncompliance with the humane handling of livestock. The SPHV took regulatory action and applied U.S. Rejected Tag # B45406275 to the knock box to prevent slaughter operations from continuing.

This is an egregious act of inhumane handling of animals in connection with slaughter, as your establishment failed to separate livestock unable to move from ambulatory animals, and you failed to conduct humane handling of livestock during unloading. Your establishment also failed to adequately use implements to drive animals as little as possible in order to minimize excitement and injury. Your establishment does not currently have a robust Systematic Approach to the humane handling of livestock.

This is a violation of Title 9 CFR 313.2(a), which states, *“Driving of livestock from the unloading ramps to the holding pens and from the holding pens to the stunning area shall be done with a minimum of excitement and discomfort to the animals.”* In addition, this is a violation of Title 9 CFR 313.2(b), which states, *“Electric prods, canvass slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury.”* This is also a violation of Title 9 CFR 313.2(d)(1) which states, *“Disabled animals and other animals unable to move shall be separated from normal ambulatory animals and placed in the covered pen provided for in 313.1(c).”* 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.

These findings demonstrate your 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) and the Humane Methods of Slaughter Act, and the regulations promulgated thereunder.

Furthermore, the Alameda District Office (ADO) issued to your establishment a Letter of Caution dated October 30, 2020, detailing our concerns regarding recent humane handling concerns and noncompliance at your establishment. Specifically, from September 2020 through October 24, 2020, FSIS raised concerns regarding your management’s ability to meet regulations in Title 9 CFR 313, Humane Slaughter of Livestock. FSIS inspection program personnel (IPP) documented a total of seven noncompliance records (NR) and four Memoranda of Interview (MOI) for your firm’s failure to meet the regulatory requirements of Title 9 CFR 313.1(b), 313.1(c), 313.2(d), and 313.2(e). Recently, IPP issued MOI VMH5617100808G dated October 10, 2020, Task type VMH5517105108I for a similar incident occurring on October 7, 2020, of your employees’ failure to separate non ambulatory livestock from ambulatory animals. Specifically FSIS IPP observed ambulatory livestock stepping on and over two down cows in a pen; one cow stepped on the head of one of the down cows.

Based on the above findings and your failures 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 November 2, 2020.

The suspension of the assignment of inspectors will remain in effect until such time as 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:

Paul Wolseley
Executive Associate for Regulatory Operations
Office of Field Operations
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Avenue, SW
Room 3159, South Building
Washington, DC 20250
Phone: (202) 708-9506

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

Scott C. Safian, Branch Chief
Enforcement Operations Branch
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/ Abdalla Amin

for

Yudhbir Sharma, DVM
District Manager

cc:

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

(b) (6)



P. Wolseley, EARO
S. Baucher, IEA, RD
USDA IIC, Est. M 934
FO/QR