NOTICE OF INTENDED ENFORCEMENT (NOIE)

Mr. Frey,

This letter serves as official notification by the Food Safety Inspection Service (FSIS) of its intent to withhold the marks of inspection and suspend the assignment of FSIS Inspection Program Personnel (IPP) at your establishment Albion Locker, M5622 located in Albion, Nebraska. The decision to issue this notification was made in accordance with 9 CFR 500.3(b) (Rules of Practice), based on your failure to meet regulatory requirements in regard to livestock humane slaughter at your establishment. Dr. Jessica Van Hook, Deputy District Manager, informed you by phone of the Notice of Intended Enforcement (NOIE).

Background Authority

The Federal Meat Inspection Act (FMIA), 21 USC Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering 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 establishments by any method not in accordance with the Humane Methods of Slaughter Act (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. FSIS has
also developed Rules of Practice regarding enforcement prescribed in 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.

Finding/Basis for Action

On Thursday, April 14, 2021, the FSIS Consumer Safety Inspector (CSI) documented in a non-compliance report the following event at Est. M5622:

While verifying HATS Category VIII: Stunning Effectiveness, the CSI observed the following noncompliance. For safety reasons, the CSI was outside of the stunning area during firearm stunning. At approximately 8:56am, the establishment employee applied the first stun on a beef cow using a .22 magnum firearm. After the first stun was heard, the CSI heard the animal vocalize once. The CSI then heard a second and third stun applied. After the third stun, the establishment employee signaled to the CSI that it was safe to enter the stunning area. The CSI entered the stunning area and observed that the animal was laying down with its head raised, blinking, and breathing heavily. The CSI informed the establishment employee that the animal was still blinking and at this point the animal attempted to stand up. The cow was able to get its back legs under itself and raise its hindquarters off the ground but was not able to lift its chest from the ground. The establishment employee retrieved the firearm, and a fourth stun attempt was applied after the CSI exited the stunning area. The CSI reentered the stunning after being informed that it was safe to enter and verified that animal was rendered unconscious following the fourth stun attempt.

The CSI verbally informed Dustin Frey, Owner, of the noncompliance. Denver District Management team was contacted through supervisory channels. Regulatory control was taken at the stunning area with USDA Reject Tag #B19204803. The dressed head was retained with USDA Retain Tag # B19204807.

Prior to this incident, the establishment was determined to have a Robust Systematic Approach to humane handling.

Summary

This event is a noncompliance of regulatory requirements in Title 9 CFR 313.16(a)(1): The firearms shall be employed in the delivery of a bullet or projectile into the animal in accordance with this section so as to produce immediate unconsciousness in the animal by a single shot before it is shackled, hoisted, thrown, cast, or cut. The animal shall be shot in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.

The decision to issue a NOIE in lieu of a Notice of Suspension (NOS) is based on your establishment implementing a robust systematic approach to humane handling and the details of the incident.

You are required to proffer the Denver District Office a written response of your analysis of the event, corrective actions and preventative measures within three working days from the receipt of
this letter, no later than the close of business, Monday, April 19, 2021. Your response should include:

- A written description of the incident.
- The root cause of the incident.
- Your immediate corrective actions.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you’re planning to use.
- Any monitoring procedures, including any documentation records.

Based on your response, FSIS will determine further action, if any, is necessary. In addition, failure to respond to this NOIE and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

If you have any questions regarding this matter, you may contact the Denver District Office at (303)236-9800.

Sincerely,

JESSICA VANHOOK

Mr. Paul Wolseley
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cc: FO/QER
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    R. Reeder, DDM
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S. Baucher, RD/OIEA