NOTICE OF SUSPENSION

Dear Mr. McKenzie:

This letter confirms the verbal notification that was provided to your establishment on September 21, 2021, 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 slaughter of livestock in connection with slaughter at your establishment, and to appropriately stun an animal prior to slaughter in accordance with Title 9 CFR Part 313.16(a)(1). This is a 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/Basis for Action**

On September 21, 2021, the FSIS Supervisory Public Health Veterinarian (SPHV) and the Consumer Safety Inspector (CSI) observed your establishment’s failure to conduct slaughter of livestock in accordance with the regulatory requirements. At approximately 0810 hours, you and Mr. James Stoll, Owner/Manager, were preparing to use a .22 caliber long rifle to stun one of two market hogs that were in a stock trailer. After the first shot was fired, the SPHV and CSI, who were standing in the firearm safety zone behind the door of a shipping container, heard a hog squealing and a loud yell from you, who had fired the rifle. As the SPHV and CSI peered around the door of the shipping container, they observed you and Mr. Stoll exit the trailer while the hog was still squealing. After approximately 15-30 seconds, Mr. Stoll told you that the rifle was still loaded and to fire another shot. After the second shot with the rifle, a hog continued to squeal. Another 30 seconds passed, and Mr. Stoll ran out of the trailer into the shipping container where the SPHV and CSI were standing to grab the captive bolt gun. He then ran back to the trailer with the captive bolt gun to administer a third stunning attempt. FSIS personnel heard the captive bolt discharge, and afterwards the squealing stopped. You and Mr. Stoll proceeded to remove the hog from the trailer onto the bleeding slab, where the SPHV and CSI verified the hog was unconscious.

The CSI notified you that no further stunning would be allowed due to the inhumane handling of livestock and took regulatory control action by placing U.S. Rejected Tag #B26819361 on the trailer. Prior to you skinning the head of the hog, the CSI discovered an exit wound under the jaw. The CSI observed two rifle holes approximately an inch below the eyes in the central mid-line of the head, while there was only one hole in the forehead consistent with the application of a captive bolt gun, with the captive bolt hole mid-line above the eyes.

This is an egregious act of inhumane handling of animals in connection with slaughter, as you failed to effectively stun a market hog on the first shot and had not planned for immediate corrective actions. Your establishment does not currently have a Robust Systematic Approach for humane handling and slaughter of livestock because this is the second day of your operations.

This is a violation of Title 9 CFR 313.16(a)(1), which states, “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.” 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.

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 21, 2021.

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:

Sherri N. Johnson  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service  
United States Department of Agriculture  
1400 Independence Avenue, SW  
SB, Room 1330A  
Washington, DC 20250  
Phone: (202) 379-6196
In accordance with Title 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

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 9-235A  
1400 Independence Avenue, SW  
Washington, DC 20250  
Voice: (202) 418-8872  
Fax: (202) 245-5097

If you have any questions, wish to further discuss this matter or wish to submit any proposals please contact the Alameda District Office at (510) 769-5712.

Sincerely,

/s/ Virginia Felix, DVM  
Deputy District Manager  
(for)

William Griffin  
District Manager

cc:  
A. Amin, DDM  
S. Beckett, DDM  
V. Felix, DDM  
F. Gillis, DDM  
S. Johnson, EARO  
S. Baucher, IEA, RD  
USDA, IIC, Est. M47592  
FO/QER  

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