NOTICE OF INTENDED ENFORCEMENT

Dear, (b) (6)

This letter confirms verbal notification by the Des Moines District Office, Food Safety and Inspection Service (FSIS) on September 26, 2021, of our intent to withhold the marks of inspection and suspend the assignment of inspection program personnel (IPP) at Establishment M46071, Seaboard Triumph Foods, 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 such as occurred at your establishment on September 26, 2021.

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 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 slaughtering 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 establishments by any method not in accordance with sections 1901 to 1906 of Title 7 until the establishment furnishes assurances, satisfactory to the Secretary, that all Slaughtering and handling in connection with livestock shall be in accordance with such a method.
The Humane Methods of Slaughter Act of 1978 (7 U.S.C. 1901 et seq.) provides that Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. 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.

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.

**Findings/Basis for Action**

At approximately 0050, while observing hogs being moved into the gate area, immediately prior to the CO2 chamber, IPP observed the following noncompliance with HATS Category IX, Consciousness on the rail. IPP noticed a CO2 alarm (red light) flashing on the panel for that chamber. Asking the barn supervisor nearby what the red alarm indicated, he responded that the CO2 levels were not reading correctly in the chamber. IPP asked how he knew if it was reading wrong, or if they were indeed low in the chamber, he said that he had called maintenance to place a secondary reading device into the chamber to check the levels. They proceeded to do this as IPP and he spoke.

Approximately five minutes later, employees working the hanging and bleed out belt immediately below the chamber started to yell to surrounding employees to get the hand-held captive bolt (HHCB) stunning devices. IPP immediately descended the platform to the belt level and observed multiple hogs demonstrating signs of regaining consciousness including reflexive kicking and rhythmic breathing. IPP approached the belt and checked the reflexes on three of the hogs showing movement and observed the following signs of consciousness: non-spontaneous blinking and eye tracking. Multiple employees began stunning animals with captive bolts along the belt and bleed out line.

One of the hogs that IPP had observed with signs of consciousness was missed by the employees. IPP drew attention to the animal by calling for employees and pointing to the hog. An employee tried to stun the animal three times, but his captive bolt did not discharge. He called a second employee over to stun the animal with a second HHCB. The animal was gasping, blinking, and tracking movement with its eyes until it was
stunned. IPP checked all the animals to ensure they were stunned. IPP instructed a CSI to tag the two alleyways/chutes entering the two CO2 chambers with the U.S. Reject tag NO B36821898 and B36821896. IPP verbally informed [b] (6) and [b] (6) of her observations.

This is noncompliant with regulation 9 CFR 313.5(a)(3). Prior to this noncompliance, the establishment operated under a robust systematic approach to humane handling.

Conclusion:

After consideration of the facts surrounding this incident, it was determined that an NOIE be issued for your slaughter operations, in lieu of a suspension, as per the Rules of Practice 9 CFR 500.3(b).

According to the FSIS Rules of Practice laid out in 9 CFR 500.3(b), FSIS may impose a suspension without providing prior notification because an establishment is handling or slaughtering animation inhumanely. Alternatively, FSIS may issue a withholding action or suspension with prior notification in certain cases based on considerations of establishment history of compliance with the humane handling regulations, demonstration of implementation of a robust systematic approach to humane handling, whether suspension is necessary to prevent inhumane handling from continuing, and whether the egregious noncompliance represents a rare finding or an anomaly in an otherwise well-functioning system. The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your implementation of a written humane handling program in a “robust” manner and history of compliance with the humane handling regulations.

Before proceeding with any enforcement action, we are affording you the opportunity to demonstrate why a determination should not be made that your slaughter process is inadequate or to demonstrate that you have achieved regulatory compliance. Please provide this office with a written response to this NOIE within three (3) working days from the date of your receipt of this letter. We will determine if any further actions are necessary based on your response. The corrective actions and preventive measures in your response should address the following:

1. An initial assessment of incident/determine the cause.
2. Immediate corrective actions taken.
3. Preventive measures to prevent reoccurrence.
4. Any training of employees and materials used.
5. Type of monitoring activity for stunning, along with a documentation record.
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 expected to comply with FSIS regulations, regarding the humane handling and slaughter of livestock. 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 or [redacted].

Sincerely,

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