



Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone:(510)769-5712

Fax: (844) 622-0081

February 3, 2022

Kevin Maloney, President
Bay Area Ranchers' Cooperative, Inc.
Establishment M47584
1995-B Gericke Road
Petaluma, CA 94952

**CERTIFIED RETURN
RECEIPT REQUESTED**

(b) (6)

NOTICE OF SUSPENSION

Dear Mr. Maloney:

This letter confirms the verbal notification that was provided to your establishment on February 3, 2022, 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 313.15(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 February 3, 2022, 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 0630 hours the establishment stunner operator stunned a market hog with a handheld captive bolt gun, and the stun impacted the animal (bleeding hole on forehead centered just above the eyeline) causing it to collapse in the restrainer. After collapsing, the SPHV observed the employee touch the hog's eye and noted it was blinking in response, and was breathing rhythmically. The stunner employee took no additional action and began preparing the chain to hoist the hog. The SPHV pointed out that the animal was still breathing rhythmically and would need to be re-stunned. As the stunner employee began to reload the handheld captive bolt gun at that time, the hog began to move its head from side to side while an additional employee lifted the hog's ear to see the eye tracking and focused. Just as the hog stood up on all four feet, the stunner operator applied a second stun which rendered the animal unconscious. Although the second stun was effective in rendering the animal unconscious, approximately one minute passed between knocks due to your employees taking no initial action to re-stun the animal until FSIS inspection program personnel informed them it was needed. The SPHV notified (b) (6), of the noncompliance and that no further stunning would be allowed due to the inhumane handling of livestock. The SPHV took regulatory control action by placing U.S. Rejected Tag B19890378 on the restrainer.

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

This is a violation of Title 9 CFR 313.15(a)(1), which states in part, "*The captive bolt stunners shall be applied to the livestock in accordance with this section to produce immediate unconsciousness in the animals before they are 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 February 3, 2022.

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:

Sherril 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/ Frank Gillis
Deputy District Manager
(for)

William Griffin
District Manager

cc:

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

(b) (6)

S. Johnson, EARO
S. Baucher, IEA, RD
USDA, IIC, Est. M47584
FO/QER