



Food Safety and  
Inspection Service

Alameda District  
800 Buchanan St.  
Albany, CA 94710

Phone:(510)769-5712

Fax: (844) 622-0081

December 1, 2022

Mr. Nunzio Femino, Owner  
Messina Meats  
Establishment M45422  
1230 Highway 99 West  
Orland, CA 95963

**CERTIFIED RETURN**  
**RECEIPT REQUESTED**

E-mail: [MessinaMeat@hotmail.com](mailto:MessinaMeat@hotmail.com)

(b) (6)

## NOTICE OF SUSPENSION

Dear Mr. Femino:

This letter confirms the verbal notification that was provided to your establishment on December 1, 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 United States Code (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 failure to appropriately stun an animal prior to slaughter in accordance with Title 9 CFR Part 313.30(a)(1), 313.30(a)(3), 313.30(b)(1), and 313.30(b)(3). 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 December 1, 2022, the FSIS Consumer Safety Inspector (CSI) observed your establishment's failure to conduct slaughter of livestock in accordance with regulatory requirements. While observing your employee conduct electrical stunning of goats, the CSI observed your employee apply stunner electrodes to the back of the head of one goat. The employee then opened the restrainer box side door and pulled the goat out to the slaughter floor for sticking/bleeding. However, the goat was conscious and began vocalizing and trying to stand upright as it attempted to pull away from the employee holding it. The employee then attempted to stick the conscious animal in order to bleed it out, but the CSI stopped him and instructed him to stun the animal with the backup captive bolt gun before making the cut. The employee retrieved the loaded captive bolt backup gun approximately two feet away from the restrainer and applied a stunning blow to the goat. The goat was immediately rendered unconscious and remained unconscious through sticking and bleeding until deceased. The CSI then informed the employee to stop stunning any more animals. At 8:05 am, the CSI informed (b) (6) (b) (6) and you, Establishment Owner Nunzio Femino, that no further slaughter would be allowed due to the inhumane handling of livestock. The CSI placed U.S. Rejected Tag No. B42071170 on the establishment's lamb/goat ramp leading to the stun box and U.S. Rejected Tag No B42066551 to the electrical hog stunning unit so no further slaughter could occur.

This is an egregious act of inhumane handling of animals in connection with slaughter, as your establishment failed to effectively stun a goat so that it remained unconscious on the first stun attempt. The animal also was not stunned or killed before your employee attempted to cut the animal. Your establishment does not currently have a Robust Systematic Approach for humane handling and slaughter of livestock.

This is a violation of Title 9 CFR Part 313.30(a)(1), which states, "*The electric current shall be administered so as to produce, at a minimum, surgical anesthesia, i.e. a state where the animal feels no painful sensation. The animals shall be either stunned or killed before they are shackled, hoisted, thrown, cast, or cut. They shall be exposed to the electric current in a way that will*

*accomplish the desired result quickly and effectively, with a minimum of excitement and discomfort.”*

This is a violation of Title 9 CFR Part 313.30(a)(3), which states, “*The quality and location of the electrical shock shall be such as to produce immediate insensibility to pain in the exposed animal.*”

This is also noncompliant with Title 9 CFR Part 313.30(b)(1), which states, “*...It is necessary that the operator of electric current application equipment be skilled, attentive, and aware of his or her responsibility*” and Title 9 CFR 313.30(b)(3), which states in part, “*...Each animal shall be given a sufficient application of electric current to ensure surgical anesthesia throughout the bleeding operation. Suitable timing, voltage and current control devices shall be used to ensure that each animal receives the necessary electrical charge to produce immediate unconsciousness.*” 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 December 1, 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:

Sherry 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, SB- Room 2148  
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:

V. Felix, DDM

F. Gillis, DDM

A. Ahmed, Acting DDM



S. Johnson, EARO

S. Baucher, IEA, RD

USDA, IIC, Est. M45422

FO/QR