



United States Department of Agriculture

Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone: (510) 769-5712

Fax: (844) 622-0081

November 29, 2022

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

**CERTIFIED RETURN
RECEIPT REQUESTED**

E-mail:

kevin@fallonhills.com



NOTICE OF SUSPENSION

Dear Mr. Maloney:

This letter confirms the verbal notification that was provided to your establishment on November 29, 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 failure 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 November 29, 2022, the FSIS Supervisory Public Health Veterinarian (SPHV) observed your establishment's failure to conduct slaughter of livestock in accordance with regulatory requirements. At approximately 0724 hours, your employee loaded an adult sheep into the small livestock restrainer. The adult sheep stood quietly as (b) (6). (b) (6) applied a handheld captive bolt gun to the sheep's forehead and the device discharged. The sheep immediately reared, and (b) (6) placed an arm over its shoulder in an effort to restrain it. (b) (6) then applied a second stunning blow to the sheep's head with a back-up captive bolt gun; it discharged, and the sheep reared up again. (b) (6) reloaded the captive bolt gun and applied a third stun to the sheep's forehead; however this third attempt was also unsuccessful as the animal remained standing. (b) (6) again reloaded the captive bolt gun, and applied a fourth stun that was finally effective at rendering the sheep unconscious. The SPHV notified (b) (6) that no further stunning would be allowed due to the inhumane handling of livestock. The SPHV applied U.S. Rejected tag No. B26819429 to the restrainer.

Afterwards, the SPHV palpated two distinct holes in the forehead. One hole was lined up directly with the medial canthus of both eyes. Approximately two centimeters above this hole, the SPHV found a slightly larger hole that was one centimeter lateral of midline. There was some crushed bone around the periphery of the larger hole. The holes were separated by approximately 2 centimeters of skin. After the establishment skinned the head, the SPHV observed that the smaller hole had crushed bone at an angle that would not have allowed the penetrating bolt to contact the brain.

This is an egregious act of inhumane handling of animals in connection with slaughter, as your establishment failed to effectively stun an adult sheep so that it was immediately unconscious on the first stun attempt. 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 313.15(a)(1), which states, *“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. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.”* 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.

Previously, on July 6, 2022, the Alameda District Office notified your establishment of the reinstatement of the withholding of the marks of inspection and suspension of the assignment of inspectors at your facility in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action was initiated due to your firm’s similar failure to maintain or implement required controls to prevent the inhumane handling and slaughter of a lamb at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.15(a)(1). These events were in violation of 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. This reinstatement of suspension was closed with a Letter of Warning issued November 28, 2022, as your establishment had met the commitments outlined the FSIS Verification Plan at that time. As stated in the Letter of Warning, FSIS advised your establishment that failure to comply with the requirements of the FMIA, the Humane Methods of Slaughter Act, or the regulations promulgated thereunder could result in future enforcement actions.

Additionally, on April 29, 2022, the Alameda District Office notified your establishment of the withholding of the marks of inspection and suspension of the assignment of inspectors at your facility in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action was initiated due to your firm’s similar failure to maintain or implement required controls to prevent the inhumane handling and slaughter of a beef cow at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.15(a)(3). These events were in violation of 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. As stated in the Notice of Suspension Held in Abeyance dated May 4, 2022, your establishment’s failure to comply with regulatory requirements or effectively implement your commitments and agreements, may result in the reinstatement of the suspension of inspection in your establishment.

Furthermore, on February 3, 2022, the Alameda District Office notified your establishment of the withholding of the marks of inspection and suspension of the assignment of inspectors at your facility in accordance with 21 U.S.C. 603 and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action was initiated due to your firm’s similar failure to maintain or implement required controls to prevent the inhumane handling and slaughter of a market hog at your establishment and to appropriately handle animals in accordance with Title 9 CFR 313.15(a)(1).

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 November 29, 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:

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, 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:

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

(b) (6)

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