



Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone: (510) 769-5712
Fax: (510) 337-5081

July 25, 2017

Mr. Andre Noqueira, CEO and President
JBS Tolleson, Inc.
Establishment 267M
651 S. 91st Avenue
Tolleson, AZ 85353

CERTIFIED RETURN
RECEIPT REQUESTED

E-mail: keith.charmasson@jbssa.com
Facsimile: (623) 476-4269

NOTICE OF INTENDED ENFORCEMENT

Dear Mr. Noqueira:

This serves as an official notification by the Food Safety and Inspection Service (FSIS) of our intent to withhold the marks of inspection and suspend the assignment of inspectors for the slaughter operations at your establishment located in Tolleson, AZ, in accordance with 21 U.S.C. 603(b) and Title 9 Code of Federal Regulations (CFR) Part 500.3(b). This action was initiated due to your firm's failure to maintain or implement required controls to prevent the inhumane handling and slaughtering of livestock at your establishment and to appropriately handle animals in accordance with 21 U.S.C. 603(b) and Title 9 CFR Part 313.50(b).

Background/Authority

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 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 handle 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 Regulations 9 CFR Part 313, and the Humane Methods of Slaughter Act of 1978. 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 and Basis for Action:

On July 25, 2017, at approximately 0614 hours, while performing Humane Handling Ante Mortem tasks at the animal holding pens, where animals are held prior to slaughter, the Consumer Safety Inspector (CSI) observed nonambulatory cows in the pens that were lying in distress.

The CSI observed one cow in Pen 19 lying on her side and unable to rise, mentally incoherent, having difficulty breathing, and repetitively making a kicking motion with its legs while moaning as if in pain. The CSI asked (b) (6) (b) (6) to summon the (b) (6), so that the animal could be euthanized as the animal was in significant distress and was suffering. The establishment personnel then moved the surrounding ambulatory cattle out of the pen.

At this time the CSI then observed another cow down in Pen 15, also lying on its side, unable to rise, mentally incoherent, and also struggling to breathe while making kicking motions with its legs. After these observations were made, your establishment personnel also moved surrounding ambulatory cattle out of the pen.

At 0620 hours, (b) (6) arrived and the CSI showed her the two animals that were nonambulatory, in significant distress and which should be euthanized. (b) (6) stated that she would summon (b) (6), to come and knock the cows. She left the area at this time.

A number of minutes passed and by this time the CSI noted that the cow in Pen 15 was now dead. When (b) (6) finally returned, she did not bring (b) (6) or any other employee to perform the knocking. When the CSI asked where was the employee who would conduct the knocking, (b) (6) responded that he was on his way with the establishment's bobcat. The CSI could see him in the distance driving the bobcat.

At this point, the CSI repeated to the Yard Supervisor that the one remaining suffering cow needed to be knocked promptly. The CSI informed her that the second cow had died and emphatically stated that the other distressed cow needed to be knocked as soon as possible and that getting the bobcat to the area was less of a priority and could wait. She stated "*I Know, I Know*", but did not do anything further. The CSI decided to approach the employee on the bobcat, and instructed him to get off the machine and knock the cow. The employee proceeded to come over and finally euthanized the cow with the hand held captive bolt at 0635 hours, which was almost 15 minutes from when FSIS made the initial request to the plant to euthanize the suffering animal(s).

The CSI informed the Supervisory Public Health Veterinarian/Inspector in Charge (SPHV/IIC) of the situation, who contacted District Management. FSIS personnel placed

a U.S. Rejected Tag # B37090625 on the establishment's knock box in accordance with Title 9 CFR 313.50(b).

This is an egregious act of inhumane handling of animals in connection with slaughter, as a result of your establishment employee actions of mishandling livestock that were in significant distress. Title 9 CFR 313.50(b) states, "*If the cause of inhumane treatment is the result of establishment employee actions in the handling or moving of livestock, the inspector shall attach a "U.S. Rejected" tag to the alleyways leading to the stunning area.*" 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.

On September 9, 2004, FSIS published "*Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*" in the Federal Register Notice (54 Fed. Reg. 54625). On August 15, 2011, FSIS released FSIS Directive 6900.2 Revision 2, entitled, "*Humane Handling and Slaughter of Livestock.*" Additionally, on October 23, 2013, FSIS introduced new guidance, titled "*FSIS Compliance Guide for a Systematic Approach to the Humane Handling of Livestock*" within the guidance material intended to better ensure the humane treatment of livestock presented for slaughter. The compliance guide provides a set of practices designed to minimize excitement, discomfort and accidental injury of livestock. These documents describe the four components of a robust systematic approach to humane handling. The decision to issue a Notice of Intended Enforcement (NOIE) in lieu of a Notice of Suspension (NOS) is based on your establishment implementing a robust systematic approach to humane handling.

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 further action, if any, based on your response. In addition, failure to respond to this NOIE and failure to assure that you handle and slaughter animals at your establishment humanely, in accordance with the statutory and regulatory requirements, may result in further administrative enforcement actions.

In accordance with Title 9 CFR 500.5(b)(4), you may contest the basis for this proposed action by contacting:

Dr. Keith Gilmore
Executive Associate for Regulatory Operations
210 Walnut Street
Room 923
Des Moines, IA 50309
Phone: 515-727-8970

If you have any questions, please call the Alameda District Office at (510) 769-5712.

Sincerely,

*/s/ Sheryl Beckett, DDM
(for)*

Yudhbir Sharma, DVM
District Manager

cc:

S. Beckett, DDM

V. Felix, DDM

A. Amin, DDM

S. Beckett, DDM

F. Gillis, DDM

(b) (6)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b) (6)

A. Khroustalev, RD, IEA
USDA IIC, Est. M267
FO/QER