



Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

Phone: (510) 769-5712

Fax: (844) 622-0081

May 5, 2022

Mr. Anthony DiMaria, Owner
Charlie DiMaria & Sons
Establishment 934 M
9531 Beverly Road
Pico Rivera, CA 90660

**CERTIFIED RETURN-
RECEIPT REQUESTED**

E-mail: anthonymeats@gmail.com

NOTICE OF SUSPENSION

Dear Mr. DiMaria:

This letter confirms the verbal notification provided to your establishment on May 5, 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 slaughtering 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 May 5, 2022, the FSIS Supervisory Public Health Veterinarian (SPHV) observed your establishment's failure to conduct slaughter of livestock in accordance with the regulatory requirements. At approximately 0840 hours, the SPHV observed a beef cow in the restrainer. Your employee initially stunned the cow in the forehead with a handheld captive bolt gun, but the cow remained standing and was looking around. In the presence of Mr. Todd Manning, Plant Manager, the employee reloaded the captive bolt gun and administered a second stun to the forehead. The cow fell to the bottom of the restrainer, and the SPHV observed the eyes were rolled downward in the sockets and the third eyelids were protruding, which indicated that the animal was potentially regaining consciousness.

The establishment employee opened the restrainer door to roll the cow out onto the kill floor, and then started to shackle and hoist the cow by its hind leg. While the employee was hoisting the cow, the SPHV observed the cow breathing. The employee stopped hoisting the cow and administered another stun behind the poll. This third stunning attempt rendered the cow unconscious.

The SPHV observed the skull and observed one hole in the center of the forehead approximately two inches above eye level, and one hole that was slightly off center approximately one inch above the first hole. The SPHV also observed a third hole in the center behind the poll.

This is a noncompliance of inhumane handling of animals in connection with slaughter, as this cow was not rendered insensible upon the initial stun, and the immediate corrective actions included an additional stunning blow that did not render the animal unconscious. This is a violation in accordance with 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 so as 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 SPHV informed Mr. Todd Manning, Plant Manager, that FSIS inspection program personnel would be tagging the restrainer so that all further stunning would cease. The SPHV applied U.S. Rejected Tag # B-45951707 to the restrainer.

Furthermore, since May 4, 2022, FSIS inspection program personnel have documented multiple and similar incidents of noncompliance for the failure of livestock not being immediately rendered unconscious with use of a hand-held captive bolt gun as required by Title 9 CFR

313.15(a)(1). Specifically, FSIS issued to your establishment the following Noncompliance Records (NRs) for ongoing and repetitive incidents of ineffective stunning:

1. NR VMH2715055904N/1 issued on May 4, 2022: The FSIS Supervisory Public Health Veterinarian (SPHV) observed on May 4, 2022, your employee initially stunned a steer in the forehead with a handheld captive bolt gun. The steer remained standing, looking around and vocalizing. The employee reloaded the captive bolt gun and applied a stun behind the poll; however, this second stunning attempt was also unsuccessful as the steer remained standing. The employee then applied another stun to the forehead and this third attempt finally rendered the steer unconscious.

The SPHV inspected the animal's skull and found two holes in the forehead, one in the center and one hole off center from the midline and approximately three inches rostral from the upper hole. The SPHV found an additional hole behind the poll.

2. NR VMH4215052102N-1 issued on May 2, 2022: While observing procedures at the bleeding station on the slaughter floor on May 2, 2022, an Enforcement Investigations and Analysis Officer (EIAO) heard the captive bolt gun fire and then immediately heard vocalization and an animal taking steps in the restrainer. The EIAO observed the employee load a handheld captive bolt gun and start to follow the animal's head with the gun as it moved around in the restrainer. After approximately 30-40 seconds the animal stood still, and the employee applied a stun to the forehead which rendered the animal unconscious. FSIS inspection program personnel observed the skull and identified one hole that was placed above the left eye and a second hole slightly left of the middle of the forehead.
3. NR VMH5416043128N-2 issued on April 28, 2022: On April 28, 2022, FSIS inspection program personnel observed your employee initially stun a dairy cow in the restrainer with a handheld captive bolt. The cow remained standing and was looking around. The establishment employee then reloaded the captive bolt gun and applied a second stun to the forehead, which rendered the cow unconscious.
4. NR VMH5308045113N-1 issued on April 13, 2022: On April 12, 2022, FSIS inspection program personnel observed your employee initially stun a steer in the restrainer with a handheld captive bolt gun administered to the forehead. The steer did not fall but instead continued to look around. The establishment employee reloaded the captive bolt gun, and applied a second stun to the forehead, which rendered the steer unconscious.
5. NR VMH5015042604N-1 issued on April 4, 2022: On April 4, 2022, FSIS inspection program personnel observed your employee initially stun a steer with horns in the restrainer, using a handheld captive bolt captive bolt gun that was administered to the forehead. The steer continued to stand and look around. The establishment employee reloaded the captive bolt gun and applied a second stun behind the poll, which rendered the steer unconscious.

These repeated regulatory failures demonstrate a trend of repetitive noncompliance with 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 so as to produce immediate unconsciousness in the animals before they are shackled, hoisted, thrown, cast, or cut.”*

As indicated above, FSIS inspection program personnel have documented and discussed these concerns with your establishment. The NRs, along with your establishment’s failure to provide adequate corrective actions and preventive measures in response to the noncompliances, indicate an inability to implement humane methods of slaughtering livestock and to prevent the inhumane handling and slaughtering of cattle at your facility.

Additionally, on May 4, 2022, the Alameda District Office held a conference call with your establishment personnel to discuss strong concerns regarding the similarity and frequency of these noncompliances and informed your management that further failures to prevent inhumane handling and slaughtering of cattle will lead to enforcement action including the suspension of your Slaughter operations.

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 May 5, 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, 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/ Abdalla Amin,
Deputy District Manager
(for)*

William Griffin
District Manager

cc:

A. Amin, DDM
V. Felix, DDM

E. Gillis, DDM

(b) (6)

S. Johnson, EARO
S. Baucher, IEA, RD
USDA IIC, Est. 934 M
FO/QR