



March 15, 2018

Food Safety and
Inspection Service

Alameda District
800 Buchanan St.
Albany, CA 94710

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

Mr. Frank Lopes, CEO
Western Meat Processing, Inc.
Est. M44824
725 Zeff Road
Modesto, CA 95351

**CERTIFIED RETURN
RECEIPT REQUESTED**

Facsimile: (209)521-1040

E-mail: frank@westernmeat.net

(b) (6)

fidel@westernmeat.net

NOTICE OF SUSPENSION

Dear Mr. Lopes:

This letter confirms the verbal notification provided to your establishment on March 15, 2018, by the Food and Safety Inspection Service (FSIS), Alameda District of the suspension of the assignment of inspectors at your establishment and the withholding of the marks of inspection for the slaughter operations, 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 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 Title 9 CFR Part 313.2(b). This is 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.

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 handle in connection with slaughter at such establishment by any method not in accordance with sections 1901 to 1906 of USC 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 March 15, 2018, at approximately 1200 hours, the FSIS Supervisory Public Health Veterinarian (SPHV) was observing slaughter operations on the kill floor of Establishment M44824, when he and the FSIS Food Inspector heard a cow vocalize outside the knock box. The SPHV immediately proceeded to the knock box area and observed your employees standing on a platform directly above the knock box, and attempting to move cows that were in the knock box pushed up next to each other. One of the employees, (b) (6), was standing directly above the second cow and hitting it in the face repeatedly with a hard plastic rattle paddle mounted on the end of a plastic pole. The SPHV instructed the employee to stop hitting the animal, but due to the force and increasing intensity of the strikes, the employee did not initially hear the SPHV's instructions. The SPHV observed the employee holding the paddle like an axe to strike the animal on the face and nose, and he observed the animal lifting and moving its head away after the impact of the strikes.

The SPHV again immediately instructed the employee to stop hitting the animal and he finally stopped. The SPHV then took regulatory control action and halted slaughter operations by tagging the knock box with US Rejected tags B38512563 and B38512565. The SPHV notified Mr. Fidel Ibarra, Plant Manager, of this inhumane handling incident.

This is an egregious act of inhumane handling of animals in connection with slaughter, as your employee was striking the cow in an aggressive manner. Your establishment does not have a robust Systematic Approach to the humane handling of livestock at this time.

This is a violation of Title 9 CFR 313.2(b), which states, "*Electric prods, canvas slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury. Any use of such implements which, in the opinion of the inspector, is excessive, is prohibited.*" This is considered an egregious act per Humane Handling and Slaughter of Livestock regulations and Agency guidance that define, in part, egregious inhumane treatment of livestock as any act or condition that results in severe harm to animals, for example: Excessive beating or prodding of ambulatory animals.

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 failures 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 March 15, 2018.

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:

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

In accordance with 9 CFR 500.5(d), you may request a hearing concerning this action by contacting:

Scott C. Safian, Director
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Enforcement and Litigation Division
Stop Code 3753, PP3, Cubicle 8-235A
1400 Independence Avenue, SW
Washington, D.C. 20250
Voice: (202) 418-8872
Fax: (202) 245-5097

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

Sincerely,

*/s/ Frank Gillis, DDM
(for)*

Yudhbir Sharma, DVM
District Manager

cc:

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

(b) (6)

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K. Gilmore, EARO
S. Baucher, RD/OIEA
USDA IIC, Est. M44824
FO/QR