April 2, 2020

Scott Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
United States Department of Agriculture
1440 Independence Ave., S.W.
Patriot Plaza III, 9-205
Washington, DC 20250-3700

Via email to scott.safian@usda.gov

Re: **Enforcement of Consent Decision and Orders for Establishments with Subsequent Egregious Humane Slaughter Violations**

Dear Mr. Safian,

I write on behalf of the Animal Welfare Institute (AWI) and our members to express our concerns regarding the manner in which FSIS is handling egregious humane slaughter incidents that occur at establishments subject to administrative consent decision and orders (CDOs). In case you are not familiar with AWI, it is a national non-profit membership organization that has worked to alleviate animal suffering since 1951. AWI's farm animal work has included monitoring the Food Safety and Inspection Service's enforcement of the Humane Methods of Slaughter Act (HMSA) and making policy recommendations for improvement.

AWI wishes to commend FSIS, and your division in particular, for its diligence in ensuring that the HMSA is enforced consistently and fairly at establishments across the country. However, AWI has recently discovered that FSIS has allowed establishments to continue to operate despite violating key provisions of CDOs.

For example, on October 17, 2019, Cimpl's Inc. (M2460) was issued a Notice of Suspension (NOS) when an employee failed to render a bull insensible with one shot in violation of 9 C.F.R. § 313.15. At the time, Cimpl's was subject to a CDO relating to the establishment's lack of compliance with the HMSA and the Federal Meat Inspection Act (FMIA). The CDO holds in abeyance the establishment's indefinite suspension and permanent withdrawal of federal inspection services as long as Cimpl's complies with the conditions of the order. Cimpl's actions violated paragraphs 37a and 38 of its CDO. AWI was surprised to observe that the Notice of Suspension Held in Abeyance (NOSHA), issued just one day after the incident, does not indicate whether the CDO's provisions were considered in allowing the suspension to be held in abeyance. The NOSHA similarly does not mention whether withdrawal of inspection was considered, per paragraph 40 of the CDO. In fact, the CDO was not mentioned once in the records relating to this incident.
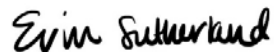
A similar incident occurred at Mark's Meat Inc. (M9265) on January 29, 2020, when an employee made multiple stunning attempts to render a pig unconscious. The inspector issued a NOS for this egregious violation of 9 C.F.R. § 313.15, and the suspension was held in abeyance after just one day. This establishment is also subject to a CDO for its lack of compliance with the HMSA and FMIA. AWI was dismayed to see the NOSHA merely mentions the CDO without any detail as to whether it was considered in allowing the plant to resume operations despite clear violation of paragraphs 37a and 38.

While AWI is aware that FSIS has discretion in enforcing its own administrative orders, we question both the purpose and the effectiveness of the CDO process if the establishment is allowed to quickly resume operations despite clear and egregious violations of CDO terms. Establishments subject to these orders should know that FSIS will hold them accountable and that the enforcement provisions will be applied, for instance, by at the very least considering whether withdrawal of the establishment's grant of inspection is appropriate, if not by referring the matter to the U.S. Department of Justice for civil or criminal enforcement.

AWI strongly urges you to ensure that CDOs are considered when making enforcement decisions, especially when plants have committed egregious violations. We would also appreciate learning if FSIS has a policy for implementing CDOs and its rationale for how it handled these specific cases.

Thank you very much for your time. Feel free to contact me at (202) 446-2147 or erin@awionline.org to further discuss this issue.

Sincerely,

Erin Sutherland
Staff Attorney, Farm Animal Program