



United States Department of Agriculture

Food Safety and  
Inspection Service

Office of Field  
Operations

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June 22, 2023

Modern Heritage Wholesome Foods, LLC  
M47877  
2110 NE 63<sup>rd</sup> Street  
Ocala, FL 34479  
(b) (6) @outlook.com  
(404) 520-3912

FEDEX TRACKING NUMBER  
77252656033

Attention: Mr. Robert Hernandez, Owner

### NOTICE OF SUSPENSION

This letter serves as official notification by the Food Safety and Inspection Service (FSIS) of our decision to withhold the federal marks of inspection and suspend the assignment of Inspection Program Personnel (IPP) at Modern Heritage Wholesome Foods, LLC., located at 2110 NE 6<sup>th</sup> Street, Ocala, FL 34479. This letter follows verbal notification of the suspension action, provided by (b) (6) District Veterinary Medical Specialist, to Mr. Robert Hernandez, Owner at approximately 3:08PM on June 21, 2023. This action includes your Slaughter Hazard Analysis Critical Control Point (HACCP) processes employed at your establishment.

The decision to institute this enforcement action is in accordance with Title 9 of the Code of Federal Regulations (CFR), Rules of Practice 500.3(b), based on the determination that your establishment did not handle or slaughter animals humanely. The evidence demonstrates failure to comply with the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901 *et seq.*), and the regulatory requirements (9 CFR Part 313).

### Background/Authority

The FMIA (21 USC 601 *et seq.*) provides it is essential to the public interest that the health and welfare of consumers be protected, by assuring meat products distributed to them are wholesome, not adulterated, and properly marked, and labeled. The Act gives FSIS the authority, as designated by the Secretary of Agriculture, to prescribe rules and regulations describing sanitation requirements for inspected establishments and provide FSIS program personnel the authority to refuse to allow meat/meat food products to be marked, labeled, stamped, or tagged as *inspected and passed*, to prevent the entry of adulterated products into commerce. Furthermore, the FMIA provides FSIS the authority to appoint inspectors to examine and inspect the method by which livestock are slaughtered and handled at slaughtering establishments.

The HMSA provides that Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. It is therefore

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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.

Under the authority of the Acts, FSIS has prescribed rules and regulations required for establishments slaughtering and handling livestock, as required by 9 CFR Part 313. FSIS has also developed the Rules of Practice regarding administrative enforcement, 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, and for filing a complaint to withdraw a grant of inspection. Specifically, 9 CFR 500.3(b) states that FSIS may impose a suspension without providing prior notification due to handling or slaughtering of animals inhumanely.

#### **Findings/Basis for Action**

This Notice of Suspension is based on your establishment being in violation of 9 CFR 313.15 (a)(1), 9 CFR 313.15(a)(3), 9 CFR 313.15(b)(1)(i), 9 CFR 313.15(b)(1)(iv), and 9 CFR 313.15(b)(2)(i)

9 CFR 313.15 (a)(1) states: *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. The animals shall be stunned in such a manner that they will be rendered unconscious with a minimum of excitement and discomfort.*

9 CFR 313.15(a)(3) states: *Immediately after the stunning blow is delivered the animals shall be in a state of complete unconsciousness and remain in this condition throughout shackling, sticking and bleeding.*

9 CFR 313.15(b)(1)(i) states: *Acceptable captive bolt stunning instruments may be either skull penetrating or nonpenetrating. The latter type is also described as a concussion or mushroom type stunner. Penetrating instruments on detonation deliver bolts of varying diameters and lengths through the skull and into the brain. Unconsciousness is produced immediately by physical brain destruction and a combination of changes in intracranial pressure and acceleration concussion. Nonpenetrating or mushroom stunners on detonation deliver a bolt with a flattened circular head against the external surface of the animal's head over the brain. Diameter of the striking surface of the stunner may vary as conditions require. Unconsciousness is produced immediately by a combination of acceleration concussion and changes in intracranial pressures. A combination both penetrating and nonpenetrating principles is acceptable. Energizing of instruments may be accomplished by detonation of measured charges of gunpowder or accurately controlled compressed air. Captive bolts shall be of such size and design that, when properly positioned and activated, immediate unconsciousness is produced.*

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9 CFR 313.15(b)(1)(iv) states: *The stunning operation is an exacting procedure and requires a well-trained and experienced operator. He must be able to accurately place the stunning instrument to produce immediate unconsciousness. He must use the correct detonating charge with regard to kind, breed, size, age, and sex of the animal to produce the desired results.*

9 CFR 313.15(b)(2)(i) states: *Choice of instrument and force required to produce immediate unconsciousness varies, depending on kind, breed, size, age, and sex of the animal. Young swine, lambs, and calves usually require less stunning force than mature animals of the same kind. Bulls, rams, and boars usually require skull penetration to produce immediate unconsciousness. Charges suitable for smaller kinds of livestock such as swine or for young animals are not acceptably interchanged for use on larger kinds or older livestock, respectively.*

Specifically, on Wednesday June 21, 2023, at approximately 11:40AM while verifying the establishment's stunning procedures, Inspection Program Personnel (IPP) observed the following humane handling noncompliance at Modern Heritage Wholesome Foods, LLC, establishment # M47877. An establishment employee attempted to stun a bull with a hand-held captive bolt. The captive bolt discharged and IPP observed the bull still standing. The bull was looking at the establishment employees through a hole in the knock box. The backup captive bolt was quickly used to attempt to stun the bull again. The captive bolt discharged, but the animal remained conscious, standing in the knock-box. The two captive bolts were alternated with a total of five attempts to stun the bull. After these attempts were ineffective, the establishment employee used a 9 mm pistol to shoot the bull. After the shot, the bull dropped to the ground, had no eye movement, and was not rhythmically breathing. The bull was immediately bled by another employee. U.S. Rejected Tag No. B40476170 was applied to the knock-box.

On postmortem examination, IPP examined the head after the bull was bled out. IPP observed four circular depressions in the skin around the middle of the forehead above the eyes. When the head was skinned, IPP observed two small, circular holes and one larger hole in the middle of the forehead where the skull was penetrated. IPP also observed a semicircular hole at the bottom of the larger hole that was a fourth point of penetration. The establishment does not have a robust, systematic approach to humane handling. Mr. Robert Hernandez, Plant Owner was notified of the incident.

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 (69 FR 54625). On September 24, 2020, FSIS released FSIS Directive 6900.2 Revision 3, 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 is information intended to better ensure the humane treatment of livestock presented for slaughter. The guidance material provides a set of practices designed to minimize excitement, discomfort, and accidental injury regarding

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the humane handling of livestock to include the four components of a robust systematic approach to humane handling.

When an establishment maintains a robust humane handling program, FSIS can exercise regulatory discretion when an inhumane handling or slaughter incident is observed. You do not currently maintain a written humane handling program for consideration.

### **Summary and Conclusion**

Provisions of the FMIA outline FSIS' ability to refuse to render inspection and indefinitely withdraw inspection from an establishment, provided the establishment is afforded the right to an administrative hearing, when conditions exist where the slaughter and/or handling of livestock was not by a method in accordance with the Act(s). Evidence demonstrates your failure to meet regulatory requirements addressed in 9 CFR 313.15 (a)(1), 9 CFR 313.15(a)(3), 9 CFR 313.15(b)(1)(i), 9 CFR 313.15(b)(1)(iv), and 9 CFR 313.15(b)(2)(i), constituting a violation of the humane slaughter requirements, and supporting the conclusion that your handling of livestock violated the provisions of the FMIA and HMSA.

Please provide a written response, inclusive of written corrective action and preventative measures, by addressing the following:

- Evaluate and identify the nature, cause of the incident.
- Describe the specific actions taken to eliminate the cause of the incident and prevent future recurrences.
- Describe specific monitoring activities planned to ensure future compliance.
- Provide any supporting documentation and records maintained and/or associated with the proposed corrective actions and preventative measures.

A determination of further administrative action will be made upon receipt and review of your submitted corrective actions and preventative measures. You are reminded that, as an operator of a federally inspected establishment, you are expected to comply with FSIS regulations and to take appropriate corrective actions to prevent the production of or adulterated products at your establishment. Please be advised that your failure to respond adequately to these issues may result in our initiating action to withdraw inspection from your establishment.

### **Appeal and Hearing Rights**

You have the right to appeal this matter and can do so by contacting:

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Melissa Moore,  
Executive Associate for Regulatory Operations  
Office of Field Operations  
Food Safety and Inspection Service  
United States Department of Agriculture  
SB, Room 344-E  
1400 Independence Avenue, SW  
Washington, DC 20250  
Email: [Melissa.Moore@usda.gov](mailto:Melissa.Moore@usda.gov)  
Phone: (202) 450-0330

Pursuant to 9 CFR 500.5(d), you may also request a hearing regarding this determination. Should you request a hearing, FSIS will file a complaint that will include a request for an expedited hearing. If you wish to request a hearing regarding this determination, please contact:

Scott C. Safian, Director  
Enforcement Operations Staff (EOS)  
Office of Investigation, Enforcement and Audit (OIEA)  
Food Safety and Inspection Service  
United States Department of Agriculture  
Stop Code 3753, SB - Room 2148  
1400 Independence Avenue, SW  
Washington, DC 20250  
Telephone: (202) 418-8872  
Facsimile: (202) 245-5097  
E-mail: [AEBCorrespondence@usda.gov](mailto:AEBCorrespondence@usda.gov)

If you have any questions, please contact Dr. Phyllis Adams via telephone at (404) 562-5900 or via electronic mail at [Phyllis.Adams@usda.gov](mailto:Phyllis.Adams@usda.gov). Additionally, you can contact the Atlanta District Office at (404) 562-5900 or by fax at (404) 562-5877.

Sincerely,



Dr. Phyllis Adams  
District Manager

Mr. Robert Hernandez, Owner  
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cc: Melissa Moore, EARO  
Phyllis Adams, DM  
(b) (6) Humane Handling Enforcement Coordinator  
OIEA Regional Director  
Edward Hepburn, DDM  
Barney Welch, DDM  
Tracy Bryant, DDM  
(b) (6) SEIAO  
(b) (6) DCS  
(b) (6) DVMS  
(b) (6) FLS  
(b) (6) SPHV at M47877  
FO/Quarterly Reports