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March 13, 2024

Mr. Thomas Gilbert III, Vice President  
**Herring Brothers, Inc. (Est. M9760/P-9760)**  
350 Water Street  
Guilford, Maine 04443  
[herringbros@hotmail.com](mailto:herringbros@hotmail.com)  
Ph: (207) 876-2631

### **NOTICE OF SUSPENSION**

Attention: Thomas Gilbert III, Vice President

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 **Herring Brothers, Inc.**, establishment M-9760/P-9760, located at 350 Water Street, Guilford, Maine 04443. This letter follows verbal notification of the suspension action, provided by Dr. Chelsea Buckley, Deputy District Manager (DDM) to Thomas Gilbert III, Vice President, at approximately 1212 hours on March 13, 2024. This action includes the Pork (swine) Slaughter Hazard Analysis Critical Control Point (HACCP) process 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 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**

On Wednesday, March 13, 2024, at approximately 0740 hours during hog slaughter operations at Herring Brothers, Inc., establishment M9760, IPP observed the following non-compliance.

A slaughter employee drove a market swine into the kill box, secured the box, and applied water to the back of the animal's neck per protocol. The operator acquired, applied, then deployed the (electric) hog stunner to the animal, activating the apparatus until the timed trigger stopped the flow of current, while the animal concurrently collapsed to the floor of the box. The operator returned the stunner wand and opened the box door to remove the unconscious hog from the box. During this time, as the operator retrieved the captive bolt, the animal began audibly breathing louder than might typically be observed. In these moments, the operator approached with the captive bolt device and applied a stun from the bolt. As the operator returned the captive bolt, and proceeded to attempt to shackle the animal, the hog steadily and rapidly increased leg movements as a marked increase of audible, loud, rhythmic gasping was heard. The operator attempted to apply the shackle; however, the increasing leg thrashing of the animal caused the shackle chain to fly off, and the animal scrambled to right itself, attempting to walk. The ever-increasing ambulatory efforts (of the animal) led to it scrambling in a walk-stumble manner approximately twenty (20) feet across the kill floor, with eyes wide and alert and breathing heavily. The operator hurried to capture the animal as other employees joined and assisted in moving the conscious animal across the floor back to the stunning area. The team of employees manually restrained the animal and applied an effective captive bolt stun to render the animal unconscious. The animal was then shackled, hoisted, and bled until dead.

By this time, the owner/vice president, was present and the event was discussed. He was notified that a regulatory control action was to be taken, and the kill box was rejected with U.S. Reject Tag No. B23796665.

Postmortem analysis of the carcass evidenced the first captive bolt application was anatomically and physically ineffective. It was poorly placed off midline and did not enter the cranial vault, which allowed the animal to regain consciousness.

IPP reviewed the establishment's *Robust Humane Handling* plan which states, in part: "(b) (4)"

[REDACTED]

Training material included in the plan is from the stunner manufacturer. It depicts brain stunning and alludes to secondary heart stunning; however, training reference materials are not definitively prescriptive. The establishment owner/vice president stated the actual training of employees occurs per written statement above where only "back of the head" electrical stunning is applied. Other training material states, in part: "(b) (4)"

[REDACTED]

While the establishment has a robust systematic approach to humane handling, it was not implemented properly as the establishment employee did not effectively follow, nor properly implement the knowledge from training material supplied (in the plan). Additionally, the establishment employee displayed an inability to recognize signs of consciousness.

### **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 in accordance with 9 CFR 313.2(f), 313.30(a)(4), and 313.15(a)(3), 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:

Melissa Moore  
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 1222  
Washington, DC 20250  
Email: [melissa.moore1@usda.gov](mailto:melissa.moore1@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 regarding this matter, please feel free to contact Dr. Chelsea Buckley, DDM, via electronic mail at [chelsea.buckley@usda.gov](mailto:chelsea.buckley@usda.gov) or by telephone at (267) 807-7615. Additionally, you can contact the Philadelphia District Office at (800) 637-6681.

Sincerely,

**GEORGE  
SLOBODJIAN**

Digitally signed by GEORGE  
SLOBODJIAN  
Date: 2024.03.13 16:35:16 -04'00'

Mr. George Slobodjian  
Deputy District Manager/ Acting District Manager

CC:

**FSIS - FO/Quarterly Enforcement Report**

Ms. Melissa Moore, EARO, FSIS, OFO, Washington D.C.

Mr. Joseph Priore, RD, FSIS, OIEA, Northeast Region

Mr. Jason Orlando, DM, FSIS, OFO, Philadelphia District Office

Mr. Joseph Schein, DDM, FSIS, OFO, Philadelphia District Office

Mr. George Slobodjian, DDM, FSIS, OFO, Philadelphia District Office

Dr. Chelsea Buckley, DDM, FSIS, OFO, Philadelphia District Office

(b) (6) DCS, FSIS, OFO, Philadelphia District Office

(b) (6), SEIAO, FSIS, OFO, Philadelphia District Office

(b) (6) FLS, FSIS, OFO, Philadelphia District

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