



United States Department of Agriculture

Food Safety and  
Inspection Service

March 25, 2020

Office of Field  
Operations  
Denver District Office

**SENT VIA FEDEX &  
ELECTRONIC MAIL**

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Center, Bldg. 45  
P.O. Box 25387  
Denver, CO 80225

Voice (303)236-9800  
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Mr. Gene Malkovsky, Owner  
Malco's Buxton Meat Co., M9264  
37101 SE Dunn Road  
Sandy, Oregon 97055  
[1malco79@gmail.com](mailto:1malco79@gmail.com)

### **REINSTATEMENT OF SUSPENSION (ROS)**

Dear Mr. Malkovsky,

This letter confirms the verbal notification provided to your establishment, Malco's Buxton Meat Co., M9264, located in Sandy, OR on Wednesday, March 25, 2020, by the Food Safety Inspection Service (FSIS), Denver District, of the reinstatement of suspension (ROS) of the assignment of inspectors and the withholding of the marks of inspection at your establishment for slaughter operations. Dr. Robert Reeder verbally informed you of the Reinstatement of Suspension. This action was initiated in accordance with Title 21 of the United States Code (USC), Section 603(b) and Title 9 of the Code of Federal Regulations (CFR) Part 500.3(b) (Rules of Practice).

### **Background Authority**

The *Federal Meat Inspection Act* (FMIA), 21 USC Section 603(b), provides for the purpose of preventing the inhumane slaughtering of livestock. The FMIA gives FSIS the authority, as designated by the Secretary of the Department of Agriculture, to prescribe rules and regulations describing examinations and inspections of the method by which cattle, sheep, swine, goats, horses, mules, and other equines are slaughtered in the establishments inspected under the FMIA. The FMIA also provides FSIS Program personnel the authority to suspend operations at a slaughtering 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 establishments by any method not in accordance with the *Humane Methods of Slaughter Act* (HMSA) of August 27, 1958 (72 Statute 862; Title 7 USC, Sections 1901-1906), until the establishment furnishes FSIS with satisfactory assurances that all slaughtering and handling in connection with the slaughter of livestock shall be in accordance with such methods.

Under the authorities of these Acts, FSIS has prescribed rules and regulations required for the humane slaughtering of livestock, contained in Title 9 CFR Part 313. 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/Basis for Action**

On Wednesday, March 25, 2020, the FSIS Consumer Safety Inspector (CSI) documented in a Memorandum of Information (MOI) the following event at Est. M9264:

*“At Establishment M9264 on 03/25/2020 at approximately 10:06 hours, the CSI was standing on the slaughter floor while the establishment prepared to stun a mature bull in the stun box outside. The CSI heard a stun attempt with a firearm and waited for the signal to open the door outside to verify stunning effectiveness. (b) (6) called for the signal to open the door and no response was heard. Shortly thereafter, the stunner employee came inside the slaughter floor. The CSI went outside to the stun box and observed the bull was standing on all four legs, vocalizing, and flickering his tail. The CSI observed stunning hole on the upper side of the left eye. The bull continued to vocalize. The stun operator returned to the stun box with a 270 rifle, took aim and applied a second stunning attempt which rendered the bull unconscious. The CSI immediately alerted (b) (6) of the incident and notified him of the regulatory control action and applied USDA REJECTED TAG No. B30449332 to the stun box. Denver District Office was contacted through supervisory channels.”*

### **Summary**

The decision to reinstate the suspension of the assignment of inspectors at your establishment is based on this noncompliance with 9 CFR 313.16(a)(1) and your establishment's humane handling noncompliance history. You were currently operating under the abeyance period for a Notice of Suspension issued on March 2, 2020, whereby your employee needed multiple stunning attempts to render an animal unconscious. Additionally, your firm does not operate with a Robust Systematic Approach.

The suspension of the assignment of inspectors will remain in effect until such time as you provide the Denver District Office adequate written corrective actions and preventative measures to ensure that livestock at your establishment are handled and slaughtered humanely, and in accordance with the FMIA, the HMSA and 9 CFR 313 regulations.

These should include:

- A written description of the incident.
- The root cause of the incident.
- Your immediate corrective actions.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

Your recent humane handling noncompliance history shows a systematic failure to comply with 9 CFR 313 regulations. Be advised that based on your recent history of non-compliance concerning the inhumane handling of livestock, the Denver District Office will be consulting with the Office of Investigation, Enforcement and Audit, Enforcement and Litigation Division (ELD). Further humane handling noncompliance may result in referring this matter to ELD and removal of your Grant of Inspection.

In accordance with Title 9 CFR 500.5(a)(5), you may appeal this action by contacting:

Paul Wolseley  
Acting Executive Associate for Regulatory Operations  
USDA/FSIS/OFO  
Room 3159 South Building  
Washington, D.C. 20250  
Tel: 207-708-9506  
[Paul.Wolseley@usda.gov](mailto:Paul.Wolseley@usda.gov)

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

Scott C. Safian  
Enforcement and Litigation Division  
Office of Investigation, Enforcement and Audit  
Food Safety and Inspection Service  
Stop Code 3753, PP III, Cubicle 9-235A  
1400 Independence Avenue, SW  
Washington, D.C. 20250  
Voice: (202) 418-8872  
Fax: (202) 245-5097

If you have any questions regarding this matter, you may contact the Denver District Office at (303)236-9800.

Sincerely,

ROBERT  
REEDER

Digitally signed by  
ROBERT REEDER  
Date: 2020.03.25  
13:45:58 -06'00'

FOR

Valerie Clay  
District Manager  
FSIS Denver District Office  
[Valerie.Clay@usda.gov](mailto:Valerie.Clay@usda.gov)

cc: FO/QER  
Est. File  
S. Hoffman, DDM

R. Reeder, DDM  
J. VanHook, DDM

(b) (6)



S. Baucher, RD/OIEA