



United States Department of Agriculture

Food Safety and  
Inspection Service

Office of Field  
Operations  
Denver District Office

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

Voice (303)236-9800  
Fax (303)236-9794

March 2, 2020

**SENT VIA FEDEX &  
ELECTRONIC MAIL**

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

### **NOTICE OF SUSPENSION (NOS)**

Mr. Malkovsky,

This letter confirms the verbal notification provided to your establishment, Malco's Buxton Meat Co., Establishment M9264, located in Sandy, OR, on Monday, March 2, 2020, by the Food Safety Inspection Service (FSIS), Denver District, of the suspension of the assignment of inspectors and the withholding of the marks of inspection at your establishment for slaughter operations. Dr. Jessica VanHook, Deputy District Manager, notified you of the suspension action. 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.

### **Finding/Basis for Action**

On Monday, March 2, 2020, the FSIS Supervisory Public Health Veterinarian (SPHV) documented in a Memorandum of Information (MOI) the following event at Est. M9264:

*" On 3/02/2020 at 1035 hours at establishment M9264, the SPHV observed an establishment employee make three unsuccessful attempts at stunning a lamb with an electrical stunning device before applying a successful stun attempt with a hand-held captive bolt (HHCB) device. On each stun attempt with the electrical stunner the wand was placed behind the lamb's ears and the lamb dropped to its knees and then immediately rose. The lamb did not vocalize during the attempts with the electrical wand. After the third stun attempt, establishment manager Gene Malkovsky instructed an employee to stun the lamb with a HHCB. This fourth stun attempt was successful in rendering the lamb unconscious.*

*The SPHV immediately ceased slaughter operations by applying U.S. Rejected Tag #B18928639 to the stun box and notified Mr. Malkovsky of my regulatory control action. The Denver District Office was contacted via supervisory channels."*

### **Summary**

The decision to suspend the assignment of inspectors at your establishment is based on this noncompliance with 9 CFR 313.30(a)(1). This is an inhumane noncompliance; whereby an establishment employee needed multiple stunning attempts to render an animal unconscious.

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.
- Your specific corrective actions to prevent reoccurrence of the noncompliance.
- Any training or retraining of employees you plan to provide, including materials you're planning to use.
- Any monitoring procedures, including any documentation records.

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

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

Scott C. Safian, Director  
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,

**VALERIE CLAY** Digitally signed by VALERIE CLAY  
Date: 2020.03.02 14:09:42 -07'00'

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

cc: FO/QER  
Est. File  
R. Reeder, DDM  
S. Hoffman, DDM  
I. VanHook, DDM

(b) (6)



S. Baucher, RD/OIEA