UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

USDA/OALJ/OHC
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In re:	)	
	)	AMA Docket No. 19-J-0132
	)	19-J-0133
Lineage Logistics ICM, LLC, a Limited Liability Company; and Baker Cold Storage, INC. dba: Lineage Logistics-Vernon,	)	
	)	
Respondents.	)	Consent Decision and Order

This proceeding was instituted under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621 et seq.) (AMA), the regulations promulgated thereunder (9 C.F.R. §§ 350 et seq. and 362 et seq.), and the applicable Rules of Practice (7 C.F.R. §§ 1.130 et seq.) to withdraw Federal Voluntary Reimbursable Inspection, Identification, and Certification Service from Respondent Lineage Logistics ICM, LLC, and Respondent Baker Cold Storage, INC. dba: Lineage Logistics-Vernon. This proceeding was commenced by a complaint filed on _____ 2019, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties have agreed that this proceeding should be terminated by entry of the Consent Decision and Order set forth below pursuant to the consent decision provisions of the Rules of Practice (7 C.F.R. § 1.138).

Respondents admit the findings of fact, as set forth herein, and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, waive all rights to seek judicial review and otherwise challenge or contest the validity of this decision, including waiving challenges to the Administrative Law Judge's authority to enter this Consent Decision and Order under the Administrative Procedure Act and the Constitution of the United States, and waive any action

against the United States Department of Agriculture under the Equal Access to Justice Act of 1980 (5 U.S.C. §§ 504 et seq.) for fees and other expenses incurred by Respondents in connection with this proceeding or any action against any USDA employee in their individual capacity.

Complainant agrees to the entry of this Consent Decision and Order.

Findings of Fact

1. On or about January 27, 2017, John Dahmen, General Manager of Lineage Logistics, LLC's Long Beach facility, submitted an Application/Approval for Federal Voluntary Reimbursable Inspection Service, FSIS Form 5200-6, to the FSIS, Alameda, California, District Office, requesting approval to conduct, among other activities, export certification service under the AMA and the regulations promulgated thereunder. The application identified the applicant as "Baker Cold Storage, INC. dba: Lineage Logistics-Vernon" and the location as 1710 Pier B Street, Long Beach, California 90813.

2. On or after April 6, 2017, the FSIS, Alameda, California, District Office approved said application, assigned Establishment Number V-48194, and has since provided Federal Voluntary Reimbursable Inspection Service, including export certification service, under the AMA and the regulations promulgated thereunder to the entity identified as "Baker Cold Storage, INC. dba: Lineage Logistics-Vernon" at the refrigerated warehouse facility located at 1710 Pier B Street, Long Beach, California 90813.

3. Respondents at all times material herein, have received Federal Voluntary Reimbursable Inspection Service, including export certification service, as Establishment Number V-48194 at the refrigerated warehouse facility located at 1710 Pier B Street, Long Beach, California 90813.

4. Baker Cold Storage, Inc., is, and at all times material herein was, a corporation organized and existing under the laws of the State of California, whose business address is 4020 Bandini Boulevard, Vernon, California 90058.

5. Baker Cold Storage, Inc., is, and at all times material herein was, a subsidiary of Baker Commodities, Inc., a corporation organized and existing under the laws of the State of Delaware, whose business address is 4020 Bandini Boulevard, Vernon, California 90058.

6. Baker Cold Storage, Inc., and/or its parent, Baker Commodities, Inc., at all times material herein, owned a refrigerated warehouse located at 1710 Pier B Street, Long Beach, California 90813.

7. Baker Cold Storage, Inc., at all times material herein, contracted with Respondent Lineage Logistics ICM, LLC, to manage, operate, and promote the refrigerated warehouse facility located at 1710 Pier B Street, Long Beach, California 90813 and to recruit, train, employ, and supervise all individuals performing operations at the facility. Respondent Lineage Logistics ICM, LLC, is, and at all times material herein was, required to operate in accordance with applicable laws, rules, and regulations.

8. Respondent Lineage Logistics ICM, LLC, is, and at all times material herein was, a limited liability company organized and existing under the laws of the State of California, whose business address is 4100 Bandini Boulevard, Vernon, California 90058.

9. Lineage Logistics, LLC, is, and at all times material herein was, a limited liability company organized and existing under the laws of the State of Delaware, whose business address is 46500 Humboldt Drive, Novi, Michigan 48377.

10. Lineage Logistics Services, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, whose business address is 46500 Humboldt Drive, Novi, Michigan 48377.

11. Lineage Logistics Holdings, LLC, is, and at all times material herein was, a limited liability company organized and existing under the laws of the State of Delaware, whose business address is 46500 Humboldt Drive, Novi, Michigan 48377.

12. Respondent Lineage Logistics ICM, LLC, is, and at all times material herein was, a subsidiary of Lineage Logistics, LLC. Lineage Logistics, LLC and Lineage Logistics Services, LLC are subsidiaries of Lineage Logistics Holdings, LLC.

13. Baker Cold Storage, Inc. and the various Lineage Logistics companies conducted business under and benefitted from the Federal Voluntary Reimbursable Inspection Service, including export certification service, provided to Establishment V-48194.

14. On or about January 29, 2019, FSIS denied Voluntary Reimbursable Inspection Service provided to Establishment V-48194 following allegations of alterations of export applications and certificates in violation of the AMA and the regulations promulgated thereunder.

Conclusion

The parties having admitted the jurisdictional facts and the parties having agreed to entry of this Consent Decision and Order, this Consent Decision and Order will be entered.

Order

1. Voluntary Reimbursable Inspection, Identification, and Certificate Service (VRIS), under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. §§ 1621 et seq.) (AMA) and the regulations promulgated thereunder (9 C.F.R. §§ 350 et seq. and 362 et seq.) are withdrawn from Respondents and their owners, officers, directors, partners, successors, affiliates, and assigns, directly or through any business or other device beginning on the effective date of this Order. However, the withdrawal of VRIS shall be held in abeyance, and services shall be provided to Respondents, pursuant to a conditional grant of inspection, so long as the conditions set forth below, in addition to all the other requirements of VRIS, are met. This Order will expire three (3) years from the date on which Respondents' VRIS resume pursuant to the terms of this Order.

2. Upon the effective date of this Order, and subject to verification by FSIS, Respondents shall comply with the AMA, as amended (7 U.S.C. §§ 1621 et seq.), the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601 et seq.) (FMIA), the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451 et seq.) (PPIA), and the regulations promulgated thereunder (9 C.F.R. Parts 322, 350 and 362).

Conditions

Conditions to be met prior to resuming of operations requiring VRIS

Respondents will not resume operations requiring VRIS until Respondents demonstrate to FSIS all provisions listed in Paragraphs 1 through 19 of this Order have been met.

Subject to verification by FSIS, pursuant to this Order, Respondents shall:

Establishment Management and Personnel

1. Prior to the resumption of operations requiring VRIS, Respondents shall submit to the District Manager, Food Safety and Inspection Service (FSIS), Office of Field Operations, Alameda District Office (hereafter "District Manager"), an updated application for VRIS (FSIS Form 5200-6) that accurately reflects the contractual and managerial structure of the facility and complies with FSIS statutes, regulations, and policies.

2. Prior to the resumption of operations requiring VRIS, Respondents shall provide the Director, Enforcement and Litigation Division, FSIS (hereinafter "Director") with an organization chart of the export clerks, the Export Coordinator, office manager, forklift operator, and all managers involved in export operations at the Long Beach facility. Respondents shall also provide a description of the roles and duties of each of these individuals.

3. As provided for in the March 8, 2019 Response to the Notice of Show Cause, Respondents shall recruit and train a new Export Coordinator who is separate from other managers at the facility. Respondents may also recruit and train two (2) alternates to act only when the Export Coordinator is unavailable. The Export Coordinator's duties, at a minimum, shall include:

a. provide overall management and implementation, coordination, review, recordkeeping, and maintenance of Respondents' Compliance and Export Control Program (hereinafter "CECP") as required by and consistent with the AMA, FMIA, PPIA, the regulations promulgated thereunder, and the requirements of this Order;

b. be present when export operations are conducted;

c. when appropriate communicate directly with FSIS program personnel at all levels;

d. stop product export certification operations, remove product from further handling, and make determinations regarding control of any manufactured, stored, or staged products which are believed to be adulterated, misbranded, or otherwise fail to meet regulatory requirements or destination country requirements;

e. make decisions concerning product disposition, including product destruction;

f. implement, document, and maintain records for all export control procedures;

g. initiate corrective actions for any deviation or noncompliance related to Respondents' CECP;

h. be responsible for volume management as set forth in the March 8, 2019 Response to the Notice of Show Cause:

1) the Export Coordinator shall be responsible for volume control and management to ensure that full shipments are presented to FSIS inspection personnel for export inspection and certification. The Export Coordinator will be responsible for informing customers when the establishment cannot facilitate additional orders; and

2) the Export Coordinator will create a daily schedule of all outbound export shipments.

i. provide direct oversight over the export clerks.

4. The General Manager of the Respondents' Long Beach facility duties, at a minimum, shall include:

a. when appropriate communicate directly with FSIS program personnel at all levels;

b. make oral and written responses to noncompliance records, if warranted, and appeal the findings of FSIS; and

c. recall potentially adulterated or misbranded products, or products that have been falsely or fraudulently represented, or products that have been shipped and thereafter determined not to meet the destination country's requirements in any manner.

5. For one (1) year from the effective date of this Order, and subject to verification by FSIS inspection program personnel, Respondents agree to adhere to the personnel changes outlined in its March 8, 2019 Response to the Notice of Show Cause. The changes include, but are not limited to, the appointment or hiring of export clerks, the Export Coordinator, forklift operators, and all managers involved in export operations at the Long Beach facility. Any changes to such personnel or their duties shall be subject to the review and concurrence of the Director.

Ethics and Compliance Officer

6. Prior to the resumption of operations requiring VRIS, and subject to the concurrence of the Director, Respondents shall appoint or hire an individual to the position of Ethics and Compliance Officer (hereinafter "ECO"). Any changes to the ECO shall be made subject to the concurrence of the Director. The ECO shall be responsible for:

a. supervising and monitoring Respondents' compliance with this Order, including corporate-wide[1] provisions required by the Order;

b. implementing, maintaining, and assuring and certifying the completion of the various training provisions required by this Order;

c. maintaining records and reports required by this Order; and

d. reporting to FSIS on Respondents' compliance with this Order.

[1] This Consent Decision and Order defines corporate-wide as falling under the Lineage Logistics Holdings, LLC corporate umbrella.

Corporate Code of Conduct and Employee Handbook

7. Prior to the resumption of operations requiring VRIS, and subject to the concurrence of the Director, Respondents shall develop, update (through supplement, addendum or appendix), and implement a written Corporate Code of Conduct and Employee Handbook.

8. The written Corporate Code of Conduct and Employee Handbook will include, at a minimum:

a. a policy for Respondents' commitment and the commitment of its officers, managers, and employees to comply with all statutory and regulatory export requirements, federal and state food safety requirements, recordkeeping requirements, and other laws in the conduct of its business;

b. a policy for Respondents' commitment and the commitment of its officers, managers, and employees ethics and public trust;

c. guidelines for Respondents' officers, managers, and employees to follow with respect to product export applications, shipments, and ethics issues;

d. guidelines for Respondents' officers, managers, and employees to follow with respect to food safety and ethics issues; and

e. measures for Respondents' officers, managers, and employees to report alleged violations of food safety, compliance, or ethics issues, or violations of corporate policies, to Respondents' officers or managers, without fear of reprisal and for Respondents to document and address reported allegations.

9. Within thirty (30) calendar days from resumption of VRIS at Respondents' Long Beach facility, and subject to the concurrence of the Director, Respondents shall develop, update (through supplement, addendum or appendix), and implement a section of the Employee Handbook specifically to address the issue of food safety.

10. Upon implementation of the written Corporate Code of Conduct and Employee Handbook, Respondents shall notify and receive concurrence from the Director, in writing, of any proposed changes or modifications.

11. Prior to the resumption of operations requiring VRIS, and subject to concurrence by the Director, and verification by FSIS inspection program personnel, Respondents shall create a corporate-wide notice summarizing the written Corporate Code of Conduct that shall be permanently displayed in a prominent location in Respondents' establishments and shall be provided to and discussed with all current and future officers, managers, and employees, and shall require written acknowledgement by everyone of receipt, discussion, understanding, and adherence to the policy and program.

12. Respondents will maintain the written Corporate Code of Conduct and Employee Handbook for the remainder of this Order.

Compliance and Export Control Program

13. Prior to the resumption of operations requiring VRIS, and subject to the concurrence of the Director, Respondents shall develop, implement and maintain a written CECP and ensure the program includes, at a minimum:

a. requirements to request and obtain approval from FSIS inspection program personnel prior to any re-labeling of products, change in labeling, change in production dates, or change in system of coding of the production date (on-site, or at an approved off-site location, such as an

outside warehouse conducting identification services or approved facility contracted by Respondents to provide that service, or to export product for Respondents), or of any deviations involving product labeling;

b. requirements for staging, presentation, labeling, and stamping of meat and/or poultry product containers for export re-inspection, and maintenance of records for complete monitoring of all product shipments after the containers have been labeled and stamped;

c. requirements for completion, verification, and distribution of the original export certificate and all attached copies, and of all additional certificates, seals, certifications and any foreign country documents requested;

d. verification of the completed, original export certificate by FSIS inspection program personnel;

e. corrective actions when any part of the procedure is found to be noncompliant;

f. verification procedures to ensure that all destination country requirements have been met;

g. verification procedures to ensure that all meat and meat food products, and poultry and poultry food products intended for export comply with any restrictions imposed by the importing country;

h. verification procedures to ensure that all Export Verification (hereinafter "EV") requirements, if applicable for the destination country, are obtained by Respondents and are presented to FSIS inspection program personnel along with each FSIS Form 9060-6, Application for Export Certificate;

i. ensure that new export procedures as discussed in the March 8, 2019 Response to the Notice of Show Cause are developed, implemented, and maintained, including:

1) procedures to ensure that net weight and package quantities will not be entered on Form 9060-6 until the product has been weighed;

2) procedures to makes certain that the export procedures are followed by all employees; and

3) procedures to provide proper oversight and verification of export certifications.

j. ensure written recall procedures are in place to effectively recall potentially adulterated or misbranded products sold or shipped by Respondents when found within distribution channels.

14. Upon implementation of CECP, Respondents shall notify and receive concurrence from the Director, in writing, of any proposed changes or modifications, or any proposed changes or modifications to the recordkeeping forms associated with the program.

Establishment Management and Employee Training

15. Prior to the resumption of operations requiring VRIS, and subject to the concurrence of the Director, Respondents at the Long Beach facility shall participate in and successfully complete a training program(s) or educational course(s) encompassing:

a. ethical business practices;

b. compliance with applicable federal and state statutes and meat and poultry regulations;

c. compliance with the Respondents' written Corporate Code of Conduct and Employee Handbook; and

d. CECP.

Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by FSIS.

16. In accordance with the March 8, 2019 Response to the Notice of Show Cause, Respondents shall certify that corporate-wide training has taken place at all VRIS facilities, subject to the review and concurrence of the Director, within thirty (30) calendar days of the effective date of this Order on:

a. the written Corporate Code of Conduct and Employee Handbook; and

b. CECP.

Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by FSIS.

17. Respondents shall train and educate any future hire(s) consistent with the requirements of this Order within thirty (30) calendar days of employment. Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by FSIS.

18. Respondents shall conduct annual training for all officers, managers, and employees, consistent with the requirements of this Order. Respondents shall maintain for the duration of this Order records documenting the successful completion of such training and shall make those records available upon request by FSIS.

19. Respondents shall document and maintain all training and education materials, training records, test results, and other materials for all training required by this Order and make these records available to FSIS for review and/or copying immediately upon request.

Third Party Audits

20. Upon resumption of operations requiring VRIS, and subject to verification by FSIS, for Respondents' Long Beach facility, Respondents shall cause to be made, by an independent third-party, written audits of:

a. Respondents' implementation, monitoring, and maintenance of its CECP;

b. Respondents' CECP effectiveness to verify the accuracy of all Export Applications and Certificates of Wholesomeness;

c. Respondents' compliance with FSIS statutory and regulatory requirements; and

d. Respondents' compliance with the terms required by this Order.

21. The first written audit shall be conducted within one hundred eighty (180) calendar days from the resumption of operations requiring VRIS, and annually thereafter for the duration of this Order for a total of three audits.

22. Respondents shall prepare for each audit conducted a written response to the audit findings and recommendations. Respondents' written response shall identify:

a. any modifications to its CECP;

b. any corrective actions or any other actions implemented or planned in response to the audit findings and recommendations; and

c. supportable information for any decision by Respondents to not implement any audit recommendation.

23. Respondents shall submit a copy of each third-party audit, a copy of Respondents' written response, or other documents related to the audit to the Director within thirty (30) calendar days after each audit is completed.

24. Respondents shall, within one (1) year from the effective date of this Order, cause to be made a corporate-wide audit of all VRIS facilities to ensure that all facilities receiving VRIS are operating in accordance with FSIS statutes, regulations, and policies. Respondents shall prepare a written response to the audit findings and recommendations. Respondents shall

submit a copy of the audit, a copy of Respondents' written response, or other documents related to the audit to the Director within thirty (30) calendar days after each audit is completed.

25. For the purposes of Paragraphs 20 through 25, an independent third party shall be a person, entity, or corporation free from bias and absent from a conflict of interest with the Respondents. Specifically, the person, entity or corporation conducting an audit shall not be a current or former officer, director, employee, affiliate, representative, or agent of Respondents. If the Director has good cause to believe that an audit was conducted by a person, entity, or corporation otherwise employed by or affiliated with Respondents, or with a present bias or a conflict of interest, any written audit and report of the audit shall be deemed disqualified for the purposes of complying with this Order.

Recordkeeping Provisions

26. Respondents shall keep and maintain full, complete, and accurate copies of:

a. all written records required by the AMA, FMIA, PPIA, the regulations promulgated thereunder, and all applicable state or local statutes; and

b. all other written records required by this Order.

27. Respondents shall make all such records available to FSIS inspection program personnel for review and/or copying upon request, in a timeframe consistent with FSIS requirements.

28. Respondents shall immediately notify Director of any changes or modifications to its business records, CECP, any training documents, or Standards of Conduct Policy and Program required by regulation or by this Order, including all changes to its related recordkeeping forms.

General Provisions

29. Respondents and any of its officers, managers, employees, or affiliates shall not:

a. violate any section of the AMA, FMIA, PPIA, the regulations promulgated thereunder, or any federal, state, or local statue or regulation involving the preparation, sale, transportation, distribution or attempted distribution of any adulterated, non-inspected, misbranded, or deceptively packaged meat, meat food products, poultry, or poultry food products;

b. commit any felony or fraudulent act or other criminal act involving fraud, conspiracy, bribery, or any other act or circumstances indicating a lack of integrity needed for the conduct of operations affecting public health;

c. willfully make or cause to be made any false entry into any accounts, records, reports, or memoranda kept by the Respondents in compliance with federal, state or local statutes or regulations or this Order; neglect or fail to make full, true, and correct entries in such accounts, records, reports or memoranda; and fail to keep such accounts, records, reports, or memoranda that fully and correctly disclose all transactions in the Respondent's business; or

d. assault, intimidate, impede, threaten, or interfere with any FSIS program personnel in the performance of his or her official duties under the AMA, FMIA, PPIA, the regulations promulgated thereunder.

30. Respondents shall fully and completely cooperate with any FSIS investigation, inquiry, review, or examination of Respondents' compliance with the AMA, FMIA, PPIA, the regulations promulgated thereunder or this Order.

Enforcement Provisions

31. The Administrator, FSIS, will have the right to summarily withdraw inspection services upon a determination by the Director, or his or her designee, that one or more conditions

set forth in paragraphs of this Order have been violated. It is acknowledged that Respondents retain the right to request an expedited hearing pursuant to the USDA Rules of Practice, concerning any violation alleged as the basis for a summary withdrawal of voluntary inspection services. This does not affect Complainant's right to suspend operations in accordance with the regulations.

32. Nothing in this Order will preclude the referral of any violation of law to the U.S. Department of Justice for possible criminal or civil proceedings or preclude the Administrator from taking other appropriate administrative action under the AMA, FMIA, PPIA, and the regulations promulgated thereunder.

33. Nothing in this Order will preclude the Administrator, FSIS, from seeking further administrative remedy should Respondents or any person responsibly connected to Respondents be convicted of any act related to the following provisions set forth in 9 C.F.R. §§ 350.6 and 362.4 as bases for the denial or withdrawal of VRIS:

a. any willful misrepresentation to FSIS concerning any meat or other product for which service has been requested under the regulations in 9 C.F.R. Part 350;

b. any use without authority, or the imitation, of any marks or certificates of federal meat inspection on or with respect to any meat or other product;

c. being otherwise responsible for any fraudulent or deceptive practice with respect to VRIS under 9 C.F.R. Part 350;

d. any willful misrepresentation or any other fraudulent or deceptive practice in connection with any application or request for service under the regulations in 9 C.F.R. Part 362;

e. knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device for making any such mark or identification authorized or issued under 9 C.F.R. Part 362;

f. knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device;

g. knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device, or of any carcass, poultry, or product bearing any falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, or identification;

h. knowingly represented that any carcass, poultry, or product has been officially inspected and passed (by an authorized inspector) under 9 C.F.R. part 362, when it had not in fact been so inspected; or

i. be convicted, within the last ten years, of any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food, or fraud in connection with transactions in food, or any felony indicating a lack of the integrity needed for the conduct of operations affecting the public health.

34. If any provision of this Order is declared invalid, such declaration will not affect the validity of any other provision herein. This Order will be considered issued and effective on the date of signature by an Administrative Law Judge.

35. Respondents agree to the admission of the March 8, 2019 Response to the Notice of Show Cause, in total, in any future proceeding where Respondents are accused of one or more violations of the conditions set forth in the paragraphs of this Order.

36. This Order will expire three (3) years from the date on which the Respondents' VRIS resumes pursuant to the terms of this Order.

37. This Order shall become effective upon issuance by the Administrative Law Judge.

Lineage Logistics ICM, LLC, a Limited
Liability Company; and
Baker Cold Storage, INC. dba:
Lineage Logistics-Vernon

Respondents

[redacted]

Jason E. Burnett
Executive Vice-President and General Counsel
Lineage Logistics Holdings, LLC;
Lineage Logistics, LLC; and
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Issued this 31 day of Jul 2019,
at Washington, D.C.

[redacted] Acting, for

Administrative Law Judge

Channing D. Strother
Chief Administrative Law Judge