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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	}	FMIA Docket No. 15-0127
	}	15-0128
	}	
Zabiha Halal Meats Inc. and	}	
Daniel W. Ault,	}	
	}	
	}	
	}	
Respondents.	}	Amended Consent Decision and Order

This proceeding was instituted under the Federal Meat Inspection Act ("FMIA"), as amended (21 U.S.C. § 601 et seq.), and the applicable Rules of Practice (7 C.F.R. § 1.130 et seq. and 9 C.F.R. § 500.1 et seq.), to withdraw Federal inspection services from Zabiha Halal Meats Inc. and Daniel W. Ault (hereinafter referred to as the Respondents). This proceeding was commenced by a complaint filed on June 15, 2015, by the Administrator of the Food Safety and Inspection Service (FSIS), United States Department of Agriculture (USDA). The parties agreed that this proceeding should be terminated by entry of a Consent Decision and Order, dated December 29, 2015, pursuant to the Consent Decision provisions of the Rules of Practice (7 C.F.R. § 1.138). The parties have agreed to modify the Consent Decision and Order, dated December 29, 2015, with entry of an Amended Consent Decision and Order, as set forth below.

The 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 and waive oral hearing and further procedure in this matter, and waive any claim against the Complainant under the Equal Access to Justice Act of 1980 (5 U.S.C. § 504 et seq.). The

Respondents, further, consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Zabiha Halal Meats Inc., herein referred to individually as Respondent Corporation, is now and at all times material herein was a corporation located at 10811 SE 00 West, Fairmount, Indiana, 46928.

2. Respondent Corporation was and has been granted federal inspection services, pursuant to the FMIA, since July 1, 2013, at the above named establishment that was and has been designated as Official Establishment Number M45105.

3. Respondent Daniel W. Ault is and at all times material herein was the Owner and holder of ten percent or more voting stock of Respondent Corporation. Mr. Ault's business address is 10811 S.E. 00 West, Fairmont, Indiana 46928.

4. On January 26, 2015, in the Madison Circuit Court, Anderson, Madison County, Indiana, Respondent Ault, Owner and stock holder in Respondent Corporation, pled guilty to four class D felony charges for the improper disposal of a dead animal.

5. On June 15, 2015, the FSIS filed a complaint, under 7 C.F.R. §§ 1.133 and 1.135, alleging that Respondents were unfit to engage in business requiring federal inspection services under Title 1 of the Federal Meat Inspection Act (21 U.S.C. 601 et seq) (FMIA).

6. On December 29, 2015, the parties agreed to terminate the proceeding by entering into a Consent Decision and Order in accordance with the Consent Decision and Order provisions of the Rules of Practice, 7 C.F.R. § 1.138.

7. The Consent Decision and Order contained numerous provisions to ensure Respondents complied with the FMIA, including conditions related to compliance with food safety and sanitation requirements of 9 C.F.R. Parts 416, 417, and 418. The Consent Decision and Order also included enforcement provisions, including for withdrawal of inspection service for violations of the FMIA, regulations, or the Consent Decision and Order.

8. On August 2, 2016, the Food Safety and Inspection Service suspended the assignment of inspectors to Respondents federal inspected operations due to the observation of insanitary conditions and rodent activity within the official premises in violation of FSIS food safety laws, including 9 C.F.R. Part 416, and the Consent Decision and Order.

9. Subsequently, on August 4, 2016, the Food Safety and Inspection Service issued a written Notice of Show of Cause Letter to Respondents to provide Respondents the opportunity to present their views as to why FSIS should not summarily withdraw Respondent's inspection services, pursuant to the provisions of the Consent Decision and Order.

10. Respondents provided responses to the Show of Cause letter, which included corrective and preventive actions to achieve and maintain compliance with FSIS statutory and regulatory requirements, including, among other things, sanitary conditions.

11. In lieu of continuing with further administrative proceedings, the parties have agreed to modify the terms and conditions of the Consent Decision and Order, dated December 29, 2015, by entry of a new, Amended Consent Decision and Order, which represents the agreement of the parties.

Conclusion

The Respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, this decision will be entered.

Order

Federal meat inspection services under Title I of the FMIA are withdrawn from the Respondent and Respondent Corporation's owners, officers, directors, partners, successors, affiliates and assigns, directly or through any business or other device, for a period of three (3) years, beginning on the effective date of this Order; Provided, however, said withdrawal of inspection services shall be held in abeyance, and Federal meat inspection services shall be provided to the Respondents, pursuant to a conditional grant of inspection, for so long as the statutory and regulatory requirements for applicable inspection services are met, in addition to all terms and conditions of this Order set forth below.

Establishment Management and Personnel

1. Prior to the effective date of this Order, and subject to verification by FSIS, Respondents shall submit to the Chicago District Manager an application for Federal Inspection with a request to change and update the ownership and management information to reflect the current individuals responsibly connected to the Respondent Corporation. FSIS must review the application and verify that the responsibly connected individuals can receive federal meat inspection services. Throughout the duration of this Order, Respondents shall update and submit the application for Federal Inspection as needed to accurately reflect the establishment, operational, and ownership/management information.

2. Prior to the effective date of this Order, Respondents shall appoint or hire, with concurrence of the Director, Evaluation and Litigation Division (ELD) of the Office of Investigation, Enforcement, and Audit, FSIS (hereinafter, the Director, ELD), an individual to the position of Corporate Ethics and Compliance Officer (hereinafter "CECO"). The CECO will be responsible, along with the Corporate President, for ensuring compliance with the Order. Any

changes to the CECO shall be made with the concurrence of the ELD Director. The CECO shall have the responsibility for: (a) supervising and monitoring Respondents compliance with this Order; (b) implementing the Corporate Code of Conduct and Ethics established under paragraph 4 of the Order; (c) maintaining records and reports required by this Order; and (d) reporting to FSIS, in accordance with paragraph 29, on Respondents' compliance with the Order.

3. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents shall:

(a) designate, in writing, two full-time employees, one as a principal and the other as an alternate, who shall be responsible for the overall implementation, coordination, documentation, monitoring, recordkeeping, review and maintenance of the facility's SPS, SSOPs, HACCP, *E. coli* Biotype sampling and testing programs, Pest Management Program, Planned Improvement Program (PIP), other written sanitation programs, process controls, and corrective actions as required by regulation or this Order; and

(b) provide a detailed summary of the authority and responsibilities that the designated principal and alternate are granted with respect to actions taken in the establishment.

4. Respondents shall not conduct any processing operations in the absence of said designated principal or alternate. The designated principal and alternate shall have authority to hold up production, stop production, remove product from production, or take positive control of any products produced, processed, packed, or stored at the establishment that are or are believed to be adulterated or misbranded, or when facility sanitation or production deficiencies are observed. Respondents may name a new designated principal and alternate employee or employees upon written notification to the FSIS.

Ethics Training and Corporate Code of Conduct and Ethics

5. Within ninety (90) days of the effective date of this Order, Respondent Ault shall participate in and successfully complete a training program or educational course encompassing ethical business practices which has received prior approval by the Director, ELD. Respondents shall maintain for the duration of the Order records documenting the completion of such training and shall make these records available upon request to any authorized representative of the Secretary.

6. Within sixty (60) days of the effective date of this Order, Respondents shall develop and implement a corporate code or policy statement of business conduct and ethics to ensure food safety and regulatory compliance in business practices (hereinafter "Corporate Code") applicable to all business entities and individuals within or employed by Respondents. The Corporate Code, at minimum, shall include:

(a) the statement of company policy addressing business ethics and the public trust;

(b) the statement of Respondents' commitment to comply with all applicable Federal and State food safety and other laws in the conduct of their business;

(c) the guidelines for Respondents' employees to follow with respect to food safety and ethics issues, and;

(d) the assurances to preclude any acts of intimidation, assault, or interference of USDA program employees.

The Corporate Code shall be submitted to the Director, ELD for review and approval prior to implementation, shall be permanently displayed in a prominent location in Respondents' establishment, and shall be discussed with all current and new employees.

Company Requirements

7. Respondents shall demonstrate compliance with statutory and regulatory requirements, including but not limited to 9 C.F.R. Parts § 310, 416, 417, and 418 upon a review and examination of:

(a) Respondent's Sanitation Performance Standards (SPS), Sanitation Standard Operating Procedures (SSOPs), Hazard Analysis and Critical Control Point (HACCP) system, *E. coli* Biotype sampling and testing programs, Pest Management Program, Planned Improvement Program (PIP), other written sanitation, process controls, corrective actions, and sampling or testing programs required by regulation or this Order; and

(b) the physical and sanitary conditions of Respondents' establishment.

8. Respondents shall comply with statutory and regulatory requirements for humane handling as prescribed in 21 U.S.C. 610(b), the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. § 1901 et. seq.), and 9 C.F.R. Part 313.

9. During the period of this Order, within its discretion, FSIS may conduct examinations of records and other verification and monitoring activities to ensure the Respondents' compliance, implementation, and the effectiveness of its SPS, SSOP, HACCP, and other systems, plans, and records required by the FMIA, the regulations, and this Order.

Sanitation Performance Standards (SPS)

10. Prior to resumption of inspection services, and subject to verification by FSIS, Respondents shall:

(a) develop written procedures, including monitoring, corrective action, and recordkeeping procedures that Respondents will implement to operate and maintain its establishment, including its premises, facilities, equipment, and outside premises in a manner

sufficient to: (i) prevent the creation of insanitary conditions and practices, and to preclude harborage and breeding of pests; (ii) comply with the requirements of SPS regulations (9 C.F.R. § 416.1 to § 416.5); and (iii) ensure that meat and meat food products that are prepared, packed, and stored at Respondents' facility are not adulterated or misbranded; and

(b) address and correct any premises, facility and equipment noncompliance issues previously identified by FSIS, or identified by FSIS at the time of the physical plant review conducted pursuant to paragraph 1(b) of this Order.

11. Upon the resumption of inspection services, and subject to verification by FSIS, Respondents shall:

(a) operate and maintain, at all times, its establishment, including its interior premises, facilities, equipment, and outside premises, in a manner sufficient to prevent the creation of insanitary conditions and practices, comply with the requirements of the SPS regulations (9 C.F.R. § 416.1 to § 416.5), and to preclude harborage and breeding of pests;

(b) ensure that meat and meat food products are not adulterated;

(c) routinely assess its written SPS procedures to evaluate their effectiveness, and make necessary improvements, corrections, and repairs to the establishment buildings, structures, rooms, and compartments to ensure that they are kept in good repair and have sufficient size to allow for processing, handling, and storage of product in a manner to ensure and maintain sanitary conditions, and to preclude harborage and breeding of pests; and

(d) implement and maintain the SPS written procedures for the duration of this Order.

Planned Improvement Program

12. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents shall develop a "Planned Improvement Program" (PIP) designed to identify and correct noncompliance and to ensure that the entire structure of the facility, including its rooms and compartments, is of sound construction and that all equipment is maintained in proper working order and kept in good repair.

13. Upon the resumption of inspection services, and subject to verification by FSIS, Respondents shall implement and maintain their PIP as required in this Order, and document any findings and corrective actions to address structural and/or mechanical repairs and/or improvements to their facility and make these records available to FSIS for review and/or copying upon request.

Pest Management Program

14. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents shall develop a written pest management program, to be implemented and maintained by an independent pest control service, to prevent the harborage and breeding of pests within the facility and on its grounds consistent with 9 C.F.R. § 416.2(a) and (b) to ensure that:

(a) the pest control service reviews and services Respondents' facility and grounds at least monthly; and

(b) the pest control service provides Respondents written reports detailing its findings and recommendations of its review.

15. Upon resumption of inspection service, and subject to verification by FSIS, Respondents shall implement and maintain their pest management program in a manner sufficient to prevent the creation of insanitary conditions and practices, to prevent the harborage and breeding of pests, and to ensure that meat products stored, prepared, and packed are not contaminated or adulterated.

Sanitation Standard Operating Procedures (SSOPs)

16. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents shall:

(a) develop written sanitation standard operating procedures (SSOPs) to describe the monitoring activities, recordkeeping, and other procedures that Respondents will implement, conduct, and maintain, on a daily and ongoing basis, before, during, and after operations, in accordance with this Order and regulatory requirements (9 C.F.R. § 416.11 to § 416.16) to ensure sanitary conditions and prevent product adulteration; and

(b) ensure that its SSOPs include specific, written instructions addressing, at a minimum, the following procedures: (i) cleaning and sanitizing of food contact surfaces of facilities, equipment and utensils; (ii) proper handling, storage, denaturing, and disposal of inedible products; (iii) re-conditioning of contaminated product; and (iv) employee hygienic practices. These written instructions shall specify the frequency of each aforementioned procedure.

17. Upon the resumption of inspection services, and subject to verification by FSIS, Respondents shall:

(a) implement and maintain, on a daily and ongoing basis, its SSOP system as provided in this Order and regulatory requirements of 9 C.F.R. § 416.11 to § 416.16 to ensure sanitary conditions and prevent product adulteration; and

(b) implement and document all corrective and preventive actions, as required by 9 C.F.R. § 416.15; routinely evaluate the effectiveness of its SSOPs; and implement necessary modifications as required by 9 C.F.R. § 416.14 to ensure that regulatory requirements for the maintenance of sanitary conditions and the production and distribution of safe, wholesome, not adulterated, and properly labeled products in commerce are met.

E. coli Biotype I

18. Prior to the resumption of Federal inspection services, and subject to verification by FSIS, Respondents shall develop and implement an *Escherichia coli* Biotype I (*E. coli*) sampling and testing program and describe the procedures, sampling methodology, frequency, analyses, and record keeping the Respondents will conduct and maintain in order to ensure ongoing compliance with 9 C.F.R. § 310.25(a).

Management and Employee Training

19. Prior to the resumption of inspection services, and subject to verification by FSIS, Respondents shall develop a training program for all current employees and future hires involved in the preparation, processing, and/or production of meat and meat food products to ensure that employees are trained in all aspects of food safety measures and regulatory requirements, including the requirements of the SPS and SSOP programs, HACCP, *E. coli* Biotype sampling and testing programs, Pest Management Program, Planned Improvement Program (PIP), other written sanitation, process controls, and corrective actions, and

recordkeeping procedures relevant to each employee's position. Respondents will provide copies of all training materials to FSIS for review and evaluation prior to training employees.

20. Respondents shall, within thirty (30) days from the effective date of this Order, and subject to verification by FSIS, train all such current employees consistent with the requirements of paragraph 19 of this Order.

21. Respondents shall train and educate any new employee(s), consistent with the requirements of this Order, within thirty (30) calendar days of the first date(s) of employment.

22. Respondents shall conduct annual training for all employees and management personnel, current and new, involved in the preparation, processing, and/or production of meat and meat products consistent with statutory and regulatory requirements 9 C.F.R. § 310, 416, 417, and 418, and the requirements of this Order.

23. Respondents shall document and maintain all training and education materials, certifications, training records, test results, and other materials for all training required by paragraphs 19 through 22 of this Order and make these records available to FSIS personnel for review and/or copying immediately upon request.

Recordkeeping Provisions

24. Respondents shall maintain full, complete, and accurate written records of all business activities involved in their operations under the FMIA, including the SSOP, and HACCP records requirements. Respondents shall make these records available for review and copying upon request of any authorized representative of the Secretary.

25. Respondents shall make all records regarding its federally inspected establishment or other regulated business or business activities at said establishment available to FSIS personnel for review and/or copying immediately upon request by FSIS.

General Provisions

26. Respondents and their officers, directors, partners, employees, agents, affiliates, successors, and assigns shall not:

(a) violate any section of the FMIA or any regulations promulgated thereunder, or state or local statutes involving the preparation, sale, transportation, distribution or attempted distribution of any meat 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 Respondents' business;

(d) assault, intimidate, impede, threaten or interfere with any program employee in the performance of his or her official duties under the FMIA, or regulations promulgated thereunder; and

(e) conduct any operation requiring Federal inspection outside the official hours of operations without first submitting a written request to, and receiving written approval from FSIS.

27. Respondents shall not knowingly hire or add any new individual who has been convicted, in any Federal or State court, of any felony or more than one misdemeanor based upon the acquiring, handling, or distribution of unwholesome, mislabeled or deceptively packaged food, or based upon fraud in connection with transactions in food. Respondents shall immediately terminate their connection with any such individual when that individual's conviction becomes known to Respondents.

28. Respondents shall fully and completely cooperate with any FSIS investigation, inquiry, review or examination of Respondents' compliance with the FMIA or this Order.

Corporate Reporting to FSIS

29. Respondents shall provide an annual report to the Director, ELD regarding Respondents' compliance with all terms and conditions of this Order and FSIS statutory and regulatory requirements, including 9 C.F.R. Parts 416, 417, and 418.

Implementation

30. Respondents shall implement the company policies and programs required by this Order, require strict adherence to the company policies and programs on the part of all current and future officers, managers, and employees, and take and document corrective action, including disciplinary action, when necessary.

Enforcement Provisions

31. The Administrator, FSIS, may summarily withdraw the grant of federal inspection from Respondent upon a determination by the Director, ELD, that Respondent has committed an act in violation of, or has otherwise failed to comply with any requirement of this Order. The withdrawal of Respondent's grant of federal inspection services under the FMIA shall become effective immediately, without further proceeding, upon FSIS's service of a Notice of Summary

Withdrawal to Respondents. Respondents shall retain the right, after any summary withdrawal of Respondent's grant of federal inspection, to request an expedited hearing, pursuant to the applicable rules of practice (7 C.F.R. Part 1, subpart H and 9 C.F.R. Part 500), to contest the Agency's withdrawal of Respondent's grant of federal inspection services. Such request for an expedited hearing must be submitted within twenty (20) calendar days of FSIS' service of a Notice of Summary Withdrawal.

Miscellaneous Provisions

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

33. If any provision of this Order is declared invalid, such declaration shall not affect the validity of any other provision herein.

34. This Order shall be considered issued on the date that an Administrative Law Judge signs it but shall become effective on the date that the conditional grant of Federal inspection services is issued to Respondents.

35. This Order shall expire three (3) years from the date on which the Respondent's Federal inspection services resume.

Daniel W. Ault, Owner, for
Zabiha Halal Meats Inc.
Respondents

Scott C. Safian, Director
Enforcement and Litigation Division
Food Safety and Inspection Service
U.S. Department of Agriculture

[redacted]

For Tracey Manoff
Attorney for Complainant
U.S. Department of Agriculture
Office of the General Counsel

Issued this 7th day of September 2016

at Washington, D.C.

[redacted], CALJ

Administrative Law Judge