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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

In re: ) P. & S. Docket No. D-12- 0190  
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 The Smithfield Packing Company, Inc., )  
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 )  
 Respondent ) Complaint and Notice of Hearing

There is reason to believe that the Respondent named herein has willfully violated provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 et seq.) and therefore, this Complaint and Notice of Hearing is issued alleging the following:

I

(a) The Smithfield Packing Company, Inc., hereinafter referred to as Respondent, is a wholly-owned subsidiary of Smithfield Foods, Inc.. Respondent maintains its principal place of business at 111 Commerce Street, Smithfield, Virginia, 23430, and has a mailing address of PO Box 489, Smithfield, VA 23430.

(b) Respondent, at all times material herein, conducted operations at, among other places, 601 N. Church Street, Smithfield, VA, 23430 (Smithfield Facility). Respondent's Smithfield Facility operated as Gwaltney of Smithfield, Ltd, and has a mailing address of PO Box 447, Smithfield, VA 23430.

(c) Respondent, at all times material herein, conducted operations at, among other places, 15855 Hwy 87 West, Tar Heel, NC, 28392 (Tar Heel Facility).

Respondent's Tar Heel facility has a mailing address of P.O. Box 99, Tar Heel, NC, 28392.

(d) Respondent is and, at all times material herein, was:

(1) Engaged in the business of buying livestock in commerce for the purposes of slaughter and manufacturing or preparing meats or meat products for sale or shipment in commerce; and

(2) A packer within the meaning of and subject to the provisions of the Act.

## II

(a) Respondent, by certified mail received October 1, 2007, was notified that a dynamic monorail scale which Respondent used in its Smithfield Facility to obtain hot carcass weights for the payment of hog purchases was inaccurate and out of tolerance. The notice of violation letter dated September 27, 2007, informed Respondent that an on line test weighing of twenty hog carcasses conducted on June 11, 2007, had revealed a .32 % cumulative difference in the total hot weight which exceeded the tolerance of .20 % permitted by regulation 201.71 (a),(d) (9 C.F.R. § 201.71(a),(d)), under the incorporated specifications, tolerances, and other technical requirements set forth in the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44. The notice of violation letter also informed Respondent that operating as a subject packer using an inaccurate scale is

considered a violation of Section 202(a) of the Act (7 U.S.C. § 192(a)).

(b) Respondent was notified by certified mail received January 8, 2008, that a dynamic monorail scale which Respondent used in its Tar Heel Facility to obtain hot carcass weights for the payment of hog purchases was inaccurate and out of tolerance. The notice of violation letter dated January 4, 2008, informed Respondent that an on line test weighing of twenty hog carcasses conducted on December 13, 2007, had revealed a 0.32 % cumulative difference in the total hot weight which exceeded the tolerance of 0.20 % permitted by regulation 201.71 (a),(d) (9 C.F.R. § 201.71(a),(d)), under the incorporated specifications, tolerances, and other technical requirements set forth in the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44. The notice of violation letter also informed Respondent that operating as a subject packer using an inaccurate scale is considered a violation of Section 202(a) of the Act (7 U.S.C. § 192(a)).

### III

(a) On August 19, 2008, Respondent had already weighed, on a hot carcass basis, 5,099 hogs slaughtered that day at its Smithfield Facility, when Complainant conducted a test weighing of twenty of the carcasses that had been weighed by Respondent on its dynamic monorail scale. Complainant's test weighing of the twenty carcasses revealed a 0.41 % error level.

(b) Complainant promptly advised Respondent that the test weighing showed that hot carcass weights recorded that day over the dynamic monorail scale

were inaccurate and out of tolerance. Although Respondent had notice that the hot carcass weights its employees had recorded were inaccurate in a manner that was adverse to the livestock producers whose hogs had been weighed, Respondent used the inaccurate hot carcass weights it had recorded that day to determine the amount to be paid to producers for its livestock purchases.

#### IV

(a) On March 10, 2009, Complainant conducted a check weighing of a twenty-carcass sample of the hog carcasses that had been weighed by Respondent on its Line A dynamic monorail scale at its Tar Heel Facility. The test weighing established that the weights recorded by Respondent on this dynamic monorail scale were inaccurate and had a 0.35 % error level.

(b) On March 10, 2009, Respondent failed to maintain, and to have available at its Tar Heel Facility, the complete set of five calibrated test weights, required to properly test the accuracy of the static monorail scale which Respondent regularly used to check the accuracy of the hot hog carcasses weights recorded during the daily operation of its dynamic in-motion monorail scale.

#### V

On March 9, 2011, Complainant conducted a check weighing of a twenty-carcass sample of the hog carcasses that had been weighed by Respondent on its Line B dynamic monorail scale at its Tar Heel Facility. The test weighing established that the weights recorded by Respondent on this dynamic monorail scale

were inaccurate and had a -0.58 % error level.

## VI

By reason of the facts alleged in paragraphs I, II, III, IV and V herein, Respondent has willfully violated sections 201.71 and 201.99(d) of the regulations (9 C.F.R. §§ 201.71 and 201.99(d)) and section 202(a) of the Act (7 U.S.C. §§192(a)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has in fact willfully violated the Act, this Complaint and Notice of Hearing shall be served upon Respondent. Respondent shall have twenty (20) days after receipt of this Complaint and Notice of Hearing in which to file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing.

Respondent is hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing, a hearing will be held in accordance with the Rules of Practice, at a place and time to be designated later. At the hearing, Respondent will have the right to appear and show cause why an appropriate Order should not be issued in accordance with the provisions of the Act which requires that Respondent cease and desist from violating the Act with respect to matters alleged herein and assesses such civil penalties as are authorized by the

Act and warranted under the circumstances.

Done at Washington, D.C.

this 20 day of January, 2012



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Packers and Stockyards Program  
Grain Inspection, Packers and Stockyards  
Administration

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