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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
) P. & S. Docket No. D- 08 - 0141
Swift and Company d/b/a)
Swift Beef Company,)
)
Respondent) Complaint and Notice of Hearing

There is reason to believe that Swift and Company d/b/a Swift Beef Company (hereinafter "Respondent") has willfully violated provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §181 et seq.), hereinafter referred to as the Act, and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. §201.1 et seq.), hereinafter referred to as the regulations. The Act and the regulations state in pertinent part:

- (a) It shall be unlawful for any packer ... to [e]ngage in or use any unfair, unjustly discriminatory, or deceptive practice or device... . 7 U.S.C. § 192 (a).
- (b) All scales used by ... packers ... to weigh ... livestock carcasses ... for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the ... National Institute of Standards and Technology (NIST) Handbook 44... . 9 C.F.R. §201.71 (a).
- (c) Settlement and final payment for livestock purchased by a packer on a carcass

weight or carcass grade and weight basis ... basis shall be on actual hot weights. 9
C.F.R. §201.99 (d).

This complaint and notice of hearing is issued alleging the following:

I

(a) Respondent is a corporation organized and existing under the laws of the State of Delaware, located in Greeley, Colorado. Its business mailing address is 1770 Promontory Circle, Greeley, CO 80634.

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

(1) Engaged in the business of buying livestock in commerce for the purposes of slaughter;

(2) Engaged in the business of manufacturing or preparing meat and meat food products for sale or shipment in commerce; and

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

II

On April 4, 2007, the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards Program conducted a carcass weighing investigation of Respondent, to determine if Respondent's weighing procedures and equipment were accurate in accordance with the Act and regulations. The investigation revealed that:

(a) Respondent purchased livestock on a hot carcass weight basis;

(b) Respondent inaccurately weighed hot carcasses for the purposes of payment to livestock sellers. Specifically, Respondent's dynamic monorail weighing system

was not in accordance with the tolerances specified in, *inter alia*, sections N.1.3.6.1 and T.N.3.8 of the NIST Handbook 44, entitled Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices; and

- (c) Respondent reported inaccurate hot carcass weights to livestock sellers, and paid livestock sellers on those inaccurate hot carcass weights.

As a result of the practices described in paragraphs (a) through (c), above, Respondent failed to pay livestock sellers when due for livestock, in that it failed to pay the full amount due to livestock sellers for hot carcasses weighed, recorded and reported as required by the Act and the regulations and failed to pay the full amount due within the time frame required by the Act and the regulations.

III

By reason of the facts alleged in paragraph II herein, specifically, by Respondent's practice of inaccurately weighing livestock carcasses for the purposes of payment to livestock sellers and reporting inaccurately weighed hot carcass weights to livestock sellers, and by Respondent's practice of paying livestock sellers on those inaccurate hot carcass weights, Respondent has willfully violated section 202(a) of the Act (7 U.S.C. § 192 (a)), section 409 of the Act (7 U.S.C. § 228 b), and sections 201.71(a) and 201.99(d) of the regulations (9 C.F.R. §§ 201.71 and 201.99).

WHEREFORE, it is hereby ordered that for the purpose of determining whether Respondent has, in fact, willfully violated the Act and regulations issued thereunder, 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 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.). The answer shall be filed with an original and three copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material allegation of this complaint and notice of hearing. Allegations not answered will be deemed admitted for the purpose of this proceeding. Failure to file an answer shall constitute an admission of all the material allegations of this complaint and notice of hearing, unless prior to the time required to file an answer, the parties have agreed to a consent decision pursuant to section 1.138 of the Rules of Practice (7 C.F.R § 1.138).

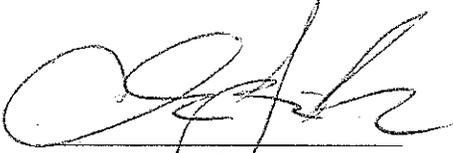
Respondent is hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing as provided by sections 1.136 and 1.141 of the Rules of Practice, a hearing will be held in accordance with the Rules of Practice, at a place and time to be later designated before an administrative law judge. 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 requiring Respondent to cease and desist from violating the Act with respect to matters alleged herein, and assessing such civil penalties as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.

this 18 day of June, 2008



Alan R. Christian
Deputy Administrator,
Packers and Stockyards Program



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