

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	
)	P&S Docket No. 16-0143
Noah's Ark Processors, LLC)	
)	
Respondent)	Complaint and Notice of Hearing

There is reason to believe that the Respondent named herein has willfully violated the Packers & 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.

- (1) Noah's Ark Processors, LLC. (Respondent) is a Limited Liability Company registered in the State of Minnesota. Respondent's business operating and mailing address is 1009 West M St. Hastings, Nebraska 68901.
- (2) Respondent at all times material herein was:
 - (a) Engaged in the business of buying livestock in commerce for the purposes of slaughter;
 - (b) Engaged in the business of manufacturing or preparing meat and meat food products for sale or shipment in commerce; and
 - (c) A packer within the meaning of and subject to the provisions of the Act.

II.

(1) On or about December 2, 2009, an administrative complaint was filed against the Respondent alleging the Respondent was operating as a packer under the Act, without obtaining the proper bond in violation of section 202(a) of the Act (7 U.S.C. § 192) and section 201.29 of the Regulations (9 C.F.R. § 201.29). On or about March 9, 2010, the Respondent agreed to pay a civil penalty in the amount of \$4,500, to resolve the administrative complaint.

(2) Based on a follow up investigation of the Respondent relating to a different violation of the Act, the Midwestern Regional Office, Packers and Stockyards Program, Grain Inspection Packers and Stockyards Administration (GIPSA), discovered the Respondent had increased the volume of its livestock purchases, and sent the Respondent a Notice requesting a financial instrument increase from \$765,000 to \$1,560,000.

(3) On or about November 24, 2014, the Midwestern Regional Office, Packers and Stockyards Program, GIPSA sent Respondent a Notice of Default (NOD) by certified mail. The NOD indicated that the regulations issued under the Packers and Stockyards Act required the Respondent to maintain a reasonable bond to secure the performance of its obligations for livestock. The NOD warned Respondent that failure to comply with the bonding requirements would result in an administrative complaint. Relevant provisions, forms and instructions for bonding increase were enclosed with the NOD. The NOD was returned unclaimed, and on January 14, 2015, Midwestern Regional Office Resident Agent, Steven Golus, personally delivered the NOD, forms and instructions to Don Willnerd, the Respondent's Controller, at 1009 West M Street, Hastings, Nebraska 68901. Respondent has not obtained the financial instrument increase.

(4) On June 20, 2016, the Respondent's 2015 Annual Report was received by the Packers and Stockyards Program. The report indicated that from January 1, 2015 to December 31,

2015, the Respondent purchased \$218,196,406.00 of livestock in commerce. Due to the increase in livestock purchase volume, the Respondent was provided notice that proper bonding amount is now \$1,680,000.00. The notice warned Respondent that failure to comply with the bonding requirements would result in administrative action. Relevant provisions, forms and instructions for bonding increase were enclosed with the notice. The notice was signed for at the Respondent's address in Hastings, Nebraska on June 30, 2016. Respondent engaged in the business of a packer purchasing livestock in commerce without maintaining an adequate bond or bond equivalent.

III.

By reason of the facts alleged in paragraph II of this Complaint and Notice of Hearing, Respondent has willfully violated section 202(a) of the Act (7 U.S.C. § 192(a)) and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29- 201.30).

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, Room 1031, South Building, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250-9200, 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 26th day of July, 2016



Susan B. Keith
Deputy Administrator
Packers and Stockyards Program



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