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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	P. & S. Docket No. D-07-0053
)	
Smithfield Beef Group, Inc.,)	
d/b/a Moyer Packing Co., Inc.,)	
)	
)	
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.), 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) Every packer ... shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business... . 7 U.S.C. § 221.
- (c) Each packer purchasing livestock on a ... carcass weight ... basis ... shall, after determination of the amount of the purchase price, transmit or deliver to the seller, or his duly authorized agent, a true written account of such purchase showing the number, weight, and price of the carcasses of each grade ... and any other information affecting the final accounting. Packers purchasing livestock on such a basis shall maintain sufficient records to substantiate the settlement of each

transaction. 9 C.F.R. §201.99 (b).

- (d) Settlement and final payment for livestock purchased by a packer on a carcass weight ... basis shall be on actual hot weights... . 9 C.F.R. §201.99 (d).
- (e) 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 1996 edition of the National Institute of Standards and Technology (NIST) Handbook 44... . 9 C.F.R. §201.71 (a).

This Complaint and Notice of Hearing is issued alleging the following:

I

(a) Moyer Packing Co., Inc., hereinafter referred to as Respondent, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, doing business in the Commonwealth of Pennsylvania. Its business mailing address is P.O. Box 64395, Souderton, PA 18964. Respondent is a wholly owned subsidiary of Smithfield Beef Group, Inc. Smithfield Beef Group, Inc., is a corporation organized and existing in the State of Delaware. Its business mailing address is P.O. Box 23000, Green Bay, WI 54305-3000.

(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; and

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

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

II

- (a) During the period November 29, 2001 through November 4, 2004, Respondent purchased livestock on a hot carcass weight basis.
- (b) Throughout the period set forth in paragraph (a) above, Respondent utilized a computer program which improperly rounded carcass weight.
- (c) Throughout the period set forth in paragraph (a) above, Respondent reported improperly rounded hot carcass weights to livestock producers, and paid livestock producers on those improperly rounded hot carcass weights.
- (d) Throughout the period set forth in paragraph (a) above, Respondent failed to maintain a written record of the properly rounded hot carcass weights.

Respondent, as a result of the practices described in paragraphs (a) through (c), above, failed to pay livestock producers when due for livestock, in that it failed to pay the full amount due for carcasses on which Respondent improperly rounded and recorded hot carcass weights.

III

By reason of the facts alleged in paragraph II herein, specifically, Respondent's practice of improperly rounding hot carcass weights, reporting the improperly rounded hot carcass weights to livestock producers, and paying livestock producers on those improperly rounded hot carcass weights, Respondent has willfully violated section 202(a) of the Act (7 U.S.C. § 192 (a)).

By reason of the facts alleged in paragraph II herein, specifically, Respondent's practice of failing to maintain a written record of properly rounded hot carcass weights, Respondent has failed to keep such accounts, records, and memoranda as fully and correctly disclose all

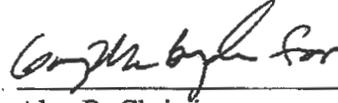
transactions involved in its business, as required by section 401 of the Act (7 U.S.C. § 221). By reason of the facts alleged in paragraph II herein, specifically, Respondent's practice of failing to keep a true written account of properly rounded hot carcass weights and failing to pay producers on a hot carcass weight basis for properly rounded, actual hot weights, Respondent has violated sections 201.71 and 201.99 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 wilfully 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 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.

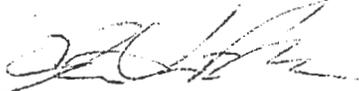
Respondent is hereby notified that unless hearing is waived, either expressly or by failure to answer and request a hearing, a hearing will be held in accordance with the Rules of Practice, at a place and time to be designated later. At the hearing, Respondent will have the right to appear and show cause why an appropriate Order should not be issued in accordance with the provisions of the Act which require that Respondent 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 January, 2007



Alan R. Christian
Deputy Administrator,
Packers and Stockyards Program



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