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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P & S Docket No. 0038
)
National Beef Packing Company,)
LLC,)
)
Respondent) Complaint and Notice of Hearing

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

I.

(a) National Beef Packing Company, LLC, hereinafter referred to as "Respondent," is a limited liability company organized and existing under the laws of the State of Delaware. Its business mailing address is P.O. Box 20046, Kansas City, Missouri 64195.

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

II.

(a) During the period of December 27, 2005 through January 21, 2006, Respondent failed to disclose, or to make known to livestock sellers, a freight charge deduction and data error that affected the prices that Respondent paid for cattle purchased pursuant to quality-based pricing grids.

(b) Respondent's quality-based grids are pricing formulas that are used to set the prices that are paid to producers who sell cattle to Respondent's plants on a carcass grade and weight basis. Respondent's quality-based grids are not the only valuation mechanism available to producers contracting for the sale of cattle to Respondent's plants. Respondent also purchases cattle on a liveweight basis and on other carcass weight pricing formulations.

(c) Respondent's quality-based grids are designed to reward producers for high-quality beef cattle. For example, Respondent's grids reward producers for animals whose carcasses obtain the highest U.S. Quality Grade designation of "Prime." Carcasses with the highest degrees of cutability, represented by U.S. Yield Grades 1 or 2, may also receive a price premium. Similarly, carcasses derived from cattle that meet certain phenotypic requirements and that meet the grading or other requirements for certification in a particular marketing program, such as the Certified Angus Beef ("CAB") brand program, may also receive a price premium. Conversely, the grids discount carcasses with less desirable grade and yield characteristics that cannot be used in Respondent's branded products. Certain types of cattle, such as dairy breeds, are excluded from Respondent's grid-based pricing.

(d) Respondent's quality-based grids utilize cattle sales price data reported by USDA's Market News ("Market News") to establish the base price per hundredweight that will be paid to producers opting to sell cattle to Respondent under contracts that utilize a grid as the pricing mechanism. Premiums or discounts, such as those described in sub-paragraph (c) above, are added to, or subtracted from, the base price depending on the grid specifications and the quality and yield of the carcass. Respondent's grids utilize Market News reported boxed beef sales price data to calculate Prime and CAB grid premiums. By utilizing Market News price data, Respondent's grids are able to adjust the prices that Respondent pays producers to reflect changing supply and demand conditions in the markets for cattle and beef.

(e) During the period of December 27, 2005 through January 21, 2006, Respondent deducted a \$.75/cwt freight charge in grid-based pricing calculations. The freight charge was subtracted from Market News reported prices in Respondent's calculations of Prime and CAB premiums. Respondent did not disclose to livestock sellers that the freight charge was being deducted.

(f) Additionally, Respondent used inaccurate Prime and CAB premium price numbers for the week of December 18, 2005 through December 24, 2005 to calculate a rolling four-week average that was used in Respondent's quality-based pricing grids. Respondent's use of inaccurate Prime and CAB premium price numbers resulted in underpayments to some producers whose cattle were priced using Respondent's grids during the period of December 27, 2005 through January 21, 2006.

(g) Livestock sellers delivering cattle to Respondent's plants in Dodge City, Kansas and Liberal, Kansas received \$18,775.39 less for their cattle during the period of December 27, 2005 through January 21, 2006 than they would have received if Respondent had not included the undisclosed freight deduction and data error, described in sub-paragraphs (e) and (f) above, in Respondent's grid-based pricing calculations.

III.

By reason of the facts alleged in paragraph II herein, Respondent has willfully violated section 202(a) of the Act, (7 U.S.C. § 192(a)), and section 201.99 of the regulations (9 C.F.R. § 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 following 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 20 day of December 2007



Alan R. Christian
Deputy Administrator,
Packers & Stockyards Program



Charles E. Spicknall
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
Trade Practices Division
1400 Independence Avenue, S.W.
Room 2318, South Building
Washington, D.C. 20250
Telephone: (202) 720-8564