

UNITED STATES  
DEPARTMENT OF AGRICULTURE

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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P&S Docket No. -D-10-0457
	)	
JBS USA, LLC, f/k/a Swift &	)	
Company and Swift Pork	)	
Company,	)	
	)	
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.*) (the "Act") and the regulations promulgated thereunder by the Secretary of Agriculture (9 C.F.R. § 201.1 *et seq.*) (the "regulations") and therefore this Complaint and Notice of Hearing is issued alleging the following:

I.

(a) JBS USA, LLC, formerly known as Swift & Company and Swift Pork Company, is a limited liability company organized and existing under the laws of the State of Delaware. Its business mailing address is 1770 Promontory Circle, Greeley, Colorado 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; and

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

## II.

(a) During the period of January 1, 2007, through November 30, 2007, Respondent purchased hogs for slaughter on a carcass merit basis. Premiums and discounts were added to and subtracted from the base prices that hog sellers received depending on the weight and lean percent of individual hog carcasses in the sellers' lots. Carcasses with a lean percent above 51% received a price premium. Conversely, carcasses with a lean percent of 49% or less received a discount. The premiums and discounts were disclosed to hog sellers by Respondent's carcass merit adjustment or buying matrices.

(b) At all times material to the allegations herein, Respondent used an electronic probe known as the Fat-O-Meat'er to obtain back fat and loin eye measurements from each processed hog carcass. Data from the probe was used to calculate the lean percent of processed hogs in order to adjust carcass merit payments to hog sellers. Occasionally, the Fat-O-Meat'er probe failed to obtain lean data for a particular carcass or carcasses in a lot. A lean percent was not calculated for carcasses with missing data.

(c) In the transactions set forth in the table below, and on numerous other occasions, Respondent purchased hogs on a carcass merit basis and provided inaccurate accountings to sellers in that 1) Respondent failed to disclose when missing Fat-O-Meat'er data prevented Respondent from calculating the lean percent of a particular carcass or

carcasses in a seller's lot and 2) Respondent substituted an arbitrary lean value of 49% for carcasses with missing data:

Plant	Lot No.	Kill Date	Number of Carcasses in the Lot	Number of Carcasses with Missing Lean Data	Average Lean Percentage of the Lot	Lean Percentage Used for Carcasses with Missing Lean Data	Payment Reduction Resulting from Use of 49% Lean Versus Lot Average
Worthington	318	02/19/07	182	21	57.4%	49%	\$293.23
Worthington	7850	05/11/07	159	18	55.9%	49%	\$195.84
Worthington	250	08/29/07	174	19	57.0%	49%	\$224.34
Worthington	390	11/02/07	180	19	55.6%	49%	\$183.06
Marshalltown	3404	03/15/07	184	12	58.0%	49%	\$150.99
Marshalltown	3478	06/28/07	179	14	56.0%	49%	\$158.58
Louisville	1120	01/08/07	171	18	54.5%	49%	\$150.20
Louisville	1107	03/05/07	193	37	55.3%	49%	\$397.76
Louisville	1427	08/09/07	156	28	53.9%	49%	\$216.36
Louisville	1365	11/07/07	176	33	54.2%	49%	\$262.43
Worthington	389	01/10/07	197	37	55.3%	49%	\$427.82
Worthington	1295	03/09/07	190	26	57.1%	49%	\$360.71
Worthington	7583	09/18/07	182	33	54.1%	49%	\$273.00
Louisville	1512	01/05/07	176	11	54.3%	49%	\$84.92
Louisville	1511	03/09/07	180	30	53.7%	49%	\$218.84
Louisville	1361	07/26/07	182	19	52.4%	49%	\$137.59

Total: \$3,735.67

(d) Hog sellers to Respondent's plants received an automatic discount of \$1.00 to \$2.00 per hundredweight (cwt) for carcasses with missing Fat-O-Meat'er data and were unable to obtain possible premiums of up to \$5.30/cwt for those carcasses.

(e) Respondent's use of an undisclosed, arbitrary lean percent value of 49% to calculate carcass merit payments for carcasses with missing Fat-O-Meat'er data, versus a lean percent equal to the average of the remainder of the lot, reduced payments for hogs

delivered to Respondent's Worthington, Marshalltown, and Louisville plants by an estimated \$350,000 during the period of January 1, 2007, through November 30, 2007.

### 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 30 day of September 2010



Alan R. Christian  
Deputy Administrator,  
Packers & Stockyards Program



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