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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

FD

In re:

P&S Docket No -10-0141

John Morrell & Co.,

Respondent

Complaint and Notice of Hearing

There is reason to believe that the Respondent has willfully violated provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*)(Act) and the regulations promulgated thereunder (9 C.F.R. part 201)(regulations); therefore, this complaint is issued alleging the following:

I.

(a) John Morrell & Co., (Respondent) is a corporation incorporated in Delaware whose corporate headquarters is located in the state of Ohio and whose business address is 805 E. Kemper Rd., Cincinnati, OH 45246.

(b) Respondent, at all times material to this complaint, was:

(1) engaged in the business of purchasing livestock in commerce for the purpose of slaughter and of manufacturing or preparing meats or meat food products for sale or shipment in commerce; and

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

II.

As part of its carcass merit program from 2005 to 2007, Respondent informed sellers that Respondent would account and pay for carcasses for which no actual weight or lean percent was recorded, called "lost identity" carcasses, using the average weight and average lean percentage for the lot to represent the weight and lean percent for the ungraded carcasses. In fact, however, in instances where a lean percent was not recorded, Respondent substituted a lean percentage other than the average lean percent of the carcasses in the same lot in calculating the amounts to be paid for these carcasses.

III.

(a) Respondent provided inaccurate and false accountings to the sellers of hogs for the lots listed in the following table, and on numerous other occasions, in that: (1) Respondent purchased livestock on a carcass merit basis and failed to notify sellers that some of those carcasses were ungraded; (2) without notice to the livestock sellers, Respondent substituted an arbitrary lean percentage of 53% for those carcasses that were not linked to a lean percent in its accountings to the seller.

Plant Location	Lot No	Kill date	Number of carcasses in lot	Number of carcasses with substituted lean percentages	Average lean percentage for the lot	Lean percentage that Respondent substituted in the accounting
Sioux City	5643	08/11/2005	186	26	55.0%	53%
Sioux City	5641	08/11/2005	191	34	55.8%	53%
Sioux City	5800	08/11/2005	206	39	54.9%	53%
Sioux City	5670	08/12/2005	192	30	55.9%	53%
Sioux City	5845	08/15/2005	198	22	54.4%	53%
Sioux City	5763	08/15/2005	187	31	54.9%	53%
Sioux City	5700	08/16/2005	208	22	54.4%	53%
Sioux City	5879	03/23/2006	174	11	54.8%	53%
Sioux City	5688	03/23/2006	179	12	55.6%	53%
Sioux City	5737	04/17/2006	174	13	55.9%	53%
Sioux City	5867	04/17/2006	171	6	54.5%	53%
Sioux City	5778	06/29/2006	180	6	54.7%	53%
Sioux City	5606	06/29/2006	170	14	56.9%	53%
Sioux City	5903	07/26/2006	182	25	55.6%	53%
Sioux City	2945	07/26/2006	143	10	56.5%	53%
Sioux City	5875	10/06/2006	183	68	55.6%	53%
Sioux City	5889	10/06/2006	184	3	55.5%	53%
Sioux City	5909	11/21/2006	174	5	54.9%	53%
Sioux City	5926	12/15/2006	168	16	54.8%	53%
Sioux City	5679	12/15/2006	176	6	54.3%	53%
Sioux City	5816	02/23/2007	175	108	58.6%	53%
Sioux City	5631	02/23/2007	182	29	57.2%	53%
Sioux City	5744	04/25/2007	178	6	54.1%	53%
Sioux Falls	2069	01/16/2006	135	2	55.0%	53%
Sioux Falls	2396	03/23/2006	72	3	56.3%	53%
Sioux Falls	3261	04/17/2006	180	1	55.2%	53%

Sioux Falls	2736	04/17/2006	120	2	54.5%	53%
Sioux Falls	4939	07/26/2006	164	1	54.9%	53%
Sioux Falls	4976	10/06/2006	176	3	55.9%	53%
Sioux Falls	2755	10/06/2006	181	3	54.4%	53%
Sioux Falls	4966	11/21/2006	206	4	54.8%	53%
Sioux Falls	2423	02/23/2007	174	5	54.8%	53%
Sioux Falls	2480	02/23/2007	150	10	55.9%	53%

(c) On 48 randomly selected shifts from June 2005 through April 2007, Respondent failed to obtain lean percentages for 6,739 hogs out of 354,834 hogs and substituted a percentage of 53% for the grade when, during a significant portion of that period, from January 1, 2006 through April 30, 2007, the average lean percentage of carcasses at its facilities exceeded 54%. This substitution resulted in small amounts of loss for individual sellers. In the aggregate, however, Respondent's substitution resulted in estimated losses in an amount between over \$300,000 to over \$570,000 for all hog producers who sold to Respondent on a carcass merit basis from January 1, 2006 until April 30, 2007.

IV.

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

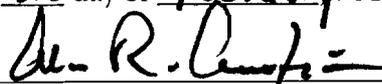
By reason of the facts alleged in paragraph III, Respondent has willfully violated section 202(a) of the Act (7 U.S.C. § 192(a)) and section 201.99(b) of the regulations (9 C.F.R. § 201.99).

Wherefore, it is hereby ordered that for the purpose of determining whether Respondent has, in fact, willfully violated the Act, this Complaint and Notice of Hearing shall be served upon Respondent. Respondent shall have twenty (20) days after receipt of

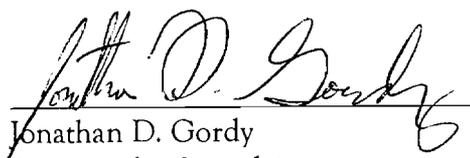
this Complaint and Notice of Hearing in which to file with the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250, an answer with an original and three copies, fully and completely stating the nature of the defense and admitting or denying, specifically and in detail, each material 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 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 notified that unless a hearing is waived, whether expressly or by failure to answer and request a hearing as provided by sections 1.136 and 1.141 of the Rules of Practice (7 C.F.R. §§ 1.1.36, 1.141), a hearing for the above-mentioned purpose will be held at a place and time to be later designated before an administrative law judge authorized to conduct a hearing. 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 the matters alleged herein, and assessing an appropriate civil penalty.

Done at Washington, D.C.

this 25 day of February 2010



Alan R. Christian
Deputy Administrator
Packers and Stockyards Program



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