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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
) P & S Docket No. D - 12 - 0127
)
) Nebraska Beef, Ltd.,)
)
) 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.*) (the Act) 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.

- (a) Nebraska Beef, Ltd., hereinafter referred to as the respondent, is a limited partnership with a business mailing address of 4501 South 36th Street, Omaha, Nebraska 68107.
- (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.

Respondent, when purchasing livestock on a carcass weight basis, failed to maintain and operate an accurate scale for the purpose of determining livestock carcass weights at respondent's slaughter facility in Omaha, Nebraska.

- (a) Specifically, on July 28, 2008, the dynamic monorail scale on the kill floor at respondent's plant, which was used to determine hot carcass weights, failed to meet

applicable accuracy tolerances for dynamic monorail scales established by the National Institute of Standards and Technology ("NIST").

(b) Carcass hot weights are used by respondent to calculate the payments that are due to cattle sellers who sell cattle to the respondent on a carcass weight basis.

During the period of July 28, 2008 through December 23, 2008, respondent purchased approximately one hundred and ninety-eight thousand (198,000) cattle on a carcass weight basis.

(c) In August, 2008, the respondent was notified by the Grain Inspection, Packers and Stockyards Administration ("GIPSA"), in a Notice of Violation letter, by certified mail, that that the error rate of respondent's dynamic monorail scale during the July, 2008, test exceeded the allowable tolerances set by NIST. The letter referenced section 201.71(a) of the regulations promulgated under the Act (9 C.F.R. § 201.71(a)), and notified the respondent of its obligation to correct its business practices.

(d) On December 23, 2008, in conjunction with the State of Nebraska Department of Agriculture, Division of Scales and Weighing, the Packers and Stockyards Program retested respondent's dynamic monorail scale on the kill floor and again the dynamic monorail scale, which continued to be used to determine hot carcass weights, failed to meet applicable NIST accuracy tolerances.

III.

In July, 2008, and in December, 2008, when purchasing livestock on a carcass weight basis, the respondent failed to pay for livestock based on accurate or correct weights.

(a) Specifically, on July 28, 2008, the respondent purchased carcass number 47, lot number 6, from Greg Rus, based on a weight of 941 pounds when, in fact, the

scale tickets for each half of carcass number 47 indicate the halves weighed 480.6 and 462.1 pounds, which add up to a total of 942.7 pounds.

(b) On July 28, 2008, the respondent purchased carcass number 68, lot number 6, from Greg Rus, based on a weight of 833 pounds when, in fact, the scale tickets for each half of carcass number 68 indicate the halves weighed 426.9 and 408.4 pounds, which add up to a total of 835.3 pounds.

(c) On December 23, 2008, the respondent purchased carcass number 32, lot number 315, from Mack Brothers, based on a weight of 1054 pounds when, in fact, the scale tickets for each half of carcass number 32 indicate the halves weighed 527.7 and 528.3 pounds, which add up to a total of 1056 pounds.

(d) On December 23, 2008, the respondent purchased carcass number 37, lot number 318, from Anderson Livestock, LLC, based on a weight of 922 pounds when, in fact, the scale tickets for each half of carcass number 37 indicate the halves weighed 467.2 and 456.5 pounds, which add up to a total of 923.7 pounds.

IV.

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 sections 201.71 and 201.99 of the regulations (9 C.F.R. §§ 201.71 and 201.99).

By reason of the facts alleged in paragraph III 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).

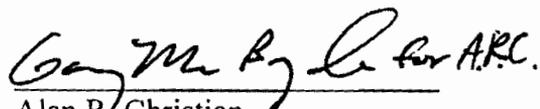
WHEREFORE, it is hereby ordered that for the purpose of determining whether respondent has, in fact, willfully violated the Act and regulations issued thereunder, this

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.*). Allegations not answered shall 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 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 28 day of December 2011


Alan R. Christian
Deputy Administrator
Packers and Stockyards Program

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