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UNITED STATES DEPARTMENT OF AGRICULTURE RECEIVED
BEFORE THE SECRETARY OF AGRICULTURE

In re:) P. & S. Docket No. D-12-0190
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The Smithfield Packing Company, Inc.,)
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)
Respondent) Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. §§ 181 et seq.), by a complaint filed by the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that respondent The Smithfield Packing Company, Inc., willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. §§ 201.1 et seq.). This decision is entered pursuant to the consent decision provision of the rules of practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondent admits the jurisdictional allegations in paragraph I of the Complaint and Notice of Hearing and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

- (a) The Smithfield Packing Company, Inc., hereinafter referred to as Respondent, is a wholly-owned subsidiary of Smithfield Foods, Inc.. Respondent maintains its principal place of business at 111 Commerce Street, Smithfield, Virginia, 23430, and has a mailing address of PO Box 489, Smithfield, VA 23430.
- (b) Respondent conducted operations at, among other places, 601 N. Church Street, Smithfield, VA, 23430 (Smithfield Facility). Respondent's Smithfield Facility operated as Gwaltney of Smithfield, Ltd, and has a mailing address of PO Box 447, Smithfield, VA 23430.
- (c) Respondent conducted operations at, among other places, 15855 Hwy 87 West, Tar Heel, NC, 28392 (Tar Heel Facility). Respondent's Tar Heel Facility has a mailing address of P.O. Box 99, Tar Heel, NC, 28392.
- (d) 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 manufacturing or preparing meats or meat products for sale or shipment in commerce; and
 - (2) A packer within the meaning of and subject to the provisions of the Act.

Conclusions

The respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order


Respondent, its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, in connection with its activities subject to the Act, shall cease and desist from:

- (1) Failing to maintain and operate scales to ensure accurate weights in compliance with 9 C.F.R. § 201.71(a) and (d) of the regulations and the applicable requirements contained in the General Code, Scales Code, and Weights Code for the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is incorporated by reference in 9 C.F.R. § 201.71;
- (2) Making settlement and final payment for livestock purchased by respondent on a carcass weight or carcass grade and weight basis based on inaccurate hot carcass weights;
- (3) Failing to maintain, and to have available at its facilities, a complete set of calibrated test weights to properly test the accuracy of its monorail scales.


In accordance with section 203 of the Act (7 U.S.C. § 193), respondent is assessed a civil penalty in the amount of Thirty-Nine Thousand Dollars (\$39,000.00).


This Order shall have the same force and effect as if entered after full hearing. The provisions of this Order shall become final and effective on the sixth day after service of this Consent decision and Order on respondent.

Copies of this decision shall be served upon the parties.



The Smithfield Packing Company, Inc.
By: Joel T. Weaver, Corporate Counsel
Respondent


Brett T. Schwemer
Olsson Frank Weeda Terman Matz PC
Attorney for Respondent


Krishna G. Ramaraju
Attorney for Complainant

Done at Washington, D.C.

this 19th day of March, 2012

A solid black rectangular redaction box covering the signature of the Administrative Law Judge.

Administrative Law Judge