

# AGRICULTURE DECISIONS

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE  
SECRETARY OF AGRICULTURE AND THE COURTS  
PERTAINING TO STATUTES ADMINISTERED BY THE  
UNITED STATES DEPARTMENT OF AGRICULTURE

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**PACKERS AND STOCKYARDS ACT****PACKERS AND STOCKYARDS ACT****COURT DECISIONS****SYVERSON v. USDA.****No. 11-1363.****Court Decision.****Filed January 27, 2012.****Rehearing and Rehearing En Banc Denied April 12, 2012.****PS—Suspension—Reasonable period.**

[Cite as: 666 F.3d 1137 (8th Cir. 2012)].

**United States Court of Appeals,  
Eighth Circuit.****Before: WOLLMAN, MURPHY, and BENTON, Circuit Judges.****OPINION OF THE COURT**

WOLLMAN, Circuit Judge.

Todd Syverson appeals from the sixteen-month suspension of his registration under the Packers and Stockyards Act (PSA or Act), 7 U.S.C. §§ 181–229, a sanction imposed after remand by the judicial officer of the United States Department of Agriculture. We affirm.

**I.**

In 2002, Syverson purchased cattle for Lance Quam. Syverson purchased cattle at a slaughter auction, had them inspected by a veterinarian, consigned them for sale at a dairy auction, and then repurchased them from his own consignment. He delivered some of the cows to Quam, accompanied by an invoice that showed the dairy-auction price, a commission, a veterinary fee, and the cost of trucking. Syverson did not disclose that he had repurchased the cows from his own consignment or that the cows initially had been purchased at the slaughter auction, at a lower price.

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After Quam discovered Syverson's practice, he complained to the Grain Inspection, Packers and Stockyard Administration (GIPSA). GIPSA commenced an investigation and requested that Syverson produce his business records. Syverson claimed that the records were lost or misfiled, but eventually turned over some records. Those records did not include the initial price or the source of the cows purchased for Quam. In 2004, GIPSA filed a formal complaint against Syverson, alleging that his self-dealing was an unfair or deceptive practice, in violation of 7 U.S.C. § 213(a), and that his failure to keep proper records violated 7 U.S.C. § 221.

An administrative law judge (ALJ) determined that Syverson, acting as a dealer, had engaged in unfair and deceptive trade practices and had intentionally withheld business records, in violation of the PSA. The ALJ assessed a civil penalty and ordered Syverson to cease and desist from similar violations of the Act. GIPSA appealed the decision to the judicial officer. The judicial officer concluded that Syverson acted as a market agency, engaged in unfair and deceptive practices, and failed to keep adequate records of his business. Along with a cease and desist order, the judicial officer suspended Syverson's registration under the PSA for five years. Syverson then appealed to our court.

In our first decision, *Syverson v. U.S. Department of Agriculture*, 601 F.3d 793 (8th Cir. 2010) (*Syverson I*), we upheld the determination that Syverson, as a market agency, had violated the Act. We reversed the judicial officer's imposition of a five-year suspension, however, concluding that it was "unwarranted in law and without justification in fact." *Id.* at 805. On remand, GIPSA recommended a two-year suspension, while Syverson requested a suspension of "less than 30 days, if any." *In re Todd Syverson*, P & S Docket No. D-05-0005, 3 (Nov. 16, 2010) (Decision and Order on Remand) (quoting the brief Syverson submitted after remand). Following briefing and review of the record, the judicial officer imposed a sixteen-month suspension. The final order allows Syverson to apply for a modification to be a salaried employee of another registrant or packer, following the expiration of eight months of the suspension term. *Id.* at 14-15. The suspension has been stayed pending judicial review.

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## II.

The Secretary may suspend “for a reasonable specified period” any registrant who has violated any provision of the Act. 7 U.S.C. § 204. We review the Secretary’s orders “according to the fundamental principle that where Congress has entrusted an administrative agency with the responsibility of selecting the means of achieving the statutory policy the relation of remedy to policy is peculiarly a matter for administrative competence.” *Butz v. Glover Livestock Comm’n Co.*, 411 U.S. 182, 185, 93 S.Ct. 1455, 36 L.Ed.2d 142 (1973) (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 112, 67 S.Ct. 133, 91 L.Ed. 103 (1946)) (internal quotations and alterations omitted). “The court may decide only whether under the pertinent statute and relevant facts, the Secretary made ‘an allowable judgment in [his] choice of the remedy.’ ” *Id.* at 189, 93 S.Ct. 1455 (quoting *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 612, 66 S.Ct. 758, 90 L.Ed. 888 (1946)) (alterations in original). Thus, we cannot overturn the Secretary’s choice of sanction unless it is “unwarranted in law ... or without justification in fact.” *Id.* at 185–86, 93 S.Ct. 1455 (quoting *Am. Power Co.*, 329 U.S. at 112–13, 67 S.Ct. 133).

In *Syverson I*, we held that the five-year suspension was “not a ‘reasonable specified period,’ given the judicial officer’s deviation from the requirements of his own sanction policy and the facts of this case.” 601 F.3d at 805. The sanction policy, set forth in *In re: S.S. Farms Linn County, Inc.*, required the judicial officer “(1) to examine the nature of the violations in relation to the remedial purposes of the PSA, (2) to consider all relevant circumstances, and (3) to give appropriate weight to the recommendations of the administrators of the PSA.” *Syverson I*, 601 F.3d at 804 (citing *S.S. Farms Linn Cnty.*, 50 Agric. Dec. 476, 497 (1991)). The judicial officer did not address the first factor, leaving us “only to speculate how Syverson’s violations relate[d] to the remedial purposes of the PSA.” *Id.* Moreover, the judicial officer failed to consider all relevant circumstances, particularly the nature of Syverson’s violation and the effect the suspension would have on him. *Id.* at 804–05.

On remand, the judicial officer applied the sanction policy set forth

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above.<sup>1</sup> Syverson contends, however, that the judicial officer again failed to consider the first factor. Although his discussion of the issue is not lengthy, the judicial officer considered the nature of Syverson's violations in relation to the remedial purposes of the Act. Syverson owed a fiduciary duty to Quam, but he repurchased cattle from his own consignment for sale to Quam, without disclosing his conflict of interest. The judicial officer concluded that this unfair and deceptive practice related to the purpose of assuring fair trade practices in livestock marketing. Decision and Order on Remand at 4. Moreover, he found that Syverson "thwarted the Secretary of Agriculture's ability to enforce the Packers and Stockyards Act when he failed to produce records, which he was required to keep, for examination by United States Department of Agriculture investigators." *Id.* at 4–5. The judicial officer ultimately concluded that a significant period of suspension was necessary.

Syverson further contends that the Act seeks to prevent unfair price increases to consumers. So, although he concedes that he violated the Act when he failed to disclose his self-interested transactions to Quam, he maintains that he charged Quam a fair price and that his violations would have been cured if he had disclosed his conflict of interest to Quam. Regardless of whether the price was fair, his violation "involved price manipulation resulting in ill-gotten gain for him and economic harm to his customer." *Syverson I*, 601 F.3d at 804. Accordingly, it inhibited fair trade and can fairly be described as a practice the Act was designed to remedy. *See United States v. Donahue Bros*, 59 F.2d 1019, 1022 (8th Cir.1932) ("In the case of stockyards the evils to be dealt with are a multiplicity of more or less minor matters ... and minor injustices against shippers and purchasers, which, if to be remedied effectively must be dealt with promptly.") (quoting comments by the Chairman of the House Committee on Agriculture, speaking for his committee with reference to the Packers and Stockyards Act). We thus conclude that the judicial officer adequately considered the nature of the violations in relation to the remedial purposes of the PSA.

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<sup>1</sup> We find Syverson's contention that the judicial officer relied on the "severe" sanction policy, which was abandoned in 1991, to be without merit. *See S.S. Farms Linn Cnty.*, 50 Agric. Dec. at 497 ("[R]eliance will no longer be placed on the 'severe' sanction policy set forth in many prior decisions....").

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Syverson next contends that the suspension is too harsh, given the circumstances of the violation. In *Syverson I*, we concluded that the judicial officer failed to consider all relevant circumstances, including that Syverson's violations were limited to one customer and involved a relatively small number of livestock and that a five-year suspension would likely bankrupt Syverson. 601 F.3d at 804–05. We emphasized that “the nature of the conduct in question is crucially important, as well as the effect of the proposed sanction on the registrant.” *Id.* at 804.

Although a sixteen-month suspension is a significant sanction, the judicial officer considered the circumstances we instructed him to consider. Syverson urges us to compare his suspension to the cases in which we reversed much shorter suspensions. *See Ferguson v. U.S. Dep't of Agric.*, 911 F.2d 1273 (8th Cir.1990) (six months); *W. States Cattle Co. v. U.S. Dep't of Agric.*, 880 F.2d 88 (8th Cir.1989) (six months); *Farrow v. U.S. Dep't of Agric.*, 760 F.2d 211 (1985) (forty-five days). But the judicial officer adequately distinguished those cases, *see In re Todd Syverson*, P & S Docket No. D–05–0005, 7–8 (Dec. 22, 2010) (Order Denying Reconsideration of Decision and Order on Remand), and the Supreme Court has held that “mere unevenness in the application of the sanction does not render its application in a particular case ‘unwarranted in law.’” *Butz*, 411 U.S. at 189, 93 S.Ct. 1455.

If not unwarranted in law, Syverson must show that the sanction is unjustified in fact. He cannot do so. After weighing the nature of the violation and the effect of the suspension on Syverson, the judicial officer imposed a sanction that he believed would ensure Syverson's compliance with the Act without necessarily forcing him from the industry. In determining the sanction, the judicial officer considered the facts that the deception involved only one purchaser and twenty-four cows. He concluded that those mitigating “factors form[ed] part of the basis for my reduction of the five-year period of suspension which I imposed on Mr. Syverson.” Decision and Order on Remand at 5–6. The judicial officer also considered Syverson's argument that a suspension would be devastating for his family against GIPSA's argument that a two-year suspension likely would not bankrupt Syverson or visit extreme hardship on his family. *Id.* at 6–7 (citing GIPSA's evidentiary showing in support of its argument). Ultimately, the judicial officer concluded that

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Syverson's "violations are serious and, in my view, a significant period of suspension as a registrant ... is necessary to deter Mr. Syverson and others from violating the [Act], even if the suspension poses some risk that Mr. Syverson may declare bankruptcy and poses a threat to Mr. Syverson's livelihood." *Id.* at 7. Syverson thus has failed to show that the suspension "was so without justification in fact as to constitute an abuse of the Secretary's discretion." *Butz*, 411 U.S. at 188, 93 S.Ct. 1455 (quoting *Am. Power Co.*, 329 U.S. at 115, 67 S.Ct. 133) (internal quotations and alteration omitted).

Finally, Syverson argues that the judicial officer abused his discretion by considering the prior cease and desist order involving Syverson and by failing to consider Syverson's "lack of notice that his actions were in breach of a fiduciary duty." Appellant's Br. 31. In *Syverson I*, we said, "These serious offenses are deserving of a significant sanction, especially in light of the prior cease and desist order for price manipulation that had been imposed upon Syverson." 601 F.3d at 805. We also concluded that Syverson was on notice that his actions were unlawful. *Id.* at 803 n.6. Our prior panel decision thus has foreclosed these arguments.

### III.

The sanction is affirmed.

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**EMPIRE KOSHER POULTRY, INC. v. USDA.**  
**No. 11-3231.**  
**Court Decision.**  
**Filed April 12, 2012.**

**PS – Late pay, no prior agreement to waive PS terms of payment – Excessive fine, size of dealer's business justified USDA's amount of fine.**

[Cite as: 475 Fed.Appx. 438, 2012 WL 1224021].

**United States Court of Appeals,**

**PACKERS AND STOCKYARDS ACT****Third Circuit.****Before: FUENTES, SMITH, and JORDAN, Circuit Judges.****OPINION OF THE COURT**

JORDAN, Circuit Judge.

Empire Kosher Poultry, Inc. (“Empire”) petitions for review of the July 20, 2011 decision and order of the Secretary of the U.S. Department of Agriculture (“the Secretary”) determining that Empire violated Section 410 of the Packers and Stockyards Act (“the Act”), 7 U.S.C. § 228b–1, by failing to make timely payments for the purchase of live poultry. The Secretary assessed an \$18,000.00 fine for that violation. For the reasons that follow, we will deny the petition for review.

**I. Background**

Empire is a live poultry dealer that operates a kosher chicken and turkey processing plant in Pennsylvania. Koch's Turkey Farm (“Koch”) also operates a turkey processing facility. Between April and June 2008, Empire entered into an agreement to provide Trader Joe's Company, Inc. (“Trader Joes”) with 43,200 antibiotic-free (“ABF”) turkeys beginning the week of November 3, 2008. In order to acquire the turkeys necessary to fulfill that obligation, Empire contacted Duane Koch (“Mr. Koch”), an owner and the vice president and general manager of Koch, who agreed to sell Empire live ABF turkeys for \$.70 per pound. At the time, Empire and Koch did not reach an agreement concerning the terms of payment.<sup>1</sup>

Koch made several turkey deliveries to Empire between August and

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<sup>1</sup> The Secretary found that the parties “did not have an express agreement concerning credit terms prior to Empire's purchase of turkeys in any of the transactions at issue in the instant proceeding.” (App. at 11 A.) Although the parties dispute that finding in their briefs, we must defer to the Secretary's finding of fact, to the extent that it is supported by “substantial evidence” in the record. *See* 5 U.S.C. § 706(2)(E). Here, as discussed *infra*, there is evidence in the record which supports the Secretary's finding concerning the parties' agreement. Thus, we assume for the purpose of our recitation of the facts, that the parties did not reach “an express agreement concerning credit terms.” (App. at 11A.)

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September 2008 that are relevant to this appeal.<sup>2</sup> It delivered four truckloads on August 13 and 14. The first truckload and eighty-four turkeys from the second truckload were unloaded and processed on August 14. However, Empire rejected the remaining turkeys because they failed to pass USDA and rabbinical inspections. Thereafter, Koch delivered four truckloads of live turkeys on August 20, five truckloads on September 3 and 4, four truckloads on September 5, and four truckloads on September 8.

Shortly after each delivery, Mr. Koch sent Empire an invoice, requesting payment within fourteen days.<sup>3</sup> Mr. Koch said that the fourteen-day payment period was important because Koch needed to compensate its suppliers within fourteen days. However, Empire disagreed with Mr. Koch's proposed payment period, ultimately failing to pay Koch within fourteen days of each of the disputed deliveries. When Mr. Koch called Jeffrey Brown, Empire's chief operating officer, to inquire about the delinquent payments, the discussion turned to the dispute about the quality of the birds that had failed inspections and Brown told him to send more turkeys if he wanted to get paid. On September 24, 2008, Koch contacted the USDA's Grain Inspection, Packers & Stockyards Administration ("GIPSA") seeking assistance in its efforts by Koch to secure payment from Empire. As a result, GIPSA began an investigation. Empire did not pay Koch in full until November 3, 2008.

On February 4, 2010, a deputy administrator from the Department of Agriculture filed a complaint against Empire alleging that Empire willfully violated the Act by delaying payment for the live ABF turkeys it purchased from Koch. On March 8, 2011, an Administrative Law Judge ("ALJ") issued a decision and order concluding that Empire

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<sup>2</sup> Koch also delivered live ABF turkeys to Empire on August 6, 2008. However, the complaint filed against Empire does not allege that Empire violated the Act by failing to pay for the August 6 delivery in a timely manner.

<sup>3</sup> On August 25, 2008, Koch sent Empire an invoice for the August 13, 14, and 20 deliveries. It sent invoices for the September 3, 4, and 5 deliveries on September 10, and for the September 8, 2008 delivery on September 17, 2008.

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violated Section 410 of that act, codified at 7 U.S.C. § 228b-1 (a),<sup>4</sup> because it had failed to pay for the turkeys within the time period required by the statute. The ALJ ordered Empire to “cease and desist from failing to pay for poultry purchases within the time period required by Section 410 of the Act,” and assessed an \$18,000.00 civil penalty against Empire for the tardy payments. (App.53A.) Empire appealed that decision and order to the Department of Agriculture's Judicial Officer (the “JO”),<sup>5</sup> who adopted the ALJ's decision and order.

In so doing, the JO found that Empire and Koch “did not have an express agreement concerning credit terms prior to Empire's purchase of turkeys in any of the transactions” in dispute. (App. at 11A.) The JO also determined that, because Koch “did not expressly extend credit to Empire prior to the transactions,” the transactions “constituted live poultry ... cash sales ... requiring Empire to pay within the time required by 7 U.S.C. § 228b-1(a).” (App. at 16A.) The JO further concluded that “Empire's failure to pay for live poultry purchased, received, and accepted within the time period required for payment in a cash sale ... constitute[d] an unfair practice, in willful violation of the [Act].” (App. at 16A.) The JO's decision automatically became the decision of the Secretary. *See supra* note 3.

Empire then filed this timely petition for review.

**II. Jurisdiction and Standard of Review**

The Secretary had jurisdiction over this enforcement action pursuant

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<sup>4</sup> Section 228b-1(a) provides, in relevant part:

[e]ach live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry ... deliver, to the cash seller ... from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller ... on account of such poultry.

7 U.S.C. § 228b-1(a).

<sup>5</sup> Pursuant to 7 C.F.R. § 2.35(a)(1), the Secretary has delegated authority to the JO to serve as an officer with final decision making authority in U.S. Department of Agriculture adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557.

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to 7 U.S.C. § 228b-2(a),<sup>6</sup> and we have jurisdiction over Empire's petition for review pursuant to 28 U.S.C. § 2342(2) and 7 U.S.C. § 228b-3(h). Pursuant to the Administrative Procedures Act, we review the Secretary's decisions under a deferential standard, determining whether the Secretary's findings of fact are supported by substantial evidence. 5 U.S.C. § 706(2)(E). We review the Secretary's conclusions of law *de novo*, *Nat'l Indus. Sand Assoc. v. Marshall*, 601 F.2d 689, 699 n. 34 (3d Cir.1979), and accord the Secretary's reasonable interpretations of ambiguous provisions in the Act appropriate deference, *see Chevron, U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) (requiring deference to reasonable agency interpretations of the statutes they administer). Finally, we review the Secretary's choice of sanction for abuse of discretion, *Baiardi Food Chain v. United States*, 482 F.3d 238, 240 (3d Cir.2007), overturning the prescribed sanction only when it is “unwarranted in law or ... without justification in fact.” *Butz v. Glover Livestock Comm'n Co., Inc.*, 411 U.S. 182, 185-86, 93 S.Ct. 1455, 36 L.Ed.2d 142 (1973) (internal quotation marks and citation omitted).

### III. Discussion

#### A. *The Packers and Stockyards Act*

“The primary purpose of [the Act] is to assure fair competition and fair trade practices in livestock marketing and in the meatpacking industry.” H.R.Rep. No. 85-1048, at 1 (1957), *reprinted in* 1958 U.S.C.C.A.N. 5212, 5213. The statute was amended in 1987 to deal with, among other things, “the length of time some poultry producers are forced to wait for payment for their product or services,” because, during those delays “producers must continue to pay their own operating and

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<sup>6</sup> The Secretary has the authority to enforce the provisions of the Act, which includes, among other things, the authority to (1) “cause a complaint in writing to be served upon ... live poultry dealer[s],” (2) promulgate regulations governing hearings related to its enforcement authority, and (3) issue appropriate penalties for violations of § 228b-1 such as cease and desist orders and civil penalties. *See* 7 U.S.C. § 228b-2(a), (b). Thus, Congress “expect[s] the [Secretary] to be able to speak with the force of law” in his or her enforcement actions. *United States v. Mead Corp.*, 533 U.S. 218, 229, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001).

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other expenses.” H.R.Rep. No. 100–397, at 7 (1987), *reprinted in* 1987 U.S.C.C.A.N. 855, 857 (the Poultry Producers Financial Protection Act of 1987).

Section 410 of the Act governs the sale of live poultry by “live poultry dealer[s].”<sup>7</sup> As noted earlier, *supra* n. 4, it provides that a live poultry dealer purchasing poultry in a cash sale must pay the full amount due the next business day after purchase is made. 7 U.S.C. § 228b–1(a). The Act defines “cash sale” as “a sale in which the seller does not expressly extend credit to the buyer,” though the Act does not go on to specify what “expressly” means. 7 U.S.C. § 228b–1(c). The parties agree that these conditions hold, unless the seller “expressly extend[s] credit” to the live poultry dealer. 7 U.S.C. § 228b–1(a), (c).

*B. Whether Empire Violated § 228b–1 by Failing to Pay Koch for the Disputed Turkey Deliveries in a Timely Manner*

To determine whether substantial evidence supports the Secretary's decision, we must first decide whether the disputed transactions were “cash sales” under Section 410 of the Act, which necessarily turns on our understanding of what constitutes an “express” extension of credit. The Secretary urges us to adopt the plain and ordinary meaning of the term, which, according to Black's Law Dictionary, is “[c]learly and unmistakably communicated” or “directly stated”—a definition the Secretary, through the JO, adopted at the agency level. (App. at 18A (quoting Black's Law Dictionary 661 (9th ed.2009)).) On the other hand, Empire defines the term “expressly extend credit” by reference to certain sections of the Uniform Commercial Code (“U.C.C.”), which, it argues, provides a basis for us to determine that Koch “expressly extend[ed] credit” by its actions as well as the parties' “course of performance,

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<sup>7</sup> Empire stipulates that it is a live poultry dealer under the Act, and we agree. *See* 7 U.S.C. § 182(10) (defining a “live poultry dealer” as a “person engaged in the business of obtaining live poultry by purchase ... for the purpose of ... slaughtering it”).

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course of dealing, and usage of trade.”<sup>8</sup> (Petitioner's Opening Br. 17, 29 (citations omitted).)

In deciding whether to adopt the Secretary's interpretation of the Act, we apply the principles set forth in *Chevron*. Under that standard, we “must first determine if the statute is silent or ambiguous with respect to the specific issue of law in the case, using traditional tools of statutory construction to determine whether Congress had an intention on the precise question at issue.” *Lin-Zheng v. Att’y Gen.*, 557 F.3d 147, 155 (3d Cir.2009) (*en banc*) (internal quotation and citation omitted). “If congressional intent is clear, the inquiry ends, as both the agency and the court must give effect to the plain language of the statute.” *Id.* (internal citation and quotation omitted). Consistent with those principles, here, we need look no further than the plain text of the statute to determine Congress's intent. While the Act does not define the term “express,” it has a plain and ordinary meaning: “directly, firmly, and explicitly stated.” Merriam-Webster's Collegiate Dictionary 409 (10th ed.2002). There is nothing the least ambiguous about the word. If a seller and buyer want to agree on credit terms, that must be done in a communication that is “direct[ ], firm [ ], and explicit[ ],” or, as the JO put it, “clear and unmistakable,” (App.18A.) Thus, we begin, and end, our inquiry under the first step of the *Chevron* analysis, concluding that, under Section 410 of the Act, a sale of live poultry is a cash sale unless a seller “directly, firmly, and explicitly state[s]” its intent to extend credit.

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<sup>8</sup> Specifically, Empire relies upon Sections 2-204, 2-206, and 2-207 of the U.C.C. However, none of those sections explain what it means to “expressly” extend credit under the Act. Section 2-204 addresses the conditions under which parties may “show agreement” when forming a contract; it does not explain what it means for a party to “expressly” extend credit, as required by § 228b-1. U.C.C. § 2-204(1)-(3). Similarly, Section 2-206 does not define the terms “expressly extend credit,” but instead prescribes conduct that, under the appropriate circumstances, may constitute acceptance of an offer for the sale of goods. *Id.* § 2-206. Section 2-207 explains that a party may accept an offer with a “definite and seasonable expression of acceptance or written confirmation ... sent within a reasonable time ... even though it states terms additional to or different from those offered or agreed upon,” a proposition that, while perhaps true generally, does not advance Empire's position because Koch did not send Empire invoices for any of the disputed deliveries *before* the statutorily prescribed period for payment had lapsed, as required by the PSA. *Id.* § 2-207; *see infra* n. 9.

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In light of that plain meaning of the word “express,” we turn to the task of determining whether substantial evidence supports the Secretary's finding that Koch did not expressly extend credit to Empire, and that Empire failed to pay Koch before the expiration of the statutorily prescribed period for payment. As to the first issue, the record supports the Secretary's finding that Koch did not expressly extend credit to Empire. When Empire informed Koch that it would only agree to “reasonable” repayment terms, Koch did not state expressly (either verbally or in writing) that he intended to extend credit to Empire. In addition, Mr. Koch testified that, at the time the parties negotiated the disputed turkey sales, they never discussed credit terms. Moreover, when the parties eventually discussed payment terms, they could not reach an agreement concerning the payment period. Koch refused to agree to the thirty-day term of payment proposed by Empire, and Empire rejected the fourteen-day terms proposed by Koch in its invoices.<sup>9</sup> Thus, because substantial evidence supports the Secretary's determination that Koch did not “expressly extend credit” to Empire before any of the disputed transactions, the parties' contract was a “cash sale” under Section 410.

Furthermore, Empire's assertion that its purchase orders are evidence of Koch's intent to extend credit is baseless. There is no evidence in the record that Koch created those purchase orders, consented to their terms, or received them prior to when the statutorily prescribed period for repayment lapsed. Thus, they cannot prove that Koch “expressly extend[ed] credit” to Empire under the Act.

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<sup>9</sup> Empire's argument that Koch's invoices, which contained a proposed 14-day payment period, serve as evidence that Koch expressly extended credit is unpersuasive. Importantly, Koch sent those invoices after the statutorily required period for payment had already lapsed. Accepting the premise of Empire's argument—that a live poultry dealer is immune from liability under the Act when a seller extends credit after the statutorily prescribed period for repayment has lapsed—would require us to read the statute in a manner that would render its prompt payment requirement meaningless. That is, Empire's interpretation of the Act would allow a live poultry dealer to delay payment and then coerce a seller into extending credit as a condition of payment. Moreover, it conflicts with the purpose of the statute, which is to address “the length of time some poultry producers are forced to wait for payment for their product or services.” H.R. 100–397, at 7 (1987), *reprinted in* 1987 U.S.C.C.A.N. 855, 857 (the Poultry Producers Financial Protection Act of 1987). Thus, Empire's argument that Koch's invoices demonstrate that it expressly extended credit is unavailing.

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As to the second issue, the evidence of record demonstrates, and it is not disputed, that Empire failed to pay Koch for any of the disputed deliveries before “the close of the next business day following [Empire's] purchase[s].” 7 U.S.C. § 228b–1(a). As noted earlier, Empire did not provide Koch with full payment for each of the disputed deliveries until November 3, 2008—well beyond “the close of the next business day” after each delivery. Therefore, because the disputed deliveries from Koch to Empire were “cash sales,” and because Empire failed to pay Koch in full for any of those deliveries before “the close of the next business day” after each delivery, we hold that the Secretary's conclusion that Empire violated § 410 is supported by substantial evidence.

*C. Whether the \$18,000.00 Assessment Was Unreasonable*

Empire also contends that the Secretary abused his discretion by approving an \$18,000.00 penalty against Empire for its late payments. Specifically, it argues that “Empire's temporary withholding of payment from Koch[ ] was not a willful act,” “[Koch] did not want the [Department of Agriculture] to ... assess any penalty against Empire,” that the Department of Agriculture “should be attempting to promote harmonious relationships between the ... parties involved in agricultural transactions,” and that “[t]here is no indication that Congress had any concern with protecting live poultry dealers” in enacting the Act. (Petitioner's Opening Br. at 38–39.) Agreeing as we do, that harmonious relationships are a good thing, and even accepting that Koch may not have wanted Empire to be fined, the fact remains that Empire consciously chose, in the context of a business dispute, to withhold payment. It violated the Act.

Under the Act, if the Secretary finds that a “live poultry dealer has violated, or is violating ... section [410] ... [he or she] may ... assess a civil penalty of not more than \$20,000 for each ... violation....” 7 U.S.C.

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§ 228b–2(b).<sup>10</sup> In determining the appropriate sanction, the Secretary must consider “[1] the gravity of the offense, [2] the size of the business involved, and [3] the effect of the penalty on the [live poultry dealer's] ability to continue in business.” *Id.* The Secretary's prescribed penalty may not “take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower.” *Id.*

Here, the Secretary did not abuse his discretion in assessing an \$18,000.00 civil penalty against Empire. The Secretary appropriately determined that Empire's five violations were significant, and noted that “[w]hen poultry dealers ignore the cash sale payment deadline and defer payments for poultry in order to alleviate cash flow problems or to obtain concessions from sellers, the accumulation of debts to poultry sellers creates the very risk that Congress sought to prevent.” (App. at 23A.) The Secretary also correctly determined that a relatively small assessment was appropriate because “Empire's violations involved a small number of transactions with one seller,” and “Empire and [Koch] had a dispute over a large number of turkeys that were rejected in one of the shipments.” (App. at 24A.) There is no evidence that the \$18,000.00 assessment was excessive given the size of Empire's business, or that the penalty would “take priority over or impede” its ability “to pay any unpaid cash seller or poultry grower.” 7 U.S.C. § 228b–2(b). Under these circumstances, the imposition of the \$18,000.00 assessment was not an abuse of discretion.

**IV. Conclusion**

For the foregoing reasons, we will deny Empire's petition for review.

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<sup>10</sup> At the time the Secretary assessed the civil penalty against Empire, the maximum statutory penalty for violating the Act was \$27,000.00 per violation. *See* 7 C.F.R. § 3.91(b)(6)(vii) (2008). Thus, because the complaint alleged (and the Secretary found) five violations of the Act, the Secretary had the authority to assess a maximum \$135,000.00 fine.

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## **PACKERS AND STOCKYARDS ACT**

### **DEPARTMENTAL DECISIONS**

**In re: H.D. EDWARDS.**  
**Docket No. 10-0296.**  
**Decision and Order.**  
**Filed January 6, 2012.**

**PS.**

Brian P. Sylvester, Esq. for GIPSA.  
Respondent, pro se.  
*Decision and Order by Jill S. Clifton, Administrative Law Judge.*

### **DECISION AND ORDER**

#### **Decision Summary**

1. For H.D. Edwards' failures to comply with the Packers and Stockyards Act, I impose cease and desist orders, which I conclude are the appropriate remedies. Packers and Stockyards requested also that civil penalties be imposed, but I conclude that civil penalties would not be just, considering the situation here. [This is an unusual situation.]

#### **Parties and Allegations**

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein "Packers and Stockyards" or "Complainant").

3. The Respondent is H.D. Edwards (herein frequently "H.D. Edwards" or "Respondent"), an individual, a part-time rancher, especially when there is rain.

4. The Complaint, filed on May 27, 2010, alleged there is reason to believe that the Respondent, H.D. Edwards, in 2009, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented

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(7 U.S.C. § 181, *et seq.*) (frequently herein the “Packers and Stockyards Act” or the “Act”), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

5. The Respondent, H.D. Edwards, filed his Answer on June 28, 2010. Of particular note is HD Edwards’ vehement denial, in his Answer, of the allegations of paragraph II of the Complaint that he had received notice to apply for registration as a dealer and to obtain a bond. H.D. Edwards has consistently denied receiving notice: in his Answer; in his testimony; and in his Response filed January 5, 2012.

**Procedural History**

6. The Hearing was held in Tucson, Arizona on December 5, 2011. The following witnesses testified: Stacey Schofield, Eva Norton, H.D. Edwards, Timothy Hansen, and John Barthel. The following exhibits were admitted into evidence: Packers and Stockyards exhibits CX 1, CX 2, CX 4a, and CX 5 through CX 22; and H.D. Edwards exhibit RX 1. I ruled from the bench (oral decision), indicating that I would put my decision in writing when I got back to the office, and that my decision would not be binding on H.D. Edwards until he received my written confirmation. Tr. 299-300. The transcript (Tr.) was filed with the Hearing Clerk on December 28, 2011.

7. Packers and Stockyards filed, post-hearing, its “Motion for Reconsideration of Tentative Bench Decision Regarding Civil Penalty”, on December 21, 2011. H.D. Edwards filed his Response on January 5, 2012.

**Findings of Fact**

8. Respondent H.D. Edwards is an individual whose business mailing address is a post office box in Marana, Arizona. H.D. Edwards is a part-time rancher. Tr. 157.

9. At the time of the hearing, H.D. Edwards had three pair (“three cows turned out with three baby calves on them”) Tr. 157. He had two horses. Tr. 266. And he had 29 other head of cattle at a different set of pens, that he was feeding for months until they got bigger. Tr. 266. H.D. Edwards

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would **not** be operating as a dealer under the Packers and Stockyards Act if he sold any of those livestock; they are part of H.D. Edwards' producer activity. For H.D. Edwards' dealer activity, both buying and selling, he is subject to the Packers and Stockyards Act requirements, even for as little as one head. There is no exemption, except for producer activity. Tr. 245-247.

10. Rain has been scarce; H.D. Edwards testified that he had not had a good season since 1992 (Tr. 157); that the last good rain he had on the ranch was 1993. Tr. 161. He testified that now that he receives social security checks, he is hopeful that he will not have to do so much part-time work hauling cattle for people and working at the sale barns. Tr. 157, 161, 163.

11. A letter of notice dated February 19, 2009 (CX-1), entitled Notice of Default, was sent to H.D. Edwards by certified mail. The letter was intended to inform the recipient that in order to continue his livestock operations subject to the Packers and Stockyards Act, he must be registered as required and obtain an adequate bond or its equivalent.

12. The Notice of Default was picked up at the post office by Cheri Lewis on February 24, 2009. CX-1. Cheri Lewis is H.D. Edwards' girlfriend, and she lived at the same place he did.

13. H.D. Edwards did not receive CX-1 or the enclosure(s) that were supposed to be with it. He first saw a copy of CX-1 (but not the enclosures) when Stacey Schofield showed it to him during her audit of his records at the Marana Stockyards on June 16, 2009. Tr. 35, 139-40, 141-43, 144, 149-50, 166-67, 201, 264-65.

14. Stacey Schofield's audit was to document Packers and Stockyards Act violations that H.D. Edwards had committed prior to her audit, prior to his having seen a copy of CX-1.

15. The audit confirmed that Respondent H.D. Edwards was previously, in April, May, and earlier in June, 2009:

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(a) operating as a dealer, buying and selling livestock in the interstate flow of commerce for his own account; within the jurisdiction of the Secretary of Agriculture, subject to the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder;

(b) not registered, as required, as a dealer with the Secretary of Agriculture;

(c) making purchases of livestock for which payment was not timely made (all payments were made in full, but payment is required before the close of the next business day; by that standard, H.D. Edwards' payments were sometimes two weeks, three weeks, even five weeks late, CX 4a, p. 2); and

(d) failing to maintain an adequate bond or bond equivalent as required.

**Conclusions**

16. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

17. H.D. Edwards had for decades been involved in activity, buying and selling in three nearby auction markets, oblivious to the fact that he might have been engaging in dealer activity. He operated on a small scale, he had never been advised that he should be registered as a dealer, he was personally friends with the auction market owners and had payment arrangements with them, and he was certain (wrong, but certain) that he had never engaged in interstate commerce. Notice to him needed to get his attention, if he was going to be required to change his operation.

18. The attempt to give H.D. Edwards notice failed, in that he did not receive the Notice of Default (CX-1) that was delivered to Cheri Lewis on February 24, 2009.

19. Prior to his seeing a copy of CX-1, in April, May, and earlier in June, 2009: Respondent H.D. Edwards engaged in operations subject to the Packers and Stockyards Act,

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(a) making purchases of livestock for which payment was not timely made, thereby engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. § 213(a)), and a violation of section 409(a) of the Act (7 U.S.C. § 228b(a)); and

(b) without maintaining an adequate bond or bond equivalent, thereby engaging in an “unfair practice” in violation of section 312(a) of the Act (7 U.S.C. § 213(a)); and section 201.29 of the regulations (9 C.F.R. § 201.29).

20.No civil penalties should be or will be imposed, because in this unusual case such a sanction would serve no remedial purpose and would be contrary to the just result sought by both parties. Cease and desist orders suffice here.

### **ORDER**

21.Packers and Stockyards shall promptly mail to H.D. Edwards the packet of information, including an application, that Packers and Stockyards would normally provide to a person who may be interested in registering as a dealer under the Packers and Stockyards Act. Information identifying the appropriate website shall be included. A sample of required reports, including the year-end reports, and sample instructions shall be included.

22.Except as granted herein, Packers and Stockyards’ “Motion for Reconsideration of Tentative Bench Decision Regarding Civil Penalty” filed on December 21, 2011, is DENIED.

23.Respondent H.D. Edwards and his agents and employees, directly or through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall:

(a) cease and desist from failing to pay, when due, the full purchase price of livestock; as required by section 409(a) of the Act (7 U.S.C. § 228b(a)).

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AND

(b) cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations promulgated thereunder, without maintaining an adequate bond or bond equivalent;

as required by section 201.29 of the regulations (9 C.F.R. § 201.29).

**FINALITY**

24. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

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**In re: BARNESVILLE LIVESTOCK, LLC AND DARRYL  
WATSON.**

**Docket No. 10-0058.**

**Decision and Order.**

**Filed January 23, 2012.**

PS.

Charles Spicknall, Esq. for GIPSA.

Miles D. Fries and Susan J. Montgomery McDonald for Respondent.

Initial Decision and Order by Chief Administrative Law Judge, Peter M. Davenport.

*Decision and Order by William G. Jenson, Judicial Officer.*

**DECISION AND ORDER****PROCEDURAL HISTORY**

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On December 10, 2009, Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], filed a Complaint alleging Barnesville Livestock, LLC [hereinafter Barnesville], and Darryl Watson willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], and the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]. Specifically, the Deputy Administrator alleges Barnesville and Mr. Watson: (1) failed to properly use and maintain Barnesville's custodial account; (2) misused Barnesville's custodial account; (3) issued checks to consignors that were returned unpaid because Barnesville did not have sufficient funds available on the account upon which the checks were drawn to pay the checks when presented; and (4) failed to remit, when due, the net proceeds from the sale price of livestock sold on a commission basis (Compl. ¶¶ III-V). On December 29, 2009, the Deputy Administrator filed a Corrected Complaint.<sup>1</sup>

On January 11, 2010, Barnesville and Mr. Watson filed an Answer to Complaint in which they denied the material allegations of the Complaint. On January 26, 2010, Barnesville and Mr. Watson filed an Answer to Corrected Complaint in which they denied the material allegations of the Corrected Complaint.

On July 28, 2011, the parties filed Joint Stipulation Regarding Admissible Evidence, Facts, and Legal Conclusions [hereinafter the Joint Stipulation] wherein Barnesville and Mr. Watson admitted violating the Packers and Stockyards Act and the Regulations as alleged in the Corrected Complaint, leaving only the issue of the appropriate sanction for Barnesville and Mr. Watson's violations unresolved.

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<sup>1</sup> The Corrected Complaint merely added Appendix A which the Deputy Administrator failed to include when the Deputy Administrator filed the original Complaint on December 10, 2009 (Motion for Leave to File a Corrected Complaint filed by the Deputy Administrator on December 29, 2009; Order filed by the then Chief Administrative Law Judge Marc R. Hillson on December 29, 2009).

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Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] conducted a telephonic hearing on August 2, 2011, with the Deputy Administrator in Washington, DC, and Barnesville and Mr. Watson participating from their attorneys' offices in Zanesville, Ohio. Miles D. Fries and Susan J. Montgomery McDonald of Gottlieb, Johnston, Beam & Dal Ponte, P.L.L., Zanesville, Ohio, represented Barnesville and Mr. Watson. Charles E. Spicknall, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Deputy Administrator. The hearing was limited to the issue of the appropriate sanction for Barnesville and Mr. Watson's violations of the Packers and Stockyards Act and the Regulations. Mr. Watson testified on behalf of himself and Barnesville. Raymond Minks, a marketing specialist employed by the Office of Policy and Litigation Support, Packers and Stockyards Program, testified on behalf of the Deputy Administrator.<sup>2</sup>

The Chief ALJ provided the parties with an opportunity to file post-hearing briefs (Tr. 57-58). On September 20, 2011, the Deputy Administrator filed a post-hearing brief. Barnesville and Mr. Watson did not file a timely post-hearing brief and, after the Chief ALJ issued a Decision and Order, notified the Chief ALJ that they would not be filing a post-hearing brief (Respondent's [sic] Post Hearing Notice to the Court filed October 24, 2011).

On October 13, 2011, the Chief ALJ issued a Decision and Order: (1) concluding Barnesville and Mr. Watson willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.42 and 201.43, as alleged in the Corrected Complaint; (2) ordering Barnesville and Mr. Watson to cease and desist from further violations of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.42 and 201.43; and (3) suspending Barnesville as a registrant under the Packers and Stockyards Act for a period of 21 days (Chief ALJ's Decision and Order at 7).

On November 21, 2011, Barnesville and Mr. Watson appealed to the Judicial Officer. On December 12, 2011, the Deputy Administrator filed Complainant's Response to Appeal Petition. On December 19, 2011, the

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<sup>2</sup> References to the transcript of the hearing are indicated as "Tr." with the page reference.

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Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I affirm the Chief ALJ's Decision and Order.

## **DECISION**

### **Decision Summary**

Barnesville and Mr. Watson admit violating the Packers and Stockyards Act and the Regulations as alleged in the Corrected Complaint, leaving only the issue of the appropriate sanction unresolved (Joint Stipulation). Moreover, Barnesville and Mr. Watson appeal only the Chief ALJ's 21-day suspension of Barnesville as a registrant under the Packers and Stockyards Act; they do not appeal the cease and desist provision of the Chief ALJ's Order (Respondents' Appeal Pet. at 1). I have carefully considered the issues raised by Barnesville and Mr. Watson in Respondents' Appeal Petition and conclude the Chief ALJ's 21-day suspension of Barnesville as a registrant under the Packers and Stockyards Act is not error. Therefore, except for minor non-substantive changes, I adopt the Chief ALJ's Findings of Fact, Conclusions of Law, and Order as the final agency decision and order.

### **Findings of Fact**

1. Barnesville is an Ohio limited liability company with a business mailing address in New Concord, Ohio. Barnesville's registered agent for service of process is Darryl L. Watson of Norwich, Ohio.
2. Barnesville operates a livestock auction market in Barnesville, Ohio, and, at all times material to this proceeding, was:
  - a. Engaged in the business of conducting and operating a posted stockyard subject to the Packers and Stockyards Act;
  - b. Engaged in the business of a market agency selling consigned livestock in commerce on a commission basis at the stockyard; and

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c. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis and as a market agency buying livestock on commission.

3. Mr. Watson is an individual residing in the State of Ohio. Mr. Watson, at all times material to this proceeding, was:

a. The sole member and owner of Barnesville; and

b. The individual responsible for day-to-day direction, management, and control of Barnesville's business operations.

4. On October 28, 2008, the Packers and Stockyards Program notified Barnesville and Mr. Watson, by certified mail, that Barnesville's operation with a custodial account shortage is an unfair practice and a violation of the Packers and Stockyards Act.

5. Notwithstanding the notice described in Finding of Fact number 4, Barnesville and Mr. Watson, during the period October 31, 2008, through May 31, 2011, failed to properly use and maintain Barnesville's custodial account, thereby endangering the faithful and prompt accounting of shippers' proceeds and the payment due the owners and consignors of livestock.

6. As of October 31, 2008, Barnesville and Mr. Watson had outstanding checks drawn on Barnesville's custodial account in the amount of \$285,548.03. On that same date, the custodial account had a negative balance of \$58,381.28, with proceeds receivable of \$109,957.85, leaving a custodial account shortage of \$233,971.46.

7. As of December 31, 2008, Barnesville and Mr. Watson had outstanding checks drawn on Barnesville's custodial account in the amount of \$281,043.28. On that same date, the custodial account had a negative balance of \$3,454.86, with proceeds receivable of \$17,749.53, leaving a custodial account shortage of \$266,748.61.

8. As of June 30, 2009, Barnesville and Mr. Watson had outstanding checks drawn on Barnesville's custodial account in the amount of \$165,417.78. On that same date, the custodial account had a negative

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balance of \$25,268.52, with proceeds receivable of \$19,723.21, leaving a custodial account shortage of \$170,963.09.

9. As of April 29, 2011, Barnesville and Mr. Watson had outstanding checks drawn on Barnesville's custodial account in the amount of \$181,176.11. On that same date, the custodial account had a balance of \$29,672.96, with proceeds receivable of \$15,634.98, leaving a custodial account shortage of \$135,868.17.

10. As of May 31, 2011, Barnesville and Mr. Watson had outstanding checks drawn on Barnesville's custodial account in the amount of \$258,409.34. On that same date, the custodial account had a balance of \$107,890.60, with proceeds receivable of \$19,325.00, leaving a custodial account shortage of \$131,193.74.

11. The shortages in Barnesville's custodial account were due, in part, to Barnesville and Mr. Watson's failure to deposit into the account amounts equal to the proceeds receivable from the sale of consigned livestock within the time prescribed in 9 C.F.R. § 201.42.

12. The shortages in Barnesville's custodial account, during the period October 31, 2008, through May 31, 2011, were also due, in part, to Barnesville and Mr. Watson's misuse of custodial account funds.

13. Barnesville and Mr. Watson, during the period October 6, 2008, through December 26, 2008, permitted \$137 in bank fees to be charged to the custodial account.

14. Barnesville and Mr. Watson, during the period October 3, 2008, through December 30, 2008, transferred \$78,785.71 in custodial funds to Barnesville and Mr. Watson's general account.

15. Barnesville and Mr. Watson, on October 31, 2008, deposited proceeds in the amount of \$5,723.52 from the sale of livestock sold on a commission basis into an account other than Barnesville's custodial account.

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16. Barnesville and Mr. Watson, during the period September 13, 2008, through August 15, 2009, sold livestock on a commission basis and in purported payment of the net proceeds of those sales issued at least 350 NSF checks to consignors that were returned by the bank upon which the checks were drawn because Barnesville and Mr. Watson failed to maintain a sufficient balance in Barnesville's custodial account for the checks to be honored when presented for payment and, in so doing, failed to remit, when due, the net proceeds due from the sale price of such livestock on a commission basis.

17. Barnesville and Mr. Watson have fully cooperated with the Grain Inspection, Packers and Stockyards Administration's investigation of issues concerning the custodial account for shippers' proceeds at Barnesville.

#### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Barnesville was, at all times material to Barnesville and Mr. Watson's violations of the Packers and Stockyards Act and the Regulations, a market agency selling consigned livestock within the meaning of, and subject to the provisions of, the Packers and Stockyards Act.
3. Mr. Watson is the alter ego of Barnesville.
4. Barnesville and Mr. Watson willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. § 201.42 by failing to maintain and properly use Barnesville's custodial account for shippers' proceeds at the auction market.
5. Barnesville and Mr. Watson willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. § 201.43 by issuing NSF checks and by failing to timely remit the net proceeds due from the sale of livestock to the consignors

#### **Barnesville and Mr. Watson's Appeal Petition**

Barnesville and Mr. Watson appeal only the Chief ALJ's 21-day suspension of Barnesville as a registrant under the Packers and Stockyards Act. Barnesville and Mr. Watson raise three issues with

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respect to the Chief ALJ's 21-day suspension. First, Barnesville and Mr. Watson assert their acts were isolated and thus not an unfair practice under 7 U.S.C. § 213(a) (Respondents' Appeal Pet. at 1).

The Packers and Stockyards Act makes it unlawful for any market agency to engage in or use any unfair practice, as follows:

**§ 213. Prevention of unfair, discriminatory, or deceptive practices**

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

7 U.S.C. § 213(a).

Barnesville and Mr. Watson: (1) failed to properly use and maintain Barnesville's custodial account during the period October 31, 2008, through May 31, 2011, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.42; and (2) issued at least 350 NSF checks to consignors during the period September 13, 2008, through August 15, 2009, and, in so doing, failed to remit, when due, the net proceeds from the sale price of livestock on a commission basis, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.43. Accordingly, I find no factual basis for Barnesville and Mr. Watson's contention that their violations over a period of 2 years 8 months 18 days were "isolated" violations of the Packers and Stockyards Act and the Regulations.

Moreover, even if I were to find Barnesville and Mr. Watson's acts "isolated" (which I do not so find), that finding would not preclude my concluding that they engaged in an unfair practice under 7 U.S.C. § 213(a). The issue has previously arisen as to whether a single transaction or incident may be the subject of a disciplinary or reparation proceeding

**PACKERS AND STOCKYARDS ACT**

under the Packers and Stockyards Act. This issue has arisen because of the use of the word “practice” in the Packers and Stockyards Act, *e.g.*, “[i]t shall be unlawful . . . to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device[.]” 7 U.S.C. § 213(a). Although the word ‘practice’ usually has the connotation of repeated or customary action, it does not always have that connotation.<sup>3</sup> In addition, the Packers and Stockyards Act refers to a “practice or device,” and the word “device” does not have the usual connotation of repeated or customary action.<sup>4</sup>

The Judicial Officer has long held that a single incident or transaction in violation of the Packers and Stockyards Act is a sufficient basis for a proceeding under the Packers and Stockyards Act.<sup>5</sup> The Judicial Officer’s position is based upon legislative history of the Packers and Stockyards Act which indicates congressional concern with practices in the industry.<sup>6</sup> It is my view, therefore, that Congress used the term “practice” in the Packers and Stockyards Act with respect to industry practices rather than to a continuous course of conduct by a particular individual.

In view of the language of the statute, the legislative history, and the long-held position of the Judicial Officer, I conclude a single transaction or incident is sufficient to support a disciplinary proceeding for an unfair, unjustly discriminatory, or deceptive practice under 7 U.S.C. § 213(a). Therefore, even if I were to conclude that Barnesville and Mr. Watson’s violations of the Packers and Stockyards Act and the Regulations were isolated, I would reject their contention that their acts could not be an unfair practice under 7 U.S.C. § 213(a).

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<sup>3</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 1780 (1981).

<sup>4</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 618 (1981).

<sup>5</sup> *See, e.g., In re Ozark County Cattle Co.* (Decision as to National Order Buying Co. and Thomas D. Runyan), 49 Agric. 336, 354-55 (1990); *In re Danny Cobb*, 48 Agric. Dec. 234, 272-73 (1989), *aff’d*, 889 F.2d 724 (6th Cir. 1989), *reprinted in* 51 Agric. Dec. 640 (1992); *In re Floyd Stanley White*, 47 Agric. Dec. 229, 287 n.10 (1988), *aff’d per curiam*, 865 F.2d 262 (Table), 1988 WL 133292 (6th Cir. 1988); *In re Mid-States Livestock, Inc.*, 37 Agric. Dec. 547, 563-64 (1977), *aff’d sub nom. Van Wyk v. Bergland*, 570 F.2d 701 (8th Cir. 1978); *In re Hass-Davis Packing Co.*, 29 Agric. Dec. 1249, 1251-52 (1970).

<sup>6</sup> H.R. Rep. No. 85-1048 at 1 (1957) *reprinted in* 1958 U.S.C.C.A.N. 5212, 5213; 61 Cong. Rec. 1800-01, 1887, 2615-16 (1921).

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Second, Barnesville and Mr. Watson assert a 21-day suspension would impact the local economy and put Barnesville out of business (Respondents' Appeal Pet. at 1).

Collateral effects of a sanction on a violator's business and the local economy in which the violator operates are generally given no weight in determining the sanction to be imposed for violations of the Packers and Stockyards Act since the national interest of having fair conditions in the livestock industry must prevail over a violator's interests and the interests of the violator's community.<sup>7</sup> Accordingly, I reject Barnesville and Mr. Watson's contention that the 21-day suspension of Barnesville as a registrant under the Packers and Stockyards Act is inappropriate because of the impact the suspension might have on the local economy and on Barnesville's ability to continue in business.

Third, Barnesville and Mr. Watson contend their full and open cooperation with the Grain Inspection, Packers and Stockyards Administration's investigation and their admission of wrongdoing are significant (Respondents' Appeal Pet. at 1).

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<sup>7</sup> See *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 328 (2000); *In re Hines & Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1430 (1998); *In re Sam Odom*, 48 Agric. Dec. 519, 540-41 (1989); *In re Great American Veal, Inc.*, 48 Agric. Dec. 183, 206 (1989), *aff'd*, 891 F.2d 281 (3d Cir. 1989) (unpublished); *In re Edward Tiemann*, 47 Agric. Dec. 1573, 1593 (1988); *In re Paul Rodman* (Order Denying Pet. for Recons.), 47 Agric. Dec. 1400, 1415 (1988); *In re Richard N. Garver*, 45 Agric. Dec. 1090, 1104 (1986), *aff'd*, 846 F.2d 1029 (6th Cir.), *cert. denied*, 488 U.S. 820 (1988); *In re Blackfoot Livestock Comm'n Co.*, 45 Agric. Dec. 590, 636 (1986), *aff'd*, 810 F.2d 916 (9th Cir. 1987); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 445 (1984), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re Hugh B. Powell*, 41 Agric. Dec. 1354, 1365 (1982). *But see Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793, 804 (8th Cir. 2010) (stating the effect of a proposed sanction on a registrant is crucially important); *In re Todd Syverson* (Order Denying Pet. to Reconsider on Remand), \_\_\_ Agric. Dec. \_\_\_, slip op. at 4-5 (Dec. 22, 2010) (stating, with respect to proceedings that could be appealed to the United States Court of Appeals for the Eighth Circuit, my policy of giving no weight to the effect of a suspension of registration under the Packers and Stockyards Act on the likelihood of a violator's bankruptcy and on the likelihood that a violator will be deprived of his or her livelihood is modified to comport with *Syverson v. U.S. Dep't of Agric.*, 601 F.3d 793 (2010)).

**PACKERS AND STOCKYARDS ACT**

The Chief ALJ specifically considered Barnesville and Mr. Watson's admissions of wrongdoing and cooperation with the Grain Inspection, Packers and Stockyards Administration's investigation when determining the appropriate period of Barnesville's suspension as a registrant under the Packers and Stockyards Act (Chief ALJ's Decision and Order at 3). Therefore, I reject Barnesville and Mr. Watson's contention that the Chief ALJ erroneously failed to find their admissions and cooperation significant.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. Barnesville and Mr. Watson, their agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from further violations of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.42 and § 201.43.

Paragraph 1 of this Order shall become effective on the day after service of this Decision and Order on Barnesville and Mr. Watson.

2. Barnesville is suspended as a registrant under the Packers and Stockyards Act for a period of 21 days.

Paragraph 2 of this Order shall become effective on the 60th day after service of this Decision and Order on Barnesville and Mr. Watson.

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**In re: PHILIP AMBROSE.**  
**Docket No. 11-0387.**  
**Decision and Order.**  
**Filed January 26, 2012.**

**PS.**

Jonathan D. Gordy, Esq. for GIPSA.  
Respondent, pro se.  
*Decision and Order by Administrative Law Judge Jill S. Clifton.*

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## **DECISION AND ORDER BY REASON OF ADMISSIONS**

### **Decision Summary**

1. For Respondent Philip Ambrose's failures to comply with the Packers and Stockyards Act, I impose the remedies requested by Packers and Stockyards: (a) a cease and desist order; (b) a 180 day suspension (which is held in abeyance for three years on conditions), and (c) civil penalties totaling \$4,000.00. *See* paragraphs 18, 19, and 20.

### **Parties and Allegations**

2. The Complainant is the Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture (frequently herein "Packers and Stockyards" or "Complainant").

3. The Respondent is Philip Ambrose, an individual (herein frequently "Philip Ambrose" or "Respondent").

4. The Complaint, filed on September 9, 2011, alleged there is reason to believe that the Respondent, Philip Ambrose, from about September 29, 2010 through February 24, 2011, willfully violated the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181, *et seq.*) (frequently herein the "Packers and Stockyards Act" or the "Act"), and the regulations promulgated thereunder, 9 C.F.R. § 201.1 *et seq.*

5. The Respondent, Philip Ambrose, timely filed his Answer on September 27, 2011, stating: "I mailed a check to International Sureties today for a \$40,000.00 bond. As soon as I Recieve (sic) the bond, I will mail it to Denver."

**PACKERS AND STOCKYARDS ACT****Procedural History**

6. Packers and Stockyards filed a Motion for Decision Without Hearing by Reason of Default, accompanied by a proposed Decision,<sup>1</sup> on November 21, 2011. *See* 7 C.F.R. § 1.139. Philip Ambrose had through January 17, 2012, to respond to Packers and Stockyards' Motion and failed to respond. Based upon careful consideration, Packers and Stockyards' Motion is granted, and I issue this Decision and Order without hearing or further procedure.

7. The Complaint, and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes (7 C.F.R. § 1.130 et seq.) (Rules of Practice), and the Hearing Clerk's notice letter dated September 12, 2011, were mailed to the Respondent via certified mail on September 12, 2011 and received by the Respondent on September 16, 2011, as indicated by the return date on the return receipt card. The Hearing Clerk's notice letter informed the Respondent that he had 20 days from receipt to file with the Hearing Clerk his Answer. The Hearing Clerk's notice letter informed him that his Answer must set forth any defense he wished to claim and must admit or deny each allegation. Further, the Hearing Clerk's notice letter stated: "Failure to file an Answer or filing an Answer which does not deny the material allegations of the Complaint shall constitute an admission of those allegations and waive your right to an oral hearing."

8. Respondent Philip Ambrose's Answer failed to deny any part of the allegations of the Complaint. Therefore, the factual allegations of the Complaint are admitted by the Respondent's failure to deny those allegations and are adopted and set forth herein as Findings of Fact. This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

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<sup>1</sup> The proposed Decision recites requested remedies, the essence of which I have imposed, in paragraphs 18, 19, and 20.

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### **Findings of Fact**

9. The Respondent, Philip Ambrose, also known as Philip W. Ambrose and Philip William Ambrose, is an individual with an address in Colorado.

10. The Respondent's registration with the Secretary of Agriculture as a dealer buying livestock for his own account or the accounts of others was in an inactive status, when, during about September 29, 2010 through about February 24, 2011, he was engaged in the business of a market agency purchasing livestock in commerce on a commission basis.

11. On November 25, 1994, the Respondent had consented to the entry of a Decision in P&S Docket No. D-94-46 that ordered him to cease and desist from operating subject to the Act without a bond. The order provides:

Respondent Philip W. Ambrose, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

12. On December 24, 2008, the Respondent was notified by certified mail that Respondent's surety bond would terminate on January 22, 2009. The letter referenced § 312 of the Act (7 U.S.C § 213) and sections 201.29-201.30 of the regulations (9 C.F.R §§ 201.29-201.30), and notified the Respondent of his obligation to secure a bond or bond equivalent unless he intended to terminate his operations subject to the Act. The letter also stated that, unless the Respondent provided proof of suitable bond or bond equivalent to the Packers and Stockyards Program, Respondent must discontinue all livestock operations for which bonding is required under the Act upon termination of his bond.

**PACKERS AND STOCKYARDS ACT**

13. On December 27, 2008, the Respondent returned the letter with his signed "Statement of Operations" that certified that he had discontinued livestock operations. Notwithstanding this certification, the Respondent resumed operations subject to the Act as a market agency buying on commission in the fall of 2010 without obtaining a bond or bond equivalent.

14. During the period from about September 29, 2010 through about February 24, 2011, Respondent Philip Ambrose engaged in the business of a market agency, purchasing livestock on a commission basis, for the account of the JBS Packerland meatpacking plant, which operates subject to the Act, located in Tolleson, Arizona. During this period, in approximately 47 transactions, the Respondent purchased approximately 2,584 head of cattle for the account of JBS Packerland at a gross cost of \$2,070,198.40. In return for his services as a market agency he received a commission of \$.35 per cwt for cattle he purchased, in the total amount of \$12,548.60.

15. Respondent Philip Ambrose was, from about September 29, 2010 through about February 24, 2011:

(a) operating as a dealer, engaged in the business of a market agency purchasing livestock in commerce on a commission basis; within the jurisdiction of the Secretary of Agriculture, subject to the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder;

(b) while his registration as a dealer with the Secretary of Agriculture was in an inactive status; and

(c) while he failed to maintain an adequate bond or bond equivalent as required.

**Conclusions**

16. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

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17. Respondent Philip Ambrose engaged in operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent, thereby willfully engaging in an "unfair practice" in violation of section 312(a) of the Act (7 U.S.C. § 213(a)); and willfully violating sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

### ORDER

18. Respondent Philip Ambrose, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations promulgated thereunder, without filing and maintaining an adequate bond or bond equivalent, as required by the Act and the regulations, and particularly sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30). Further, Respondent Philip Ambrose is prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered under the Act.

19. Respondent Philip Ambrose shall be suspended as a registrant under the Act for a period of **180 days**, which will be held in abeyance for three years on the condition (a) that he complies with the registration and bonding provisions of the Act and regulations and (b) that he timely files all annual and special reports, and (c) that he pay in full the assessed civil penalties as specified in paragraph 20.

20. Respondent Philip Ambrose is assessed civil penalties totaling **\$4,000.00** (four thousand dollars), in accordance with section 312(b) of the Act. 7 U.S.C. § 213(b). The civil penalty payment instrument(s) shall be made payable to the order of the **United States Department of Agriculture**, marked with **PS-D-11-0387**, and sent to:

USDA-GIPSA  
P.O. Box 790335

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St. Louis, Missouri 63179-0335

Payment(s) shall be completed within 180 days from the date this Order is final and effective (*see* next paragraph).

**Finality**

21. This Decision and Order shall be final and effective 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

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**In re: ROBERT MORALES CATTLE COMPANY, d/b/a K-M  
CATTLE AND ROBERT MORALES.**

**Docket No. 11-0406.**

**Decision and Order.**

**Filed March 6, 2013.**

**PS.**

Kelly J. Smith, Esq. for Robert Morales Cattle Co. and Robert Morales.

Leah C. Battaglioli, Esq. for GIPSA.

Initial Default Decision by Peter M. Davenport, Chief Administrative Law Judge.

*Decision and Order by William G. Jenson, Judicial Officer.*

**DECISION AND ORDER****PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on September 15, 2011. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the

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Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges: (1) during the period on or about June 3, 2008, through July 31, 2008, in approximately 23 transactions, Robert Morales Cattle Company, under the direction, management, and control of Robert Morales, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of the livestock, in violation of 7 U.S.C. §§ 213(a) and 228b; (2) Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a dealer and market agency, as required by 7 U.S.C. § 221; and (3) Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.<sup>1</sup>

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on September 19, 2011.<sup>2</sup> Neither Robert Morales Cattle Company nor Mr. Morales filed an answer to the Complaint within 20 days after service, as required by 7 C.F.R. § 1.136(a). The Assistant Hearing Clerk sent Robert Morales Cattle Company and Mr. Morales a letter dated October 13, 2011, informing them that they had failed to file a timely response to the Complaint. Neither Robert Morales Cattle Company nor Mr. Morales responded to the Assistant Hearing Clerk's October 13, 2011, letter.

On October 14, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered. Neither Robert Morales Cattle

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<sup>1</sup> Compl. at 3-4 ¶¶ III-V.

<sup>2</sup> United States Postal Service Domestic Return Receipt for article number 7009 1680 0001 9852 3852.

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Company nor Mr. Morales filed a response to the Chief ALJ's Show Cause Order. On October 26, 2011, the Deputy Administrator filed Complainant's Response to Show Cause Order and Motion for Decision Without Hearing By Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing By Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter on October 29, 2011.<sup>3</sup> On November 21, 2011, Robert Morales Cattle Company and Mr. Morales filed a response to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision.

On December 27, 2011, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order in which the Chief ALJ: (1) concluded that Robert Morales Cattle Company and Mr. Morales willfully violated 7 U.S.C. §§ 213(a), 221, and 228b and 9 C.F.R. §§ 201.49 and 201.73-1, as alleged in the Complaint; (2) ordered Robert Morales Cattle Company and Mr. Morales to cease and desist from failing to pay, when due, the full purchase price of livestock; (3) ordered Robert Morales Cattle Company and Mr. Morales to cease and desist from failing to issue scale tickets in conformity with 9 C.F.R. §§ 201.49 and 201.73-1; (4) ordered Robert Morales Cattle Company and Mr. Morales to keep and maintain records which fully and correctly disclose the true nature of all transactions involved in their business subject to the Packers and Stockyards Act, as required by 7 U.S.C. § 221; and (5) assessed Robert Morales Cattle Company and Mr. Morales, jointly and severally, a \$16,500 civil penalty.

On January 31, 2012, Robert Morales Cattle Company and Mr. Morales appealed the Chief ALJ's Default Decision and Order to, and requested an opportunity to present oral argument before, the Judicial Officer. On February 14, 2012, the Deputy Administrator filed Complainant's Opposition To Respondents' Appeal Petition. On February 22, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a

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<sup>3</sup> United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 8676.

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careful review of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision.

## **DECISION**

### **Statement of the Case**

Robert Morales Cattle Company and Mr. Morales failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). Pursuant to 7 C.F.R. § 1.136(c), the failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

### **Findings of Fact**

1. Robert Morales Cattle Company was a corporation organized and existing under the laws of the State of Utah. Robert Morales Cattle Company's corporate status expired on or about July 6, 2010, due to its failure to file a renewal. Robert Morales Cattle Company's current mailing address is in care of its registered agent, Robert Morales, in the State of Utah.

2. At all times material to this proceeding, Robert Morales Cattle Company was:

(a) Engaged in the business of buying and selling livestock, in commerce, as a dealer for its own account or for the account of others;

(b) Engaged in the business of a market agency buying livestock, in commerce, on a commission basis;

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(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock, in commerce, for its own account or for the account of others; and

(d) Registered with the Secretary of Agriculture as a market agency to buy livestock, in commerce, on a commission basis.

3. Mr. Morales is an individual residing in the State of Utah.

4. At all times material to this proceeding, Mr. Morales was:

(a) President of Robert Morales Cattle Company;

(b) Director of Robert Morales Cattle Company;

(c) One hundred percent owner of Robert Morales Cattle Company;

(d) Registered agent of Robert Morales Cattle Company; and

(e) Responsible for the direction, management, and control of Robert Morales Cattle Company.

5. On April 1, 2008, the Western Regional Office, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, mailed Mr. Morales a Notice of Violation letter. Mr. Morales was served with the Notice of Violation letter on April 3, 2008. In the Notice of Violation letter, Mr. Morales was notified that he had failed to:

(a) Pay for livestock in a timely manner, in violation of 7 U.S.C. § 228b;

(b) Maintain a means to trace his dealer transactions from purchase to sale by failing to maintain all purchase and sales invoices, load make-up sheets, and trucking records, as required by 7 U.S.C. § 221; and

(c) Zero balance his scale, print scale tickets when the scale was zero balanced, identify the name of the buyer on his scale tickets, use serially

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numbered scale tickets, and keep copies of executed or voided scale tickets, in violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.49 and 201.73-1.

6. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, commencing on or about June 3, 2008, and continuing through July 31, 2008, in approximately 23 transactions, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of such livestock. Robert Morales Cattle Company's payments were made between approximately 1 day and 160 days late. Robert Morales Cattle Company purchased livestock from the following sellers: (1) Producers Livestock Marketing Association, Jerome, Idaho; (2) Twin Falls Livestock Commission Co., Twin Falls, Idaho; (3) Burley Livestock Auction, LLC, Burley, Idaho; (4) Blackfoot Livestock Commission Co., Blackfoot, Idaho; (5) Dale T. Smith & Sons Meat Packing Co., Draper, Utah; (6) The Stockman's Market, Inc., Visalia, California; and (7) Shasta Livestock Auction Yard, Cottonwood, California.

7. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, failed to keep and maintain records which fully and correctly disclosed all the transactions involved in its business as a dealer and market agency, as required by 7 U.S.C. § 221. Specifically, Robert Morales Cattle Company failed to keep and maintain load make-up sheets, all purchase and sales invoices, all scale tickets, and all bank statements.

8. Robert Morales Cattle Company, under the direction, management, and control of Mr. Morales, in connection with its operations subject to the Packers and Stockyards Act, failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1. Specifically, Robert Morales Cattle Company issued scale tickets that were not serially numbered, did not identify the buyer of the livestock, did not identify the name, initials, or number of the person who weighed

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the livestock, and contained no record of zero balancing, as required by 9 C.F.R. § 201.73-1.

**Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Mr. Morales is the alter ego of Robert Morales Cattle Company.
3. By reason of the findings of fact in this Decision and Order, Robert Morales Cattle Company and Mr. Morales willfully violated 7 U.S.C. §§ 213(a), 221, and 228b and 9 C.F.R. §§ 201.49 and 201.73-1.

**Robert Morales Cattle Company and  
Mr. Morales' Request for Oral Argument**

Robert Morales Cattle Company and Mr. Morales' request for oral argument, which the Judicial Officer may grant, refuse, or limit,<sup>4</sup> is refused because the issues are not complex and oral argument would serve no useful purpose.

**Robert Morales Cattle Company and  
Mr. Morales' Appeal Petition**

Robert Morales Cattle Company and Mr. Morales raise 12 issues in their appeal of the Chief ALJ's December 27, 2011, Default Decision and Order. First, Robert Morales Cattle Company and Mr. Morales, quoting their November 21, 2011, filing, assert they requested a hearing and the Chief ALJ erroneously failed to schedule a hearing. Robert Morales Cattle Company and Mr. Morales request that I set aside the Chief ALJ's December 27, 2011, Default Decision and Order and remand the proceeding to the Chief ALJ for hearing. (Appeal Pet. at 2-3 ¶¶ 4, 7, 17.)

Robert Morales Cattle Company and Mr. Morales state in their November 21, 2011, filing: "I hope there is something we can do to work out this problem. My cell phone number is . . . and would love to

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<sup>4</sup> 7 C.F.R. § 1.145(d).

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talk to someone about the trouble I am in.” I do not find that Mr. Morales’ suggestion that someone call his cell phone and talk to him constitutes a request for a hearing. Moreover, even if I were to find Robert Morales Cattle Company and Mr. Morales requested a hearing in their November 21, 2011, filing, the request was made far too late to be considered. The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint on September 19, 2011.<sup>5</sup> Robert Morales Cattle Company and Mr. Morales failed to file a response to the Complaint within 20 days after the Hearing Clerk served them with the Complaint, as required by 7 C.F.R. § 1.136(a). Pursuant to 7 C.F.R. § 1.136(c), the failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer constitutes a waiver of hearing. Therefore, Robert Morales Cattle Company and Mr. Morales waived the opportunity for a hearing long before their November 21, 2011, filing, and I reject their request that I set aside the Chief ALJ’s December 27, 2011, Default Decision and Order and remand the proceeding to the Chief ALJ for hearing.

Second, Robert Morales Cattle Company and Mr. Morales assert their November 21, 2011, filing is a timely response to the Deputy Administrator’s Motion for Default Decision and Proposed Default Decision (Appeal Pet. at 2 ¶¶ 5, 8).

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Deputy Administrator’s Motion for Default Decision and Proposed Default Decision on October 29, 2011.<sup>6</sup> Robert Morales Cattle Company and Mr. Morales were required to file objections to the Deputy Administrator’s Motion for Default Decision and Proposed Default Decision no later than 20 days after service;<sup>7</sup> namely, no later than November 18, 2011. Robert Morales Cattle Company and Mr. Morales filed their objections to the Deputy Administrator’s Motion for Default Decision and Proposed Default

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<sup>5</sup> See note 2.

<sup>6</sup> See note 3.

<sup>7</sup> See 7 C.F.R. § 1.139.

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Decision on November 21, 2011; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that their objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision were timely filed.

Third, Robert Morales Cattle Company and Mr. Morales assert the Deputy Administrator did not respond to the letter they filed on November 21, 2011 (Appeal Pet. at 2 ¶ 6).

Robert Morales Cattle Company and Mr. Morales variously characterize their November 21, 2011, filing as an answer to part of the Complaint (Appeal Pet. at 2 ¶¶ 8, 11) and objections to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision (Appeal Pet. at 2 ¶¶ 5, 8). The Rules of Practice do not require that an opposing party respond to an answer, objections to a motion for a default decision, or objections to a proposed default decision.<sup>8</sup> Therefore, I do not find the Deputy Administrator's failure to respond to Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing relevant to this proceeding.

Fourth, Robert Morales Cattle Company and Mr. Morales assert their November 21, 2011, filing is a timely answer to part of the Complaint (Appeal Pet. at 2 ¶ 8).

The Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint on September 19, 2011.<sup>9</sup> Robert Morales Cattle Company and Mr. Morales were required to file a response to the Complaint no later than 20 days after service;<sup>10</sup> namely, no later than October 11, 2011.<sup>11</sup> Robert Morales Cattle Company and

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<sup>8</sup> 7 C.F.R. §§ 1.136 and 1.139.

<sup>9</sup> See note 2.

<sup>10</sup> 7 C.F.R. § 1.136(a).

<sup>11</sup> Twenty days after the date the Hearing Clerk served Robert Morales Cattle Company and Mr. Morales with the Complaint was Sunday, October 9, 2011. The Rules of Practice provide, when the time for filing a document or paper expires on a Sunday, the time for filing shall be extended to the next business day, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

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Mr. Morales filed their answer to part of the Complaint on November 21, 2011; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that their answer to part of the Complaint was timely filed.

Fifth, Robert Morales Cattle Company and Mr. Morales assert they did not receive the Hearing Clerk's letter dated October 13, 2011 (Appeal Pet. at 2 ¶ 9).

The Assistant Hearing Clerk sent Robert Morales Cattle Company and Mr. Morales a letter dated October 13, 2011, informing them that they failed to file a timely response to the Complaint, as follows:

Your answer to the complaint has not been filed in the above-captioned proceeding within the allotted time as noted in § 1.136 of the Rules of Practice. Please note that you will be informed of any further actions in this matter.

The Rules of Practice do not require that the Hearing Clerk inform parties to a proceeding that a timely answer has not been filed; therefore, the fact that Robert Morales Cattle Company and Mr. Morales did not receive the Assistant Hearing Clerk's October 13, 2011, letter is not relevant to this proceeding.

Sixth, Robert Morales Cattle Company and Mr. Morales assert the Deputy Administrator failed to provide evidence which supports findings of fact numbers 5 through 8 in the Chief ALJ's December 27, 2011, Default Decision and Order (Appeal Pet. at 2 ¶ 10).

Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint; therefore, Robert Morales Cattle

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(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h). Monday, October 10, 2011, was a federal holiday. The next business day after Sunday, October 9, 2011, was Tuesday, October 11, 2011.

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Company and Mr. Morales are deemed to have admitted the allegations of the Complaint.<sup>12</sup> The Chief ALJ adopted the allegations in paragraphs II through IV of the Complaint as findings of fact numbers 5 through 8 in his December 27, 2011, Default Decision and Order. As the Chief ALJ's findings of fact numbers 5 through 8 are based upon admissions, I find no error. The Deputy Administrator is not required to present evidence in support of allegations of the Complaint that are deemed to have been admitted.

Seventh, Robert Morales Cattle Company and Mr. Morales assert the Chief ALJ erroneously states in the December 27, 2011, Default Decision and Order that they admitted the untimely payments alleged in the Complaint in their November 21, 2011, filing (Appeal Pet. at 2 ¶ 11).

The Chief ALJ, referring to Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing, states: "The Respondents filed an untimely response which admits in part the untimely payments alleged in the Complaint." (Default Decision and Order at 2.) Robert Morales Cattle Company and Mr. Morales' November 21, 2011, filing does not contain an admission that they failed to pay the full purchase price of livestock when due, as alleged in the Complaint. Therefore, I agree with Robert Morales Cattle Company and Mr. Morales that the Chief ALJ's statement is error, and I do not adopt that statement in this Decision and Order. However, Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint and are deemed to have admitted the untimely payments alleged in the Complaint. Under these circumstances, I find the Chief ALJ's error harmless.

Eighth, Robert Morales Cattle Company and Mr. Morales contend the Chief ALJ's conclusion that they willfully violated the Packers and Stockyards Act, is error (Appeal Pet. at 2 ¶ 12).

A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of

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<sup>12</sup> 7 C.F.R. § 1.136(c).

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evil intent, or done with careless disregard of statutory requirements.<sup>13</sup> Robert Morales Cattle Company and Mr. Morales are within the jurisdiction of the United States Court of Appeals for the Tenth Circuit which has adopted a more stringent standard for willfulness under 5 U.S.C. § 558(c) than the standard adopted by the United States Department of Agriculture: willfulness must be demonstrated by an intentional misdeed or such gross neglect of a known duty as to be the equivalent of an intentional misdeed.<sup>14</sup>

The Packers and Stockyards Act explicitly requires each dealer and market agency purchasing livestock, before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock, to pay the full amount of the purchase price<sup>15</sup> and explicitly requires each dealer and market agency to keep such records, accounts, and memoranda as fully and correctly disclose all transactions involved in the business.<sup>16</sup> Moreover, the Regulations explicitly state the information that is required to be on scale tickets.<sup>17</sup> Mr. Morales was put on prior notice for precisely the same types of violations that Robert Morales Cattle Company and Mr. Morales are found to have committed in this proceeding.<sup>18</sup> Robert Morales Cattle Company and Mr. Morales knew their duties under the Packers and Stockyards Act and the Regulations. Robert Morales Cattle Company and Mr. Morales'

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<sup>13</sup> See, e.g., *In re Richard L. Reece*, \_\_\_ Agric. Dec. \_\_\_, slip op. at 7 (Oct. 17, 2011); *In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 309-12, (2000); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1414, 1423 (1998); *In re Samuel J. Dalessio, Jr.* (Decision as to Samuel J. Dalessio, Jr., and Douglas S. Dalessio, d/b/a Indiana Farmers Livestock Market, Inc.), 54 Agric. Dec. 590, 607 (1995), *aff'd*, 79 F.3d 1137 (3d Cir. 1996) (Table); *In re Hardin County Stockyards, Inc.* (Decision as to Hardin County Stockyards, Inc., and Rex Lineberry), 53 Agric. Dec. 654, 658 (1994); *In re Syracuse Sales Co.* (Decision as to John Knopp), 52 Agric. Dec. 1511, 1529 (1993), *appeal dismissed*, No. 94-9505 (10th Cir. Apr. 29, 1994); *In re Red River Livestock Auction, Inc.*, 30 Agric. Dec. 898, 904 (1971); *In re Rayville Livestock Auction, Inc.*, 30 Agric. Dec. 886, 896 (1971).

<sup>14</sup> *United States v. New Mexico Landscaping, Inc.*, 785 F.2d 843, 847 (10th Cir. 1986); *Diamond Ring Ranch, Inc. v. Morton*, 531 F.2d 1397, 1405 (10th Cir. 1976); *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10th Cir. 1965).

<sup>15</sup> 7 U.S.C. § 228b(a).

<sup>16</sup> 7 U.S.C. § 221.

<sup>17</sup> 9 C.F.R. §§ 201.49 and 201.73-1.

<sup>18</sup> See Decision and Order, *supra*, at finding of fact number 5.

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willfulness is reflected by their violations of express provisions of the Packers and Stockyards Act and the Regulations, the length of time during which Robert Morales Cattle Company and Mr. Morales committed the violations, and the dollar amount and number of the violative transactions. I find Robert Morales Cattle Company and Mr. Morales engaged in such gross neglect of known duties that their violations of the Packers and Stockyards Act and the Regulations were the equivalent of intentional violations and that Robert Morales Cattle Company and Mr. Morales' violations were willful, both under the standard for willfulness applied by the United States Department of Agriculture and under the standard for willfulness applied by the United States Court of Appeals for the Tenth Circuit. Therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that the Chief ALJ erroneously concluded that they willfully violated the Packers and Stockyards Act.

Ninth, Mr. Morales asserts he was not required to renew Robert Morales Cattle Company with the State of Utah after July 6, 2010, as he no longer owns or operates Robert Morales Cattle Company (Appeal Pet. at 3 ¶ 13).

State of Utah requirements concerning renewal of Robert Morales Cattle Company are not relevant to this proceeding, which is limited to the issue of Robert Morales Cattle Company and Mr. Morales' violations of the Packers and Stockyards Act and the Regulations.

Tenth, Robert Morales Cattle Company and Mr. Morales assert they no longer purchase livestock; therefore, the Chief ALJ's order that they cease and desist from violations of the Packers and Stockyards Act and comply with 7 U.S.C. § 221 are not applicable to them (Appeal Pet. at 3 ¶ 14).

Nothing prohibits Robert Morales Cattle Company or Mr. Morales from resuming operations under the Packers and Stockyards Act at any time; therefore, I find the Chief ALJ's cease and desist order and order to comply with 7 U.S.C. § 221 applicable to both Robert Morales Cattle Company and Mr. Morales.

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Eleventh, Robert Morales Cattle Company and Mr. Morales “object to the calculation of a civil penalty in the amount of Sixteen Thousand Five Hundred Dollars (\$16,500).” (Appeal Pet. at 3 ¶ 15.)

The Secretary of Agriculture’s sanction policy is as follows:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

*In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff’d*, 991 F.2d 803 (9th Cir. 1993).

Pursuant to 7 U.S.C. § 213(b), the Secretary of Agriculture must also consider “the gravity of the offense, the size of the business involved, and the effect of the penalty on the person’s ability to continue in business.” The maximum civil penalty that the Secretary of Agriculture may assess for each of Robert Morales Cattle Company and Mr. Morales’ violations of the Packers and Stockyards Act is \$11,000.<sup>19</sup>

Robert Morales Cattle Company and Mr. Morales, commencing on or about June 3, 2008, and continuing through July 31, 2008, in approximately 23 transactions, purchased livestock in the total amount of approximately \$293,211 and failed to pay, when due, the full purchase price of such livestock. Robert Morales Cattle Company and

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<sup>19</sup> The Packers and Stockyards Act provides that the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) is \$10,000 (7 U.S.C. § 213(b)). However, the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) has been modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. In 2008, when Robert Morales Cattle Company and Mr. Morales violated the Packers and Stockyards Act, the maximum civil penalty for each violation of 7 U.S.C. § 213(a) was \$11,000 (7 C.F.R. § 3.91(b)(6)(iv) (2010)).

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Mr. Morales also failed to keep and maintain records which fully and correctly disclosed all the transactions involved in their business as a dealer and market agency, as required by 7 U.S.C. § 221, and failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.

The purposes of the Packers and Stockyards Act are varied; however, one of the primary purposes of the Packers and Stockyards Act is “to assure fair trade practices in the livestock marketing . . . industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock.” *Bruhn’s Freezer Meats v. U.S. Dep’t of Agric.*, 438 F.2d 1332, 1337 (8th Cir. 1971), *cited in Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978). The requirement that a livestock purchaser make timely payment effectively prevents livestock sellers from being forced to finance transactions.<sup>20</sup> Robert Morales Cattle Company and Mr. Morales contravened the timely-payment requirement and their violations directly thwart one of the primary purposes of the Packers and Stockyards Act.<sup>21</sup> In addition, Robert Morales Cattle Company and Mr. Morales failed to keep and maintain records which fully and correctly disclosed all the transactions involved in their business as a dealer and market agency, as required by 7 U.S.C. § 221, and failed to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1. Keeping complete and accurate records is one of the important and essential means in accomplishment of the purposes of the Packers and Stockyards Act.<sup>22</sup>

Robert Morales Cattle Company and Mr. Morales’ violations of the Packers and Stockyards Act and the Regulations warrant a severe

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<sup>20</sup> See *Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978) (stating timely payment in a livestock purchase prevents the seller from being forced, in effect, to finance the transaction); *In re Richard L. Reece* (Order Denying Pet. to Reconsider), \_\_\_ Agric. Dec. \_\_\_, slip op. at 7 (Nov. 4, 2011) (stating the requirement that a purchaser make timely payment effectively prevents the seller from being forced to finance the transaction); *In re Hines and Thurn Feedlot, Inc.*, 57 Agric. Dec. 1408, 1429 (1998) (same).

<sup>21</sup> See *Mahon v. Stowers*, 416 U.S. 100, 111, (1974) (per curiam) (dictum) (stating that regulation requiring prompt payment supports policy to ensure that packers do not take unnecessary advantage of cattle sellers by holding funds for their own purposes); *Bowman v. U.S. Dep’t of Agric.*, 363 F.2d 81, 85 (5th Cir. 1966) (stating one of the purposes of the Packers and Stockyards Act is to ensure prompt payment).

<sup>22</sup> *Hyatt v United States*, 276 F.2d 308, 312 (10th Cir. 1960).

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sanction. Further, I give weight to the sanction recommendations of administrative officials, and the Deputy Administrator recommended assessment of a \$16,500 civil penalty. Therefore, I reject Robert Morales Cattle Company and Mr. Morales' objection to the Chief ALJ's assessing a \$16,500 civil penalty.

Twelfth, Robert Morales Cattle Company and Mr. Morales contend the Chief ALJ's findings of fact are error (Appeal Pet. at 3 ¶ 16).

Robert Morales Cattle Company and Mr. Morales failed to file a timely answer to the Complaint; therefore, Robert Morales Cattle Company and Mr. Morales are deemed to have admitted the allegations of the Complaint.<sup>23</sup> The Chief ALJ adopted the allegations of the Complaint as the findings of fact in the December 27, 2011, Default Decision and Order; therefore, I reject Robert Morales Cattle Company and Mr. Morales' contention that the Chief ALJ's findings of fact are error.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. Robert Morales Cattle Company and Mr. Morales, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Failing to pay, when due, the full purchase price of livestock; and

b. Failing to issue scale tickets in conformity with the requirements of 9 C.F.R. §§ 201.49 and 201.73-1.

2. Robert Morales Cattle Company and Mr. Morales shall keep and maintain accounts, records, and memoranda which fully and correctly disclose the true nature of all transactions involved in their business subject to the Packers and Stockyards Act, as required by 7 U.S.C. § 221,

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<sup>23</sup> 7 C.F.R. § 1.136(c).

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including, but not limited to, load make-up sheets, all purchase and sales invoices, all scale tickets, and all bank statements.

3. Robert Morales Cattle Company and Mr. Morales are assessed, jointly and severally, a \$16,500 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the “Treasurer of the United States” and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Robert Morales Cattle Company and Mr. Morales. Robert Morales Cattle Company and Mr. Morales shall state on the certified check or money order that payment is in reference to P & S Docket No. D-11-0406.

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**In re: MOHAMMAD S. MALIK AND KIRAN ENTERPRISES,  
INC., D/B/A TRENTON HALAL MEAT PACKING CO.  
Docket No. 12-0072.  
Decision and Order.  
Filed March 8, 2013.**

PS.

Brian Sylvester, Esq. for GIPSA.  
Mohammad S. Malik, pro se.  
Initial Decision by Janice K. Bullard, Administrative Law Judge.  
*Decision and Order by William G. Jenson, Judicial Officer.*

**DECISION AND ORDER****PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration,

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United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint and Notice of Hearing [hereinafter Complaint] on November 17, 2011. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges, during the period on or about July 30, 2009, through October 20, 2009, Mohammad S. Malik and Kiran Enterprises, Inc., d/b/a Trenton Halal Meat Packing Co. [hereinafter Kiran Enterprises], purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 192(a) and 228b.<sup>1</sup>

The Hearing Clerk served Mr. Malik and Kiran Enterprises with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on November 21, 2011.<sup>2</sup> Neither Mr. Malik nor Kiran Enterprises filed an answer to the Complaint within 20 days after service, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent Mr. Malik and Kiran Enterprises a letter dated December 19, 2011, informing them that they had failed to file a timely response to the Complaint. Neither Mr. Malik nor Kiran Enterprises responded to the Hearing Clerk's December 19, 2011, letter.

On December 20, 2011, the Deputy Administrator filed a Motion for Default Decision and a proposed Decision Without Hearing By Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Mr. Malik and Kiran Enterprises with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the

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<sup>1</sup> Compl. at 2 ¶¶ II-III.

<sup>2</sup> United States Postal Service Domestic Return Receipt for article number 7009 1680 0001 9852 1315.

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Hearing Clerk's service letter on December 23, 2011.<sup>3</sup> Neither Mr. Malik nor Kiran Enterprises filed a response to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision.

On January 26, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ], in accordance with 7 C.F.R. § 1.139, issued a Decision Without Hearing By Entry of Default Against Respondents [hereinafter Default Decision]: (1) concluding that Mr. Malik and Kiran Enterprises willfully violated 7 U.S.C. §§ 192(a) and 228b by failing to make full payment promptly; (2) ordered Mr. Malik and Kiran Enterprises to cease and desist from failing to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of livestock; and (3) assessed Mr. Malik and Kiran Enterprises a \$31,600 civil penalty.<sup>4</sup>

On February 15, 2012, Mr. Malik and Kiran Enterprises appealed the ALJ's Default Decision to the Judicial Officer. On March 5, 2012, the Deputy Administrator filed Complainant's Opposition to Respondent's [sic] Appeal Petition. On March 7, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the ALJ's Default Decision as the final agency decision.

**DECISION****Statement of the Case**

Mr. Malik and Kiran Enterprises failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). Pursuant to 7 C.F.R. § 1.136(c), the failure to file an answer within the time provided in 7 C.F.R. § 1.136(a) is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in

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<sup>3</sup> United States Postal Service Track & Confirm for article number 7009 1680 0001 9852 7454.

<sup>4</sup> ALJ's Default Decision at 2-3.

Mohammad S. Malik and Kiran Enterprises, Inc.  
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the Complaint are adopted as findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

**Findings of Fact**

1. Mr. Malik is an individual who is president and 50 percent owner of Kiran Enterprises.
2. Kiran Enterprises is a corporation organized and existing under the laws of the State of New Jersey.
3. Mr. Malik and Kiran Enterprises' business mailing address is 610 Roebling Avenue, Trenton, New Jersey 08611.
4. Mr. Malik and Kiran Enterprises, at all times material to this proceeding:
  - (a) 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
  - (b) Operated as a packer within the meaning of, and subject to, the Packers and Stockyards Act.
5. On or about the dates and in the transactions set forth in Appendix A, attached to this Decision and Order, Mr. Malik and Kiran Enterprises purchased livestock and failed to pay, when due, the full purchase price of the livestock.

**Conclusion of Law**

By failing to make full payment promptly, Mr. Malik and Kiran Enterprises have willfully violated 7 U.S.C. §§ 192(a) and 228b.

**Mr. Malik and Kiran Enterprises' Appeal Petition**

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Mr. Malik and Kiran Enterprises raise two issues in their appeal of the ALJ's Default Decision. First, Mr. Malik and Kiran Enterprises request that I set aside the ALJ's Default Decision. Mr. Malik and Kiran Enterprises admit they failed to file a timely answer to the Complaint and state they cannot explain the reasons for their failure to file a timely answer. (Appeal Pet. at 1.)

Mr. Malik and Kiran Enterprises' failure to file a timely answer to the Complaint is deemed, for purposes of the proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing.<sup>5</sup> Therefore, the ALJ properly issued the Default Decision. On rare occasions, I have set aside default decisions for good cause shown or in proceedings in which the complainant does not object to setting aside the default decision.<sup>6</sup> Mr. Malik and Kiran Enterprises state they cannot

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<sup>5</sup> 7 C.F.R. §§ 1.136(c), 1.139, 1.141(a).

<sup>6</sup> See *In re Dale Goodale*, 60 Agric. Dec. 670 (2001) (Remand Order) (setting aside the default decision because the administrative law judge adopted apparently inconsistent findings of a dispositive fact in the default decision and the order in the default decision was not clear); *In re Deora Sewnanan*, 60 Agric. Dec. 688 (2001) (setting aside the default decision because the respondent was not served with the complaint); *In re H. Schnell & Co.*, 57 Agric. Dec. 1722 (1998) (Remand Order) (setting aside the default decision, which was based upon the respondent's statements during two telephone conference calls with the administrative law judge and the complainant's counsel, because the respondent's statements did not constitute a clear admission of the material allegations in the complaint and concluding the default decision deprived the respondent of its right to due process under the Fifth Amendment to the Constitution of the United States); *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996) (setting aside the default decision because facts alleged in the complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-Pro Distributors*, 42 Agric. Dec. 273 (1983) (Remand Order) (setting aside the default decision because service of the complaint by registered and regular mail was returned as undeliverable, and the respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted), final decision, 42 Agric. Dec. 1173 (1983); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981) (Order Vacating Default Decision and Remanding Proceeding) (vacating the default decision and remanding the case to the administrative law judge to determine whether just cause exists for permitting late answer), final decision, 40 Agric. Dec. 1254 (1981); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (Remand Order) (remanding the proceeding to the administrative law judge for the purpose of receiving evidence because the complainant had no objection to the respondent's motion for remand), final decision, 37 Agric. Dec. 1175 (1978); *In re Richard Cain*, 17 Agric. Dec. 985 (1958) (Order Reopening After Default) (setting aside a default decision and accepting a late-filed answer because the complainant did not object to the respondent's motion to reopen after default).

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explain the reasons for their failure to file a timely answer to the Complaint; therefore, I find Mr. Malik and Kiran Enterprises have failed to show good cause for setting aside the ALJ's Default Decision. Moreover, the Deputy Administrator objects to setting aside the ALJ's Default Decision (Complainant's Opposition to Respondent's [sic] Appeal Petition at 3-6). Under these circumstances, I find no basis upon which to set aside the ALJ's properly issued Default Decision.

Second, Mr. Malik and Kiran Enterprises request that I suspend or waive the civil penalty assessed by the ALJ. Mr. Malik and Kiran Enterprises cite, as the bases for their request, the following: (1) while they have not always paid for livestock in accordance with the Packers and Stockyards Act, they have never failed to pay an invoice; (2) no livestock seller has ever been instituted an action against them for failure to pay for livestock, when due; (3) they have always tried to comply with the Packers and Stockyards Act; and (4) in the future, they fully expect to pay for livestock in accordance with the Packers and Stockyards Act. (Appeal Pet. at 1.)

The Packers and Stockyards Act explicitly requires each packer purchasing livestock, before the close of the next business day following the purchase of the livestock and the transfer of possession of the livestock, to pay the full amount of the purchase price.<sup>7</sup> Mr. Malik and Kiran Enterprises do not deny their failure to pay for livestock in accordance with the Packers and Stockyards Act, as alleged in the Complaint. Mr. Malik and Kiran Enterprises' payment of all invoices for livestock, Mr. Malik and Kiran Enterprises' attempt to comply with the Packers and Stockyards Act, Mr. Malik and Kiran Enterprises' expectation that they will comply with the Packers and Stockyards Act in the future, and the fact that no livestock seller has ever instituted an action against Mr. Malik or Kiran Enterprises for failure to pay for livestock, when due, are not defenses to their violations of the Packers and Stockyards Act or bases upon which to suspend or waive the civil penalty assessed by the ALJ.

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<sup>7</sup> 7 U.S.C. § 228b(a).

**PACKERS AND STOCKYARDS ACT**

Mr. Malik and Kiran Enterprises also assert the civil penalty assessed by the ALJ should be suspended or waived because their violations of the Packers and Stockyards Act were not intentional (Appeal Pet. at 1). The ALJ concluded that Mr. Malik and Kiran Enterprises' violations of the Packers and Stockyards Act were willful.<sup>8</sup> A violation is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements.<sup>9</sup> Mr. Malik and Kiran Enterprises' willfulness is reflected by their violations of express provisions of the Packers and Stockyards Act, the length of time during which Mr. Malik and Kiran Enterprises committed the violations, and the dollar amount and number of the violative transactions. I find, under the circumstances, Mr. Malik and Kiran Enterprises intentionally failed to pay the full amount of the purchase price of livestock, when due; therefore, Mr. Malik and Kiran Enterprises' violations of the Packers and Stockyards Act were willful. Accordingly, I reject Mr. Malik and Kiran Enterprises' request that I suspend or waive the civil penalty assessed by the ALJ.

For the foregoing reasons, the following Order is issued.

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<sup>8</sup> ALJ's Default Decision at 2.

<sup>9</sup> See, e.g., In re Robert Morales Cattle Co., \_\_\_ Agric. Dec. \_\_\_, slip op. at 15 (Mar. 6, 2012); In re Richard L. Reece, \_\_\_ Agric. Dec. \_\_\_, slip op. at 7 (Oct. 17, 2011); In re Marysville Enterprises, Inc., 59 Agric. Dec. 299, 309-12, (2000); In re Hines and Thurn Feedlot, Inc., 57 Agric. Dec. 1408, 1414, 1423 (1998); In re Samuel J. Dalessio, Jr. (Decision as to Samuel J. Dalessio, Jr., and Douglas S. Dalessio, d/b/a Indiana Farmers Livestock Market, Inc.), 54 Agric. Dec. 590, 607 (1995), *aff'd*, 79 F.3d 1137 (3d Cir. 1996) (Table); In re Hardin County Stockyards, Inc. (Decision as to Hardin County Stockyards, Inc., and Rex Lineberry), 53 Agric. Dec. 654, 658 (1994); In re Syracuse Sales Co. (Decision as to John Knopp), 52 Agric. Dec. 1511, 1529 (1993), appeal dismissed, No. 94-9505 (10th Cir. Apr. 29, 1994); In re Red River Livestock Auction, Inc., 30 Agric. Dec. 898, 904 (1971); In re Rayville Livestock Auction, Inc., 30 Agric. Dec. 886, 896 (1971).

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### ORDER

1. Mr. Malik and Kiran Enterprises, their agents and employees, directly or indirectly through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from failing to pay, within the time period required by the Packers and Stockyards Act, the full purchase price of livestock, as required by 7 U.S.C. § 228b(a).
2. Mr. Malik and Kiran Enterprises are assessed, jointly and severally, a \$31,600 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Mr. Malik and Kiran Enterprises. Mr. Malik and Kiran Enterprises shall state on the certified check or money order that payment is in reference to P & S Docket No. D-12-0072.

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**In re: MICHAEL V. BOTT AND TONY BOTT.**  
**Docket No. 11-0438.**  
**Decision and Order.**  
**Filed May 8, 2012.**

**PS.**

Jonathan Gordy, Esq. for GIPSA.  
Michael V. Bott and Tony Bott, pro se.  
Initial Default Decision by Peter M. Davenport, Chief Administrative Law Judge.  
*Decision and Order by William G. Jenson, Judicial Officer.*

**PACKERS AND STOCKYARDS ACT****DECISION AND ORDER****PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on September 27, 2011. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges, during the period March 2008 through October 2009: (1) Michael V. Bott and Tony Bott purchased livestock and failed to pay, when due, the full purchase price for the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b; (2) Tony Bott issued 17 checks in purported payment for livestock purchases that were returned unpaid because Michael V. Bott and Tony Bott did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented, in willful violation of 7 U.S.C. §§ 213(a) and 228b; and (3) Michael V. Bott and Tony Bott did not maintain trucking or freight invoices and load make-up sheets, as required by 7 U.S.C. § 221.<sup>1</sup>

The Hearing Clerk served Michael V. Bott and Tony Bott with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on October 12, 2011.<sup>2</sup> Michael V. Bott and Tony Bott requested an extension of time within which to file an answer to the Complaint. On November 2, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] granted Michael V. Bott and Tony Bott's

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<sup>1</sup> Compl. at 3-4 ¶¶ III-V.

<sup>2</sup> United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 8904 and United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 8898.

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request and extended the time for filing an answer to December 1, 2011.<sup>3</sup> Neither Michael V. Bott nor Tony Bott filed a timely answer to the Complaint, and on January 6, 2012, the Chief ALJ issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered.

On January 23, 2012, the Deputy Administrator filed a Response to Show Cause Order and Motion for Decision Without Hearing by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Michael V. Bott and Tony Bott with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter.<sup>4</sup> On February 17, 2012, Michael V. Bott and Tony Bott each filed a response to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision.

On March 9, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Michael V. Bott and Tony Bott willfully violated 7 U.S.C. §§ 213(a) and 228b; (2) concluding Michael V. Bott and Tony Bott failed to keep records that fully and correctly disclose all the transactions involved in their business, as required by 7 U.S.C. § 221; (3) ordering Michael V. Bott and Tony Bott to cease and desist from failing to pay, when due, the full purchase price of livestock; (4) ordering Michael V. Bott and Tony Bott to cease and desist from failing to keep records that fully and correctly disclose all transactions involved in their business, as required by 7 U.S.C. § 221; and (5) assessing Michael V. Bott and Tony Bott, jointly and severally, a \$34,000 civil penalty.<sup>5</sup>

On April 11, 2012, Michael V. Bott and Tony Bott appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On May 2, 2012, the Deputy Administrator filed Response to letters of appeal. On

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<sup>3</sup> Chief ALJ's Order Extending Time filed November 2, 2011.

<sup>4</sup> United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 7563 and United States Postal Service Domestic Return Receipt for article number 7005 1160 0002 7835 7570.

<sup>5</sup> Chief ALJ's Default Decision and Order at the third and fourth unnumbered pages.

**PACKERS AND STOCKYARDS ACT**

May 4, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision.

**DECISION****Statement of the Case**

Michael V. Bott and Tony Bott failed to file a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

**Findings of Fact**

1. Michael V. Bott is an individual whose business address is in Rupert, Idaho.
2. At all times material to this proceeding, Michael V. Bott was:
  - (a) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account;
  - (b) Engaged in the business of a market agency, buying livestock in commerce on a commission basis; and
  - (c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, a market agency buying on commission, and a market agency providing clearing services.
3. Tony Bott is an individual whose business address is in Rupert, Idaho.
4. At all times material to this proceeding, Tony Bott was:

Michael V. Bott and Tony Bott  
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(a) Engaged in the business of a dealer, buying and selling livestock in commerce for his own account;

(b) Engaged in the business of a market agency, buying livestock in commerce on a commission basis; and

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce.

5. During the period March 2008 through October 2009, Michael V. Bott and Tony Bott, under the name "MB Livestock" and their own names, in connection with their operations subject to the Packers and Stockyards Act, failed to pay, when due, the full amount of the purchase price for livestock within the time period required by 7 U.S.C. § 228b and 9 C.F.R. § 201.43 in the transactions as identified generally in Attachment A to the Complaint.

6. During the period March 2008 through October 2009, Tony Bott issued 17 checks, on the account of "MB Livestock" and Michael Bott and Doris Bott, in the total amount of \$1,182,982.90 to Cattleman's Livestock Auction, Inc., d/b/a Treasure Valley Livestock, of Caldwell, Idaho, in purported payment for livestock purchases, that were returned unpaid by the bank upon which they were drawn. These checks were returned because Michael V. Bott and Tony Bott did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented.

7. During the period March 2008 through October 2009, Michael V. Bott and Tony Bott did not maintain trucking or freight invoices or load make-up sheets.

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Michael V. Bott and Tony Bott willfully violated 7 U.S.C. §§ 213(a) and 228b.

**PACKERS AND STOCKYARDS ACT**

3. Michael V. Bott and Tony Bott failed to keep records that fully and correctly disclose all the transactions involved in their business, as required by 7 U.S.C. § 221, by failing to keep trucking or freight invoices and load make-up sheets.

**Michael V. Bott's and Tony Bott's Appeal Petitions**

Michael V. Bott and Tony Bott raise five issues in their appeal petitions. First, Michael V. Bott and Tony Bott deny the allegations in the Complaint.

The Hearing Clerk served Michael V. Bott and Tony Bott with the Complaint on October 12, 2011;<sup>6</sup> therefore, an answer to the Complaint was originally required to be filed with the Hearing Clerk no later than November 1, 2011. Michael V. Bott and Tony Bott requested an extension of time within which to file an answer to the Complaint, which the Chief ALJ granted extending the time for filing an answer to December 1, 2011.<sup>7</sup> Michael V. Bott and Tony Bott filed their responses to the allegations of the Complaint on February 17, 2012, 2 months 16 days after their answers to the Complaint were due. The failure to file a timely answer to the Complaint is deemed, for the purposes of the proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing.<sup>8</sup> Therefore, Michael V. Bott's and Tony Bott's denials of the allegations of the Complaint both in their responses to the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and in their appeal petitions come far too late to be considered.

Second, Michael V. Bott and Tony Bott assert none of the livestock sellers from whom they purchased livestock has complained about late payment. Tony Bott asserts the only person who "seems to have a problem with [his] practices is the [Packers and Stockyards Program] agent." (Tony Bott's Appeal Pet. at 1.)

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<sup>6</sup> See note 2.

<sup>7</sup> See note 3.

<sup>8</sup> 7 C.F.R. §§ 1.136(c), .139, .141(a).

Michael V. Bott and Tony Bott  
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The Packers and Stockyards Act requires that each market agency and each dealer promptly pay for livestock purchases, as follows:

**§ 228b. Prompt payment for purchase of livestock**

**(a) Full amount of purchase price required; methods of payment**

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price[.]

7 U.S.C. § 228b(a).

A failure to pay for livestock purchases, when due, is an unfair practice under the Packers and Stockyards Act<sup>9</sup> even if the livestock sellers have acquiesced to late payments.<sup>10</sup> Therefore, even if I were to find that none of the livestock sellers from whom Michael V. Bott and Tony Bott purchased livestock has complained about late payment, that finding would not change the disposition of this proceeding.

Third, Michael V. Bott asserts the Packers and Stockyards Program will not tell him the number of days he must own cattle before they become feeder cattle, rather than dealer cattle.

Michael V. Bott fails to explain the relevance of the Packers and Stockyards Program's purported failure to inform him of the number of days he must own cattle before they become feeder cattle, and I find

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<sup>9</sup> See 7 U.S.C. § 213(a).

<sup>10</sup> See *In re San Jose Valley Veal, Inc.*, 34 Agric. Dec. 966, 981-82 (1975) (holding the existence of a course of dealing allowing for delayed payment did not excuse the packing company from delaying its payments beyond the close of the next business day and holding the delayed payments to be in violation of the Packers and Stockyards Act); *In re Sebastopol Meat Co., Inc.*, 28 Agric. Dec. 435, 441 (1969) (rejecting the argument that no violation of the Packers and Stockyards Act occurred as the livestock sellers acquiesced in the late payments by continuing to do business with the livestock purchaser), *aff'd*, 440 F.2d 983 (9th Cir. 1971).

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Michael V. Bott's assertion regarding the Packers and Stockyard Program's lack of communication on the subject of feeder cattle irrelevant to this proceeding. Michael V. Bott is deemed, by his failure to file a timely answer to the Complaint, to have admitted the allegations of the Complaint,<sup>11</sup> including the allegation that, at all times material to the Complaint, he "[e]ngaged in the business of a dealer."<sup>12</sup>

Fourth, Michael V. Bott and Tony Bott assert the Packers and Stockyards Program does not enforce the Packers and Stockyards Act against everyone.

Michael V. Bott and Tony Bott's assertion that the Packers and Stockyards Program does not enforce the Packers and Stockyards Act against everyone is not relevant to this proceeding.<sup>13</sup> The Packers and Stockyards Act does not need to be enforced everywhere to be enforced somewhere and agency officials have broad discretion in deciding against whom to institute administrative disciplinary proceedings for violations of the Packers and Stockyards Act. The decision of whether and when an agency exercises its enforcement powers is left to agency discretion, except to the extent determined by Congress.<sup>14</sup>

Fifth, Tony Bott asserts the "MB Livestock" account no longer exists.

Tony Bott fails to explain the relevance of the closure of the "MB Livestock" account, and I find Tony Bott's assertion regarding the closure of the "MB Livestock" account irrelevant to this proceeding. Tony Bott is deemed, by his failure to file a timely answer to the

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<sup>11</sup> 7 C.F.R. § 1.136(c).

<sup>12</sup> Compl. at 1 ¶ I(b)(1).

<sup>13</sup> In re Sam Mazzola (Ruling Denying Mr. Mazzola's Motion to Reopen), 68 Agric. Dec. 1066, 1068-69 (2009) (finding that a respondent's assertions that the agency failed to enforce the Animal Welfare Act against others who had violated the Animal Welfare Act had no relevance in the proceeding concerning violations committed by the respondent).

<sup>14</sup> See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *United States v. Batchelder*, 442 U.S. 114, 123-24 (1979); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967); *Confiscation Cases*, 74 U.S. (7 Wall.) 454 (1869); *Sierra Club v. Whitman*, 268 F.3d 898, 902-03 (9th Cir. 2001); *Massachusetts Pub. Interest Research Group v. U.S. Nuclear Regulatory Comm'n*, 852 F.2d 9, 14-19 (1st Cir. 1988); *Harmon Cove Condominium Ass'n, Inc. v. Marsh*, 815 F.2d 949, 952-53 (3d Cir. 1987).

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Complaint, to have admitted the allegations of the Complaint,<sup>15</sup> including the allegation that he issued 17 checks “on the account of ‘MB Livestock’ and Michael Bott and Doris Bott, in the total amount of \$1,182,982.90 to Cattleman’s Livestock Auction, Inc. d.b.a. Treasure Valley Livestock, of Caldwell, ID . . . in purported payment for livestock purchases, that were returned unpaid by the bank upon which they were drawn.”<sup>16</sup>

For the foregoing reasons, the following Order is issued.

**ORDER**

1. Michael V. Bott and Tony Bott, their agents and employees, directly or indirectly through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

(a) failing to pay, when due, the full purchase price of livestock; and

(b) failing to keep records that fully disclose all transactions involved in their business, including trucking or freight invoices and load make-up sheets.

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<sup>15</sup> See note 11.

<sup>16</sup> Compl. at 3 ¶ III(b).

**PACKERS AND STOCKYARDS ACT**

2. Michael V. Bott and Tony Bott are assessed, jointly and severally, a \$34,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Michael V. Bott and Tony Bott. Michael V. Bott and Tony Bott shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-11-0438.

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**In re: RICHARD HALE.**  
**Docket No. 12-0204.**  
**Decision and Order.**  
**Filed June 18, 2012.**

PS.

Jonathan Gordy, Esq. for GIPSA.  
Richard Hale, pro se.  
Initial Default Decision by Peter M. Davenport, Chief Administrative Law Judge.  
*Decision and Order by William G. Jenson, Judicial Officer.*

**DECISION AND ORDER****PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on January 25, 2012. The Deputy Administrator

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instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt.201); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges, during the period June 9, 2010, through November 4, 2010, Richard Hale purchased livestock in approximately 55 transactions from Burley Livestock Auction, LLC, of Burley, Idaho, and from Producers Livestock Marketing Association of Jerome, Idaho, and made payment between 5 and 21 days beyond the date payment was due, in willful violation of 7 U.S.C. §§ 213(a) and 228b.<sup>1</sup>

The Hearing Clerk served Mr. Hale with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on February 3, 2012.<sup>2</sup> Mr. Hale failed to file an answer to the Complaint within 20 days after the Hearing Clerk served him with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated February 24, 2012, to Mr. Hale informing him that his answer to the Complaint had not been filed within the time prescribed by the Rules of Practice. Mr. Hale did not respond to the Hearing Clerk's letter dated February 24, 2012. On February 28, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered.

On March 7, 2012, Mr. Hale filed an answer to the Complaint. On March 14, 2012, the Deputy Administrator filed a response to the Chief ALJ's Show Cause Order in the form of a Motion for Decision Without Hearing by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision Without Hearing by Reason of Default [hereinafter Proposed Default Decision]. On March 19, 2012, the

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<sup>1</sup> Compl. ¶¶ III-IV.

<sup>2</sup> United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 7164.

**PACKERS AND STOCKYARDS ACT**

Hearing Clerk served Mr. Hale with the Deputy Administrator's Motion for Default Decision and Proposed Default Decision and the Hearing Clerk's service letter.<sup>3</sup>

On March 27, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Mr. Hale willfully violated 7 U.S.C. §§ 213(a) and 228b, as alleged in the Complaint; (2) ordering Mr. Hale to cease and desist from failing to pay, when due, for livestock purchases; and (3) assessing Mr. Hale a \$20,000 civil penalty.<sup>4</sup> On April 9, 2012, Mr. Hale filed a letter indicating disagreement with the Chief ALJ's Default Decision and Order. The Chief ALJ treated Mr. Hale's April 9, 2012, filing as a request for reconsideration of the Default Decision and Order and on May 10, 2012, issued an order denying Mr. Hale's request for reconsideration.

On May 23, 2012, Mr. Hale appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On June 14, 2012, the Deputy Administrator filed Response to Respondent's Letter of Appeal. On June 15, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision.

**DECISION****Statement of the Case**

Mr. Hale failed to file a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as

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<sup>3</sup> United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3862 7454.

<sup>4</sup> Chief ALJ's Default Decision and Order at 2-3.

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findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

### **Findings of Fact**

1. Richard Hale is an individual whose mailing address is in Twin Falls, Idaho.
2. At all times material to this proceeding, Richard Hale was:
  - (a) A dealer engaged in the business of buying and selling in commerce livestock either on his own account or as the agent of the vendor or purchaser; and
  - (b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account and for the account of others.
3. The Chief ALJ entered a Decision Without Hearing by Reason of Consent in *In re Richard Hale*, P. & S. Docket No. D-10-0001 (May 20, 2010), in which the Chief ALJ ordered Richard Hale to cease and desist from failing to pay, when due, the full purchase price of livestock, as required by 7 U.S.C. § 228b.
4. The provisions of the cease and desist order in *In re Richard Hale*, P. & S. Docket No. D-10-0001 (May 20, 2010), are still in effect.
5. During the period June 9, 2010, through November 4, 2010, Richard Hale purchased livestock in approximately 55 transactions from Burley Livestock Auction, LLC, of Burley, Idaho, and from Producers Livestock Marketing Association of Jerome, Idaho, and made payment between 5 and 21 days beyond the date payment was due.

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Richard Hale willfully violated 7 U.S.C. §§ 213(a) and 228b.

**PACKERS AND STOCKYARDS ACT****Mr. Hale's Appeal Petition**

Mr. Hale denies the allegations of the Complaint in his appeal petition.

The Hearing Clerk served Mr. Hale with the Complaint on February 3, 2012;<sup>5</sup> therefore, Mr. Hale's answer to the Complaint was required to be filed with the Hearing Clerk no later than February 23, 2012. Mr. Hale filed his first response to the allegations of the Complaint on March 7, 2012, 13 days after his answer to the Complaint was due. The failure to file a timely answer to the Complaint is deemed, for the purposes of the proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing.<sup>6</sup> Therefore, Mr. Hale's denial of the allegations of the Complaint comes too late to be considered.

Mr. Hale's appeal petition also contains a request that I appoint counsel to represent him in this proceeding.

The Administrative Procedure Act provides that a party in an agency proceeding may appear by or with counsel, as follows:

**§ 555. Ancillary matters**

....

(b) . . . A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.

5 U.S.C. § 555(b).

However, a respondent who desires assistance of counsel in an agency proceeding bears the responsibility of obtaining counsel. Moreover, a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in a disciplinary administrative proceeding conducted under the Packers

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<sup>5</sup> See note 2.

<sup>6</sup> 7 C.F.R. §§ 1.136(c), .139, .141(a).

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and Stockyards Act.<sup>7</sup> Therefore, I deny Mr. Hale's request that I appoint counsel to represent him in this proceeding.

Mr. Hale also indicates in his appeal petition that he wants "to go to court."

The Rules of Practice provide that this Decision and Order is a final agency decision for the purposes of judicial review.<sup>8</sup> Mr. Hale has the right to seek judicial review of this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §

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<sup>7</sup> See *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439, 442 (1984) (stating a disciplinary proceeding under the Packers and Stockyards Act is not a criminal proceeding and the respondent, even if he cannot afford counsel, has no constitutional right to have counsel provided by the government), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984). See also *Elliott v. SEC*, 36 F.3d 86, 88 (11th Cir. 1994) (per curiam) (rejecting petitioner's assertion of prejudice due to his lack of representation in an administrative proceeding before the Securities and Exchange Commission and stating there is no statutory or constitutional right to counsel in disciplinary administrative proceedings before the Securities and Exchange Commission); *Henry v. INS*, 8 F.3d 426, 440 (7th Cir. 1993) (stating it is well-settled that deportation hearings are in the nature of civil proceedings and aliens, therefore, have no constitutional right to counsel under the Sixth Amendment); *Alvarez v. Bowen*, 704 F. Supp. 49, 52 (S.D.N.Y. 1989) (stating the Secretary of Health and Human Services is not obligated to furnish a claimant with an attorney to represent the claimant in a social security disability proceeding); *In re Frank Craig*, 66 Agric. Dec. 353, 366-67 (2007) (stating a respondent who is unable to obtain counsel has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Federal Meat Inspection Act and the Poultry Products Inspection Act); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 50-51 (2002) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Animal Welfare Act); *In re Garland E. Samuel*, 57 Agric. Dec. 905, 911 (1998) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Swine Health Protection Act); *In re Steven M. Samek*, 57 Agric. Dec. 185, 188 (1998) (Ruling Denying Motion to Appoint Public Defender as to Steven M. Samek) (stating a respondent who is unable to afford an attorney has no right under the Constitution of the United States, the Administrative Procedure Act, or the Rules of Practice to have counsel provided by the government in an administrative disciplinary proceeding conducted under the Animal Welfare Act).

<sup>8</sup> 7 C.F.R. § 1.145(i).

**PACKERS AND STOCKYARDS ACT**

2341-2350. Judicial review must be sought within 60 days after entry of the Order in this Decision and Order.<sup>9</sup> The date of entry of the Order in this Decision and Order is June 18, 2012.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. Richard Hale, his agents and employees, directly or indirectly through any corporate or other device, in connection with his activities subject to the Packers and Stockyards Act, shall cease and desist from failing to pay, when due, for livestock purchases.
2. Richard Hale is assessed a \$20,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the "Treasurer of the United States" and sent to:

USDA-GIPSA  
P.O. Box 790335  
St. Louis, MO 63197-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Richard Hale. Richard Hale shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-12-0204.

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<sup>9</sup> 28 U.S.C. § 2344.

Claypoole Livestock, Inc. and Timonthy J. Claypoole  
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**In re: CLAYPOOLE LIVESTOCK, INC. AND TIMOTHY J.  
CLAYPOOLE.**

**Docket No. 12-0135.**

**Decision and Order.**

**Filed June 20, 2012.**

**PS.**

Charles Spicknall, Esq. for GIPSA.

Timothy J. Claypoole, pro se.

Initial Default Decision by Peter M. Davenport, Chief Administrative Law Judge.

*Decision and Order by William G. Jenson, Judicial Officer.*

**DECISION AND ORDER**

**PROCEDURAL HISTORY**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on December 21, 2011. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges: (1) during the period May 6, 2009, through August 10, 2011, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b; (2) during the period May 20, 2009, through August 24, 2011, Claypoole Livestock, Inc., under the direction, management, and control of Mr. Claypoole, in connection with operations subject to the Packers and Stockyards Act, issued checks for livestock purchases that were returned unpaid by the

**PACKERS AND STOCKYARDS ACT**

bank upon which the checks were drawn because Claypoole Livestock, Inc., and Mr. Claypoole did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented, in willful violation of 7 U.S.C. §§ 213(a) and 228b; and (3) Claypoole Livestock, Inc., and Mr. Claypoole engaged in operations subject to the Packers and Stockyards Act without registering or maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-30.<sup>1</sup>

The Hearing Clerk served Claypoole Livestock, Inc., and Mr. Claypoole with the Complaint and the Hearing Clerk's service letter on February 2, 2012.<sup>2</sup> Neither Claypoole Livestock, Inc., nor Mr. Claypoole filed an answer to the Complaint within 20 days after the Hearing Clerk served them with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated March 8, 2012, to Claypoole Livestock, Inc., and Mr. Claypoole informing them that an answer to the Complaint had not been filed within the time prescribed by the Rules of Practice. Neither Claypoole Livestock, Inc., nor Mr. Claypoole responded to the Hearing Clerk's letter dated March 8, 2012.

On March 14, 2012, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Show Cause Order in which he provided the parties 15 days within which to show cause why a default decision should not be entered. On March 15, 2012, the Deputy Administrator filed a response to the Chief ALJ's Show Cause Order in the form of a Motion for Default Decision and a proposed Decision and Order. On April 5, 2012, Claypoole Livestock, Inc., and Mr. Claypoole filed a response to the Chief ALJ's Show Cause Order.

On May 11, 2012, the Chief ALJ, in accordance with 7 C.F.R. § 1.139, issued a Default Decision and Order: (1) concluding Claypoole Livestock, Inc., and Mr. Claypoole willfully violated 7 U.S.C. §§ 213(a) and 228b and 9 C.F.R. §§ 201.29-30, as alleged in the Complaint; (2) ordering Claypoole Livestock, Inc., and Mr. Claypoole to cease and

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<sup>1</sup> Compl. ¶¶ II-V.

<sup>2</sup> Memorandum To The File, dated February 2, 2012, regarding service on Claypoole Livestock, Inc.; Memorandum To The File, dated February 2, 2012, regarding service on Mr. Claypoole.

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desist from violations of the Packers and Stockyards Act and the Regulations; and (3) assessing Claypoole Livestock, Inc., and Mr. Claypoole, jointly and severally, an \$11,000 civil penalty.<sup>3</sup>

On May 29, 2012, Claypoole Livestock, Inc., and Mr. Claypoole appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On June 13, 2012, the Deputy Administrator filed an Appeal Response. On June 15, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful review of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision.

## **DECISION**

### **Statement of the Case**

Neither Claypoole Livestock, Inc., nor Mr. Claypoole filed a timely answer to the Complaint. Pursuant to 7 C.F.R. § 1.136(c), the failure to file a timely answer is deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact, and I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

### **Findings of Fact**

1. Claypoole Livestock, Inc., is a corporation organized and existing under the laws of the State of Colorado. Claypoole Livestock, Inc.'s business mailing address is in the State of Colorado. Claypoole Livestock, Inc.'s registered agent for service of process is Timothy J. Claypoole.
2. Claypoole Livestock, Inc., is, and at all times material to this proceeding was:

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<sup>3</sup> Chief ALJ's Default Decision and Order at 5-6.

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(a) Engaged in the business of buying and selling livestock in commerce as a dealer for its own account or for the account of others;

(b) Engaged in the business of a market agency buying livestock in commerce on a commission basis; and

(c) Not registered as a dealer or market agency with the Secretary of Agriculture.

3. Timothy J. Claypoole is an individual whose business mailing address is in the State of Colorado.

4. Timothy J. Claypoole is, and at all times material to this proceeding was:

(a) The president of Claypoole Livestock, Inc.;

(b) A director of Claypoole Livestock, Inc.;

(c) An owner of Claypoole Livestock, Inc.;

(d) The registered agent of Claypoole Livestock, Inc.; and

(e) Responsible for the direction, management, and control of Claypoole Livestock, Inc.

5. On or about the dates and in the transactions described in this finding of fact, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, in connection with its operations subject to the Packers and Stockyards Act, purchased livestock and failed to pay, when due, the full purchase price of the livestock:

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Purchase Date	Seller	No. of Head	Type of Livestock	Sale Price - Excluding Non-Livestock Charges	Payment Due Date Per 7 U.S.C. § 228b	Payment Date	Days Late
05/21/09	Delta Sales Yard	14	LAMBS	\$1,850.03	05/22/09	10/16/09	147
06/11/09	Delta Sales Yard	6	LAMBS	\$484.50	06/12/09	07/07/09	25
05/06/09	Western Slope Cattlemen's	8	CATTLE	\$6,107.88	05/07/09	05/08/09	1
05/13/09	Western Slope Cattlemen's	2	CATTLE	\$1,078.08	05/14/09	06/03/09	20
05/20/09	Western Slope Cattlemen's	1	CATTLE	\$290.70	05/21/09	07/14/09	54
06/24/09	Western Slope Cattlemen's	6	LAMBS	\$639.35	06/25/09	07/14/09	19
08/05/09	Western Slope Cattlemen's	10	CATTLE	\$10,209.60	08/06/09	08/08/09	2
08/12/09	Western Slope Cattlemen's	54	LAMBS	\$5,542.76	08/13/09	08/15/09	2
08/10/11	Western Slope Cattlemen's	24	LAMBS/ EWES	\$3,545.60	08/11/11	08/15/11	4

6. On or about the dates and in the transactions described in this finding of fact, Claypoole Livestock, Inc., under the direction, management, and control of Timothy J. Claypoole, in connection with its operations subject to the Packers and Stockyards Act, issued checks for livestock purchases that were returned unpaid by the bank upon which the checks were drawn because Claypoole Livestock, Inc., and Timothy J. Claypoole did not have and maintain sufficient funds on deposit and available in the account upon which the checks were drawn to pay the checks when presented:

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Purchase Date	No. of Head	Type of Livestock	Invoice Amount	Check Date	Check Number	Check Amount	Date Check Returned
05/21/09	14	LAMBS	\$1,843.07	05/25/09	3267	\$1,843.07	07/01/09 07/14/09
06/11/09	6	LAMBS	\$482.12	06/20/09	3228	\$482.12	07/01/09
05/20/09	1	LAMBS	\$290.70	05/25/09	3266	\$290.70	06/15/09
06/24/09	6	LAMBS	\$639.35	06/28/09	3271	\$639.35	07/10/09
08/24/11	96	LAMBS	\$19,630.85	08/24/11	3630	\$19,630.85	08/30/11

7. On August 24, 2009, Timothy J. Claypoole received written notification from the Packers and Stockyards Program that he was operating subject to the Packers and Stockyards Act and that he was required to register and to obtain a bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations. Notwithstanding the notice, Timothy J. Claypoole continued to direct, manage, and control Claypoole Livestock, Inc., while engaging in the business of a dealer buying and selling livestock in commerce and the business of a market agency buying livestock on a commission basis, without registering or maintaining an adequate bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations.

**Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. At all times relevant to the allegations in the Complaint, Claypoole Livestock, Inc., and Timothy J. Claypoole were operating as a dealer and market agency subject to the provisions of the Packers and Stockyards Act.
3. Claypoole Livestock, Inc., and Timothy J. Claypoole willfully violated 7 U.S.C. §§ 213(a) and 228b by failing to make timely payment for livestock purchases and by issuing insufficient fund checks in purported payment for livestock.
4. Claypoole Livestock, Inc., and Timothy J. Claypoole willfully violated 7 U.S.C. § 213(a) and 9 C.F.R. §§ 201.29-.30 by engaging in

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operations subject to the Packers and Stockyards Act without maintaining an adequate bond or bond equivalent.

**Claypoole Livestock, Inc., and Mr. Claypoole's Appeal Petition**

Claypoole Livestock, Inc., and Mr. Claypoole raise two issues in their appeal petition. First, Claypoole Livestock, Inc., and Mr. Claypoole assert they are not now able to pay the civil penalty assessed by the Chief ALJ and request that I reduce the civil penalty "to the least monetary fine possible."

The Chief ALJ assessed Claypoole Livestock, Inc., and Mr. Claypoole, jointly and severally, an \$11,000 civil penalty. However, the Chief ALJ suspended all but \$2,500 of the civil penalty contingent on Claypoole Livestock, Inc., and Mr. Claypoole's compliance with the Chief ALJ's cease and desist order for 1 year.<sup>4</sup> In light of the number and gravity of Claypoole Livestock, Inc., and Mr. Claypoole's violations of the Packers and Stockyards Act and the Regulations and the extensive period of time during which Claypoole Livestock, Inc., and Mr. Claypoole violated the Packers and Stockyards Act and the Regulations, I conclude the civil penalty assessed by the Chief ALJ is justified by the facts. Moreover, the civil penalty is warranted in law. The maximum civil penalty that the Secretary of Agriculture may assess for each of Claypoole Livestock, Inc., and Mr. Claypoole's violations is \$11,000.<sup>5</sup> The Chief ALJ could have assessed Claypoole Livestock, Inc., and Mr. Claypoole a civil penalty of \$165,000 each. Therefore, I reject Claypoole Livestock, Inc., and Mr. Claypoole's request that I reduce the civil penalty assessed by the Chief ALJ.

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<sup>4</sup> Chief ALJ's Default Decision and Order at 6.

<sup>5</sup> The Packers and Stockyards Act provides that the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) is \$10,000 (7 U.S.C. § 213(b)). However, the maximum civil penalty that the Secretary of Agriculture may assess for each violation of 7 U.S.C. § 213(a) has been modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), and various implementing regulations issued by the Secretary of Agriculture. When Claypoole Livestock, Inc., and Mr. Claypoole violated the Packers and Stockyards Act, the maximum civil penalty for each violation of 7 U.S.C. § 213(a) was \$11,000 (7 C.F.R. § 3.91(b)(6)(iv)).

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Second, Claypoole Livestock, Inc., and Mr. Claypoole request that I modify the Chief ALJ's cease and desist order to eliminate the provision suspending them "from "doing livestock business for one year[.]"

The Chief ALJ's Default Decision and Order contains no provision suspending Claypoole Livestock, Inc., or Mr. Claypoole from "doing livestock business" for 1 year. Therefore, I reject Claypoole Livestock, Inc., and Mr. Claypoole's request that I eliminate the non-existent 1-year suspension.

For the foregoing reasons, the following Order is issued.

**ORDER**

1. Claypoole Livestock, Inc., and Timothy J. Claypoole, their agents and employees, directly or indirectly through any corporate or other device, in connection with their operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. Engaging in business in any capacity for which bonding is required without filing and maintaining an adequate bond or bond equivalent as required by the Packers and Stockyards Act and the Regulations;

b. Purchasing livestock and failing to pay for the livestock purchases within the time period required by the Packers and Stockyards Act; and

c. Issuing checks in payment for livestock without having and maintaining sufficient funds on deposit and available in the accounts upon which the checks are drawn to pay the checks when presented.

2. Claypoole Livestock, Inc., and Timothy J. Claypoole are prohibited from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act without first becoming properly registered.

3. In accordance with 7 U.S.C. § 213(b), Claypoole Livestock, Inc., and Timothy J. Claypoole are jointly and severally assessed an \$11,000 civil penalty. However, the civil penalty in excess of \$2,500 is suspended:

Claypoole Livestock, Inc. and Timothy J. Claypoole  
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*Provided, That* Claypoole Livestock, Inc., and Timothy J. Claypoole fully comply with terms of the cease and desist provisions contained in this Order for a period of 1 year. Payment of the unsuspended amount of \$2,500 shall be made by certified check or money order, made payable to the “Treasurer of the United States,” and sent to:

USDA-GIPSA  
PO Box 790335  
St. Louis, Missouri 63179-0335

Payment of the civil penalty shall be sent to, and received by, USDA-GIPSA within 60 days after service of this Order on Claypoole Livestock, Inc., and Timothy J. Claypoole. Claypoole Livestock, Inc., and Timothy J. Claypoole shall state on the certified check or money order that payment is in reference to P. & S. Docket No. D-12-0135.

#### **RIGHT TO JUDICIAL REVIEW**

Claypoole Livestock, Inc., and Timothy J. Claypoole have the right to seek judicial review of this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Judicial review must be sought within 60 days after entry of the Order in this Decision and Order.<sup>6</sup> The date of entry of the Order in this Decision and Order is June 20, 2012.

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<sup>6</sup> 28 U.S.C. § 2344.

**MISCELLANEOUS ORDERS****PACKERS AND STOCKYARDS ACT****MISCELLANEOUS ORDERS**

*Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: [www.dm.usda.gov/oaljdecisions/](http://www.dm.usda.gov/oaljdecisions/).*

**STEVEN LUKENS.**

**Docket No. 12-0141.**

**Miscellaneous Order.**

**Filed February 23, 2012.**

**In re: BARNESVILLE LIVESTOCK, LLC, AND DARRYL WATSON.**

**Docket No. 10-0058.**

**Miscellaneous Order.**

**Filed March 1, 2012.**

**PS-D.**

Charles E. Spicknall, Esq. for Complainant.

Miles D. Fries, Esq. and Susan J. McDonald, Esq. for Respondents.

Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.

*Ruling by William G. Jenson, Judicial Officer.*

**ORDER GRANTING RESPONDENTS' MOTION TO MODIFY  
ORDER**

In *In re Barnesville Livestock, LLC*, \_\_ Agric. Dec. \_\_ (Jan. 23, 2012), I suspended Barnesville Livestock, LLC [hereinafter Barnesville], as a registrant under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act], for a period of 21 days. The suspension was to become effective on the 60th day after service of the Decision and Order on Barnesville and Darryl Watson. On February 29, 2012, Barnesville and Mr. Watson filed a motion requesting that Barnesville's suspension as a registrant under the Packers and Stockyards Act "become

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effective immediately with a one week notice to Respondents instead of within sixty (60) days of the date from the date of service.”<sup>1</sup> On March 1, 2012, Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], filed a response to Barnesville and Mr. Watson’s motion stating the Deputy Administrator does not oppose Barnesville and Mr. Watson’s requested modification of the January 23, 2012, Order. On March 1, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for a ruling on Barnesville and Mr. Watson’s motion to modify the January 23, 2012, Order.

Based upon the agreement of the parties, I vacate paragraph 2 of the Order in *In re Barnesville Livestock, LLC*, \_\_ Agric. Dec. \_\_ (Jan. 23, 2012), and substitute the following in its place:

2. Barnesville is suspended as a registrant under the Packers and Stockyards Act for a period of 21 days. Barnesville’s suspension as a registrant under the Packers and Stockyards Act shall become effective on the 7th day after service of this Order Granting Respondents’ Motion to Modify Order on Barnesville and Mr. Watson.

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**In re: H.D. EDWARDS.**  
**Docket No. D-10-0296.**  
**Miscellaneous Order.**  
**Filed March 15, 2012.**

**PS-D.**

Brian P. Sylvester, Esq. for Complainant.  
Respondent, pro se.  
Initial Decision by Jill S. Clifton, Administrative Law Judge.  
*Ruling by William G. Jenson, Judicial Officer.*

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<sup>1</sup> Respondent’s [sic] Motion to Modify the Terms of the Order at 1.

**MISCELLANEOUS ORDERS****ORDER DENYING LATE APPEAL****Procedural History**

Alan R. Christian, Deputy Administrator, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter the Deputy Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 27, 2010. The Deputy Administrator instituted the proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]; the regulations issued under the Packers and Stockyards Act (9 C.F.R. pt. 201) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Deputy Administrator alleges H.D. Edwards: (1) operated as a dealer, buying and selling livestock, in commerce, for his own account, without maintaining an adequate bond or bond equivalent, in willful violation of 7 U.S.C. § 213(a) and 9 C.F.R. § 201.29; and (2) purchased livestock and failed to pay, when due, the full purchase price of the livestock, in willful violation of 7 U.S.C. §§ 213(a) and 228b (Compl. ¶¶ II-V). On June 28, 2010, H.D. Edwards filed a response to the Complaint in which he denied the material allegations of the Complaint.

On December 5, 2011, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] conducted a hearing in Tucson, Arizona. H.D. Edwards appeared pro se. Brian P. Sylvester, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Deputy Administrator. H.D. Edwards testified on behalf of himself. The Deputy Administrator called four witnesses.<sup>1</sup> H.D. Edwards introduced one exhibit, which was admitted into evidence. The Deputy Administrator introduced 21 exhibits, which were admitted into evidence.

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<sup>1</sup> Transcript references are designated "Tr."

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The parties agreed to the ALJ's issuance of an oral decision (Tr. 299). At the close of the hearing, the ALJ issued an oral decision concluding that H.D. Edwards violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, and ordering H.D. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations (Tr. 299-310). On December 21, 2011, the Deputy Administrator filed a motion requesting that the ALJ reconsider the December 5, 2011, oral decision. On January 5, 2012, H.D. Edwards filed a response opposing the Deputy Administrator's motion for reconsideration.

On January 6, 2012, the ALJ issued a written Decision and Order in which the ALJ reiterated the conclusion that H.D. Edwards violated the Packers and Stockyards Act and the Regulations, as alleged in the Complaint, and again ordered H.D. Edwards to cease and desist from violating the Packers and Stockyards Act and the Regulations (ALJ's Decision and Order at 5-7 ¶¶ 19, 23). On January 31, 2012, the Deputy Administrator filed Complainant's Appeal Petition. On March 5, 2012, H.D. Edwards filed a response to Complainant's Appeal Petition. On March 7, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

### Conclusions by the Judicial Officer

The Rules of Practice provide that an administrative law judge may issue a decision orally at the close of the hearing,<sup>2</sup> that the issuance date of an oral decision is the date the oral decision is announced,<sup>3</sup> and that the oral decision becomes effective 35 days after the issuance of the decision.<sup>4</sup>

The ALJ announced the oral decision at the close of the hearing on December 5, 2011.<sup>5</sup> Therefore, the issuance date of the ALJ's decision is December 5, 2011, and the effective date of the ALJ's decision is

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<sup>2</sup> 7 C.F.R. § 1.142(c)(1).

<sup>3</sup> 7 C.F.R. § 1.142(c)(2).

<sup>4</sup> 7 C.F.R. § 1.142(c)(4).

<sup>5</sup> The ALJ subsequently issued a written Decision and Order but did not vacate the oral decision announced at the close of the December 5, 2011, hearing.

**MISCELLANEOUS ORDERS**

January 9, 2012. The Deputy Administrator filed an appeal petition on January 31, 2012, 22 days after the ALJ's December 5, 2011, decision became effective. The Judicial Officer has continuously and consistently held under the Rules of Practice that the Judicial Officer has no jurisdiction to hear an appeal that is filed after an administrative law judge's decision becomes final.<sup>6</sup> Therefore, I have no jurisdiction to hear the Deputy Administrator's appeal petition.

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing an appeal petition after an administrative law judge's decision has become final. The absence of such a provision in the Rules of Practice emphasizes that jurisdiction has not been granted to the Judicial Officer to extend the time for filing an appeal after an administrative law judge's decision has become final. Therefore, under the Rules of Practice, I cannot extend the time for the Deputy Administrator's filing an appeal petition after the ALJ's decision became final.

The jurisdictional bar under the Rules of Practice, which precludes the Judicial Officer from hearing an appeal that is filed after an administrative law judge's decision becomes final, is consistent with the

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<sup>6</sup> See, e.g., *In re Timothy Mays* (Order Denying Late Appeal), \_\_ Agric. Dec. \_\_, slip op. at 4 (Feb. 5, 2010) (dismissing the respondent's appeal petition filed 1 week after the administrative law judge's decision became final); *In re David L. Noble* (Order Denying Late Appeal), 68 Agric. Dec. 1060 (2009) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Michael Claude Edwards* (Order Denying Late Appeal), 66 Agric. Dec. 1362 (2007) (dismissing the respondent's appeal petition filed 6 days after the administrative law judge's decision became final); *In re Tung Wan Co.* (Order Denying Late Appeal), 66 Agric. Dec. 939 (2007) (dismissing the respondent's appeal petition filed 41 days after the chief administrative law judge's decision became final); *In re Tim Gray* (Order Denying Late Appeal), 64 Agric. Dec. 1699 (2005) (dismissing the respondent's appeal petition filed 1 day after the chief administrative law judge's decision became final); *In re Jozset Mocos* (Order Denying Late Appeal), 64 Agric. Dec. 1647 (2005) (dismissing the respondent's appeal petition filed 6 days after the chief administrative law judge's decision became final); *In re Ross Blackstock* (Order Denying Late Appeal), 63 Agric. Dec. 818 (2004) (dismissing the respondent's appeal petition filed 2 days after the administrative law judge's decision became final); *In re David Gilbert* (Order Denying Late Appeal), 63 Agric. Dec. 807 (2004) (dismissing the respondent's appeal petition filed 1 day after the administrative law judge's decision became final); *In re Vega Nunez* (Order Denying Late Appeal), 63 Agric. Dec. 766 (2004) (dismissing the respondent's appeal petition filed on the day the administrative law judge's decision became final).

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judicial construction of the Administrative Orders Review Act (“Hobbs Act”). As stated in *Illinois Cent. Gulf R.R. v. ICC*, 720 F.2d 958, 960 (7th Cir. 1983) (footnote omitted):

The Administrative Orders Review Act (“Hobbs Act”) requires a petition to review a final order of an administrative agency to be brought within sixty days of the entry of the order. 28 U.S.C. § 2344 (1976). This sixty-day time limit is jurisdictional in nature and may not be enlarged by the courts. *Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 602 (D.C. Cir. 1981). The purpose of the time limit is to impart finality into the administrative process, thereby conserving administrative resources and protecting the reliance interests of those who might conform their conduct to the administrative regulations. *Id.* at 602.<sup>7</sup>

Accordingly, the Deputy Administrator’s appeal petition must be denied since it is too late for the matter to be further considered.

For the foregoing reasons, the following Order is issued.

**ORDER**

The Deputy Administrator’s appeal petition, filed January 31, 2012, is denied.

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<sup>7</sup> *Accord Brazoria County v. EEOC*, 391 F.3d 685, 688 (5th Cir. 2004) (stating the 60-day period to file a petition for review of an agency order in 28 U.S.C. § 2344 is jurisdictional and cannot be judicially altered or expanded); *Jem Broad. Co. v. FCC*, 22 F.3d 320, 324-26 (D.C. Cir. 1994) (stating the court’s baseline standard long has been that statutory limitations on petitions for review are jurisdictional in nature and appellant’s petition filed after the 60-day limitation in the Hobbs Act will not be entertained); *Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (stating the time limit in 28 U.S.C. § 2344 is jurisdictional), *cert. denied sub nom. Tuolumne Park & Recreation Dist. v. ICC*, 493 U.S. 1093 (1990); *California Ass’n of the Physically Handicapped v. FCC*, 833 F.2d 1333, 1334 (9th Cir. 1988) (holding the time limit in 28 U.S.C. § 2344 is jurisdictional).

**MISCELLANEOUS ORDERS**

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**KARNES CITY AUCTION, INC., BRIAN MORRIS & RONALD MORRIS.**

**Docket No. 12-0210.  
Miscellaneous Order.  
Filed April 18, 2012.**

**FARON HELVEY.  
Docket No. 04-0003.  
Miscellaneous Order.  
Filed May 3, 2012.**

**D&H MEBANE STOCKMAN'S CORPORATION, D/B/A WESTERN STOCKMAN'S MARKET & DWIGHT G. MEBANE.**

**Docket No. 12-0388.  
Miscellaneous Order.  
Filed May 10, 2012.**

**In re: TODD SYVERSON, D/B/A SYVERSON LIVESTOCK BROKERS.**

**Docket No. D-05-0005.  
Miscellaneous Order.  
Filed May 21, 2012.**

**PS-D.**

Charles Spicknall, Esq. for Complainant.  
E. Lawrence Oldfield, Esq. for Respondent.  
Initial Decision by Jill S. Clifton, Administrative Law Judge.  
*Ruling by William G. Jenson, Judicial Officer.*

**ORDER LIFTING STAY ORDER**

I issued *In re Todd Syverson* (Decision on Remand), \_\_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), in which I suspended Todd Syverson as a registrant under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. §§ 181-229b) [hereinafter the Packers and Stockyards Act]. On November 26, 2010, Mr. Syverson requested a stay of the Order in

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the Decision on Remand pending the outcome of proceedings for judicial review, which I granted.<sup>1</sup>

On May 17, 2012, Mr. Syverson and the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture [hereinafter GIPSA], filed a Joint Motion to Lift Stay Order stating proceedings for judicial review are concluded and requesting that I lift the December 22, 2010, Stay Order and make the Order issued in the Decision on Remand effective on June 1, 2012. Based upon the Joint Motion to Lift Stay Order, the December 22, 2010, Stay Order is lifted and the Order in *In re Todd Syverson* (Decision on Remand), \_\_\_ Agric. Dec. \_\_\_ (Nov. 16, 2010), is effective, as follows:

**ORDER**

1. Mr. Syverson, his agents and employees, directly or indirectly through any corporate or other device, including, but not limited to, Syverson Livestock Brokers, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

a. failing to comply with the requirements of section 312(a) of the Packers and Stockyards Act (7 U.S.C. § 213(a)), and specifically, Mr. Syverson shall not represent to any buyer that his cost of cattle is based on a “purchase price” resulting from the “purchase” of cattle from his own inventory unless he discloses that he bought the cattle from his own consignment and his initial purchase price of the cattle; and

b. failing without good cause to produce for examination, within a reasonable time when asked by GIPSA, all of the accounts, records, and memoranda as are required to be kept under section 401 of the Packers and Stockyards Act (7 U.S.C. § 221), including, but not limited to, a purchase journal (recording, at minimum: the date of purchase; seller; number of head; description of livestock; purchase price(s); date(s) received; commission charges, if any; other fees or charges; whether the livestock were purchased for the account of another, and if so, the identity of that person or firm) together with all invoices, buyer bills, consignment sheets, and other records associated with individual livestock purchases and sales.

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<sup>1</sup> *In re Todd Syverson* (Stay Order), \_\_\_ Agric. Dec. \_\_\_ (Dec. 22, 2010).

**MISCELLANEOUS ORDERS**

2. Mr. Syverson is suspended as a registrant under the Packers and Stockyards Act for a period of 16 months; *Provided, however,* That this Order may be modified upon application to Packers and Stockyards Programs to permit the salaried employment of Mr. Syverson by another registrant or packer after the expiration of 8 months of the suspension term.

This Order shall become effective on June 1, 2012.

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**TYSON FARMS, INC.**  
**Docket No. 12-0123.**  
**Certification of Motion to Judicial Officer.**  
**Filed June 19, 2012.**

Default Decisions  
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**PACKERS AND STOCKYARDS ACT**

**DEFAULT DECISIONS**

*Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. Default Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: [www.dm.usda.gov/oaljdecisions/](http://www.dm.usda.gov/oaljdecisions/).*

**MOHAMMAD S. MALIK & KIRAN ENTERPRISES, INC., D/B/A  
TRENTON HALAL MEAT PACKING CO.**

**Docket No. 12-0072.**

**Decision Without Hearing by Entry of Default by Respondents.**

**Filed January 26, 2012.**

**RANDALL J. UNGER, D/B/A LAKE AREA LIVESTOCK  
MARKETING.**

**Docket No. 10-0458.**

**Default Decision and Order.**

**Filed February 9, 2012.**

**JALLAQ LIVESTOCK, INC. & MAJDI JALLAQ, A/K/A MIKE  
JALLAQ.**

**Docket No. 11-0381.**

**Default Decision and Order.**

**Filed February 9, 2012.**

**JALLAQ LIVESTOCK, INC. & MAJDI JALLAQ.**

**Docket No. 11-0382.**

**Default Decision and Order.**

**Filed February 9, 2012.**

**MICHAEL V. BOTT & TONY BOTT.**

**Docket No. 11-0438.**

**Default Decision and Order.**

**Filed March 9, 2012.**

**DEFAULT DECISIONS**

**TONY BOTT.**

**Docket No. 11-0439.**

**Default Decision and Order.**

**Filed March 9, 2012.**

**GARY CRAIG, D/B/A CRAIG SHEEP FARM, MINGIS FARMS,  
& TRIPLE C SHEEP FARM.**

**Docket No. 12-0166.**

**Default Decision and Order.**

**Filed March 9, 2012.**

**KAO VANG & CHUE THAO, D/B/A CALIFORNIA FRESH  
MEATS.**

**Docket No. 12-0002.**

**Default Decision and Order.**

**Filed March 14, 2012.**

**RYAN SANDERS.**

**Docket No. 12-0027.**

**Default Decision and Order.**

**Filed March 14, 2012.**

**CHERYL SLOVER & JOHNNY SLOVER.**

**Docket No. 11-0335.**

**Default Decision and Order.**

**Filed March 27, 2012.**

**KAO VANG & CHUE THAO, D/B/A CALIFORNIA FRESH  
MEATS.**

**Docket No. 12-0003.**

**“Amended and Corrected” Default Decision and Order.**

**Filed March 27, 2012.**

**MICHAEL BRENT WAGNER.**

**Docket No. 12-0168.**

**Default Decision and Order.**

**Filed March 27, 2012.**

**RICHARD HALE.**

Default Decisions  
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**Docket No. 12-0204.  
Default Decision and Order.  
Filed March 27, 2012.**

**JOHNNY SLOVER.  
Docket No. 12-0293.  
Default Decision and Order.  
Filed March 27, 2012.**

**RICK SHANNON.  
Docket No. 12-0133.  
Default Decision and Order.  
Filed April 24, 2012.**

**GARDEN HALAL MEAT MARKET, LLC, MOHAMED  
CHITAOU, & FEDAL LAHSANE.  
Docket No. 12-0100.  
Order Granting Judgment by Entry of Default.  
Filed April 25, 2012.**

**MOHAMED CHITAOU.  
Docket No. 12-0101.  
Order Granting Judgment by Entry of Default.  
Filed April 25, 2012.**

**FEDAL LAHSANE.  
Docket No. 12-0102.  
Order Granting Judgment by Entry of Default.  
Filed April 25, 2012.**

**DWIGHT GREGORY “GREG” COX.  
Docket No. 12-0088.  
Default Decision and Order.  
Filed April 25, 2012.**

**CLAYPOOLE LIVESTOCK, INC. & TIMOTHY J. CLAYPOOLE.  
Docket No. 12-0135.  
Default Decision and Order.**

**DEFAULT DECISIONS**

**Filed May 11, 2012.**

**TIMOTHY J. CLAYPOOLE.**

**Docket No. 12-0136.**

**Default Decision and Order.**

**Filed May 11, 2012.**

**GARY N. SHIFFLETT, JR., D/B/A NELSON SHIFFLETT  
LIVESTOCK.**

**Docket No. 12-0184.**

**Default Decision and Order.**

**Filed May 18, 2012.**

**SAMMY SIMMONS & WENDY SIMMONS, D/B/A PEOPLE'S  
LIVESTOCK OF CARTERSVILLE.**

**Docket No. 12-0131.**

**Default Decision and Order.**

**Filed May 30, 2012.**

**WENDY SIMMONS.**

**Docket No. 12-0132.**

**Default Decision and Order.**

**Filed May 30, 2012.**

**MURRAY L. EDWARDS.**

**Docket No. 12-0091.**

**Default Decision and Order.**

**Filed May 31, 2012.**

**NICK PESETSKY & PESETSKY LAND AND CATTLE, LLC.**

**Docket No. 12-0144.**

**Default Decision and Order.**

**Filed June 19, 2012.**

**PESETSKY LAND AND CATTLE, LLC.**

**Docket No. 12-0145.**

**Default Decision and Order.**

**Filed June 19, 2012.**

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**BOBBY T. TINDEL.**  
**Docket No. 12-0324.**  
**Default Decision and Order.**  
**Filed June 28, 2012.**

**ROBERT M. SELF.**  
**Docket No. 12-0167.**  
**Default Decision and Order.**  
**Filed June 29, 2012.**

**CONSENT DECISIONS****PACKERS AND STOCKYARDS ACT****CONSENT DECISIONS**

Ark-Mo Livestock Auction, LLC, PS-D-12-0106, 01/05/12.  
Kent E. O'Neal, PS-D-12-0107, 01/05/12.  
Janet L. O'Neal, PS-D-12-0108, 01/05/12.  
Richard Hayes, PS-D-12-0019, 01/17/12.  
American Beef Company, LLC & Vincent J. Paletta, PS-D-11-0327,  
01/20/12.  
Glen Ratcliff, PS-D-12-0134, 01/23/12.  
Whispering Oaks Farms, LLC, PS-D-12-0089, 01/25/12.  
Mike D. Esther, PS-D-12-0090, 01/25/12.  
Jeffrey H. Auerbach, PS-D-12-0164, 01/26/12.  
Vander Boon Livestock, Inc., PS-D-09-0089, 02/02/12.  
Kopp's Turkey Sales, Inc., d/b/a Kopp's Turkeys, Inc., PS-D-12-0175,  
02/09/12.  
Kevin Kopp, PS-D-12-0176, 02/09/12.  
T&J Meat Packing, Inc., PS-D-12-0024, 02/16/12.  
Hardee County Livestock Market Corp., PS-D-12-0084, 02/22/12.  
Janice P. Wheeler, PS-D-12-0085, 02/22/12.  
Big Dan's Trucking, Inc., PS-D-12-0205, 02/22/12.  
Robert Trindade & Patricia Trindade, d/b/a Newman Livestock Auction,  
PS-D-10-0297, 02/23/12.  
Patricia Trindade, PS-D-12-0263, 02/23/12.  
Fred J. Berger, Ltd., d/b/a Berger Cattle Company, PS-D-12-0025,  
02/27/12.  
Fred J. Berger, PS-D-12-0026, 02/27/12.  
Josephine E. Bonaccorso, PS-D-11-0437, 02/29/12.  
Josephine E. Bonaccorso, d/b/a Salem Packing Co., PS-D-11-0402,  
02/29/12.  
Samuel Bonaccorso, PS-D-11-0405, 02/29/12.  
Jantzi & Jantzi, Ltd., PS-D-11-0400, 03/07/12.  
First World Management Services, Inc., d/b/a Bios Zabeeha Halal Foods,  
PS-D-10-0237, 03/08/12.  
Tahawwur H. Rana, PS-D-12-0326, 03/08/12.  
The Smithfield Packing Company, Inc., PS-D-12-0190, 03/19/12.  
North American Bison Cooperative, PS-D-12-0050, 03/22/12.

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North Dakota Natural Beef, LLC, PS-D-12-0051, 03/22/12.  
Williams Cattle Co., Inc., PS-D-12-0009, 03/27/12.  
Darlington Livestock Market, Inc. & Robert B. Robseon, PS-D-12-0173,  
03/28/12.  
Lemmon Livestock, Inc., PS-D-12-0015, 04/03/12.  
S. Paul Huffman, PS-D-12-0016, 04/03/12.  
Ashville Stockyard, Inc., PS-D-11-0412, 04/04/12.  
Bradley Plunkett, PS-D-11-0407, 04/04/12.  
Tilda Plunkett, PS-D-11-0414, 04/04/12.  
Tony Wells, d/b/a Tony Wells Livestock, PS-D-12-0105, 04/04/12.  
Herreid Livestock Auction, Inc., PS-D-10-0008, 04/09/12.  
Joe Varner, PS-D-12-0394, 04/09/12.  
Hatch Auction, Inc., d/b/a Cow House Auction, PS-D-12-0208, 04/11/12.  
Raymond L. Hatch, PS-D-12-0209, 04/11/12.  
Brian Morris, PS-D-12-0211, 04/18/12.  
Ronald Morris, PS-D-12-0212, 04/18/12.  
James A. Quick, PS-D-12-0010, 04/25/12.  
Clair Hull, d/b/a Pioneer Specialty Foods, LLC, PS-D-11-0210,  
05/01/12.  
David Mosner, Inc., PS-D-12-0240, 05/04/12.  
Robert Smith, d/b/a 4S Cattle Company, PS-D-12-0017, 05/09/12.  
Four S Cattle Company, PS-D-12-0018, 05/09/12.  
Pamela Hill & John Clark, d/b/a Tri-State Livestock, PS-D-12-0185,  
05/09/12.  
Dwight G. Mebane, PS-D-12-0389, 05/10/12.  
Michael Okragly, PS-D-11-0401, 05/14/12.  
Cherry Okragly, PS-D-11-0404, 05/14/12.  
Okragly Cattle Company, Inc., PS-D-11-0410, 05/14/12.  
Riata Cattle Company, Inc., PS-D-12-0390, 05/16/12.  
Porfirio Garcia, a/k/a Fedo Garcia, PS-D-12-0391, 05/16/12.  
Ocala Livestock Market, Inc., PS-D-12-0012, 05/17/12.  
Michael Yeomans, a/k/a Tony Yeomans, PS-D-12-0013, 05/17/12.  
Tobitha Yeomans, PS-D-12-0015, 05/17/12.  
Albert J. Huizenga, d/b/a Beefco, PS-D-12-0201, 05/23/12.  
Aaron M. Lancaster, d/b/a Beefco, PS-D-12-0202, 05/23/12.  
Dustin Ryan Conley, d/b/a Dustin Conley Cattle Co., PS-D-12-0360,  
05/29/12.

**CONSENT DECISIONS**

Donald D. Baker Cattle Company, LLC & Donald D. Baker, PS-D-12-0398, 05/31/12.

EROB, Inc., d/b/a Eel River Organic Beef, Inc., d/b/a Eel River Organic Beef, PS-D-12-0439, 05/31/12.

Clinton J. Victorine, PS-D-12-0440, 05/31/12.

Bro Pack, Inc. & Andrew Broberg, PS-D-12-0081, PS-D-12-0082, 06/12/12.

National Beef Packing Company, LLC, PS-D-12-0468, 06/12/12.

James M. Brantley, James H. Brantley, d/b/a Southeastern Provision, LLC, PS-D-12-0125, 06/12/12.

Robert Witt, PS-D-12-0322, 06/14/12.

Thomas Witt, PS-D-12-0323, 06/14/12.

Stagno's Meat Company, Inc., PS-D-11-0308, 06/15/12.

Pasqual A. Leone, d/b/a P.A. Leone Livestock, PS-D-12-0387, 06/15/12.

Nebraska Beef, Ltd., PS-D-12-0127, 06/20/12.

Stony Pike Livestock Commission, Inc., PS-D-12-0400, 06/25/12.

Ronald R. Bullard, Jr., PS-D-12-0401, 06/25/12.

Kevin R. Bullard, PS-D-0402, 06/25/12.

Bruce Camenzind, PS-D-12-0249, 06/25/12.

Lester J. Gemmen, Jr., PS-D-12-0354, 06/27/12.

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