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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	P&S Docket No. D-10-0457
	)	
JBS USA, LLC, f/k/a Swift &	)	
Company and Swift Pork	)	
Company,	)	
	)	
Respondent	)	Consent Decision

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*), hereinafter the "Act." On September 30, 2010, a Complaint and Notice of Hearing ("Complaint") was issued against Respondent JBS USA, LLC, formerly known as Swift & Company and Swift Pork, alleging that during the period of January 1, 2007, through November 30, 2007, Respondent violated section 202(a) of the Act (7 U.S.C. § 192(a)) and section 201.99 of the regulations (9 C.F.R. § 201.99) by failing to disclose or to make known to hog sellers that the company was using a lean percent value of 49% to calculate carcass merit payments for carcasses with missing Fat-O-Meat'er data. The Complaint alleged that hog sellers received an automatic discount of \$1.00 to \$2.00 per hundredweight (cwt) for carcasses with missing Fat-O-Meat'er data and were unable to obtain possible premiums of up to \$5.30/cwt for those carcasses. The Complaint further alleged that Respondent's use of an undisclosed lean percent value of 49% to calculate carcass merit payments for carcasses with missing Fat-O-Meat'er data, versus a lean percent equal to the average of the remainder of the lot, reduced payments for hogs

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

Complainant and Respondent have now agreed to entry of this Decision, without hearing or further procedure, pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.138).

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

#### Findings of Fact

(a) Respondent JBS USA, LLC, formerly known as Swift & Company and Swift Pork Company, is a limited liability company organized and existing under the laws of the State of Delaware. Its business mailing address is 1770 Promontory Circle, Greeley, Colorado 80634.

(b) Respondent is, and at all times material herein was:

(1) Engaged in the business of buying livestock in commerce for the purposes of slaughter; and

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

#### Conclusions

Respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this Decision, such Decision will be entered.

#### Order

Respondent JBS USA, LLC, its agents and employees, directly or through any corporate or other device, in connection with Respondent's activities subject to the Packers and Stockyards Act, shall cease and desist from: 1) failing to disclose when missing Fat-O-Meat'er data has prevented Respondent from calculating the lean percent of a particular carcass or carcasses in a seller's lot and 2) substituting an undisclosed lean value for carcasses with missing data when calculating carcass-merit payments for hogs delivered to Respondent's Worthington, Marshalltown, and Louisville processing plants.

In accordance with section 203(b) of the Act, (7 U.S.C. § 193(b)), Respondent is hereby assessed a civil penalty of one hundred seventy-five thousand dollars (\$175,000) of which fifty thousand dollars (\$50,000) will be held in abeyance in accordance with the terms of the "Understanding Regarding Consent Decision" entered between the parties.

Copies of this Decision and Order shall be served on the parties. The provisions of this Order shall become effective upon service on Respondent.



CLAYTON E. BAILEY, ESQ.  
BAKER & MCKENZIE, LLP  
Attorney for JBS USA, LLC, Respondent



CHARLES E. SPICKNALL  
Attorney for Complainant

Issued in Washington D.C.

this 22<sup>nd</sup> day of December, 2010



ADMINISTRATIVE LAW JUDGE

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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