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UNITED STATES DEPARTMENT OF AGRICULTURE  
~~BEFORE THE SECRETARY OF AGRICULTURE~~  
USDA, GIPSA, OR

In re:

P&S Docket No 10-0141

John Morrell & Co.,

Respondent

Decision Without Hearing by  
Reason of Consent

This is a disciplinary proceeding under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*)(Act). On March 2, 2010, a Complaint and Notice of Hearing (Complaint) was issued against Respondent John Morrell & Co., alleging that during the period of June 2005, through April 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 53% to calculate carcass merit payments for carcasses with missing Fat-O-Meat'er data. The Complaint further alleged that Respondent's use of an undisclosed lean percent value of 53% 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

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Sioux Falls and Sioux City plants during the period of January 1, 2006, through April 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 John Morrell & Co. is a corporation incorporated in Delaware whose corporate headquarters is located in the state of Ohio and whose business address is 805 E. Kemper Rd., Cincinnati, OH 45246.

(b) Respondent 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, the Decision will be entered.

#### Order

Respondent John Morrell & Co, 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 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 sixty-two thousand five hundred dollars (\$162,500) of which thirty-seven thousand five hundred dollars (\$37,500) 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.

Respondent,




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MICHAEL H. COLE  
VICE PRESIDENT

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

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JONATHAN D. GORDY  
Attorney for Complainant

Issued in Washington D.C.

this \_\_\_\_\_ day of \_\_\_\_\_, 2011

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ADMINISTRATIVE LAW JUDGE

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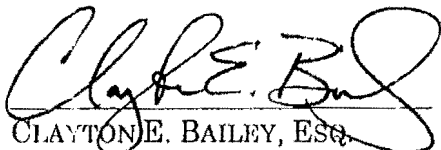
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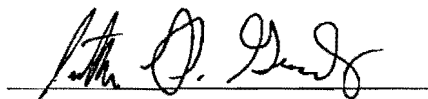
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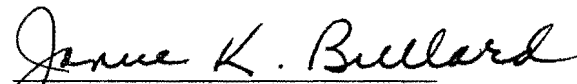
CLAYTON E. BAILEY, ESQ.  
BAKER & MCKENZIE, LLP  
Attorney for Respondent



JONATHAN D. GORDY  
Attorney for Complainant

Issued in Washington D.C.

this 6<sup>th</sup> day of July, 2011

  
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