



U.S. Department of Agriculture



Office of Inspector General  
Northeast Region

## **Audit Report**

### **Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs**

Report No. 30601-01-Hy  
January 2006



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



January 10, 2006

REPLY TO

ATTN OF: 30601-01-Hy

TO: James E. Link  
Administrator  
Grain Inspection, Packers and Stockyards Administration

ATTN: S. Brett Offutt  
Director  
Policy and Litigation Division

FROM: Robert W. Young /s/  
Assistant Inspector General  
for Audit

SUBJECT: Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs

This report presents the results of our audit of the Grain Inspection, Packers and Stockyards Administration's management and oversight of the Packers and Stockyards programs. Your response to the official draft, dated January 5, 2006, is included as exhibit A. Excerpts of your response and the OIG's position are incorporated into the Findings and Recommendations section of the report. Based on your response, we were able to reach management decision on the report's ten recommendations. Please follow your agency's internal procedures in forwarding documentation for final action to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

# Executive Summary

## *Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs (Audit Report No. 30601-01-Hy)*

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### Results in Brief

The Grain Inspection, Packers and Stockyards Administration has not established an adequate control structure and environment that allows the agency to oversee and manage its investigative activities for the Packers and Stockyards Programs (P&SP). Our review identified three material weaknesses that have not been previously disclosed in the agency's annual Federal Managers Financial Integrity Act (FMFIA) report. We found that P&SP had difficulties:

- Defining and tracking investigations,
- Planning and conducting competition and complex investigations, and
- Making agency policy.

As a result, P&SP's tracking system could not be relied upon, competition and complex investigations were not being performed, and timely action was not being taken on issues that impact day-to-day activities. These material weaknesses should be reported in the agency's next FMFIA report because they represent essential activities for administering and enforcing the Packers and Stockyards Act of 1921 (Act). The Act prohibits unfair, unjustly discriminatory, and deceptive acts and practices, including certain anti-competitive practices. We also found that the agency has not taken sufficient actions to strengthen operations in response to findings previously reported by the Office of Inspector General (OIG) in February 1997 and the Government Accountability Office (GAO) in September 2000. Our current work was initiated in response to concerns raised by a U.S. Senator in April 2005.

P&SP is responsible for maintaining fair trade practices in the marketing of livestock, providing financial protection for participants in livestock transactions, and ensuring open competitive marketing conditions for livestock and meat. To accomplish our work, we evaluated P&SP's management and oversight of its competition and complex investigations. We also examined P&SP's ability to track its investigations (i.e., financial protection, trade practice, and competition). We did not evaluate P&SP's management and oversight of its financial protection and trade practice investigations.

According to established standards for internal control,<sup>1</sup> P&SP managers and staff should establish and maintain an environment throughout the organization that sets a positive and supportive attitude. This type of environment is the foundation for effective internal control and provides the discipline, structure,

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<sup>1</sup> GAO's Standards for Internal Control in the Federal Government, dated November 1999, and the Office of Management and Budget's Circular No. A-123, Management's Responsibility for Internal Control, dated December 2004.

and climate that influence quality performance. We found that this type of environment did not exist between P&SP managers and staff.

**Inability to Track Investigations.** P&SP's tracking system counted all P&SP activities as "investigations" because there was no policy to define investigations. These activities included monitoring publicly available data, sending routine letters to request company-specific information, and performing onsite reviews of companies. In addition, records in the tracking system were not complete because there were no procedures for validating the accuracy and completeness of information recorded. Consequently, data fields were left blank. As a result, the system could not be relied upon as a control for managing P&SP investigations.<sup>2</sup>

According to P&SP data, the agency was tracking a total of 1,842 investigations as of June 30, 2005. The records, however, could not be used to identify the location of work performed (i.e., the P&SP office or the regulated entity's place of business) for 1,799 of the 1,842 investigations. In addition, agency records were incomplete for 973 of the 1,842 investigations.

**Weak Management Control.** As implemented, P&SP's control<sup>3</sup> for managing competition and complex<sup>4</sup> investigations inhibits the agency's ability to investigate them. The Senior Management Review Panel (SMRP) does not clearly establish a process for identifying the work to be performed, approving work plans, performing the fieldwork and analysis, and reporting on the results. Consequently, no competition and complex investigations were being completed. As of August 29, 2005, all of these investigations, a total of 50, were engaged in the process of being approved by SMRP. Three of these investigations were opened in 2003, and one was opened over 3 years ago in July 2002.

Since P&SP is not performing competition and complex investigations, no referrals were being made to the Office of the General Counsel (OGC) for formal administrative action. In February 2005, P&SP referred one competition investigation to OGC. The most recent referral prior to February 2005 was November 2002, over 2 years earlier. OGC filed no administrative complaints against market participants for anti-competitive practices since 1999 due to the lack of referrals by P&SP.

**No Decisions on Policy.** Due to P&SP's inadequate control structure, the agency was not making decisions on policies and requests for guidance from P&SP staff. A policy group was created in June 2005; however, P&SP has not

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<sup>2</sup> P&SP's inability to accurately and completely track its inventory of investigations limited the scope of our work. See Scope and Methodology for additional details.

<sup>3</sup> The control is the SMRP, which includes the Deputy Administrator and the Division Directors for Policy and Litigation, Industry Analysis, and Regional Operations.

<sup>4</sup> P&SP defines complex investigations as those that involve (1) more than one unit or region, (2) a substantial number or amount of resources, (3) a major firm, or (4) a novel legal theory.

established the structure this group will use for receiving, reviewing, and acting on policy questions raised by P&SP staff. As a result, timely action is not being taken on issues that impact the day-to-day business activities of producers and the entities P&SP regulates (e.g., packers, stockyards, and live poultry dealers).

We identified 64 policy issues that were awaiting decisions in P&SP Headquarters as of September 30, 2005. These issues cover all types of P&SP investigations (e.g., trade practice, financial protection, and competition) and a variety of topics to be addressed by the Deputy Administrator and the Policy and Litigation Division. For 55 of the 64 issues, guidance was requested prior to 2004, with 2 submitted in 2000.

**Prior Advice Not Implemented.** In prior reports, OIG and GAO advised on ways for P&SP to better allocate its resources to monitor the market for anti-competitive behavior. In response, P&SP initiated actions to strengthen program operations. We found that P&SP reorganized its operations in 1998 and charged the three Regional Offices with maintaining a high level of expertise in one or more species of livestock. In addition, P&SP assessed its staff's qualifications and hired staff with legal, economic, and statistical backgrounds.

We found that the actions taken in four areas, however, were not sufficient. P&SP did not identify this because the agency did not have a process for ensuring that agreed upon corrective actions were implemented. We found that P&SP did not: (1) effectively integrate economists into the investigations, (2) empower the agency's legal specialist to consult with OGC, (3) hire a manager with experience in leading P&SP investigations, and (4) develop a teamwork approach for investigations with P&SP's economists and OGC's attorneys.

Because of the weaknesses in P&SP's control for managing competition and complex investigations and P&SP's lack of action to prior advice from OIG and GAO, we did not further examine the agency's allocation and use of resources for P&SP investigations.

## **Recommendations In Brief**

P&SP needs to implement a policy for defining investigations, which requires P&SP personnel to differentiate between activities to perform onsite reviews of companies from those to monitor publicly available data and send routine letters to request company-specific information. P&SP also needs to implement procedures for recording data in the agency's tracking system and for validating the accuracy and completeness of the information recorded. The agency needs to implement a well defined process for timely identifying the work to be performed, preparing and approving work plans, performing the fieldwork and analysis, and reporting on the results. In order to appropriately and timely respond to policy issues and requests for guidance, the agency needs to develop

and implement a structure for receiving, reviewing, and acting on them. Finally, P&SP needs to develop and implement an internal review function to monitor and report on agency activities.

**Agency Response**

GIPSA agreed with the report's recommendations. We have incorporated the agency's response in the Findings and Recommendations section of this report, along with the OIG position. The response is included as Exhibit A.

**OIG Position**

Based on the response, we were able to reach management decision on the report's 10 recommendations.

## Abbreviations Used in This Report

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Act	Packers and Stockyards Act of 1921
FMFIA	Federal Managers Financial Integrity Act
FY	Fiscal Year
GAO	Government Accountability Office
GIPSA	Grain Inspection, Packers and Stockyards Administration
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
P&SP	Packers and Stockyards Programs
PLD	Policy and Litigation Division
SMRP	Senior Management Review Panel
USDA	U.S. Department of Agriculture

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# ***Background and Objectives***

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## **Background**

The U.S. Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) was established October 20, 1994, under the authority of the Agriculture Reorganization Act of 1994. Through the reorganization, GIPSA emerged as a new single agency overseeing USDA programs that were previously managed by two independent agencies: the Federal Grain Inspection Service and the Packers and Stockyards Administration. This consolidation achieved part of the USDA's overall efforts to deliver these programs and services in the most efficient and cost-effective way.

GIPSA works to ensure a productive and competitive global marketplace for USDA products. The agency's primary mission is to facilitate the marketing of livestock, poultry, meat, cereals, oilseeds and related agricultural products, and promote fair and competitive trading practices for the overall benefit of consumers and American agriculture.

Congress passed the Packers and Stockyards Act of 1921 (Act) in response to concerns raised by meat packers over unfair and deceptive trade practices, as well as those that inhibit competition (hereafter referred to as anti-competitive practices). The Act prohibits unfair, deceptive, and fraudulent practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock, meatpacking, and poultry industries. Although antitrust laws enforced by the U.S. Department of Justice already prohibit monopolistic and anti-competitive practices, Congress provided USDA with the authority to regulate the livestock and meat packing industries. GIPSA's Packers and Stockyards Programs (P&SP) administers the Act. P&SP is responsible for: (1) maintaining fair trade practices in the marketing of livestock, (2) providing financial protection for participants in livestock transactions, and (3) ensuring open competitive marketing conditions for livestock and meat.

To determine if unfair or deceptive trade practices are occurring in the procurement of livestock and poultry, P&SP conducts livestock procurement investigations of slaughtering packers, dealers, and order buyers. These investigations include examining a firm's entire operations and reviewing such things as payment practices, price manipulation, weight manipulation of livestock or carcasses, manipulation of carcass grades, and commercial bribery.

P&SP provides financial protection for participants by regulating livestock buyers' business practices to ensure, among other things, that sellers are paid promptly for their animals. Market agencies that sell livestock on a commission basis are required to establish and maintain a custodial bank account that contains the proceeds of livestock sales, for the benefit of livestock sellers.

Payment protection is provided directly under the Act by statutory requirement of full and prompt payment, by packer bonding requirements, and by the packer trust provisions. Prompt payment is a significant element of the financial protection afforded producers under the Act and is an integral part of the packer trust which provides protection to producers who fail to receive payment from meat packers. In 1988, the Act was amended to include a statutory poultry trust provision giving payment protection to live poultry growers and sellers.

One of the major responsibilities under the Act is to assure competitive marketing conditions. Various producer organizations have voiced concerns about enforcement in this area, which was the major topic of discussion and review by the USDA Advisory Committee on Agricultural Concentration established in 1996. P&SP is charged with investigating all complaints alleging anti-competitive behavior prohibited by the Act. Competition investigations are complex and often require sophisticated economic modeling and analyses. P&SP is responsible for evaluating complaints regarding restriction of competition, failure to compete, apportionment of territory, price manipulation, price discrimination, and predatory pricing. To maintain a competitive and fair marketing system, buyers of livestock must actively compete in the procurement of livestock, and the marketers of meat must also actively compete while selling their products.

In February 1997, we reported on our assessment of GIPSA's efforts to monitor and investigate anti-competitive practices.<sup>5</sup> This work was performed at the request of the Secretary of Agriculture. We concluded that GIPSA's resources were not adequate for proper monitoring of the livestock procurement market for anti-competitive behavior. As a result of this review, several suggestions were made to GIPSA on ways to allocate its resources to better monitor the market for anti-competitive behavior. These included such things as: (1) reorganizing the agency's National and Regional Offices, (2) integrating its economics staff into the investigations of anti-competitive practices, and (3) developing procedures to consult with USDA's Office of the General Counsel (OGC) prior to initiating and during investigations of anti-competitive practices.

In 1998, GIPSA initiated a major reorganization of P&SP primarily to enhance its capability to address concerns about anti-competitive activity. At the Headquarters level, located in Washington D.C., the reorganization included establishing the Office of Policy and Litigation Support with separate branch offices to oversee the agency's competition, financial, and trade practice work. At the field level, the number of Regional Offices was reduced from 11 to 3. The Eastern Regional Office in Atlanta, Georgia, leads competition, financial, and trade practice work involving poultry. The Western Regional Office in Denver, Colorado, leads work involving cattle and lambs, and the

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<sup>5</sup> Agency Efforts to Monitor and Investigate Anti-competitive Practices in the Meatpacking Industry, Evaluation Report No. 30801-01-Ch, issued February 26, 1997.

Midwestern Regional Office in Des Moines, Iowa, leads work involving hogs. During the course of our current audit, GIPSA reorganized its Headquarters structure for overseeing the agency's competition, financial, and trade practice work. According to a memorandum issued on June 22, 2005, by the Director of Regional Operations, the Office of Policy and Litigation Support was renamed the Policy and Litigation Division (PLD) with separate branches for policy and litigation. The Policy Branch was to focus on investigations and policy matters, and the Litigation Branch was to focus on reviewing cases and assisting OGC in litigation matters. Further, all economists located in Washington, D.C., were moved to the Industry Analysis Division, which was given oversight responsibility for competition cases.

The Government Accountability Office (GAO) released a report on P&SP activities that followed up on the recommendations made by Office of Inspector General (OIG) and supported OIG's conclusions.<sup>6</sup> GAO indicated that GIPSA completed a major restructuring of its Headquarters and field offices in 1999 and hired staff to strengthen its investigation of alleged anti-competitive practices. However, GAO reported two principle factors continue to detract from GIPSA's ability to investigate concerns about anti-competitive practices in these markets. First, GIPSA's investigations are led and conducted primarily by economists without the formal involvement of attorneys from OGC. Second, GIPSA's investigative processes and practices are designed for traditional trade practice and financial issues that the agency has emphasized for years, and thus are not suited for the more complex anti-competitive practices they are addressing now.

On April 4, 2005, the Inspector General received a letter from a U.S. Senator expressing concerns with GIPSA's management and oversight of the P&SP. Of particular concern was the possible inflation of the number of actual investigations conducted by the competition division in annual GIPSA reports to suggest a high rate of enforcement activity.

## **Objectives**

Our objective was to evaluate GIPSA's management and oversight of the P&SP to ensure that anti-competitive and unfair practices in the livestock and poultry markets were accurately and effectively examined, reported, and resolved. Specifically, we evaluated the adequacy of GIPSA's actions to: (1) investigate and act against anti-competitive activities in the livestock and poultry markets and implement needed regulatory reforms, (2) examine the counting and tracking of complaints and investigations for each of the P&SP enforcement areas, (3) determine how P&SP interpreted and carried out advice from prior OIG and GAO reviews, and (4) examine GIPSA's allocation and use of resources to P&SP to investigate and act on possible violations of the Act.

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<sup>6</sup> Actions Needed to Improve Investigations of Competitive Practices, RCED-00-242, issued September 21, 2000.

To accomplish our objectives, we interviewed appropriate P&SP officials, examined pertinent documentation, reviewed applicable policies and procedures, and evaluated program operations in fiscal year (FY) 2005. We performed work at P&SP Headquarters and OGC in Washington, D.C., and at each P&SP Regional Office: (1) the Eastern Regional Office in Atlanta, Georgia, (2) the Midwestern Regional Office in Des Moines, Iowa, and (3) the Western Regional Office in Denver, Colorado. (See Scope and Methodology for details.)

# **Findings and Recommendations**

## **Section 1. Management and Oversight of P&SP Needs Improvement**

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P&SP has not established an adequate control structure and environment that allows it to conduct investigations to ensure open and competitive markets for livestock, meat, and poultry. Our review identified three material weaknesses in P&SP's control structure and environment. These weaknesses have not been previously disclosed in the agency's annual Federal Managers Financial Integrity Act (FMFIA) report. We found that P&SP had difficulties:

- Defining and tracking investigations,
- Planning and conducting competition and complex investigations, and
- Making agency policy.

These material weaknesses should be reported in the agency's next FMFIA report because they represent essential activities for administering and enforcing the Act, which prohibits unfair, unjustly discriminatory, and deceptive acts or practices, including certain anti-competitive practices. We also found that, due to weaknesses in P&SP's control structure, the agency has not taken sufficient actions to strengthen operations in response to findings previously reported by OIG and GAO.

We evaluated P&SP's management and oversight of its competition and complex investigations. We also examined P&SP's ability to track its investigations (i.e., financial protection, trade practice, and competition). We did not evaluate P&SP's management and oversight of its financial protection and trade practice investigations.

According to established standards for internal control,<sup>7</sup> P&SP managers and staff should establish and maintain an environment throughout the organization that sets a positive and supportive attitude. This type of environment is the foundation for an effective internal control structure. Such an environment provides discipline and structure as well as the climate that influences quality performance. We found that this type of environment did not exist between P&SP managers and staff, which significantly contributed to the agency not being able to ensure open and competitive markets for livestock, meat, and poultry.

To address the weaknesses in P&SP's control structure, the agency needs to implement the appropriate control activities and monitoring efforts, which would include an internal review function. Control activities help to ensure that

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<sup>7</sup> GAO's Standards for Internal Control in the Federal Government, dated November 1999, and the Office of Management and Budget's Circular No. A-123, Management's Responsibility for Internal Control, dated December 2004.

management's directives are carried out. Monitoring efforts assess the quality of performance over time and ensure that the weaknesses in the control structure are timely resolved.

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**Finding 1****Investigative Tracking System Inaccurate and Incomplete**

The system used to track investigations (i.e., the complaints and investigations log) counted all P&SP activities as "investigations." These activities included monitoring publicly available data, sending routine letters to request company-specific information, and performing onsite reviews of companies. This occurred because P&SP did not have a policy to define investigations. In addition, records in the tracking system were not complete because there were no procedures for validating that necessary information (e.g., the reason for conducting the investigation) was recorded. Consequently, data fields were left blank. As a result, the system could not be relied upon as a control for managing P&SP investigations.

According to P&SP data, the agency was tracking a total of 1,842 investigations as of June 30, 2005. The records, however, could not be used to identify the location of work performed (i.e., the P&SP office or the regulated entity's place of business) for 1,799 of the 1,842 investigations. In addition, agency records were incomplete for 973 of the 1,842 investigations.

In June 2005, the Deputy Administrator informed us that P&SP does not have a standard definition for what constitutes an investigation. In addition, no procedures have been implemented for validating the accuracy and completeness of information recorded in the complaints and investigations log.

- **All Activities Counted as Investigations.** Although P&SP does not have a standard definition for an investigation, we found that P&SP's working definition has expanded to include activities that historically have not been classified as investigations. According to experienced P&SP staff, the agency only included onsite reviews of companies as investigations prior to 2000. According to P&SP Regional Managers, they received verbal direction in 2004 from the Deputy Administrator to count as investigations all matters where P&SP staff determines a violation and notifies the regulated entities of this violation by certified letter. Our review of the complaints and investigations log disclosed that P&SP staff now counts all types of work performed (i.e., monitoring activities, sending routine correspondence, or performing onsite reviews) as investigations, which would inflate the number of investigations reported as completed in the agency's annual performance report. P&SP staff explained that certified letters are used for routine correspondence with regulated entities and for initiating onsite reviews. They further explained that they began recording

monitoring activities because these activities were the only competition investigations being approved.

In addition, we found that the three P&SP Regional Offices were not consistently documenting investigative work in the complaints and investigations log. Two of the three Regional Offices classified all activities (i.e., monitoring activities, sending routine correspondence, or performing onsite reviews) as investigations. The Eastern Regional Office was reprimanded on June 14, 2005, by the Deputy Administrator for classifying investigations to only include monitoring activities and onsite reviews. The Deputy Administrator directed each Eastern Regional Office Unit (e.g., competition, trade practice, and financial protection) to devise a strategic plan to address the deficiency in the number of investigations recorded in the complaints and investigations log. According to the strategic plans, the units committed to increasing the number of complaints and investigations in the log by adding activities that were previously not included as investigations. These activities included delinquent annual and special reports, bond terminations, bond increases, and registration and bonding. We found this resulted in a significant increase in the number of investigations recorded in the complaints and investigations log. On June 14, 2005, the region was tracking a total of 425 investigations. By comparison, as of September 15, 2005, a total of 760 activities were being tracked by the region. The region climbed from last to first among the three regions by reclassifying over 300 routine activities as investigations.

- **Complaints and Investigations Log Incomplete.** We found that the records in P&SP's complaints and investigations log were not complete because there were no procedures for validating the accuracy and completeness of information recorded in the log. For example, fields in the complaints and investigations log were blank because P&SP staff did not make the necessary entries. Of the 1,842 investigations being tracked by P&SP as of June 30, 2005, we found that agency records for 973 cases were incomplete. The records were incomplete mainly because P&SP staff did not record such information as the primary reasons for conducting the investigation, the status of the investigative work, and the disposition of closed cases.

In addition, we found that P&SP staff did not always assign an investigation tracking number when they initiated work. According to data in the complaints and investigations log and discussions with P&SP regional staff, investigation tracking numbers are assigned before work begins on financial protection and trade practice investigations. However, tracking numbers are not assigned to competition cases until after the work plan is approved by the Senior Management Review Panel (SMRP). We identified that P&SP staffs are currently working on plans for nine competition investigations for which no tracking number is assigned. None

of these work plans have been approved by SMRP. (See Finding 2 for concerns we noted with P&SP's SMRP procedures.)

The complaints and investigations log does not accurately and completely track information on P&SP investigations. To ensure investigative activity is consistently recorded, P&SP needs to define the activity to be recorded. The definition should distinguish between P&SP activities for performing onsite reviews of companies from monitoring publicly available data and sending routine letters to request company-specific information. In addition, P&SP needs to develop and implement procedures for validating the accuracy and completeness of information recorded in the complaints and investigations log.

### **Recommendation 1**

Develop and implement a policy for defining investigations. This policy should require P&SP personnel to differentiate between activities to perform onsite reviews of companies from those to monitor publicly available data and send routine letters to request company-specific information.

#### **Agency Response.**

P&SP has developed and implemented a policy defining investigations. The policy statement was effective January 5, 2006. P&SP considers an investigation to be any activity to include follow-ups to prior violations, industry driven complaints, and possible violations of the P&S Act found pursuant to compliance or monitoring activities. The policy differentiates between activities requiring on-site company visits versus activities conducted solely in USDA offices. The policy also distinguishes investigations from regulatory compliance activities (including sending routine letters to request business-specific information), and from monitoring activities that use publicly available data.

#### **OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide the Office of the Chief Financial Officer (OCFO) with a copy of the policy statement defining investigations that was effective January 5, 2006.

### **Recommendation 2**

Develop and implement procedures for recording data in the complaints and investigations log. These procedures should specify the information to be recorded and how the accuracy and completeness of this information will be validated.



### **Agency Response.**

P&SP is developing and implementing procedures to better record data in the Complaints and Investigation (C&I) log, including revisions to the C&I log software. The procedures are based on the general definition described in the response to OIG Recommendation 1 for an investigation and the distinction of P&SP activities related to regulatory compliance reviews (for example, financial reviews of annual reports for bond requirements and scale checking), and monitoring activities (for example the hog market price monitoring and fed cattle market price monitoring activities). Procedures developed will be contained within a C&I log users manual and include the information required for purposes of ensuring complete entries by C&I log users. The new C&I log procedures and revisions to the C&I log software will be completed June 2006. Review procedures will be developed for confirming the completeness and accuracy of C&I log data entries at the field level. Periodic audit validation checks will be conducted and reported by headquarters staff from the Regional Operations Division. The review procedures and an initial audit check of each region will be completed June 2006. P&SP will consult with other governmental regulatory agencies to determine what types of software they are using to assess if there are superior software tools to support the tracking functions related to investigations, policy guidance requests, and regulatory and rule making activities mentioned below. The review of alternative software will be conducted by June, 2006 and a decision whether to adopt alternative software will be made September, 2006.

### **OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide OCFO with a copy of the procedures for the new complaints and investigations log and for confirming the completeness and accuracy of the data recorded in the complaints and investigations log at the field level. GIPSA also needs to provide OCFO with documentation of its decision on whether to adopt alternative software for the complaints and investigations log.

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## **Finding 2**

### **Inadequate Process for Managing Investigations**

P&SP uses SMRP to plan and conduct competition and complex investigations. As implemented, SMRP inhibits the agency's ability to investigate anti-competitive activities and unfair trade practices in the livestock and poultry markets. SMRP did not clearly establish a process for identifying the work to be performed, approving work plans, performing the fieldwork and analysis, and reporting on the results. Furthermore, the process places no responsibility on P&SP Regional Managers for managing the investigations because all decisions need to be approved by the Deputy Administrator. Consequently, no

competition and complex investigations are being completed. As of August 29, 2005, all of these investigations, a total of 50, were engaged in the process of being approved by SMRP. Three of these investigations were opened in 2003 and one was opened over 3 years ago in July 2002.

P&SP oversees competition and complex investigations through SMRP. This panel includes the Deputy Administrator and the Division Directors for Policy and Litigation, Industry Analysis, and Regional Operations. SMRP was initiated in response to a recommendation from GAO in September 2000. P&SP agreed to develop a review process for investigations in which complex investigations of anti-competitive activities are subject to review and approval by P&SP Headquarters and OGC. P&SP did not formalize its review process (i.e., SMRP) in a written policy<sup>8</sup> until May 2005.

The May 2005 SMRP procedures included general rules regarding SMRP investigations and policies that identified the team, outlined the team's responsibilities, and established requirements for such things as reporting, SMRP meetings, and consulting with OGC. The policy also included guidance on how to prepare and format investigative work plans. Since P&SP issued the policy in May 2005, it has amended the work plan format four times. Staffs in each P&SP region (Eastern, Midwest, and Western) were not certain of the expectations for investigations because the policy for preparing work plans was a moving target. Since the implementation of the policy in May 2005, a total of 27 work plans have been submitted; however, no investigative work plans have been approved by SMRP.

OGC receives referrals from P&SP requesting that a complaint be filed, reviews those cases for legal sufficiency, determines if an administrative complaint or a U.S. Department of Justice referral should take place, and provides legal services to file and litigate those actions, as appropriate. Since P&SP was not performing competition and complex investigations, no referrals are being made to OGC. In February 2005, P&SP referred one competition investigation to OGC. The most recent referral prior to February 2005 was November 2002, over 2 years earlier. OGC filed no administrative complaints against market participants for anti-competitive practices since 1999 due to the lack of referrals by P&SP.

In each P&SP region, we found examples of investigative work plans that have not been approved. No work can be performed until the work plan is approved. We also found examples where decisions have not been made to act on the results of the investigations. We judgmentally selected investigative work plans and reports for review based on the complexity of the case, timeliness of approval, and delays due to changes to SMRP policy and procedures.

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<sup>8</sup> Policy No. OPLS 06-05, SMRP Procedures, dated May 25, 2005. This policy was issued in draft form via electronic mail on March 15, 2005, for immediate implementation.

- **Plan for Annual Analysis of Procurement Data Not Approved.** We found that P&SP has been unable to approve the work plan to collect and analyze fed cattle procurement data. Each year P&SP collects this data to determine the number of fed cattle purchased by the major packers<sup>9</sup> and if the major packers accurately reported this information in their annual reports to P&SP. The P&SP Western Regional Office submitted the work plans to collect and analyze the 2004 procurement data on December 27, 2004. The work plans included an individual work plan for each major packer and an overall work plan to analyze and summarize the information learned through the work at the four packers. None of these five work plans had been approved as of September 30, 2005. Historically, P&SP reports on this analysis by September 30 each year.

The P&SP Western Regional Office made two major revisions to the work plans based on comments received from the Competition Branch of PLD in P&SP Headquarters. The first revision was submitted for review on February 17, 2005, and the second revision was submitted on March 11, 2005. A SMRP meeting was scheduled for March 23, 2005. However, on March 15, 2005, new guidelines were issued for formatting work plans. This formatting guidance required such things as an extensive investigative history of the company and any consultation with OGC. The scheduled SMRP meeting was cancelled until the work plans were revised to conform to the new formatting guidance.

The P&SP Western Regional Office made three additional revisions to the work plans based on additional comments received from the Competition Branch from March to May 2005. Our analysis of the revisions disclosed that the requested revisions were not substantive. For example, the Competition Branch requested that the work be described as a “captive supply verification” rather than a “captive supply audit.”

On May 17, 2005, a SMRP meeting was held, but the SMRP did not approve the work plans. The SMRP requested more extensive investigative history of each major packer and actual salary-based cost estimates. The P&SP Western Regional Office made the requested revisions and another SMRP meeting was scheduled for July 27, 2005. This meeting, however, was postponed indefinitely in order for Regional Office staff to respond to changes requested by the Deputy Administrator. For example, the Deputy Administrator required the work to be referred to as a “captive supply audit” as opposed to a “verification” and requested more statistical information. In order to include the requested statistical information, visits to two major beef packing facilities were needed. Before authorizing the trip, the Deputy Administrator required an abbreviated work plan describing the purpose of the work, the individuals to be contacted, and the

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<sup>9</sup> The four major beef packers are Cargill Meat Solutions Corporation, National Beef Packing Company, Swift and Company, and Tyson Fresh Meats.

evidence to be collected. The abbreviated work plan was submitted on August 16, 2005; however, as of September 30, 2005, the work plan had not been approved.

- **Decisions to Close Investigations Not Made.** During the week of May 2, 2005, the P&SP Eastern Regional Office performed a preliminary investigation to determine whether cattle dealers operating at a stockyard in Alabama were using the same individual to buy livestock in order to impede competition. This work was performed with the concurrence of the Competition Branch of PLD in P&SP Headquarters. After performing the fieldwork, the investigators recommended closing this investigation with no further action because the available evidence did not indicate a lack of competition at the market.

On May 10, 2005, the Deputy Administrator directed that all preliminary investigations require approval of the SMRP to proceed. Accordingly, the Eastern Regional Office sought approval to close the preliminary investigation through SMRP. No action on the case was taken from May 2005 until August 2005. On August 17, 2005, the Competition Branch agreed with the region's conclusions and recommended that the Deputy Administrator approve the closure of this case. On August 23, 2005, the Deputy Administrator provided edits to the decision memorandum prepared to close the matter and requested a discussion of the case with the Director of the Industry Analysis Division. As of August 29, 2005, the preliminary investigation had not been closed because the region needed the Deputy Administrator's approval.

As implemented, the SMRP process inhibits P&SP from investigating anti-competitive activities and unfair trade practices in the livestock and poultry markets. The process did not clearly establish procedures for identifying the work to be performed, approving work plans, performing the fieldwork and analysis, and reporting on the results. Moreover, the process places no responsibility on P&SP Regional Managers for managing the investigations, since all decisions are approved by the Deputy Administrator.

### **Recommendation 3**

Develop and implement a well defined process for timely identifying the work to be performed, preparing and approving work plans, performing the fieldwork and analysis, and reporting on the results. This should include controls for conducting preliminary investigations to obtain sufficient facts to decide whether to proceed with further investigation.

#### **Agency Response.**

P&SP is developing and implementing a clearly defined process for identifying the work to be performed, preparing and approving work plans,

performing the fieldwork and analysis, and timely reporting of the results. The process includes controls for conducting initial fact finding activities to determine if sufficient justification exists to merit proceeding with an investigation. A preliminary work plan policy has been prepared including a template for information needed in the work plans and how to describe the work to be conducted in the investigation, and the review process. A work plan task force with field and headquarters staff has reviewed the policy and submitted comments on the policy. These comments will be included in the final policy that describes the investigation process. The development and implementation of the investigation policy will be completed March, 2006. Regional Managers have been given the authority to approve routine or non-complex investigations. Examples of such investigations would be of insufficient funds or a failure to pay a livestock seller. The P&SP investigation policy statement in this response will also indicate the increased authority of the Regional Managers.

**OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide OCFO with a copy of the implemented investigation policy.

**Recommendation 4**

Develop and implement an effective system to communicate expectations regarding P&SP's investigative process and specific investigations.

**Agency Response.**

P&SP is developing and implementing an effective system to communicate expectations regarding P&SP investigative processes and specific investigations. A process to achieve better communications regarding investigations will include several features. First, Regional Managers, who have face-to-face communication with field investigators, are being vested with greater authority. Second, the new definitions are being put into place to clarify distinctions among investigative, regulatory, and monitoring activities conducted by the field (described in GIPSA Responses 1 & 2). Third, new investigative work plan guidelines are being finalized (described in GIPSA Response 3). And last, a less rigid format for developing and implementing investigation activity and less frequent changes to formal investigative process will be used to enhance communications. A P&SP policy statement documenting the complete implementation of the more effective communication system will be issued no later than March 2006. Those items related to the C&I log linked to GIPSA Response 2 above, will be completed by June 2006.

**OIG Position.**

We accept GIPSA’s management decision. For final action, GIPSA needs to provide OCFO with a copy of the policy statement issued documenting the complete implementation of the more effective communication system.

**Recommendation 5**

Develop and implement an organizational structure that appropriately divides the responsibility for approving work plans, managing the investigations, and reporting the results between Regional Managers and the Deputy Administrator.

**Agency Response.**

P&SP has developed and implemented a revised organizational structure that appropriately divides the responsibility for approving work plans, managing the investigations, and reporting the results between the Regional Managers and the Deputy Administrator. Regional Managers have been given the authority to initiate, develop, and provide management implementation of investigations, except for competition investigations of large economic consequences. The Division Directors acting in coordination with the Deputy Administrator will now provide technical support. The Deputy Administrator will provide oversight and final decisions on strategic resource allocations. A P&SP policy statement was issued describing the changes in the organizational structure January 5, 2006.

**OIG Position.**

We accept GIPSA’s management decision. For final action, GIPSA needs to provide OCFO with a copy of the policy statement issued January 5, 2006, describing the changes in the organizational structure.

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**Finding 3**

**Policy Decisions Not Being Made**

P&SP was not making decisions on policies and requests for guidance from P&SP staff. Decisions were not made because P&SP had no internal structure for receiving, reviewing, and acting on policy questions raised. In addition, P&SP had not established a mechanism to evaluate the need for regulatory changes. As a result, timely action was not being taken on issues that impact the day-to-day business activities of producers and the entities P&SP regulates (e.g., packers, stockyards, and live poultry dealers).

We identified 64 policy issues that were awaiting decisions in P&SP Headquarters as of September 30, 2005. These 64 issues cover all types of P&SP investigations (e.g., trade practice, financial protection, and competition) and a variety of topics to be addressed by the Deputy Administrator and PLD.

For 55 of the 64 issues, guidance was requested prior to 2004, with 2 submitted in 2000.

On June 22, 2005, P&SP created the Policy Branch in a reorganization of PLD. The Policy Branch is responsible for investigations and policy matters. However, this branch has no internal structure for receiving, reviewing, and acting on policy questions raised by P&SP staff. In addition, this branch has no program for evaluating whether changes to the regulations are needed. Before the reorganization, the staff of the Policy Branch oversaw P&SP work regarding trade practice investigations.

Of the 64 policy issues that have gone unanswered, 26 relate to trade practice issues, 14 are questions on financial protection matters, and 1 relates to competition. The remaining 23 issues cover a variety of topics, a total of 16 to be addressed by the Deputy Administrator and 7 to be addressed by PLD. The topics include such matters as how to make entries in the complaints and investigations log and how contacts with other agencies will be initiated.

- **Trade Practice.** P&SP is responsible for promoting fair business practices in the marketing and procurement of livestock, meat, and poultry, and determining if unfair or deceptive practices are occurring. P&SP's conducts trade practice investigations to determine, among other things, whether companies are appropriately registered and bonded. Any person or entity engaged in the business of a livestock dealer must register with P&SP. Livestock dealers are also required to be bonded. Since December 2000, the P&SP Eastern Regional Office has sought guidance on the bonding requirements, if any, that can be placed on Canadian companies that act as livestock dealers in the United States. If bonding requirements were imposed they could secure the performance of financial obligations incurred in the purchase of livestock.
- **Financial Protection.** P&SP protects the financial integrity and stability of the livestock, poultry, and meatpacking industries by performing financial protection investigations. These investigations address such matters as the maintenance of custodial accounts. According to the regulations<sup>10</sup> every market agency engaged in the selling of livestock shall maintain a custodial account for tracking the proceeds generated from livestock sales. Sales proceeds are required to be deposited in the custodial account before the close of the next business day. In July 2001, the P&SP Western Regional Office sought guidance on how deposit requirements would apply when livestock is purchased with a credit card. According to Regional Office staff, the proceeds from credit card transactions are not always deposited in the custodial account before the

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<sup>10</sup> Title 9 Code of Federal Regulations § 201.42, Custodial Accounts for Trust Funds, January 2005 edition.

close of the next business day. P&SP staff sought guidance on whether this type of deficiency should be treated as a violation.

In contrast, we found that P&SP policies have been recently issued for a variety of administrative matters. On February 9, 2005, the Deputy Administrator issued a policy to change the title of Regional Supervisors to Regional Managers. On April 6, 2005, procedures were issued for scheduling P&SP meetings with the Deputy Administrator. On the same day, in a separate issuance, P&SP staffs were notified of the individual responsible for making travel arrangements for the Deputy Administrator. To ensure that policy issues and requests for guidance are timely addressed, P&SP needs to implement a framework for reviewing and acting on them.

In addition to not having a structure in place for acting on policy issues, P&SP did not have a program to evaluate whether changes to the regulations were needed. Implementing such a program would be one way to effectively use the agency's regulatory analyst. Currently, this person is assigned the responsibility of managing the agency hotline and posting information on stockyards. A program to analyze regulatory needs is vital in order for P&SP to monitor the markets that it regulates and recommend any needed changes. This program should include a process for evaluating findings from P&SP's reports of investigation to determine the need for regulatory changes.

## **Recommendation 6**

Develop and implement a structure for receiving, reviewing, and acting on policy issues and requests for guidance.

### **Agency Response.**

P&SP is developing and implementing a structure for receiving, reviewing, and acting on policy issues and requests for guidance. Requests for policy guidance and identification of potential regulatory needs will typically, but not exclusively, originate in the Regional Offices with the staff affected by the concern. Review and assessment of the request for action will be conducted first by the Regional Manager who will forward the request to Headquarters if action is deemed necessary. A position within the Policy Branch of the Policy and Litigation Division (PLD) will be assigned the responsibility of receiving, tracking the request, and making initial assignments to appropriate P&SP Division Director(s) for drafting policy or regulations in conjunction with the regulatory analyst in PLD. Actions taken to respond to OIG Recommendation 6 will be documented in a P&SP policy statement issued March, 2006.



**OIG Position.**

We accept GIPSA’s management decision. For final action, GIPSA needs to provide OCFO with a copy of the policy statement issued for receiving, reviewing, and acting on policy issues and requests for guidance.

**Recommendation 7**

Develop and implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed.

**Agency Response.**

P&SP will develop and implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed. The review process will include an assessment mechanism to determine if industry conduct and behavior believed to be unfair and in violation of the P&S Act can be halted through disciplinary enforcement action. Regional staff through the Regional Managers will be vested with the authority to recommend and initiate more specific regulatory reviews as described in the response to OIG Recommendation 6. A P&SP policy statement will be issued March, 2006 to document steps taken to develop and complete the implementation of a process to review investigative findings.

**OIG Position.**

We accept GIPSA’s management decision. For final action, GIPSA needs to provide OCFO with a copy of the policy statement issued, which documents the steps taken to develop and complete the implementation of a process to review investigative findings.

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**Finding 4**

**Actions to Strengthen Program Operations Not Fully Implemented**

In two prior reports, OIG and GAO advised on ways for P&SP to better allocate its resources to monitor the market for anti-competitive behavior. In response, P&SP initiated actions to strengthen program operations; however, the actions taken in four areas were not sufficient. We found that P&SP did not: (1) effectively integrate economists into the investigations, (2) empower the agency’s legal specialist to consult with OGC, (3) hire a manager with experience in leading P&SP investigations, and (4) develop a teamwork approach for investigations with P&SP’s economists and OGC’s attorneys. P&SP did not have a process for ensuring that agreed upon corrective actions were implemented. In addition, P&SP did not identify the insufficiency of its corrective actions because no internal review function was established to monitor agency activities. As a result, P&SP has reduced assurance that mission critical activities are being effectively performed.

P&SP has not established an internal review function to monitor agency activities. Monitoring efforts can be used to assess the quality of performance as well as to test that agreed upon corrective actions are implemented.

In February 1997, we reported on our evaluation of P&SP's efforts to monitor and investigate anti-competitive practices in the meat packing industry (Evaluation Report No. 30801-01-Ch). In response to our evaluation, P&SP agreed to initiate actions in five areas to strengthen program operations.

- **Advice Implemented.** P&SP initiated a reorganization of its operations, which was completed in 1999. This reorganization focused agency activities on specific livestock industries and established branches for leading its investigations for competition, trade practice, and financial protection. Finally, P&SP reduced the number of Regional Offices from 11 to 3 and charged each Regional Office with maintaining a high level of expertise in one or more species of livestock. The Eastern Regional Office developed expertise in the poultry industry, the Midwestern Regional Office concentrated on the hog industry, and the Western Regional Office focused on the industries for cattle and lambs.

In response to our evaluation, P&SP assessed its staff's qualifications and hired staff with legal, economic, and statistical backgrounds. We found that P&SP struggles to achieve its full staffing levels. Since 1999, a total of 84 P&SP positions in Regional Offices became vacant because of employee promotions, reassignments, resignations, retirements, and transfers. The Western Regional Office had 43 of the 84 vacancies, while the Midwestern and Eastern Regional Offices had 23 and 18 vacancies, respectively. As of September 30, 2005, P&SP had 22 vacancies that needed to be filled.

- **Advice Not Implemented.** We found that P&SP did not effectively integrate economists into the investigations. Economists have been hired, but due to weaknesses in P&SP's process for managing competition investigations (see Finding 2), the economists have not been effectively used. We found that P&SP is not referring competition investigations to OGC as formal administrative complaints. OGC filed no administrative complaints against market participants for anti-competitive practices since 1999 due to the lack of referrals by P&SP.

P&SP did develop procedures for consulting with OGC. However, we found that the P&SP legal specialists are not allowed to consult with OGC attorneys until the Deputy Administrator has been briefed on all issues pertaining to the investigation. P&SP needs to implement procedures that empower the legal specialists to consult with OGC. The procedures should

establish parameters on the types of issues that must be discussed with the Deputy Administrator before consultation with OGC.

GIPSA hired a former OGC attorney with experience in litigating cases associated with P&SP activities as Deputy Administrator. The Deputy Administrator, however, had limited experience in leading the types of investigations P&SP performs (e.g., trade practice, financial protection, and competition). As part of our current work, we also found that the Deputy Administrator is attempting to change staff's approach to performing P&SP activities. For example, she is striving to have her managers, both in Headquarters and the regions, perform their functions in more of a "big picture" view and to evaluate the repercussions that their decisions have on the agency and the livestock and poultry industries. By comparison, she described that Regional Managers traditionally focused on the individual investigations they performed and did not evaluate how the results may impact the livestock and poultry industries. GIPSA needs to develop a strategy to facilitate the implementation of this organizational change.

In September 2000, GAO reported on actions needed to improve P&SP investigations of competitive practices (GAO/RCED-00-242). GAO recommended that P&SP develop a teamwork approach for investigations with P&SP's economists and OGC's attorneys working together to identify violations of the law. GAO also recommended that P&SP adopt methods and guidance similar to the U.S. Department of Justice and the Federal Trade Commission for selecting, planning, conducting, and reviewing investigations and to consult with these agencies on investigation management, operations, and case development processes. As reported in Finding 2, P&SP's process for managing investigations inhibits the agency's ability to investigate anti-competitive activities and unfair trade practices in the livestock and poultry markets. In implementing the recommendations to strengthen the process, P&SP should, as appropriate, adopt methods and guidance similar to the U.S. Department of Justice and the Federal Trade Commission.

As noted in our earlier findings, P&SP needs to implement the appropriate control activities for administering and enforcing the Act, which prohibits unfair, unjustly discriminatory, and deceptive acts or practices, including certain anti-competitive practices. In addition, P&SP should establish an internal review function to monitor agency activities. As part of the monitoring efforts, the internal review function could assess the quality of agency performance with respect to achieving particular goals and objectives, assure compliance with agency policies and procedures, and test that agreed upon corrective actions are implemented.

## **Recommendation 8**

Develop and implement procedures that empower the legal specialists to consult with OGC. The procedures should establish parameters on the types of issues that must be discussed with the Deputy Administrator before consultation with OGC.

### **Agency Response.**

P&SP has developed and implemented procedures that enable the legal specialists to consult with OGC. The procedures establish parameters on the types of issues that must be discussed with the Deputy Administrator before consultations with OGC. In general, legal specialists have full authority to contact OGC regarding questions or concerns related to the development, implementation, or future litigation of potential and ongoing investigations. The chain of command for legal specialists has been changed from the Deputy Administrator to the Regional Manager, which manages the office that is the legal specialists' permanent duty station. A process with OGC has been initiated so that competition investigations will be assigned an OGC attorney at an earlier stage of the investigation to facilitate broader and greater communication between P&SP legal specialists and OGC attorneys. A P&SP policy statement describing the changes in organizational structure and guidelines for the legal specialist to contact OGC was issued January 5, 2006.

### **OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide OCFO with a copy of policy statement issued January 5, 2006, which describes the changes in organizational structure and guidelines for the legal specialists to contact OGC.

## **Recommendation 9**

Develop and implement a strategy and process for effective implementation of changes in P&SP operations.

### **Agency Response.**

P&SP is developing and implementing a strategy and process for effective implementation of changes in P&SP operations. Several key administrative steps to ensure effective change and a revitalization of ongoing P&SP operations have been taken by the new GIPSA Administrator. Additional changes (including the steps identified in GIPSA Response 10 below) will be completed no later than September, 2006, and will be documented in P&SP policy statements. OIG suggests that P&SP implement methods and guidance similar to DOJ and the FTC. While there are many similarities between the activities that may be illegal under the antitrust laws of the United States and under the Packers and Stockyards Act, GIPSA, as a regulatory agency, has broader authority than that given to the law enforcement authorities of DOJ. However, certain investigative tools, for example, the use of civil investigative demands (CIDs) by DOJ are available to the antitrust agencies and not to GIPSA. For this reason, not all techniques or approaches used by DOJ and or the FTC are appropriate to the investigations of GIPSA. Currently a memorandum of understanding (MOU) exists between USDA, the FTC, and

DOJ for the purpose of increasing each agency's effectiveness. P&SP will work with OGC, the designated USDA liaison to DOJ and FTC under the MOU to develop a means for P&SP staff to learn from the antitrust agencies those techniques and procedures most appropriate for use under the Packers and Stockyards Act. Initial steps have been made with OGC to coordinate a planning meeting with DOJ to determine a longer term ongoing relationship between DOJ and P&SP economists and legal specialists. The outcome of the planning meeting will be documented along with actions based on decisions from the meeting. These documents will be issued September 2006.

**OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide OCFO with a copy of the document that describes the outcome of the planning meeting with the U.S. Department of Justice and the actions based on decisions from the meeting.

**Recommendation 10**

Develop and implement an internal review function to monitor and report on agency activities. This should include the implementation of controls to monitor and report on corrective actions agreed upon with entities external to P&SP, such as OIG and GAO.

**Agency Response.**

P&SP is developing an internal review function to monitor and report on agency activities. The implementation will include controls to monitor and report corrective actions agreed upon with entities external to P&SP, such as OIG and GAO. Responses to the OIG Recommendations above and in particular 2, 3, 4, and 6 will involve internal review components. Dates of completion of these response items will be documented as described above in the respective responses. Also, an assessment of personnel assigned to internal review functions presently conducted by P&SP will be undertaken. The assessment will determine if the potential exists to improve P&SP reporting functions for the OIG and GAO recommendations. The outcome and action taken will be documented and completed September, 2006.

**OIG Position.**

We accept GIPSA's management decision. For final action, GIPSA needs to provide OCFO with documentation describing the internal review function implemented to monitor and report on agency activities.

# Scope and Methodology

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Our review focused on interviewing appropriate P&SP officials, examining pertinent documentation, reviewing applicable policies and procedures, and evaluating program operations in FY 2005. The fieldwork was performed from May 2005 to October 2005. We performed work at P&SP Headquarters in Washington, D.C., and at each of the three Regional Offices: (1) the Eastern Regional Office in Atlanta, Georgia, (2) the Midwestern Regional Office in Des Moines, Iowa, and (3) the Western Regional Office in Denver, Colorado.

We conducted our audit in accordance with Government Auditing Standards established by the Comptroller General of the United States. The scope of our work was limited because we were not able to accumulate sufficient evidence to identify the location where investigative work was performed (i.e., the P&SP office or the regulated entity's place of business). In addition, the system used to track P&SP investigations was not complete.

We evaluated P&SP's processes and controls for conducting investigations to ensure complaints were effectively examined, reported, and resolved. We did not assess the quality of the investigations performed or the results reported.

## P&SP Headquarters

We interviewed 11 individuals that worked in P&SP Headquarters, which included 9 current and 2 former employees. These officials included the Deputy Administrator for P&SP as well as the Directors and staff of the P&SP Headquarters Divisions: (1) Policy and Litigation, (2) Industry Analysis, and (3) Regional Operations. The purpose of our discussions was to obtain an understanding of their oversight responsibilities and their roles in approving investigations of anti-competitive and unfair practices in the livestock and poultry markets. We also interviewed an individual from GIPSA's budget staff to understand how P&SP resources were allocated and used. To analyze and corroborate the information learned, we reviewed the P&SP employee manual, investigative policy and procedures, pending policy issues, pending investigative work plan log, and other related P&SP documentation.

To gain an understanding of OGC's relationship and involvement with the P&SP investigative process, we interviewed the Assistant General Counsel for Trade Practices.

## P&SP Regional Office

We performed audit work at each of the three P&SP Regional Offices to examine the agency's handling of and accounting for complaints and

investigations and the agency's investigative process. We evaluated complaints and investigations from each P&SP unit (i.e., financial protection, trade practice, and competition). We reviewed and evaluated the complaints and investigation log, pending policies and procedures, weekly activity reports, investigative work plans and reports, budget documents, and the turnover rate for each P&SP Regional Office. We judgmentally selected investigative work plans and reports for review based on the complexity of the case, timeliness of approval, and delays due to changes to SMRP policy and procedures. In addition, we interviewed 43 individuals that worked in P&SP Regional Offices, which included 38 current and 5 former employees.

Finally, we followed-up on the actions taken to implement the advice given GIPSA in prior reports by OIG and GAO. These reports included: (1) Evaluation of Agency Efforts to Monitor and Investigate Anti-Competitive Practices in the Meat Packing Industry, OIG Evaluation Report No. 30801-01-Ch, issued February 26, 1997, and (2) Actions Needed to Improve Investigations of Competitive Practices GAO Report No. RCED-00-242, issued September 21, 2000.

# Exhibit A – Agency Response

Exhibit A – Page 1 of 5



United States  
Department of  
Agriculture

Grain Inspection,  
Packers and Stockyards  
Administration

Stop 3641  
1400 Independence Ave., SW  
Washington, DC 20250-3641

TO: Robert W. Young  
Assistant Inspector General  
For Audit  
Office of Inspector General

FROM:

James E. Link  
Administrator

A handwritten signature in cursive script that reads "James E. Link".

JAN - 5 2006

Grain Inspection, Packers and Stockyards Administration

SUBJECT: Grain Inspection, Packers and Stockyards Administration written response to  
Office of Inspector General Audit Report No. 30601-01-Hy

Attached please find the written responses submitted by the Grain Inspection, Packers and Stockyards Administration to the Office of Inspector General (OIG) Audit Report No. 30601-01-Hy. The responses describe actions taken or planned actions to the 10 audit recommendations and proposed dates of completion for the planned actions.

If you have any questions, please call me at 202-720-0219, or have a member of your staff contact S. Brett Offutt, Director, Policy and Litigation Division, at 202-720-7363.



**OFFICE OF INSPECTOR GENERAL AUDIT RPT. NO. 30601-01-HY RECOMMENDATIONS AND  
GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION RESPONSES**

**Finding 1: Investigative Tracking System Inaccurate and Incomplete**

**Recommendation 1.** Develop and implement a policy for defining investigations. This policy should require P&SP personnel to differentiate between the activities to perform onsite reviews of companies from those to monitor publicly available data and send routine letters to request company-specific information.

*GIPSA Response 1.* P&SP has developed and implemented a policy defining investigations. The policy statement was effective January 5, 2006. P&SP considers an investigation to be any activity to include follow-ups to prior violations, industry driven complaints, and possible violations of the P&S Act found pursuant to compliance or monitoring activities. The policy differentiates between activities requiring on-site company visits versus activities conducted solely in USDA offices. The policy also distinguishes investigations from regulatory compliance activities (including sending routine letters to request business-specific information), and from monitoring activities that use publicly available data.

**Recommendation 2.** Develop and implement procedures for recording data in the complaints and investigation log. These procedures should specify the information to be recorded and how the accuracy and completeness of the information will be validated.

*GIPSA Response 2.* P&SP is developing and implementing procedures to better record data in the Complaints and Investigation (C&I) log, including revisions to the C&I log software. The procedures are based on the general definition described in the response to OIG Recommendation 1 for an investigation and the distinction of P&SP activities related to regulatory compliance reviews (for example, financial reviews of annual reports for bond requirements and scale checking), and monitoring activities (for example the hog market price monitoring and fed cattle market price monitoring activities). Procedures developed will be contained within a C&I log users manual and include the information required for purposes of ensuring complete entries by C&I log users. The new C&I log procedures and revisions to the C&I Log software will be completed June, 2006. Review procedures will be developed for confirming the completeness and accuracy of C&I log data entries at the field level. Periodic audit validation checks will be conducted and reported by headquarters staff from the Regional Operations Division. The review procedures and an initial audit check of each region will be completed June, 2006. P&SP will consult with other governmental regulatory agencies to determine what types of software they are using to assess if there are superior software tools to support the tracking functions related to investigations, policy guidance requests, and regulatory and rule making activities mentioned below. The review of alternative software will be conducted by June, 2006 and a decision whether to adopt alternative software will be made September, 2006.

**Finding 2: Inadequate Process for Managing Investigations**

**Recommendation 3.** Develop and implement a well defined process for timely identifying the work to be performed, preparing and approving work plans, performing the fieldwork and

analysis, and reporting the results. This should include controls for conducting preliminary investigations to obtain sufficient facts to decide whether to proceed with further investigation.

*GIPSA Response 3.* P&SP is developing and implementing a clearly defined process for identifying the work to be performed, preparing and approving work plans, performing the fieldwork and analysis, and timely reporting of the results. The process includes controls for conducting initial fact finding activities to determine if sufficient justification exists to merit proceeding with an investigation. A preliminary work plan policy has been prepared including a template for information needed in the work plans and how to describe the work to be conducted in the investigation, and the review process. A work plan task force with field and headquarters staff has reviewed the policy and submitted comments on the policy. These comments will be included in the final policy that describes the investigation process. The development and implementation of the investigation policy will be completed March, 2006. Regional Managers have been given the authority to approve routine or non-complex investigations. Examples of such investigations would be of insufficient funds or a failure to pay a livestock seller. The P&SP investigation policy statement in this response will also indicate the increased authority of the Regional Managers.

**Recommendation 4.** Develop and implement an effective system to communicate expectations regarding P&SP investigative process and specific investigations.

*GIPSA Response 4.* P&SP is developing and implementing an effective system to communicate expectations regarding P&SP investigative processes and specific investigations. A process to achieve better communications regarding investigations will include several features. First, Regional Managers, who have face-to-face communication with field investigators, are being vested with greater authority. Second, the new definitions are being put into place to clarify distinctions among investigative, regulatory, and monitoring activities conducted by the field (described in GIPSA Responses 1 & 2). Third, new investigative work plan guidelines are being finalized (described in GIPSA Response 3). And last, a less rigid format for developing and implementing investigation activity and less frequent changes to formal investigative process will be used to enhance communications. A P&SP policy statement documenting the complete implementation of the more effective communication system will be issued no later than March 2006. Those items related to the C&I log linked to GIPSA Response 2 above, will be completed by June 2006.

**Recommendation 5.** Develop and implement an organizational structure that appropriately divides the responsibility for approving work plans, managing the investigations, and reporting the results between the Regional Managers and the Deputy Administrator.

*GIPSA Response 5.* P&SP has developed and implemented a revised organizational structure that appropriately divides the responsibility for approving work plans, managing the investigations, and reporting the results between the Regional Managers and the Deputy Administrator. Regional Managers have been given the authority to initiate, develop, and provide management implementation of investigations, except for competition investigations of large economic consequences. The Division Directors acting in coordination with the Deputy Administrator will now provide technical support. The Deputy Administrator will provide oversight and final decisions on strategic resource allocations. A P&SP policy statement was issued describing the changes in the organizational structure January 5, 2006.

**Finding 3: Policy Decisions Not Being Made**

**Recommendation 6.** Develop and implement a structure for receiving, reviewing, and acting on policy issues and requests for guidance.

*GIPSA Response 6.* P&SP is developing and implementing a structure for receiving, reviewing, and acting on policy issues and requests for guidance. Requests for policy guidance and identification of potential regulatory needs will typically, but not exclusively, originate in the Regional Offices with the staff affected by the concern. Review and assessment of the request for action will be conducted first by the Regional Manager who will forward the request to Headquarters if action is deemed necessary. A position within the Policy Branch of the Policy and Litigation Division (PLD) will be assigned the responsibility of receiving, tracking the request, and making initial assignments to appropriate P&SP Division Director(s) for drafting policy or regulations in conjunction with the regulatory analyst in PLD. Actions taken to respond to OIG Recommendation 6 will be documented in a P&SP policy statement issued March, 2006.

**Recommendation 7.** Develop and implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed.

*GIPSA Response 7.* P&SP will develop and implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed. The review process will include an assessment mechanism to determine if industry conduct and behavior believed to be unfair and in violation of the P&S Act can be halted through disciplinary enforcement action. Regional staff through the Regional Managers will be vested with the authority to recommend and initiate more specific regulatory reviews as described in the response to OIG Recommendation 6. A P&SP policy statement will be issued March, 2006 to document steps taken to develop and complete the implementation of a process to review investigative findings.

**Finding 4: Actions to Strengthen Program Not Fully Implemented**

**Recommendation 8.** Develop and implement procedures that empower the legal specialists to consult with OGC. The procedures should establish parameters on the types of issues that must be discussed with the Deputy Administrator before consultations with OGC.

*GIPSA Response 8.* P&SP has developed and implemented procedures that enable the legal specialists to consult with OGC. The procedures establish parameters on the types of issues that must be discussed with the Deputy Administrator before consultations with OGC. In general, legal specialists have full authority to contact OGC regarding questions or concerns related to the development, implementation, or future litigation of potential and ongoing investigations. The chain of command for legal specialists has been changed from the Deputy Administrator to the Regional Manager, which manages the office that is the legal specialists' permanent duty station. A process with OGC has been initiated so that competition investigations will be assigned an OGC attorney at an earlier stage of the investigation to facilitate broader and greater communication between P&SP legal specialists and OGC attorneys. A P&SP policy statement describing the changes in organizational structure and guidelines for the legal specialist to contact OGC was issued January 5, 2006.

**Recommendation 9.** Develop and implement a strategy and process for effective implementation of changes in P&SP operation.

*GIPSA Response 9.* P&SP is developing and implementing a strategy and process for effective implementation of changes in P&SP operations. Several key administrative steps to ensure effective change and a revitalization of ongoing P&SP operations have been taken by the new GIPSA Administrator. Additional changes (including the steps identified in GIPSA Response 10 below) will be completed no later than September, 2006, and will be documented in P&SP policy statements. OIG suggests that P&SP implement methods and guidance similar to DOJ and the FTC. While there are many similarities between the activities that may be illegal under the antitrust laws of the United States and under the Packers and Stockyards Act, GIPSA, as a regulatory agency, has broader authority than that given to the law enforcement authorities of DOJ. However, certain investigative tools, for example, the use of civil investigative demands (CIDs) by DOJ are available to the antitrust agencies and not to GIPSA. For this reason, not all techniques or approaches used by DOJ and or the FTC are appropriate to the investigations of GIPSA. Currently a memorandum of understanding (MOU) exists between USDA, the FTC and DOJ for the purpose of increasing each agency's effectiveness. P&SP will work with OGC, the designated USDA liaison to DOJ and FTC under the MOU, to develop a means for P&SP staff to learn from the antitrust agencies those techniques and procedures most appropriate for use under the Packers and Stockyards Act. Initial steps have been made with OGC to coordinate a planning meeting with DOJ to determine a longer term ongoing relationship between DOJ and P&SP economists and legal specialists. The outcome of the planning meeting will be documented along with actions based on decisions from the meeting. These documents will be issued September, 2006.

**Recommendation 10.** Develop an internal review function to monitor and report on agency activities. This should include the implementation of controls to monitor and report corrective actions agreed upon with entities external to P&SP, such as OIG and GAO.

*GIPSA Response 10.* P&SP is developing an internal review function to monitor and report on agency activities. The implementation will include controls to monitor and report corrective actions agreed upon with entities external to P&SP, such as OIG and GAO. Responses to the OIG Recommendations above and in particular 2, 3, 4, and 6 will involve internal review components. Dates of completion of these response items will be documented as described above in the respective responses. Also, an assessment of personnel assigned to internal review functions presently conducted by P&SP will be undertaken. The assessment will determine if the potential exists to improve P&SP reporting functions for the OIG and GAO recommendations. The outcome and action taken will be documented and completed September, 2006.