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Audit Report

Followup Audit of the Management and Oversight of the Packers and Stockyards Program

Report No. 30016-0002-Hy
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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



DATE: June 29, 2009

REPLY TO
ATTN OF: 30016-0002-Hy

TO: J. Dudley Butler
Administrator
Grain Inspection, Packers and Stockyards Administration

ATTN: Joanne C. Peterson
Management Support Staff

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

SUBJECT: Followup Audit of the Management and Oversight of the Packers and Stockyards Program

This report presents the results of our followup audit of the management and oversight of the Packers and Stockyards Program. Your response to the official draft, dated June 15, 2009, is included as exhibit D. Excerpts of the response and the Office of Inspector General's position are incorporated into the Findings and Recommendations section of the report. Based on your response, we were able to reach management decisions on all of the report's seven 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

Followup Audit of the Management and Oversight of the Packers and Stockyards Program (Audit Report No. 30016-0002-Hy)

Results in Brief

We conducted this audit in response to requests by Congress and the former Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) to follow up on our prior audit.¹ To satisfy these requests, we assessed GIPSA's management and oversight of the Packers and Stockyards Program (P&SP). Specifically, we assessed the working relationship between GIPSA and the Office of the General Counsel (OGC). Additionally, we determined if effective corrective actions were implemented in response to our prior audit recommendations. Overall, we found that GIPSA's oversight of P&SP has improved since our prior audit and it has a good working relationship with OGC. However, opportunities remain for GIPSA to further improve program operations by strengthening management and oversight of investigations and fully implementing agreed upon corrective actions.

GIPSA's P&SP is responsible for maintaining fair trade practices in the marketing of livestock and poultry, providing financial protection for participants in livestock transactions, and ensuring open competitive marketing conditions for livestock and meat. In January 2006, we reported that P&SP had difficulties defining and tracking investigations; planning and conducting competition and complex investigations; and making agency policy.

In July 2006, the Ranking Member of the United States (U.S.) Senate Committee on Agriculture, Nutrition, and Forestry requested that the Office of Inspector General (OIG) determine if OGC was working with GIPSA to enforce competition provisions of the Packers and Stockyards Act of 1921 (the Act) and whether there were obstacles to prevent OGC and GIPSA from working together on such enforcement (see exhibit A). In May 2007, the former GIPSA Administrator requested that OIG perform a followup review to assess the progress GIPSA had made in improving management controls and strengthening program policy and delivery.

We found that GIPSA has made efforts to better manage and oversee P&SP. This includes implementation of procedures that define investigations, removal of barriers in planning and conducting investigations, and improvement in policy decision responsiveness. Management anticipates that investigation tracking will be improved as part of its business process reengineering system, Packers and Stockyards Automated System (PSAS),

¹ Management and Oversight of the Packers and Stockyards Program, Audit No. 30601-01-Hy, issued January 10, 2006.

which is being implemented during calendar years 2008 and 2009.² PSAS will maintain information for entities regulated by P&SP, retain data of tests of livestock scales, and track investigative and regulatory activity. We could not fully assess PSAS because it is currently under development; however, we did find it is being developed according to the requirements specified in the contract's statement of work.

P&SP's Policy and Litigation Division (PLD) acts as a liaison between P&SP regional offices and OGC. When GIPSA receives novel or complex³ competition investigations, they refer these cases to OGC for action. GIPSA has also taken steps to foster an improved working relationship with OGC to include greater cooperation in investigation planning and development as well as holding regular meetings between GIPSA and OGC senior management. However, GIPSA can further improve program operations by: (1) improving the management and oversight of P&SP investigations; (2) ensuring program guidance is consistent; and (3) fully implementing agreed upon actions to prior OIG audit recommendations.

Investigation Management

We identified significant delays in investigation resolution⁴ at GIPSA Headquarters, regional offices, and OGC. For example, we found that 41 of 123 investigations forwarded to Headquarters for enforcement and referred to OGC for legal action were without resolution for 500 or more elapsed days as of December 31, 2007.⁵ Based on our prior audit recommendations, P&SP implemented procedures for recording investigation-related data; however, it did not include controls to identify and resolve investigations in a timely manner. For example, P&SP did not formally assign responsibility for monitoring the progress of investigations. Although P&SP is currently developing and implementing PSAS, at the time of our review the systems in place at P&SP did not adequately track investigations. P&SP Headquarters, P&SP regional offices, and OGC used different databases to track and manage investigations. The databases were fragmented, making it difficult to track investigation progress from beginning to end. The fragmented databases limited our ability to fully assess GIPSA's investigation management.

² In Fall 2008, GIPSA rolled out the Automated Management System to replace three current systems: (1) the business identification system, which is used to maintain data of business entities regulated by P&SP; (2) a scales database, which is used to keep records of livestock scales and their testing data; and (3) the Regulatory Activity and Investigations (R&I) Log, which is used to maintain data from investigation and regulatory activities. The workflow tracking portion of PSAS, which will also be used by OGC, is expected to be deployed in early Summer 2009.

³ 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.

⁴ When violations of the Act occur, GIPSA may issue a Notice of Violation (NOV) or stipulation agreement. NOV's are forms giving regulated entities official notice of the alleged violations found. Stipulation agreements are legal agreements citing violation(s) found and the civil penalty amount GIPSA will accept in settlement of the alleged violation(s) without pursuing a formal action through OGC. Entities may agree to the stipulation and waive their right to a hearing. When GIPSA receives a complex competition violation, it refers the case to OGC, who will pursue administrative or other court actions.

⁵ Our audit examined data regarding P&SP operations from October 1, 2005, to December 31, 2007, the most current data available when we initiated our review.

GIPSA has a working relationship with OGC. When investigations are forwarded by the regions to GIPSA Headquarters, PLD determines if the case will be resolved internally with the issuance of a stipulation agreement or forwarded to OGC for administrative or other court action. However, GIPSA's performance measures do not include milestone dates for investigation resolution or require regular followup with OGC to facilitate investigation resolution. During our review, we found that cases referred to OGC were often delayed. We reviewed 83 cases referred to OGC and found that 15 were open 600 or more elapsed days. One case remained open for over a year after the attorney assigned the case terminated employment with OGC, because she did not notify the Assistant General Counsel of OGC's Trade Practices Division that she had an open case. The regional offices expressed frustrations with the delays because, at times, OGC would call at a much later date for updated information or inform them that too much time had passed and close the case.

In the regions, staff did not ensure that Notice of Violation (NOV) followup investigations were timely performed. According to agency guidance, P&SP should follow up on NOV's within 180 days. P&SP prioritizes work according to goals and performance measures outlined in the Strategic Business Plan (SBP), but the SBP does not contain specific measures for completing NOV followup. As a result, P&SP investigations have a reduced deterrent effect because of delays in enforcing compliance with the Act.

Guidance Issuance

In response to our prior recommendation, GIPSA implemented a structure for receiving, reviewing, and acting on policy issues and requests for guidance; however, the guidance the agency issued was not always consistent. This occurred because GIPSA did not have a defined process for reviewing and clearing new and revised program guidance to ensure that it did not conflict with other guidance documents. Since our prior audit, GIPSA issued or revised 53 policy documents (i.e., directives, standard operating procedures, and the employee manual). Management told us that they focused on implementing policy quickly to correct the deficiencies noted. Our review found four instances of inconsistent guidance. For example, three different policy documents granted authority to three different positions (i.e., the Industry Analysis Division Director, regional directors, and regional unit supervisors)⁶ to approve investigative work plans. Inconsistent program guidance could negatively impact the work conducted in an investigation and compromise its results.

⁶ Unit Supervisors oversee those P&SP Regional employees, such as auditors or marketing specialists, who perform investigations and other regulatory functions.

Prior Recommendations

P&SP did not completely implement corrective actions for 4 of 10 prior audit recommendations (see exhibit B). The agency implemented policies to address our prior recommendation; however, P&SP did not have a process in place to ensure these policies were carried out. GIPSA previously agreed to implement a process to review investigative findings and monitor industry activity to determine if regulatory reforms are needed. Additionally, GIPSA agreed to implement an internal review function. However, GIPSA management did not follow up with the regions or divisions to ensure that corrective actions were completed. As a result of not successfully implementing corrective actions, P&SP did not have accurate and complete data for managing its investigations or a process for monitoring the need for regulatory change.

OIG and the Government Accountability Office have previously reported on weaknesses in GIPSA's processes for investigating cases of a complex or anti-competitive nature. In response, GIPSA has implemented analytical reviews of the structural characteristics of markets to identify anti-competitive practices. This included monitoring of market related conditions such as procurement and sales patterns and pricing to identify potential anti-competitive activity for investigation. Although we did not analyze its methodologies,⁷ GIPSA's current data demonstrate that competition cases are rare. During the scope of our review (October 1, 2005 through December 31, 2007), P&SP data identified 43 of 2,068 investigations (2 percent) related to anti-competitive practices. GIPSA is currently revisiting the underlying methodologies it uses to monitor livestock and poultry markets and anticipates implementing revised methods in the first quarter of calendar year 2009 (see exhibit C).

Recommendations In Brief

GIPSA should work to strengthen controls over investigation resolution. This includes establishing controls to identify and timely resolve investigations. Additionally, GIPSA should develop procedures to monitor NOV followup to ensure it is initiated within 180 days. The agency needs to implement a defined process for reviewing, approving, and issuing program guidance to ensure consistency and implement an effective internal review function.

Agency Response

GIPSA agreed with all seven report recommendations, although officials noted that achievement of some of these would also require action by other agencies. We have incorporated GIPSA's response in the Findings and Recommendations section of this report, along with the OIG position. GIPSA's response is included as exhibit D.

⁷ We did not examine GIPSA's methodologies because GIPSA officials acknowledge that their current analytical reviews did not always identify anti-competitive cases. They anticipate implementing revised methods in Spring 2009.

OIG Position

Based on GIPSA's response, we were able to reach management decision on all recommendations in this report.

Abbreviations Used in This Report

The Act	Packers and Stockyards Act of 1921
C&I Log	Complaints & Investigations Log
FY	Fiscal Year
GAO	Government Accountability Office
GIPSA	Grain Inspection, Packers and Stockyards Administration
IAD	Industry Analysis Division
NOV	Notice of Violation
OGC	Office of the General Counsel
OIG	Office of Inspector General
P&SP	Packers and Stockyards Program
PLD	Policy and Litigation Division
PSAS	Packers and Stockyards Automated System
R&I Log	Regulatory Activity and Investigations Log
SBP	P&SP's Strategic Business Plan 2007-2009
U.S.	United States
USDA	U.S. Department of Agriculture

Table of Contents

Executive Summary	i
Abbreviations Used in This Report	vi
Background and Objectives	1
Findings and Recommendations.....	4
Section 1. Oversight of P&SP Activities	4
Finding 1 Improvements Needed in Managing Investigations.....	5
Recommendation 1	8
Recommendation 2	9
Recommendation 3	9
Finding 2 GIPSA Should Ensure Consistency in P&SP Guidance	10
Recommendation 4	12
Recommendation 5	12
Section 2. Prior Recommendations Not Completely Implemented.....	14
Finding 3 	14
Recommendation 6	17
Recommendation 7	18
Scope and Methodology.....	19
Exhibit A – Congressional Concerns Regarding P&SP Operations	22
Exhibit B – Implementation of Prior Audit Recommendations	24
Exhibit C – Efforts to Identify Potential Anti-Competitive Activity	25
Exhibit D – Agency Response	26

Background and Objectives

Background

The U.S. Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) administers two program activities, the Federal Grain Inspection Program and the Packers and Stockyards Program (P&SP), which play vital roles in American agriculture. GIPSA's programs and services are intended to promote a competitive, efficient market structure and to facilitate the marketing of agricultural products in domestic and international markets.

GIPSA is responsible for enforcing the Packers and Stockyards Act of 1921 (the Act), as amended. The Act prohibits unfair, deceptive, and unjust discriminatory practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock, meat packing, and poultry industries. Through its oversight activities, including monitoring programs, reviews, and investigations,⁸ GIPSA fosters fair competition, provides payment protection, and guards against deceptive and fraudulent trade practices that affect the movement and price of livestock and their products. GIPSA investigates such matters as whether livestock and poultry purchasers pay producers timely; maintain sufficient funds to pay producers; complete and file registrations and annual reports; and maintain appropriate scales for weighing livestock and poultry.

The P&SP Headquarters office in Washington, D.C. is comprised of two divisions: the Policy and Litigation Division (PLD) and the Industry Analysis Division (IAD). PLD develops regulations, policies, and procedures, and provides litigation support. PLD also provides enforcement of the Act through stipulation agreements. IAD provides economic advice to agency officials on broad policy issues and the economic implications of various programs, policies, and industry practices.

P&SP also operates three regional offices located in Atlanta, Georgia (Eastern regional office); Des Moines, Iowa (Midwestern regional office); and Aurora (Denver), Colorado (Western regional office). Each office is responsible for carrying out P&SP activities and functions and for investigating potential violations of the Act within its assigned region identified by State geographic boundaries. Oversight of the livestock, meat, and poultry industries is assigned to specific regional offices: the poultry industry (Eastern); the cattle and sheep industries (Western); and the hog industry (Midwestern).

⁸ In order to enforce the Act, P&SP conducts compliance activities (routine checks) and investigations of regulated entities. Investigations are primarily initiated when possible violations of the Act are discovered. Violations are resolved by P&SP through the issuance of Notice of Violation (NOV), NOV followup, and stipulation agreements. Occasionally, P&SP works with Office of the General Counsel (OGC) to resolve investigations through administrative or other court actions.

In September 2000, the Government Accountability Office (GAO) released a report⁹ on P&SP activities that followed up on the recommendations made by the Office of Inspector General (OIG) in an earlier report¹⁰ and supported our conclusions. GAO found that GIPSA's investigations were led and conducted primarily by economists without the formal involvement of attorneys from the Office of the General Counsel (OGC). In addition, GIPSA's investigative processes and practices were designed for traditional trade practice and financial issues that the agency had emphasized for years and thus were not suited for the more complex anti-competitive practices that need to be addressed.

In January 2006, we reported¹¹ that GIPSA had difficulties defining and tracking investigations, planning and conducting competition and complex investigations, and making agency policy. In response to our audit recommendations regarding the tracking of investigations, the agency is developing the Packers and Stockyards Automated System (PSAS). Once implemented, the PSAS data warehouse will be a single system of record and replace the current P&SP data systems: (1) the business identification system, which is used to maintain data of business entities regulated by P&SP; (2) a scales database, which is used to keep records of livestock scales and their testing data; (3) the Regulatory Activity and Investigations (R&I) Log, which is used to maintain data from investigation and regulatory activities; and (4) the Litigation Referral Pending Database. OGC is participating as a user of the new R&I case tracking module within PSAS. As of February 2009, the business identification system and the scales and weighing databases were merged into PSAS and the original systems have been archived. The R&I Log is still active; however, it is only in operation until current open cases are closed. As of January 2009, new cases are entered directly into PSAS. The module for industry annual reports went online in April 2009. The workflow tracking portion of PSAS for Headquarters enforcement is expected to be deployed in early summer 2009.

In July 2006, the Ranking Member of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry requested that OIG determine if OGC was working with GIPSA to enforce competition provisions of the Act and whether there were obstacles to prevent OGC and GIPSA from working together on such enforcement (see exhibit A). Additionally, in May 2007, the former GIPSA Administrator requested that we conduct a followup of our 2006 audit to assess the progress GIPSA made in improving management controls.

⁹ Actions Needed to Improve Investigations of Competitive Practices, RCED-00-242, issued September 21, 2000.

¹⁰ Agency Efforts to Monitor and Investigate Anti-competitive Practices in the Meatpacking Industry, Evaluation Report No. 30801-01-Ch, issued February 26, 1997.

¹¹ Management and Oversight of the Packers and Stockyards Program, Audit No. 30601-01-Hy, issued January 10, 2006.

Objectives

The overall objective of this audit was to evaluate GIPSA's management and oversight of P&SP to ensure that anti-competitive and unfair practices in the livestock and poultry markets are effectively examined, reported, and resolved. We also:

- Determined if OGC and GIPSA effectively collaborated to enforce the Act's competition provisions; and
- Determined if effective corrective actions were implemented in response to our prior audit, Management and Oversight of the Packers and Stockyards Program (Audit Report No. 30601-0001-Hy, issued January 2006).

Findings and Recommendations

Section 1. Oversight of P&SP Activities

Through P&SP, GIPSA is responsible for performing compliance reviews of operations subject to the Act, developing and implementing program guidance to promote fair business practices, and ensuring a fair competitive market for livestock, meat, and poultry. When violations of the Act occur, GIPSA regional offices issue a Notice of Violation (NOV).¹² When repeat offenses of the Act occur, or persons subject to the Act commit certain financial or trade practice violations, the regional offices forward these cases to PLD. PLD may offer offenders stipulation agreements.¹³ In the event that PLD does not receive a response to the stipulation agreement, the case is then referred to OGC for administrative action. The agency also collaborates with OGC to resolve novel, complex,¹⁴ or competition violations. Upon the request of P&SP, OGC takes formal administrative action in instances of fraudulent acts, failure to pay for livestock, and insolvency and other violations of the Act.

To accomplish its responsibilities, GIPSA prioritizes work according to the P&SP Strategic Business Plan (SBP) 2007-2009. GIPSA revised the SBP in 2007 to account for internal changes and to incorporate agency responses to reviews conducted in 2006.¹⁵ The SBP includes goals, objectives, activities, and performance measures needed to attain desired results.

We found that since our prior audit, GIPSA developed and implemented controls designed to enhance the overall effectiveness of P&SP. This included implementing procedures that defined investigations, removing barriers to plan and conduct investigations, and improving policy decision responsiveness. However, management could further strengthen program oversight. While we found that GIPSA effectively initiated compliance reviews, the agency needs to monitor and ensure the timeliness of the investigation process and the consistency of issued guidance.

Additionally, we found that the databases in use during our review were fragmented. The regions and OGC did not use the same database that was in use at PLD to track investigative work. To remedy this problem, GIPSA is in the process of implementing PSAS, an automated system, which will replace previous databases. Management anticipates that the new system will

¹² NOVs are forms giving regulated entities official notice of the alleged violations found. It is the Agency's policy to issue NOVs for first offenses in an attempt to achieve compliance without formal action.

¹³ Stipulation agreements are legal agreements citing violation(s) found and the civil penalty amount GIPSA will accept in settlement of the alleged violation(s) without pursuing a formal action through OGC. Entities may agree to the stipulation and waive their right to a hearing.

¹⁴ 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.

¹⁵ Subsequent to the 2006 OIG audit, an employee survey was conducted through the Office of Personnel Management's Organizational Assessment Survey. Additionally, the Animal and Plant Health Inspection Service conducted a Management Review of P&SP Headquarters Structure and Staffing. These reviews provided impetus for GIPSA management to undertake a number of initiatives.

improve investigation tracking. At the time of our review, PSAS was still under development; however several modules are currently in operation, including the module for the industry annual reports, which went online in April 2009. The tracking portion for Headquarters enforcement is scheduled for deployment in Summer 2009.

Finding 1**Improvements Needed in Managing Investigations**

We found that 41 of 123 investigations forwarded to Headquarters for enforcement and referred to OGC for legal action were without resolution for 500 or more elapsed days as of December 31, 2007.¹⁶ As required by agency policy,¹⁷ regional staff did not establish an effective followup program to ensure that followup investigations were conducted within 6 months (180 days) of the date of the NOV to the alleged violator. Based on prior audit recommendations, GIPSA implemented procedures for recording investigation-related data; however, the agency did not include controls to resolve investigations in a timely manner. For example, P&SP did not formally assign responsibility for monitoring the progress of investigations. Although GIPSA uses its SBP to guide and assess its investigative activities, the SBP did not include adequate performance measures to ensure that investigative activities are completed within designated timeframes. As a result, P&SP investigations have a reduced deterrent effect because of delays in enforcing compliance with the Act.

GIPSA personnel stated that they prioritized work according to measurable items in the SBP because standard operating procedures were not always in place. The SBP outlined four goals to satisfy the program mission, one of which is to attain compliance through investigation and enforcement. Specifically, GIPSA sought to expedite the timely completion of P&SP investigations. Some of the performance measures in the SBP provide targets that should be met by employees, while others are in the SBP to establish benchmarks for completing tasks. The goals in the SBP related to resolving investigations are designed to establish benchmarks by identifying the average time for conducting and resolving investigations. It does not establish specific timeframes for followup action by GIPSA management officials once investigations are forwarded to Headquarters.

- *Investigations Referred to Headquarters*

GIPSA's PLD provides litigation support through the review of regional investigations, development of stipulation agreements, hearing preparation, settlement negotiations, and testimony at hearings. PLD

¹⁶ Our audit examined data regarding P&SP operations from October 1, 2005, to December 31, 2007, the most current data available when we initiated our review.

¹⁷ P&SP Employee Manual, "Investigations," dated October 25, 2007, and P&SP Standard Operating Procedure Regional Offices -2, "Investigations," dated May 31, 2007.

works with regional office staff and acts as a liaison to OGC. When investigative cases are referred to Headquarters for enforcement actions, PLD reviews the cases to determine if the agency can take enforcement action through a stipulation agreement or if the case needs to be forwarded to OGC for administrative or other court action. However, GIPSA procedures do not include milestone dates for timely issuing stipulation agreements or followup actions with OGC when these dates are not met. For example, once an investigation is forwarded to OGC, GIPSA should follow up on the status of that investigation after a set period of time. We obtained data from PLD for all investigative activities to identify the time elapsed since open investigations were received by Headquarters. Per PLD data, 41 of 123 investigations forwarded to Headquarters for enforcement and referred to OGC for legal action were without resolution for 500 or more elapsed days as of December 31, 2007.

GIPSA has a working relationship with OGC; however, GIPSA's performance measures do not require regular followup with OGC to facilitate investigation resolution. GIPSA also did not formally assign specific responsibilities for monitoring and following up on the status of investigations to an appropriate manager and was not always successful in that task. There is no requirement for managers to notify senior management of delays or impediments to investigation resolution at OGC. Our review of OGC data determined that of 83 open cases at OGC as of December 31, 2007, 15 trade practice cases were open for 600 or more elapsed days.

When cases are referred to OGC for administrative action, there is a collaborative process that occurs between the OGC attorney and P&SP staff. During this process, which may include requests from OGC for supplemental information, time lapses can occur. During fieldwork, we found cases referred to OGC were delayed for different reasons. In one instance, an OGC attorney terminated employment and did not inform management that she was assigned a particular investigation. An OGC official indicated that the original attorney left in 2005 and a new attorney was not assigned until March 2007, causing the case to remain open for over a year. Another case remained open because the file was lost. Another case had to be reassigned because the OGC attorney could not travel. Additionally, we found instances where cases that were referred to OGC were subsequently returned to PLD because too much time passed between the opening of the case and OGC review or action. For example, a case was forwarded to OGC in February 2007. In January 2008, the case was returned to the region, because OGC was concerned that the supporting documentation did not identify penalties under the Act. The regional offices expressed frustrations with these delays.

We recognize that delays could occur as a normal part of the litigation process. However, untimely case completion impacts the effectiveness of PS&P investigative activity in serving as a deterrent for entities subject to the Act. In addition, employees at the regional office level expressed frustration with delays in enforcement processing and the occasional need to update investigation case files to show the current status of violations. P&SP guidance¹⁸ requires division directors to develop the appropriate tools for agency employees to log, track, and report on various types of activities; however, it does not require timely resolution of investigations at the Headquarters level. P&SP was not fully successful in reducing delays of investigation processing at Headquarters by PLD or OGC.

- NOV Followup

P&SP's guidance¹⁹ to the regional offices states that followup should be conducted within 6 months (180 days) of the date the NOV is received by the alleged violator. Followup investigations assist in ensuring that entities in violation of the Act have brought their operations into compliance. However, we found that NOV followups were not always initiated within 180 days. As previously stated, P&SP prioritizes work according to goals and performance measures in the SBP, and NOV followup is not among the performance measures. Based on data provided, two regional offices did not timely initiate followup action for 36 of 66 (55 percent) cases requiring followup before December 31, 2007. During the period of our fieldwork, we found that GIPSA revised its policy on NOV followup and gave regional directors discretionary authority to follow up on NOVs based on the following criteria: severity/seriousness of violation; size of business and compliance history; and good faith effort to demonstrate compliance. However, followup was required for all alleged violations for failure to pay producers.²⁰ Nine of the 36 cases without timely followup were payment cases. The third regional office did not include information in the regional tracking system to show when the followup was initiated; therefore, we could not analyze the timeliness of NOV followup in that region.

During our review, we found that corrective actions for NOVs are not always taken. For example, one regional office's fiscal year (FY) 2007 followup investigations found that 14 of 68 violations (21 percent) were not corrected. These followup investigations were conducted within the 6 month timeframe. Of these 14 violations, 7 related to third party custodial bank accounts²¹ that contain the proceeds of livestock sales for

¹⁸ P&SP Directive 9700-2 "Investigations, Compliance, and Monitoring," dated January 5, 2006.

¹⁹ P&SP Employee Manual, "Investigations," dated October 25, 2007, and P&SP Standard Operating Procedure Regional Office-2, "Investigations," dated May 31, 2007.

²⁰ Standard Operating Procedure Regional Office-2, dated July 1, 2008, and Employee Manual Chapter 6 "Investigations" dated April 30, 2008.

²¹ Custodial accounts are trust accounts held by market agencies selling livestock on commission. These agencies have a fiduciary responsibility to deposit, hold, and withdraw the proceeds from sale transactions in a specific manner which protects the purchasers and sellers of livestock.

the benefit of livestock sellers. A timely followup program improves the likelihood that entities subject to the Act will correct identified violations.

GIPSA should ensure that responsibility for investigation resolution is appropriately assigned and implement a process to review progress towards resolution as investigations age. In addition, the agency should establish timeliness measures for investigation resolution within Headquarters. Developing milestone dates for following up on investigation progress at OGC would facilitate the investigative process. Also, GIPSA should establish provisions to measure the timeliness of NOV followup.

Recommendation 1

Develop and implement controls to monitor the timely processing of investigations submitted to Headquarters for action. These controls should include formal assignment of responsibility to an appropriate manager and periodic reporting to senior management to identify and mediate impediments preventing timely action.

Agency Response

GIPSA officials concurred with the recommendation, stating that their new automated system—Packers and Stockyards Automated System (PSAS)—now monitors investigations from their initiation in the field to the point of referral to Headquarters and automatically flags investigations that exceed established timeframes. The PLD/OGC Enforcement Module, scheduled to be deployed by October 1, 2009, will then track investigations from the time of receipt in Headquarters through final resolution. These systems will provide GIPSA with real-time data on the progress of investigations. Everyone involved in a flagged investigation, from the front-line investigator to the Deputy Administrator for P&SP, will be notified of unmet milestones.

Also, as of May 28, 2009, the PLD director's position description has been amended to include responsibility for monitoring the progress of investigations referred to Headquarters, and for reporting developments to senior management. Finally, if needed, the GIPSA Deputy Administrator can use regularly scheduled weekly meetings with the OGC Assistant General Counsel to identify investigations that are exceeding established completion timelines and work to mediate impediments to their resolution.

OIG Position

We accept GIPSA's management decision.

Recommendation 2

Establish milestone elapsed days for contact between P&SP and OGC to ensure that cases pending action from OGC are completed timely and take action when milestones are not met.

Agency Response

The PLD/OGC Enforcement Module, to be deployed by October 1, 2009, will include timelines with milestones for P&SP to review and submit cases to OGC, and will track timelines and milestones at OGC and the Department of Justice. Using the module, both GIPSA and OGC will see PSAS' milestone tracking function, which flags any investigations that exceed established timeframes for either an entire investigation or for specified portions of it. GIPSA and OGC will collaboratively use this module's workflow management capabilities to track cases from receipt in Headquarters to final resolution. Standard operating procedures and electronic workflow requirements to formalize and outline the interaction between PLD and OGC were completed on February 18, 2009.

OIG Position

We accept GIPSA's management decision.

Recommendation 3

Develop and implement procedures to monitor NOV followup to ensure that it is initiated within 180 days and violations are corrected or appropriately pursued to ensure correction.

Agency Response

GIPSA regional directors prioritize investigations based on the relative significance of a given violation and its demands on investigative time and resources. If the regional director determines that a followup is required, the case is automatically assigned by PSAS as an NOV followup investigation and the 180-day clock starts for the followup investigation to be completed. Subsequent to the agency's official response, a GIPSA official clarified that they had reduced the 180-day requirement to 120 days. PSAS tracks the investigation until completed. The PSAS workflow document specifies timeframes for NOV followup; assigns tasks for all involved, from lead agent to regional director; and requires direct oversight and action by the regional director to close an NOV. The agency published procedures to monitor timely NOV followup in June 2008, and implemented procedures to monitor timely NOV followup in an electronic workflow in January 2009.

OIG Position

We accept GIPSA's management decision.

Finding 2

GIPSA Should Ensure Consistency in P&SP Guidance

In response to our prior recommendation, GIPSA implemented a structure for receiving, reviewing, and acting on policy issues and requests for guidance; however, the guidance the agency issued was not always consistent. This occurred because GIPSA did not have a defined process for reviewing and clearing new and revised program guidance to ensure that it did not conflict with other guidance documents. Since our prior audit, GIPSA issued or revised 53 policy documents.²² Management told us that they focused on implementing policy quickly to correct the deficiencies noted. Our review found four instances of inconsistent guidance. For example, three different policy documents granted authority to three different positions (i.e., the IAD Director, regional directors, and regional unit supervisors)²³ to approve investigative work plans. Inconsistent program guidance could negatively impact the work conducted in an investigation and compromise its results.

Departmental regulation²⁴ states that management should ensure that resources are used consistent with agency and departmental missions and that reliable and timely information is obtained, maintained, reported, and used for decision making. The Agency's directive for developing policy²⁵ does not include procedures for ensuring uniformity and consistency among all issued guidance.

During our review we noted inconsistencies in guidance in several operational areas. For example, guidance documents contradicted one another on the individual responsible for approving investigation work plans. One guidance document,²⁶ made the IAD Director responsible for approving the plans; whereas, a second guidance document²⁷ stated that the regional director in consultation with the legal specialist will approve investigation work plans. This document also allowed delegation of the approval function to unit supervisors for investigations that are of a routine nature. Lastly, a third guidance document²⁸ stated that work plans are approved by unit supervisors, if necessary.

²² GIPSA issued 26 directives, 26 standard operating procedures, and a revised employee manual regarding P&SP activities.

²³ Unit Supervisors oversee those P&SP regional employees, such as auditors or marketing specialists, who perform investigations and other regulatory functions.

²⁴ USDA Departmental Regulation 1110-002, Management Accountability and Control, dated April 14, 2004.

²⁵ P&SP Directive 9700-13, "Developing Program Policies" dated March 2, 2006.

²⁶ P&SP Directive 9700-3, "Investigation Responsibilities for the Regional Managers, Division Directors, and the Deputy Administrator," dated March 2, 2006.

²⁷ Employee Manual, -Investigations, II. B., Steps in Planning an Investigation, dated October 25, 2007.

²⁸ Standard Operating Procedure, Regional Offices-2 "Investigations," dated May 31, 2007.

In response to our prior recommendation, GIPSA issued guidance²⁹ which required legal specialists to consult with OGC on investigations that were either novel, complex, or related to competition concerns. P&SP staff in one region did not adhere to this guidance for two competition cases (e.g., anti-competitive conduct and a hotline complaint). This staff followed subsequent instructions³⁰ that stated that legal specialists “may” consult with OGC on these types of investigations. The inconsistency between these two guidance documents could lead to P&SP not consulting with OGC on investigations and limit the potential for successful enforcement action. GIPSA should ensure that current guidance on this matter is consistent with the corrective action the agency agreed to take in response to our prior recommendation.

We also noted minor inconsistencies in the guidance provided to staff for initiating rapid response investigations. For those situations which could cause imminent harm to livestock producers, such as threat of financial failure or substantial industry impact, P&SP initiates a rapid response investigation. The SBP states rapid responses begin within two business days, but an existing instruction³¹ indicates a two calendar day response time.³²

Policy documents for analyzing custodial accounts were also inconsistent. For example, when analyzing custodial accounts, one instruction³³ states that usually two well-documented custodial analyses (30 days apart) will be sufficient evidence to support an allegation of account shortages. However, another document³⁴ states that account shortages must have occurred at least 60 days apart.³⁵ Definitive guidance is critical to ensuring that sales proceeds are available to pay livestock producers.

P&SP management stated there was no formal defined process to ensure uniformity in policy. While management stated they update policy to incorporate any changes, this was not always successful as a management control. Management acknowledged the need for uniform policy to ensure consistent operations among regional offices and Headquarters divisions and stated that it planned to revise the purpose of certain policy documents and eventually rescind some of the guidance currently in place. GIPSA established the Change Control Working Group (CCWG) to administer a structured procedure to evaluate change requests and facilitate implementation of those changes which enhance the efficiency and effectiveness of operations. However, our review of the CCWG charter and standard operating procedure showed that there is still no process to ensure

²⁹ P&SP Directive 9700-20, “Management of Investigations,” dated March 20, 2006.

³⁰ Standard Operating Procedures, Regional Offices-2, “Investigations,” dated May 31, 2007.

³¹ Standard Operating Procedures, Regional Offices-2, “Investigations,” dated May 31, 2007.

³² Subsequent to fieldwork, the SOP was updated to indicate a two calendar day response time.

³³ Employee Manual, dated October 25, 2007.

³⁴ P&SP Directive 9700-11, “Dates Between Custodial Account Analyses,” dated December 14, 2007.

³⁵ The policy was corrected subsequent to on site fieldwork to require that account shortages must have occurred at least 60 days apart.

the uniformity of established policies. P&SP should implement procedures to provide consistency in guidance across all policy documents to ensure uniformity in programmatic operations across all locations.

Recommendation 4

Establish and implement a defined process for reviewing, approving, and issuing program guidance, both new or revised, to ensure consistency across all P&SP guidance.

Agency Response

GIPSA officials concurred with Recommendation 4. The agency has taken a number of steps to ensure consistency across all P&SP guidance. On April 9, 2008, P&SP established a Change Control Working Group (CCWG) to receive and process all requests for changes in regulation, operational policy, and automation. The amended CCWG Charter specifically assigns the group responsibility for ensuring consistency in all P&SP guidance. Also, GIPSA's Employee Library Team is in the final stages of integrating all directives, notices, standard operating procedures, process and sub-process models, and the P&SP Employee Manual into a single integrated web-based repository called the Employee Library. This comprehensive resource will be available to ensure accessibility of consistent guidance to all GIPSA personnel. A beta version of the Employee Library was posted on GIPSA's internal web site for testing in April 2009; the final version will be deployed by July 1, 2009.

OIG Position

We accept GIPSA's management decision.

Recommendation 5

Analyze current program guidance (i.e., directives, manuals and operating procedures) to identify and correct inconsistencies contained in the guidance.

Agency Response

GIPSA's Employee Library Team, established in April 2008, is currently completing its work of identifying and correcting inconsistencies in guidance as part of the creation of the Employee Library. As noted in the response to Recommendation 4; the final version of the Employee Library is expected to be deployed by July 1, 2009. The Change Control Working Group, established on April 9, 2009, will receive and process all requests for changes in regulation, operational policy, and automation, to ensure consistency in all P&SP guidance.

OIG Position

We accept GIPSA's management decision.

Section 2. *Prior Recommendations Not Completely Implemented*

Finding 3

P&SP did not completely implement corrective actions for 4 of 10 prior audit recommendations (see exhibit B). The agency implemented policies to address our prior recommendations; however, P&SP did not have a process in place to ensure these policies were carried out. In addition, senior GIPSA management did not implement adequate controls to ensure staff adhered to policies. As a result, GIPSA did not have accurate and complete data for managing its investigations, a process for monitoring the need for regulatory change, and an internal review function to effectively monitor agency activity.

Departmental regulation³⁶ requires agencies to implement agreed-upon corrective actions that are associated with audit recommendations in a timely manner. GIPSA needs to institute controls to ensure that its staff complies with established policies. This should include an action plan to assess and report that procedures are effectively implemented.

- *P&SP Did Not Ensure Investigative Data Was Accurate and Complete*

In response to our prior recommendation, GIPSA agreed to implement procedures for recording investigative data and ensuring that the data recorded were accurate and complete. This did not occur because P&SP allowed different organizational units (e.g., regions and divisions) to use their own tracking systems and did not implement processes to reconcile the data in their systems. We noted inconsistencies in the status of investigations in the tracking systems used by PLD and the regional offices. We also noted that the PLD system did not contain complete data.

Review of the R&I Log³⁷ data and supporting documentation found 76 of 119 investigations (64 percent) had data that were not accurate, complete, and consistent. Data entry controls were not adequate to keep the R&I Log free of errors and contradictory data. Subsequent to fieldwork, a P&SP official stated that the data were still useful. However, our review identified data inaccuracies and inconsistencies such as: (1) inconsistent treatment of similar cases; (2) reasons for closure were inconsistent with supporting documentation; and (3) hotline complaints were either not identified or identified as being initiated by GIPSA. Additionally, GIPSA did not institute compensating controls to override this lack of data entry control. Employees were allowed to close investigations without supervisory approval. As a result, we concluded that P&SP's data

³⁶ Departmental Regulation 1720-001, Audit Followup and Management Decision, April 22, 2002.

³⁷ Migrated from the former Complaints & Investigations Log, the R&I Log is intended to include data such as identifiers, subject, staff assigned, and dates for key processing milestones. However, P&SP's PLD and regional offices each developed additional systems to track investigation processing information in order to fulfill their needs.

systems continue to be unreliable as a control for investigation management.

GIPSA plans to replace its tracking systems with PSAS during calendar years 2008 and 2009 as part of a software modernization effort. Currently, management anticipates that the implementation of PSAS will improve investigation tracking and will ultimately integrate aspects of investigation fieldwork, supervision, reporting, review, and resolution. Once implemented, the PSAS data warehouse will be a single system of record and replace four current P&SP data systems. These systems include: (1) the business identification system, which is used to maintain data of business entities regulated by P&SP; (2) a scales database, which is used to keep records of livestock scales and their testing data; (3) the R&I Log, which is used to maintain data from investigation and regulatory activities; and (4) the PLD Litigation Referral Pending Database.

OGC is participating as a user of the new R&I Log case tracking module within PSAS. As discussed in Finding 1, this portion of PSAS is expected to be ready for deployment in early Summer 2009. We could not fully assess PSAS because it is currently under development; however, we did find it is being developed according to the requirements specified in the contract's statement of work. In addition, agency officials agreed to the need for data accuracy and reliability in PSAS. Beginning in January 2009, all new R&I activities have been input into PSAS. To ensure data integrity, the R&I log was restricted to only allow updates to cases that were open prior to January 2009. No new entries can be made in the R&I log.

- *P&SP Legal Specialist Did Not Always Consult with OGC*

In response to our prior recommendation, GIPSA issued guidance requiring consultation with OGC on investigations that were either novel, complex, or related to competition concerns. As discussed in Finding 2, one legal specialist in one region did not consult with OGC on two competition cases because the specialist relied on current guidance that did not require consultation. The current guidance, issued in May 2007, was not consistent with the guidance issued in March 2006 in response to our prior recommendation. GIPSA should ensure that guidance on this matter is consistent with the corrective action the agency agreed to take in response to our prior recommendation.

- *Need for Regulatory Changes Not Adequately Monitored*

We previously reported that GIPSA had not established a mechanism to evaluate the need for regulatory changes in P&SP. In response to our

recommendation, the agency agreed to implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed. During our current review, we found that while GIPSA issued policies to establish a process for monitoring the need for regulatory change, not all policies were followed.

GIPSA implemented guidance³⁸ that places responsibility on individual employees to provide management with information on industry practices or issues that may require regulatory reform. Under this policy, managers are responsible for reviewing the employee recommendations and determining whether action is necessary. This process provides the opportunity for direct input on the observed need for reform.

In order to establish a comprehensive process to review investigative findings and monitor industry activity, GIPSA issued additional guidance³⁹ which required management to prepare a periodic summary analysis of completed investigations to assess the need for rulemaking or regulation review. PLD was charged with performing this analysis; however, PLD officials stated they did not perform formal summary analysis as prescribed. They address issues as they arise during the normal course of business, but they do not perform the summary analyses necessary to find commonality in the employee recommendations required by the directive.⁴⁰

In March 2006, PLD formed a Regulation Review task force to review all of the existing Packers and Stockyards regulations and identify regulations that needed updates. It also identified areas where regulations were needed but did not exist. GIPSA established the task force to serve for a temporary period to do a review and make recommendations for changes to regulations. According to the PLD Director, to date, several proposed and one final rule have been published from the work the task force started. Other regulations are moving through the rulemaking process and are expected to be published this year.⁴¹ On November 28, 2006, GIPSA transferred responsibility for regulation review from the task force to PLD. There remains no recurring summary analysis of the need for regulatory reform. The lack of a systematic process to review investigative findings, monitor industry activity, and timely determine the need for regulatory reform limits GIPSA's effectiveness in protecting members of the livestock, meat, and poultry industries from unfair, deceptive, and anti-competitive practices.

³⁸ P&SP Directive 9700-21, "Determining Need for Regulatory Reform," dated March 30, 2006.

³⁹ P&SP Directive 9700-3, "Investigation Responsibilities for the Regional Managers, Division Directors, and the Deputy Administrator," dated March 2, 2006.

⁴⁰ P&SP Directive 9700-21, "Determining Need for Regulatory Reform," dated March 30, 2006.

⁴¹ The task force reviewed regulations related to P&SP operations, including: poultry contract content, live poultry weighing and feed weighing, and general bonding provisions.

- *GIPSA Did Not Implement an Effective Internal Review Function*

We previously reported that GIPSA needed an internal review function incorporating control and monitoring activities of P&SP activities. The agency issued guidance⁴² which established a structured internal review process and required the Deputy Administrator to monitor corrective actions to ensure appropriate and timely resolution.⁴³ According to the Assistant Deputy Administrator, upper management decided to rely on the regions to implement corrective action. Headquarters provided no oversight to the regions. Agency officials stated that corrective actions may be reviewed at a later date when other internal reviews are conducted. P&SP required regional offices to respond to critical recommendations in writing. However, they conducted no systematic followup in the regional offices to ensure corrective actions were completed.

In addition, GIPSA's internal reviews did not always address recommendations to the appropriate level for corrective action. For example, one report to a regional director recommended that he align the P&SP SBP with a specific operating procedure. However, this was the responsibility of the Director of PLD; therefore, the regional director could not take action to implement this recommendation and he did not bring this to anyone else's attention.

To ensure the integrity of P&SP operations and activities, GIPSA needs to implement additional controls to ensure that data are recorded accurately and completely. The agency also needs to strengthen procedures for monitoring the need for regulatory change and for ensuring corrective actions recommended in internal reviews are completed.

Recommendation 6

Implement procedures to ensure the integrity of data recorded in PSAS.

Agency Response

GIPSA officials concurred with Recommendation 6. PSAS, which is replacing two investigative file databases that were used for the past 20 years, includes an automated logic testing component that ensures data integrity by analyzing key data required for case management prior to assigning case files for additional processing.

⁴² P&SP Directive 9700-37, "Management Accountability Program," dated January 23, 2007.

⁴³ Internal reviews were performed by teams comprised of a contractor, P&SP employees, and the P&SP Assistant Deputy Administrator. Employees were not allowed to assess their own regions.

GIPSA began formally monitoring PSAS data integrity on April 14, 2009. On May 11, 2009, P&SP hired a data systems specialist who is responsible for monitoring data and for developing monthly case file status reports for management review. The first reports will be distributed to managers and the GIPSA administrator by July 1, 2009. All monitoring, training, and future software revisions will be coordinated to ensure the integrity of data in PSAS.

OIG Position

We accept GIPSA's management decision.

Recommendation 7

Implement controls to ensure that responsible officials follow established procedures for monitoring (a) the need for regulatory change and (b) corrective actions prescribed in internal reviews. Also, P&SP should provide an action plan with specific milestone dates to assess and report that these procedures are effectively implemented.

Agency Response

GIPSA officials concurred with Recommendation 7. PLD assumed responsibility for rulemaking activity in October 2006. GIPSA established a Regulatory Review Taskforce to review all P&SP regulations. The taskforce's findings, dated May 25, 2007, were accepted by GIPSA management. GIPSA tasked PLD with developing regulatory work plans for the recommended changes. The Change Control Work Group was tasked to ensure the ongoing assessment of the P&SP regulations and an electronic workflow to allow any employee to recommend changes to the regulations. Those recommendations are electronically tracked with management oversight. This action was completed in April 2009. GIPSA regularly meets with stakeholders on the need for regulatory change. In May 2009, the PLD director's position description was amended to specifically give him the responsibility for evaluating the need for regulatory change and reporting needed changes to management. GIPSA is modifying its internal reviews directive to require a formal response and followup reporting on all outstanding audit findings until corrected. The amended directive is due by August 2009.

OIG Position

We accept GIPSA's management decision.

Scope and Methodology

Our audit examined P&SP operations from FY 2006 through the first quarter of FY 2008 (October 1, 2005 through December 31, 2007), the most current data available when we initiated our review. We examined applicable laws, regulations, and policies and reviewed processes related to program implementation. We conducted our review at P&SP Headquarters and OGC's Trade Practices Division in Washington, DC, and at the three P&SP regional offices in Aurora, Colorado; Atlanta, Georgia; and Des Moines, Iowa. We reviewed case file documents from P&SP Headquarters, P&SP regional offices, and OGC. P&SP Headquarters, P&SP regional offices, and OGC used different databases to track and manage investigations. The databases were fragmented, making it difficult to track investigation progress from beginning to end. The fragmented databases limited our ability to fully assess GIPSA's investigation management. Finally, we followed up on the actions GIPSA took to implement the 10 recommendations in our prior audit report.⁴⁴ Fieldwork was performed from March 2008 to September 2008. We updated our understanding of the findings reported through February 2009.

R&I Log Investigative Data

We obtained data for 2,068 investigations from the R&I Log and reviewed information for active investigations during our scope period for completeness. Of the 2,068, a total of 123 investigations were forwarded from the regions to Headquarters on or before September 30, 2007, and remained open as of December 31, 2007. We reviewed the 123 investigations to determine if work was appropriately categorized and if data were accurate and consistent with respect to supporting documentation retained by the regional offices.

We judgmentally selected a sample of 32 of 329 active investigations identified as referred to Headquarters in the R&I Log and/or Headquarters tracking worksheets in our scope period. We selected the sample after review of electronic data to obtain a mixture of investigation types.⁴⁵ We conducted our review to determine if investigations were effectively examined, reported, and resolved.

We obtained worksheets maintained by each of the three regional offices to track NOV followup activity. We reviewed the data for completeness and performed analyses to determine if followup activity was executed timely.

⁴⁴ Management and Oversight of the Packers and Stockyards Program, Audit No. 30601-0001-Hy, issued January 10, 2006.

⁴⁵ Investigation types include: Failure to pay; Failure to pay when due; Issuing insufficient funds for purchase; Insolvency; Custodial Accounts; Trusts; Failure to complete registration; Inadequate bond or equivalent; Failure to maintain adequate records; Failure to complete or provide accurate annual reports; and Weight.

P&SP Headquarters

We interviewed 13 GIPSA officials at Headquarters to include senior management, division directors, and staff level employees. The purpose of these discussions was to gain an understanding of their oversight roles and responsibilities in promoting anti-competitive investigations. In addition to our discussions, we reviewed program guidance provided to agency employees on how to perform their work related activities. This guidance was documented through standard operating procedures, an employee manual, position descriptions, and relevant policies and directives.

We obtained and reviewed data from PLD's independently maintained investigation tracking system for completeness. We judgmentally selected from our universe of 2,068 investigations 5 percent (9 of 169) of the investigations identified in PLD's data as received during our review period to determine if PLD appropriately and effectively reviewed the reports and pursued proper courses of action based on their contents. We selected the investigations after reviewing the data to obtain a mixture of case types and disposition decisions.

OGC – Trade Practices Division

To address Congressional concerns regarding the working relationship between GIPSA and OGC and to determine OGC's role in the investigative process, we interviewed three OGC attorneys. This included the Assistant General Counsel for the Trade Practices Division and two staff attorneys. Specifically, we interviewed the staff attorneys to determine the work performed for P&SP cases. In conjunction with the OGC Assistant General Counsel, we reviewed a judgmental sample of 15 open trade practice cases to gain an understanding of OGC's process for handling P&SP cases. The 15 cases were selected from a universe of 83 open cases that were with OGC as of December 31, 2007 per OGC data. These 15 cases represented all P&SP cases that had been referred to OGC for action for 600 or more elapsed days.

P&SP Regional Offices

We visited each of the three P&SP regional offices to determine if GIPSA's controls were sufficient to ensure that anti-competitive and unfair practices in the livestock and poultry markets were accurately and effectively examined, reported, and resolved. We reviewed organizational charts at each of the regional offices and examined the regional internal control structures. Additionally, we interviewed regional office employees, including senior managers, unit supervisors, and staff level employees to gain an understanding of regional office operations, work flow, internal controls, and review processes.

Our audit was conducted in accordance with *Government Auditing Standards*. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Exhibit A – Congressional Concerns Regarding P&SP Operations

In response to the request from the Ranking Member of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, OIG addressed questions in six areas ranging from adequacy of professional expertise to exertion of pressure to discourage investigations.

#	<i>Question</i>	<i>Results</i>
1	Does OGC have the staffing and professional expertise to handle complex investigations and enforcement actions under the competition provisions of the Act?	According to the OGC Assistant General Counsel, staffing was adequate given the current workload from P&SP and Perishable Agricultural Commodities Act casework for which the Trade Practices Division is responsible. The Assistant General Counsel also stated that her staff had the professional expertise to handle complex investigations. In response to a prior OIG audit recommendation, P&SP economists and OGC attorneys attended training conducted by DOJ's Anti-Trust Division in 2006 and the Federal Law Enforcement Training Center in 2007. Since then, the Assistant General Counsel said that attorney training is done on the job. She explained that given the limited resources and the number of cases, extensive antitrust training for all attorneys is not cost-effective. We determined that during our scope period (October 1, 2005 through December 31, 2007) GIPSA referred a total of 177 cases to OGC, of which 9 cases had a competition basis. The two trial attorneys we interviewed were working on a competition case. However, they stated that they did not have significant experience with competition cases.
2	Will OGC and GIPSA cooperate to assign lead roles to OGC attorneys specifically for more complex competition investigations, as suggested by GAO?	GAO suggested a teamwork approach for investigations between GIPSA economists and OGC attorneys. Through related discussions and policy review, we determined GIPSA consults with OGC attorneys early in anti-competition investigations to provide feedback during planning and case development. As reported in Finding 2, GIPSA needs to ensure that it issues clear and consistent policy on this matter.
3	Do conflicts or disagreements over interpretation of the Act exist between GIPSA and OGC that could undermine the development and execution of competition investigation and enforcement actions?	We noted no conflicts in competition actions through discussions with GIPSA and OGC officials.
4	Did problems in the working relationship and communications between OGC and GIPSA prevent GIPSA from referring cases to OGC or cause GIPSA to develop bureaucratic systems to avoid even having to work with OGC?	We found no problems in the working relationship and communication between OGC and GIPSA.
5	Have OGC personnel at any time pressured or discouraged present or former GIPSA employees from pursuing investigations of anti-competitive practices?	We found no indication that OGC has attempted to exert pressure on present GIPSA employees with respect to influencing case work. We did not contact former GIPSA employees as part of this review.

Exhibit A – Congressional Concerns Regarding P&SP Operations

#	<i>Question</i>	<i>Results</i>
6	Does OGC interpret too strictly or too narrowly the Act’s competition provisions and relevant case law? Is OGC too cautious or hesitant in pursuing competition cases?	There were no indications that OGC limited competition cases. During our scope period, GIPSA referred a total of 177 cases to OGC, of which 9 cases had a competition basis. Of the nine competition cases, eight were accepted for enforcement and one was rejected for cause.

Exhibit B – Implementation of Prior Audit Recommendations

Exhibit B – Page 1 of 1

Rec. No.	Prior Recommendation	Effective Corrective Action Implemented	Current Audit Finding
<i>1</i>	Develop and implement a policy for defining investigations. This policy should require GIPSA 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.	Yes	
<i>2</i>	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.	No	3
<i>3</i>	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.	Yes	
<i>4</i>	Develop and implement an effective system to communicate expectations regarding P&SP's investigative process and specific investigations.	Yes	
<i>5</i>	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.	Yes	
<i>6</i>	Develop and implement a structure for receiving, reviewing, and acting on policy issues and requests for guidance.	Yes	
<i>7</i>	Develop and implement a process for reviewing investigative findings and monitoring industry activity to determine if regulatory reforms are needed.	No	3
<i>8</i>	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.	No	3
<i>9</i>	Develop and implement a strategy and process for effective implementation of changes in P&SP operations.	Yes	
<i>10</i>	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.	No	3

Exhibit C – Efforts to Identify Potential Anti-Competitive Activity

In 2006 we reported⁴⁶ that GIPSA did not complete competition investigations due to the lack of clear processes to identify work, approve work plans, perform investigative analysis, and report results. We found that in response to recommendations from our prior report, GIPSA implemented procedures to:

- Identify work to be performed, conduct initial fact finding, and complete decision making on whether or not there was sufficient cause to proceed with an investigation;
- Provide a basis for preparing an investigative work plan and identifying the work to be conducted;
- Outline required work plan reviews; and
- Identify the roles and responsibilities between the Deputy Administrator, division directors, and regional managers in approving work plans, managing investigations, and reporting the results between the regional manager and Deputy Administrator.

Regional officials generally agreed that obstacles to investigations due to centralization of decision making within GIPSA Headquarters had been alleviated.

We also determined GIPSA performed activities to identify potential anti-competitive activity for investigation. This included monitoring of market related conditions such as procurement and sales patterns and pricing to identify potential anti-competitive activity for investigation. We found anti-competition investigative activity during our audit scope period was limited. Although we did not analyze its methodologies,⁴⁷ P&SP data identified 43 of 2,068 applicable investigative cases (2 percent) as related to restriction of competition. Only 6 of the 43 cases (14 percent) were identified as agency initiated. We further identified that 9 of the 177 cases (5 percent) referred to OGC were for a deceptive practice or were anti-competitive in nature.

GIPSA officials acknowledged their analytical reviews of structural characteristics of markets did not always identify anti-competitive cases. According to agency officials, there are not many anti-competitive cases. For example, a February 2008 GIPSA report on its cattle market monitoring effort identified just two potential competition violations for further investigation. In one case, GIPSA filed a complaint against the packers for operating in violation of the Act. After investigating the other case, GIPSA issued three NOV's in September 2008 to the involved parties. GIPSA officials also ceased the monitoring of the swine market for potential anti-competitive activity as it had not delivered results. GIPSA officials stated that they are currently revisiting underlying methodologies for market monitoring and are consulting with outside agencies for assistance. They anticipate implementing revised methods in Spring 2009.

⁴⁶ Management and Oversight of the Packers and Stockyards Program, No. 30601-01-Hy, issued January 10, 2006.

⁴⁷ We did not find it necessary to examine GIPSA's methodologies because GIPSA officials acknowledge that their current analytical reviews did not always identify anti-competitive cases. They anticipate implementing revised methods in Spring 2009.

Exhibit D – Agency Response

Exhibit D – Page 1 of 9



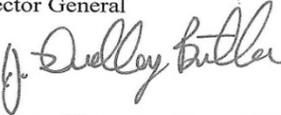
United States
Department of
Agriculture

Grain Inspection,
Packers and Stockyards
Administration

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JUN 15 2009

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

FROM: J. Dudley Butler 
Administrator

SUBJECT: Response to the Office of Inspector General Official Draft Audit Report
30016-02-Hy, "Follow up Audit of the Management and Oversight of the
Packers and Stockyards Program"

Attached is the Grain Inspection, Packers and Stockyards Administration (GIPSA) response to the Office of Inspector General's (OIG) recommendations to the subject official draft audit report.

Please call me at 202-720-0219 or Alan Christian, Deputy Administrator of the Packers and Stockyards Program, at 202-720-7051 if you have, or your staff has, any questions.

Attachment

Office of Inspection General Official Draft Audit Report 30016-02-Hy, Followup Audit of the Management and Oversight of the Packers and Stockyards Program

Recommendations in Brief (page iv). GIPSA should work to strengthen controls over investigation resolution. This includes establishing controls to identify and timely resolve investigations. Additionally, GIPSA should develop procedures to monitor NOV [Notice of Violation] follow-up to ensure it is initiated within 180 days. The agency needs to implement a defined process for reviewing, approving, and issuing program guidance to ensure consistency and implement an effective internal review function.

GIPSA Response: GIPSA concurs with the Office of the Inspector General's (OIG) in-brief recommendations; they are objectives that GIPSA management has already identified as goals and has been addressing since receiving the 2006 OIG audit findings. GIPSA notes that achieving certain OIG recommendations requires action from agencies other than GIPSA. While GIPSA can influence the outcome to a point, these entities' actions are outside of the Agency's authority and control.

GIPSA's detailed responses for the remaining recommendations follow on pages 2-9.

Finding 1 – Improvements Needed in Managing Investigations

Recommendation 1 (page 8). Develop and implement controls to monitor the timely processing of investigations submitted to Headquarters for action. These controls should include formal assignment of responsibility to an appropriate manager and periodic reporting to senior management to identify and mediate impediments preventing timely action.

GIPSA Response. GIPSA concurs with Recommendation 1. GIPSA’s new automated system—Packers and Stockyards Automated System (PSAS)—currently monitors investigations from their initiation in the field to the point of referral to headquarters. By October 1, 2009, the Policy and Litigation Division (PLD)/Office of the General Counsel (OGC) Enforcement module will track cases from receipt in headquarters to final resolution. This will provide GIPSA with real-time data on the progress of investigations in terms of resolution timelines. PSAS automatically “flags” investigations, in specified phases or in their entirety, that exceed established timeframes for completion. All involved in a flagged investigation, from the front-line investigator to the regional director to the PLD director and Packers and Stockyards Program (P&SP) deputy administrator, are notified of unmet milestones. Further, GIPSA has amended the PLD director’s position description to explicitly include responsibility for monitoring the progress of investigations referred to headquarters and reporting developments in those investigations to senior management. If needed, the GIPSA deputy administrator can use regularly scheduled weekly meetings with the OGC assistant general counsel to identify investigations that are exceeding established completion timelines and work to mediate impediments to their resolution.

Corrective Action Taken:

- The position description for the PLD director has been amended to include responsibility for monitoring the progress of investigations referred to headquarters and reporting developments in those investigations to senior management. *Completion Date: May 28, 2009*

Corrective Actions to be Taken:

- Deploy Policy and Litigation Division (PLD)/Office of the General Counsel (OGC) Enforcement PSAS module to track cases from receipt in headquarters to final resolution. *Estimated Completion Date: October 1, 2009.*

Recommendation 2 (page 8). Establish milestone elapsed days for contact between P&SP and OGC to ensure that cases pending action from OGC are completed timely and take action when milestones are not met.

GIPSA Response: GIPSA concurs with Recommendation 2. PSAS currently tracks investigations from their initiation in the field to the point of referral to headquarters. By October 1, 2009, the PLD/OGC Enforcement module will track investigations from referral to headquarters to final resolution. The system will track the entire case from the beginning of the investigation to the final decision and will show the elapsed days for each task. The module will

include timelines with milestones for P&SP to review and submit cases to OGC and will track timelines and milestones at OGC and the Department of Justice. Using the module, both GIPSA and OGC will see PSAS' milestone tracking function, which flags any investigations that exceed established timeframes for the completion of specified portions or an entire investigation. The task will turn red when over the standard timeframe. The system also will allow a "hold" for cases in the formal process with a 30-day reminder to check on the status. GIPSA and OGC will collaboratively use this module's workflow management capabilities to track cases from receipt in headquarters to final resolution.

Corrective Actions Taken:

- Developed standard operating procedures and electronic workflow requirements to formalize and outline the interaction between PLD and OGC. These documents include "SOP OGC_PLD-1 Enforcement and OGC_PLD Enforcement" and "PLD Enforcement Workflow Design" *Completion Date: February 18, 2009*

Corrective Actions to be Taken:

- Deploy Policy and Litigation Division (PLD)/Office of the General Counsel (OGC) Enforcement module in PASA to track cases from receipt in headquarters to final resolution. *Estimated Completion Date: October 1, 2009.*

Recommendation 3 (page 8). Develop and implement procedures to monitor NOV follow-up to ensure that it is initiated within 180 days and violations are corrected or appropriately pursued to ensure correction.

GIPSA Response: GIPSA concurs with Recommendation 3. PSAS includes a module that automatically creates a NOV workflow assignment with a 180-day timeframe for completion for every NOV that requires a follow-up investigation. Regional Directors are responsible for evaluating each NOV and for determining, based on established criteria, which NOV's will be followed up by an investigation. Once an NOV is approved by the Regional Director to be issued in the Regional Enforcement PSAS Module, the Regional Director has to enter into the system whether a follow up is required. If the Regional Director determines that a follow up is required, the case is automatically assigned by PSAS as an NOV follow up investigation and the 180 day clock starts for the follow up investigation to be completed. The investigation is tracked by PSAS until completed.

GIPSA prioritizes investigations based on the relative significance of a given violation and other demands on investigative time and resources. The PSAS workflow document specifies timeframes for NOV follow-up; assigns tasks for all involved, from lead agent to regional director; and requires direct oversight and action by the regional director to close an NOV.

Corrective Actions Taken:

- Published the procedures to monitor timely NOV follow-up in the GIPSA PSAS ECM Document Management and Workflow Module Functional Design manual. *Completion Date: June 8, 2008.*
- Implemented the procedures to monitor timely NOV follow up in an electronic work flow. *Completion Date: January 8, 2009.*

Finding 2 – GIPSA Should Ensure Consistency in P&SP Guidance

Recommendation 4 (page 11). Establish and implement a defined process for reviewing and issuing program guidance, both new or revised, to ensure consistency across all P&SP guidance.

GIPSA Response: GIPSA concurs with Recommendation 4. The Agency has taken a number of steps to ensure consistency across all P&SP guidance. First, P&SP established a Change Control Working Group (CCWG) to receive and process all requests for changes in regulation, operational policy, and automation. The amended CCWG Charter specifically assigns the group responsibility for ensuring consistency in all P&SP guidance. Second, GIPSA's Employee Library Team is in the final stages of integrating all directives, notices, standard operating procedures, process and sub-process models, and the P&SP Employee Manual into a single integrated web-based repository called the Employee Library. This comprehensive resource will be available to ensure accessibility of consistent guidance to all GIPSA personnel. A beta version of the Employee Library was posted on GIPSA's internal web site for testing in March 2009; the final version will be deployed by July 1, 2009.

Corrective Actions Taken:

- Established a Change Control Working Group (CCWG) to receive and process all requests for changes in regulation, operational policy, and automation. *Completion Date: April 9, 2009*
- Posted a beta version of the Employee Library on GIPSA's internal web site for testing. *Completion Date: April 8, 2009.*

Corrective Actions to be Taken:

- Deploy all directives, notices, standard operating procedures, process and sub-process models, and the P&SP Employee Manual into a single integrated web-based repository called the Employee Library. *Estimated Completion Date: July 1, 2009*

Recommendation 5 (page 11). Analyze current program guidance (i.e., directives, manuals, and operating procedures) to identify and correct inconsistencies contained in the guidance.

GIPSA Response. GIPSA concurs with Recommendation 5. In April 2008, the Agency established the Employee Library Team to integrate all P&SP directives, notices, standard operating procedures, process and sub-process models, and the P&SP Employee Manual into a single, integrated web-based repository called the Employee Library. The Employee Library Team identified and corrected inconsistencies in guidance as part of the creation of the Employee Library as the Agency's single source for agency program guidance. The Team currently is completing its work. A beta version of the Employee Library was posted on GIPSA's internal web site for testing in March 2009; the final version will be deployed by July 1, 2009. In addition, P&SP established a Change Control Working Group (CCWG) to receive and process all requests for changes in regulation, operational policy, and automation, and to ensure policy

remains consistent as policy changes are made in the future. The CCWG has been assigned responsibility to ensure consistency in all P&SP guidance.

Corrective Actions Taken:

- Established a Change Control Working Group (CCWG) to receive and process all requests for changes in regulation, operational policy, and automation and to ensure consistency in all P&SP guidance. *Completion Date: April 9, 2009*
- Posted a beta version of the Employee Library on GIPSA's internal web site for testing. *Completion Date: April 8, 2009.*

Corrective Actions to be Taken:

- Deploy all directives, notices, standard operating procedures, process and sub-process models, and the P&SP Employee Manual into a single integrated web-based repository called the Employee Library. *Estimated Completion Date: July 1, 2009*

Finding 3 – Prior Recommendations Not Completely Implemented

Recommendation 6 (page 15). Implement procedures to ensure the integrity of data recorded in PSAS.

GIPSA Response: GIPSA concurs with Recommendation 6. PSAS, which is replacing two investigative file databases that were used for the past 20 years, is a state-of-the-art application that fully integrates case file management, and data monitoring and reporting into a single secure, closed system. The system includes an automated logic testing component that ensures data integrity by analyzing key data required for case management prior to assigning case files for additional processing. PSAS integrates all investigative phases, documents, data, and workflow components for each case that GIPSA initiates into a single enterprise application that shares data across organizational units, a deliberate design implemented to allow for effective monitoring and to ensure data integrity.

GIPSA began formally monitoring PSAS data integrity on April 14, 2009. On May 11, 2009, P&SP hired a data systems specialist who is responsible for monitoring data and for developing monthly case file status reports for management review. The first reports will be distributed to managers and the GIPSA administrator by July 1, 2009. All monitoring, training, and future software revisions will be coordinated to ensure the integrity of data in PSAS.

Corrective Actions Taken:

- Began formal monitoring of PSAS data integrity. *Completion Date: April 14, 2009*
- Hired a data systems specialist who is responsible for monitoring data and for developing monthly case file status reports for management review. *Completion Date: May 11, 2009*

Recommendation 7 (page 15). Implement controls to ensure that responsible officials follow established procedures for monitoring (a) the need for regulatory change and (b) corrective actions prescribed in internal reviews. Also, P&SP should provide an action plan with specific milestone dates to assess and report that these procedures are effectively implemented.

GIPSA Response: GIPSA concurs with Recommendation 7(a).

Corrective Actions Taken 7(a):

- GIPSA established a Regulatory Review Taskforce to review all P&SP regulations. The taskforce's findings, dated May 25, 2007, were accepted by GIPSA management, and PLD was tasked with developing regulatory work plans for the recommended changes in October 2006. *Completion Date: October 2006*
- GIPSA established the Change Control Work Group (CCWG) to ensure the ongoing assessment of the P&SP regulations and an electronic workflow system to allow any

employee in the organization to recommend changes to the regulations. Those recommendations are electronically tracked with management oversight through the review, decision, and implementation phases. *Completion Date: April 9, 2009.*

- GIPSA regularly meets with, and gathers input from, stakeholders on needed regulatory changes. *Completion Date: Periodically*
- The position description for the PLD director has been amended to specifically include responsibility for evaluating the need for regulatory changes on a regular basis and for reporting needed changes to the management team. *Completion Date: May 28, 2009*

GIPSA Response: GIPSA concurs with Recommendation 7(b).

GIPSA is committed to following up on internal reviews. In the 2007 pilot reviews, the P&SP deputy administrator required division and regional directors to respond in writing to all serious areas of noncompliance. Further, the efficacy of their responsive actions was assessed during their subsequent performance reviews. These early pilot audits were conducted at a time when policies, procedures, and processes were changing rapidly, and even those conducting the audits had difficulty in correctly assessing the various activities as evidenced in the final reports. GIPSA is modifying the directive covering internal reviews to include a requirement for a formal response and follow up reporting on all outstanding audit findings until corrected and will issue the amended directive by August 1, 2009.

Corrective Actions to be Taken 7(b):

- Revise P&SP Directive 9700-37, Management Accountability Program,” dated January 23, 2007, to require a formal response and follow up on all outstanding audit findings until corrected. The directive will be modified to require written reports on action plans for addressing any problem areas and the resolution of those problems. *Estimated Completion Date: August 1, 2009.*
- Ensure that corrective actions recommended in internal reviews are completed by conducting follow-up reviews. Follow-up reviews will be conducted to ensure that noncompliant areas have been resolved satisfactorily and within the specified time frame. The Office of the Deputy Administrator will ensure the timely resolution of all corrective action plans. *Estimated Completion Date: Periodically.*
- The Office of Deputy Administrator will ensure timely resolution of all corrective action plans. *Estimated Completion Date: Periodically.*

Informational copies of this report have been distributed to:

- Government Accountability Office (1)
- Office of Management and Budget (1)
- Office of the Chief Financial Officer (1)
 - Director, Planning and Accountability Division