

## Conclusions

Substantial changes are occurring in industry structure and the behavior of firms in the livestock and meatpacking industries. Technological developments, changes in consumer demand, and other competitive forces drive many of the changes. Many of the changes are healthy for the industries involved and for consumers. However, the changes also bring the potential for packers, dealers, and market agencies to engage in activities that are prohibited under the P&S Act.

P&SP regulates industries comprised of thousands of firms that handle over \$100 billion worth of products per year. P&SP has about 185 employees throughout the United States. In the late 1990s, USDA restructured its Packers and Stockyards Programs to strengthen its capacity to investigate possible anti-competitive behavior in the livestock, meatpacking, and poultry industries and improve its efficiency and effectiveness in enforcing the provisions of the P&S Act. P&SP has changed its staffing mix to add more employees with economic and legal expertise to assist in investigations. P&SP is continuing its restructuring initiative by developing new investigative procedures, working more closely with the Office of the General Counsel at the initial stage of case development, during investigation of complex cases incorporating economists and legal specialists in the investigative process, training new employees, and making other adjustments to strengthen its capacity to monitor and investigate the structural and behavioral changes in the livestock, meatpacking, and poultry industries.

P&SP conducted 1,619 investigations during FY 2001. About 400 of these investigations resulted from complaints filed with P&SP, and the remaining investigations were initiated by P&SP as a result of monitoring industry behavior, following up on problem areas, responding to questionable items on P&SP reports or other activities revealing information about the industry. The investigations may be broadly categorized under the three major functions of P&SP as follows:

**Competition**-GIPSA receives many complaints about issues such as concentration and mergers that may relate to competition but which do not involve potential violations of the Act and do not result in investigations. During fiscal year 2001, P&SP conducted 27 investigations involving potential anticompetitive practices. Competition investigations tend to be complex and often require sophisticated economic modeling and analyses. The potential incidents of anticompetitive behavior which were investigated in FY 2001 include the following:

- Attempted restriction of competition
- Failure to compete
- Buyers acting in concert in the purchase of livestock
- Apportionment of territory
- Conflict of interest
- Price discrimination
- Price manipulation

- Predatory pricing

Nine of the 27 investigations were completed in FY 2001. One resulted in a letter of notice advising the party of a conflict of interest requiring corrective action, and the other 8 did not reveal violations of the Act. During the first quarter of FY 2002, GIPSA initiated 3 new competition investigations and closed 3 investigations with a finding of no violations.

**Trade Practice**—P&SP conducted 877 trade practice investigations in FY 2001 regarding potentially unfair practices under the P&S Act. These investigations dealt with the following types of potential offenses:

- Using poultry growing arrangements in an unfair manner
- Unfairly implementing poultry contract settlements
- Failing to adhere to the terms of poultry contracts entered into with growers
- Operating without bond or inadequate bond
- Buying or selling livestock on the basis of false weights
- Misrepresenting the weight and price of livestock
- False weighing of livestock
- Checkweighing poultry and livestock at auction markets, dealer buying stations, meatpacking and poultry processing plants, in order to determine if scales were inaccurate or proper weighing procedures were not used by industry personnel

Many of the trade practice investigations were concerned with ensuring that payments for livestock and payments to poultry growers were based on accurate weights. For example, in FY 2001 P&SP conducted 304 checkweighing investigations, and found false or incorrect weighing requiring corrective actions in 5 percent of them. Complaints were issued against 4 entities for allegedly selling livestock at weights that were more than the actual weight of the livestock. Investigations of poultry integrators prompted procedural changes by several firms.

**Financial**—P&SP conducted 715 financial investigations in FY 2001 in response to complaints or to monitor the financial integrity of firms in the livestock, meatpacking and poultry industries. P&SP reviews financial reports, conducts audits of payment practices, and conducts investigations to determine compliance of subject businesses with the financial requirements of the P&S Act and Regulations. These investigations addressed the following types of potential violations:

- Failing to pay for livestock, meat, or poultry
- Failing to pay when due for livestock, meat, or poultry
- Operating subject to the P&S Act in an insolvent condition
- Investigations involving packer trusts
- Failing to properly maintain trust accounts as required by the P&S Act and regulations

Auction markets maintain custodial accounts for the benefit of unpaid livestock sellers. Markets are required to maintain funds in the accounts to ensure the markets have sufficient funds to pay livestock sellers. Financial investigations in FY 2001 resulted in \$6.3 million being restored to custodial accounts that lacked the required funds. Livestock sellers recovered over \$844,000 under the packer trust provisions of the P&S Act. Livestock sellers were paid \$276,000 from bonds maintained by dealers and market agencies. Additional bond claims of \$556,094 are pending.

P&SP will address the concerns discussed in this report by continuing to monitor changes in industry structure and behavior, and by examining practices that raise concerns in the industry and are within P&SP's authority under the P&S Act. When circumstances indicate the possibility of a violation of the P&S Act, P&SP will conduct formal investigations and follow up with the appropriate enforcement action if violations are shown to exist. P&SP will conduct research and other analyses to assess the economic, competitive, trade practice, and financial implications of the structural and behavioral changes that are taking place in the industry. P&SP will initiate regulatory initiatives if necessary to assure that effective enforcement of the P&S Act keeps pace with changes in industry structure and business practices.