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For release only by the Senate Committee on Appropriations

Statement of JoAnn Waterfield, Deputy Administrator, P&S Programs, GIPSA, before the Subcommittee on Agriculture, Rural Development and Related Agencies.

Mr. Chairman and members of the Committee, good afternoon and thank you for allowing me the privilege of speaking on behalf of the Grain Inspection, Packers and Stockyards Programs (GIPSA). I am JoAnn Waterfield and I am the Deputy Administrator for GIPSA responsible for oversight of the Packers and Stockyards Programs (P&SP). The P&SP is responsible for enforcing the Packers and Stockyards Act (the Act) which prohibits unfair, deceptive, fraudulent practices by market agencies, dealers, stockyards, packers and live poultry dealers in the livestock, poultry, and meatpacking industries. I moved into this position in September 2000 from USDA's Office of the General Counsel where I led litigation teams responsible for enforcing the Packers and Stockyards Act. I feel privileged to represent the men and women of P&SP and have long respected their professionalism, dedication, and tenacity in pursuing and developing complex investigations and cases. I was asked to provide you with an overview on concentration today, but I also hope to provide you with a better understanding of the Agency and its contributions to the livestock, poultry and meatpacking industries and ultimately its benefit to American Agriculture.

Our ability to address concentration is limited to our statutory authority. P&SP has responsibility for addressing issues relating to competition and unfair trade practices in the livestock, meatpacking, and poultry industries through our authority to enforce the Packers and Stockyards Act of 1921, as amended and supplemented. The Act gives the Secretary of Agriculture the authority to regulate dealers, stockyards, market agencies, packers, and live poultry dealers who operate in interstate and foreign commerce. The Act makes it unlawful for a regulated entity to engage in unfair, unjustly discriminatory or deceptive practices. Engaging in any course of business for the purpose or effect of manipulating or controlling prices, creating a monopoly, or restraining commerce is also a violation of the Act.

Certain provisions of the Federal Trade Commission Act were made applicable to the Secretary's enforcement of the Act and grant the Secretary investigatory powers, including the power to gather and compile information, concerning the organization, business conduct, and practices of regulated entities, and to require by subpoena the attendance and testimony of witnesses in investigations.

To protect the livestock, poultry, and meatpacking industries, the

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Act requires market agencies and dealers to register; market agencies, packers, and dealers to be bonded; and market agencies, dealers, packers, and live poultry dealers to meet specific payment requirements. To protect the unpaid sellers of livestock, packers are subject to trust provisions which require that all livestock purchased in cash sales, and all inventories of, or receivables of proceeds from meat, meat food products, or livestock products derived therefrom, be held in trust for the unpaid sellers until payment is made in full. There is a similar provision for live poultry dealers, but none for livestock dealers.

P&SP uses its statutory authority to investigate alleged and potential violations of the Act and regulations, and prosecute violations detected through those investigations, either directly through administrative actions or through referral to the Department of Justice.

Concentration is not prohibited by the Act, and while high concentration levels gave a "red flag" requiring additional oversight to ensure that there is no harm or injury that the Act was intended to prevent in the livestock, meatpacking and/or poultry industries. Concentration is not, in and of itself, a violation of the Act. Firms are largely free to pursue their own economic interests by opening or closing plants, expanding into new geographic areas, adopting new technology, and cost-reducing innovations that are being integrated into livestock production.

Since P&SP does not have pre-merger existing authority, PS&P does not have the ability to stop mergers from taking place. The authority to investigate mergers and acquisitions resides with the Department of Justice and Federal Trade Commission, and, as requested, GIPSA supplies information and expertise to these Agencies in any investigations of mergers or competitiveness issues involving the grain, livestock, and poultry industries.

If, however, packers engage in any of the acts prohibited by Section 202 of the Act, GIPSA investigates and initiates enforcement actions. Upon a finding of violation of Section 202, the Act provides for sanctions that include an order to "cease and desist" from the prohibited practice, and a civil penalty.

There is concern about the rising levels of concentration in the livestock and meatpacking industries leading to fewer competitive marketing opportunities for producers. Concentration has remained fairly constant since 1994. However, if you look further in the past, concentration in both cattle and hog slaughter has increased greatly since 1985. The following chart provides an historic perspective of the trends I have described.

Four-firm Concentration in Meatpacking, 1980-2000

1 Includes steers, heifers, cows, and bulls.

Note: All figures for years 1980 through 1990 are based on firms' fiscal years as reported to GIPSA. Figures for 1991 through 2000 are based on calendar year federally-inspected slaughter.

For the past few years, P&SP has been in a state of dynamic change. During FY 2000, the reorganization and filling of crucial positions within the Packers and Stockyards Programs was completed. The agency now employs a total of 180, in three species-specific regional offices (Atlanta -- Poultry, Des Moines -- Hogs, and Denver -- Cattle and Sheep) that are directed by headquarters in Washington D.C. A full contingent of legal specialists (all of whom are attorneys), economists, and financial

specialists has been established. An intensive training program and a multi-disciplinary approach to developing investigation plans have also been developed. Economists now on staff provide insight and guidance in developing, analyzing and explaining complex econometric models used by the Agency in performing its regulatory responsibilities, including litigation and market oversight.

P&SP utilizes cross-regional expertise to address national issues and to look more effectively at emerging technology, evolving marketing strategies, and other issues affecting the industries and the constituencies we serve. For example, we have a cross-regional team looking at electronic transactions involving livestock. This team is comprised of representatives from each regional office with differing, but complementary areas of expertise . . . financial, legal, and economic.

P&SP monitors the livestock, meatpacking, and poultry industries, estimated by the Department of Commerce in FY 2000 to have an annual wholesale value of \$142 billion. At the close of 2000, there were 1,318 stockyards, 6,195 market agencies and dealers, and 2,039 packer buyers registered with P&SP. An estimated 6,000 slaughtering and processing packers are subject to the Act. In FY 2000, 266 slaughtering packers, each of whom purchased over \$500,000 of livestock in 1999, were required to be bonded and file reports with GIPSA. In addition, 205 poultry firms and a significant number of meat distributors, brokers, and dealers are subject to the Act.

Last year, P&SP conducted over 1,800 investigations of potential violations of the P&S Act, a 33 percent increase over the previous year. Most violations were corrected voluntarily, resulting in livestock and poultry producers receiving payment for the sale of their products. During FY 2000, 17 administrative or Federal court complaints were issued (a net increase of 5 over the previous year) to bring subject firms into compliance with the Act. In addition, USDA issued 13 decisions and orders against 21 individuals or firms for violating the Act.

P&SP continues to provide payment protection to livestock and poultry producers. Financial investigations conducted last year resulted in \$5.9 million being restored to custodial accounts established and maintained for the benefit of livestock sellers. This is more than double FY 1999 restoration figures of \$2.7 million. Since the 1976 amendments to the Act, livestock sellers have been paid \$59.7 million under the Act's statutory trust provision. In 2000, one poultry trust complaint received by GIPSA resulted in payment of \$250,000 to live poultry growers. By comparison, there were none in 1999. During FY 2000, 192 insolvent dealers and market agencies corrected or reduced their insolvencies by \$6.7 million, an increase of more than \$2 million from the previous year. Insolvent packers corrected or reduced insolvencies by \$2.2 million.

Our regulatory responsibilities are at the heart of our mission. To this end, P&S closely monitors practices that may impede the trade of livestock, meat, and poultry. We place a high priority on investigating all complaints and further developing information received concerning allegations of anti-competitive, unjustly discriminatory, or unfair practices in the livestock, meatpacking, and poultry industries. Appropriate corrective action is initiated when evidence of these practices is discovered.

Rapid Response teams continue to address urgent industry issues and are deployed when a situation warrants immediate attention or action. The ability of these teams to respond within 36 to 48

hours of being notified of a crisis provides the public with more immediate notification of problems with a stockyard or market agency. Last fiscal year, 15 teams were deployed to investigate cases in 9 states. Teams helped recover more than \$3 million for growers and producers. The Agency also provides a hotline (1-800-998-3447) on which constituents may anonymously voice their concerns. P&SP responds to and investigates all issues addressed by the callers. Last year, the Agency responded to 140 calls, compared to 126 in 1999.

P&SP is also strengthening investigations and assessments of the competitive implications of structural changes in the livestock, meatpacking, and poultry industries. To further this initiative, P&SP entered into five cooperative research agreements in FY 1999. Two examine competitive conditions in beef markets, two address competitive issues and compensation methods used in broiler production in the poultry industry, and the final project examines bidding behavior in a laboratory setting to gain insights into expected behavior in actual cattle markets. These projects will be completed in FY 2001 and FY 2002.

We have several hearings currently scheduled -- at least two in June -- and two major cases, against two of the largest packers in the Nation. The first involves a firm alleged to have violated the Act by failing to notify sellers that it had changed its equation for estimating the lean percent of animals purchased on a carcass merit basis. We allege that as a result of this change the company underpaid more than 1,250 farmers by about \$1.8 million. The second case alleges that a company retaliated against a feedlot for publishing a letter critical of the company by failing to bid or purchase from the feedlot. P&SP has incurred major litigation expenses and resources preparing for each of these cases. We have spent almost \$.5 million in litigation expenses in the first case I described.

In addition to normal regulatory duties, P&SP has been tasked with four Congressional Mandates, which will impact the Agency next year, and in subsequent years. They are the Swine Contract Library, Captive Supply Study, an Annual Assessment of the Cattle and Hog Industries, and the Agency's implementation of the General Accounting Office's recommendations in last year's report.

The first mandate, the Swine Contract Library, set out in the Agricultural Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2000 (Public Law 106-78) was signed into law on October 22, 1999. It amended the P&S Act to require P&SP to establish and maintain a library of contract provisions offered by packers to swine producers for the purchase of swine and to make that information available to the public. The swine contract library must include contracts from swine packing plants with a slaughter capacity of 100,000 swine or more per year; this includes approximately 50 plants owned by 29 packers which account for over 95 percent of the market. In addition to providing all hog purchase contracts to P&SP, these 29 packers are required to provide monthly reports to P&SP specifying the number of swine committed and the maximum number of swine to be delivered over the next six to twelve months by contract type.

GIPSA published a Notice of Proposed Rulemaking on September 5, 2000 to implement the Swine Contract Library and is drafting the final rule. In addition to the rulemaking process, P&SP has devoted resources to implement the actual contract library, involving computer hardware and software development, and data collection forms. The library will use a Web-based system to

facilitate real-time data input from swine packers and data access by the public.

The second mandate arising out of last year's appropriations bill, is in a Conference Report (House Report No. 106-948) that directs GIPSA to complete a comprehensive study on Captive Supplies by September 30, 2001. The report will examine and report on whether or not cattle that are procured pursuant to a captive supply arrangement by a packer's non-reporting subsidiary, affiliate and owners, officers and employees are being included in the cattle reported as captive supply. Additionally, the report will explain differences in the volume of captive supplies reported in the P&SP Annual Statistical Report and those reported by other entities. Because of the scope of the report and the requirements of the Paperwork Reduction Act, we will not be able to complete this report by September 30th of this year, however, we will provide Congress with an interim report consisting of qualitative analyses that are descriptive of the issues.

The third mandate requires the Agency to submit an annual report to Congress that assesses the cattle and hog industries. The Packers and Stockyards Act was amended in the Grain Standards and Warehouse Improvement Act of 2000 (Public Law 106-472) to require the Agency to submit an Annual Report Assessing the Cattle and Hog Industries. The report will include an assessment of the general economic state of the cattle and hog industries, changing business practices in these industries and practices that appear to raise concerns under the P&S Act. We estimate that 2,000 staff hours and \$72,000 were spent in compiling this report for 2000.

The final mandate began with the General Accounting Office's (GAO) Report to Congress, issued in September 2000, "Actions Needed to Improve Investigations of Competitive Practices." The Grain Standards and Warehouse Improvement Act of 2000 (Public Law 106-472) required implementation of the recommendations in the GAO Report as well as a report describing the actions taken to improve investigations of competitive practices by November 9, 2001.

The GAO report addresses actions to improve P&SP's ability to investigate complex issues. The report recommends that the Secretary of Agriculture develop a teamwork approach with P&SP economists and the Office of General Counsel (OGC) attorneys for complex investigations. We began implementing this recommendation a month after the September report with combined competition training for legal specialists, economists, and OGC attorneys. P&SP now has two legal specialists in each regional office, who have recently completed training provided by OGC. We have formalized procedures within P&SP by instituting investigation reviews by senior management when cases involve competition issues, are complex, are large, involve more than one unit (financial, competition, trade practices), involve more than one region, or require unusual resources. A regional legal specialist reviews each investigation plan before it is submitted for consideration to senior P&SP management. Once senior management has reviewed and approved each investigative plan, the investigation proceeds. Each case is monitored throughout the investigation. OGC reviews complex investigation plans prior to commencement of the investigation and thus has been integrated into the investigative process of complex cases.

The GAO report recommended that GIPSA improve its competitive investigations by adopting methods and guidance similar to those used by the Department of Justice (DOJ) and the Federal Trade Commission (FTC). GIPSA, working through the

Department's Office of the General Counsel, is reviewing DOJ and FTC investigative procedures.

The GAO report recommended that the Secretary modify the grade structure for economists. The process of upgrading economists' and legal specialists' positions is underway and should be completed shortly.

The GAO report also recommends that GIPSA provide industry participants and Congress with clarifications of the Agency's views on competitive activities by reporting changing business practices in the cattle and hog industries and by identifying market operations or activities that raise concerns. We have strengthened our commitment to communicate our policies more clearly and effectively to our stakeholders. We will publish an annual report assessing the cattle and hog industries. We are in the process of hiring an outreach coordinator to improve our communication with Congress and the public we serve.

In addition to the Congressional mandates, P&SP will be participating in a GAO investigation initiated by Senator Daschle to examine USDA's econometric models. He has asked the GAO to "assess the extent to which these models may be understating the effects of imports, market concentration, and the use of marketing agreements and forward contracts on domestic cattle prices." Senator Daschle has also requested that GAO provide recommendations on how USDA models could be "improved or revised, to provide the most comprehensive analysis possible of the impact of certain factors on prices at the producer level, including: import volumes and competition; increasing use of marketing agreements and forward contracts; and increasing consolidation in the processing, wholesaling and retail distribution sectors." We fully expect GAO to review the 1996 packer concentration study, the follow-up cooperative agreements with universities that examined concentration and captive supplies, and other activities relating to concentration and captive supplies. GAO expects to complete its investigation within one year.

While working to be wholly responsive to Congressional mandates and to provide timely information to GAO, P&SP has initiated the development of regulations to help us better serve our various constituencies. The regulations will support our enforcement of the Act. We are currently working on several rulemaking initiatives.

P&SP will actively seek to serve the industry by: providing payment protection to livestock and poultry producers; increasing the number of investigations of potential competitive violations of the Act; pursuing voluntary corrections of violations of the Act that will result in livestock and poultry producers receiving additional funds; continuing to reach out to both educate and inform constituencies served by the Agency of the benefits and protections offered to livestock and poultry producers; monitoring and responding rapidly to complaints of anticompetitive, unjustly discriminatory or unfair practices in the livestock, meat and poultry industries; pursuing cooperative agreements that contribute valuable information to P&SP's understanding of the industries; facing-off with industry giants and expending resources to correct violations of the Act; responding thoroughly and responsibly to all governmental and Congressional mandates; and pursuing rulemaking that enhances P&SP's ability to investigate and litigate violations of the Act. However, our ability to control or limit concentration lies solely within parameters defined by the Act and limits set therein.

P&SP teams of legal, financial, and economic specialists are currently addressing 14 cases, are working with OGC on 8 cases scheduled for hearing, and are assisting in over 40 cases which are being developed for enforcement by the OGC. In addition to managing complex cases, we will be continuing to develop and retain well-qualified and talented staff to enhance our ability to address industry issues.

Mr. Chairmen and members of the subcommittee, thank you for the privilege of addressing you and representing the P&SP. If you have further questions, I would be happy to entertain them. If I cannot address them at this hearing, I will have your questions researched further and respond directly to you at a later date.