United States Department of Agriculture

Agricultural Marketing Service




Packers and Stockyards Division

Annual Report 2018

Protecting fair trade practices, financial integrity, and competitive markets for livestock, meat, and poultry

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PACKERS AND STOCKYARDS DIVISION OVERVIEW

The Packers and Stockyards Division (PSD) is one of four divisions within the U.S. Department of Agriculture, Agricultural Marketing Service (AMS), Fair Trade Practices Program (FTPP). On November 14, 2017, the Packers and Stockyards Program was reorganized as PSD within the AMS FTPP.

PSD operates under the authority of the Packers and Stockyards Act of 1921 (Act) (7 U.S.C. § 181 et seq.), which makes it unlawful for packers, live poultry dealers, market agencies selling or buying on commission, dealers, and swine contractors to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device. In fiscal year (FY) 2018, PSD's budget was $23.3 million and it had 139 staff years. PSD's three regional offices and the headquarters office are:

- Eastern Regional Office in Atlanta, Georgia
- Midwestern Regional Office in Des Moines, Iowa
- Western Regional Office in Aurora, Colorado
- Litigation and Economic Analysis Division (LEAD) in Washington, D.C.

Each regional director manages a geographic area. Directors supervise a staff of auditors, marketing specialists, resident agents, economists, attorneys, and administrative support staff who work from the regional office or various field locations throughout the region.

Staff members in the regional offices and field locations conduct investigations and regulatory activities. These include business audits, weighing verifications, and day-to-day industry monitoring. Their work often takes them to the business locations of the regulated entities. A Central Reporting Unit (CRU) located in the Western region processes annual reports filed by entities subject to the Act.

LEAD provides litigation support by reviewing investigations and preparing sanction and stipulation recommendations. It also assists the USDA Office of the General Counsel (OGC) and the U.S. Department of Justice (DOJ) in preparing for hearings, and negotiating settlements, and testifying at hearings. LEAD also processes and summarizes industry data, develops PSD policy, and prepares information materials, press releases, and notices and regulations under the Act.

REGIONAL EXPERTISE

In addition to its geographic area, each PSD regional office maintains expertise in one or more species of livestock or poultry. The Eastern Regional Office focuses on poultry, the Midwestern Regional Office on hogs, and the Western Regional Office on cattle and sheep.

In FY 2018, PSD had 139 staff years which included 76 office staff and supervisors in headquarters and in the regional offices. PSD also had 43 resident agents, 5 resident auditors, and 1 market inspector who report to the regional offices and are located throughout the country to provide core services nationwide. Each regional office has agent supervisors who manage teams of agents, marketing specialists, and auditors.

The geographically dispersed resident employees enable PSD to maintain close contact with the entities PSD regulates as well as livestock producers and poultry growers (see Appendix B, figure 8).

PACKERS AND STOCKYARDS DIVISION OVERVIEW

OVERVIEW OF PSD AUTHORITIES AND RESPONSIBILITIES

Under the Act, the Secretary of Agriculture (Secretary) regulates specified activities of businesses engaged in the marketing of livestock, meat, and poultry. PSD's regulatory oversight includes the following business entities:

- Livestock market agencies (both livestock auctions selling on commission and commission buyers)
- Livestock dealers
- Stockyards
- Packers
- Swine contractors
- Live poultry dealers (those who obtain poultry for slaughter either by purchase or under poultry growing arrangements)

PSD does not have jurisdiction over livestock producers, feedlots, poultry growers, or most retailers. The Act describes unlawful behavior, and its regulations mandate certain business practices by regulated entities. These include mandatory registration of market agencies and dealers.

Market agencies, dealers, and packers (whose annual livestock purchases exceed $500,000) must secure bonds or bond equivalents to ensure payment to livestock sellers. Market agencies selling livestock on commission are required to establish and maintain a separate bank account designated as a “custodial account for shippers proceeds” and deposit into that account the proceeds from the sale of livestock. Regulated buyers (dealers and packers) must pay promptly for livestock.

PSD uses its authority to investigate alleged violations of the Act and regulations. USDA’s OGC represents the Secretary in enforcement actions under the Act and regulations. OGC takes administrative action when PSD identifies violations of the Act. OGC may also refer matters to DOJ for prosecution, when warranted.

TRUST PROVISIONS

To protect unpaid cash sellers of livestock, the Act makes packers subject to trust provisions.

An unpaid cash seller of livestock triggers these provisions by filing a written claim with both the packer and PSD.

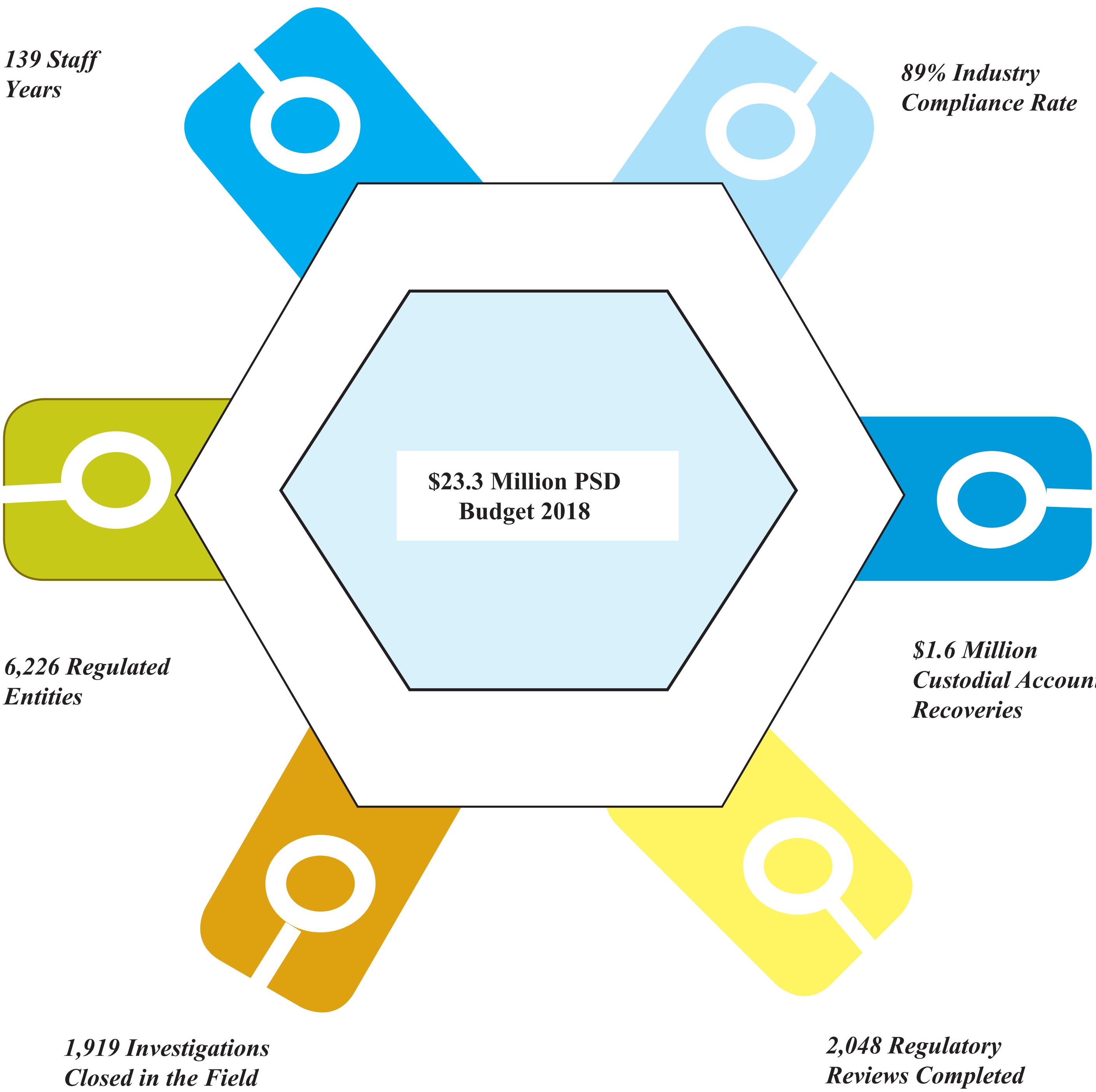
After receiving a claim, the packer must hold in trust livestock inventories and receivables, and proceeds from meat, meat food products, or livestock products until it makes full payment to all unpaid cash sellers.

PSD can penalize a packer for failing to pay for livestock in violation of the Act and for dissipation of trust assets.

A similar provision applies to live poultry dealers.

PACKERS AND STOCKYARDS DIVISION SNAPSHOT

PSD benefits America's agriculture and consumers by enforcing provisions for fair trade, prompt payment, and competition in the marketing of livestock, meat, and poultry. Below is a snapshot of the division in 2018 and its accomplishments in promoting industry compliance with the Act.



Section 415 of the Act (7 U.S.C. § 228d) requires PSD to provide Congress an annual assessment of the cattle and hog industries. The first part of this section assesses the general economic state of the industries that are regulated by PSD. This includes trends in the number of entities, financial conditions, and market share of the four largest packers by type of livestock (market concentration). The second part examines changing business practices of entities in the regulated industries. This includes pricing and procurement methods and the volume marketed through market agencies and direct purchases. Finally, this section outlines specific concerns about the events and conditions in the industries regulated under the Act.

PSD relies on data from reports that regulated entities are required to file with PSD each year. The annual reports for the 2018 calendar-reporting year are not due until April 15, 2019. As a result, most data series in this section end with the 2017 reporting year. There are exceptions. These include statistics on entities currently bonded and/or registered as recorded in PSD databases, USDA Agricultural Census statistics on swine contractors and statistics on types of procurement methods compiled from data reported to AMS under the provisions of the Livestock Mandatory Reporting Act (LMR) (7 U.S.C. § 1635 et seq.).

The following entities are subject to the Act:

- **All packers operating in interstate commerce** are subject to the unfair and deceptive practices provisions and prompt payment provisions of the Act. Packers that purchase $500,000 or more of livestock for slaughter annually are required to be bonded and file annual reports. Bonded packers include entities operating federally inspected plants as well as some entities operating State-inspected plants. Some packers that purchase less than $500,000 of livestock voluntarily obtain bonds and file annual reports.
- **Live poultry dealers** include persons or entities who purchase poultry for slaughter and poultry integrators who contract with producers for grower services to raise the integrators' chicks or poults to slaughter weight.
- **Livestock dealers** purchase livestock for resale on their own accounts, or they may purchase or sell as the agent or representative of another entity.
- **Market agencies** are engaged in the business of buying or selling livestock in commerce on a commission basis.
- **Posted stockyards** are physical facilities and are not necessarily separate businesses. Livestock auctions, which are market agencies, are usually located at posted stockyards.
- **Swine contractors** contract with hog producers to care for and raise the contractors’ hogs for slaughter.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

The number of entities subject to the Act listed in Table 1 is the number of regulated entities as of the end of the fiscal year.[1] At the end of fiscal year 2018, there were 312 bonded packers, 95 live poultry dealers, 4,582 registered livestock dealers and market agencies buying on commission, and 1,236 market agencies selling on commission. The number of bonded packers has been close to 300 since 2012. The number of market agencies selling on commission increased in the past 2 years while the number of livestock dealers and market agencies buying on commission has declined, but the totals have been relatively stable for the past decade. The total number of livestock dealers and market agencies buying on commission includes packer buyers, which are not required to be bonded.

The number of live poultry dealers has varied throughout the past decade. In 2010 and 2011, several live poultry dealers faced bankruptcy as a result of challenging economic conditions and high feed prices. Starting in 2012, with the economic recovery as well as a more favorable production environment, there was some expansion in the industry. The recent reduction in the number of live poultry dealers is mostly due to consolidation.

[1] Data sources for all tables and figures are listed in Appendix A.

Table 1. Number of Bonded Packers, Livestock Dealers, Market Agencies, and Live Poultry Dealers Reporting to PSD, 2009–2018

Year	Bonded Packers	Livestock Dealers and Market Agencies Buying On Commission	Market Agencies Selling on Commission	Live Poultry Dealers
2009	284	4,529	1,225	NA
2010	233	4,468	1,205	110
2011	258	4,572	1,220	98
2012	295	4,619	1,234	112
2013	297	4,639	1,216	110
2014	295	4,650	1,202	107
2015	303	4,607	1,224	106
2016	294	4,660	1,221	102
2017	304	4,634	1,223	100
2018	312	4,582	1,236	95

PSD = Packers and Stockyards Division NA = Not Available

There were 575 swine contractors (Table 2) as of 2017. From 2012 to 2017, the total number of hog farms increased from 55,882 to 64,781, compared to a decline of about 25 percent between 2007 and 2012. The number of contractors and contract growers also increased from 2012 to 2017. When slaughter hogs are grown under contract, swine contractors typically own the hogs and sell the finished hogs to pork packers.

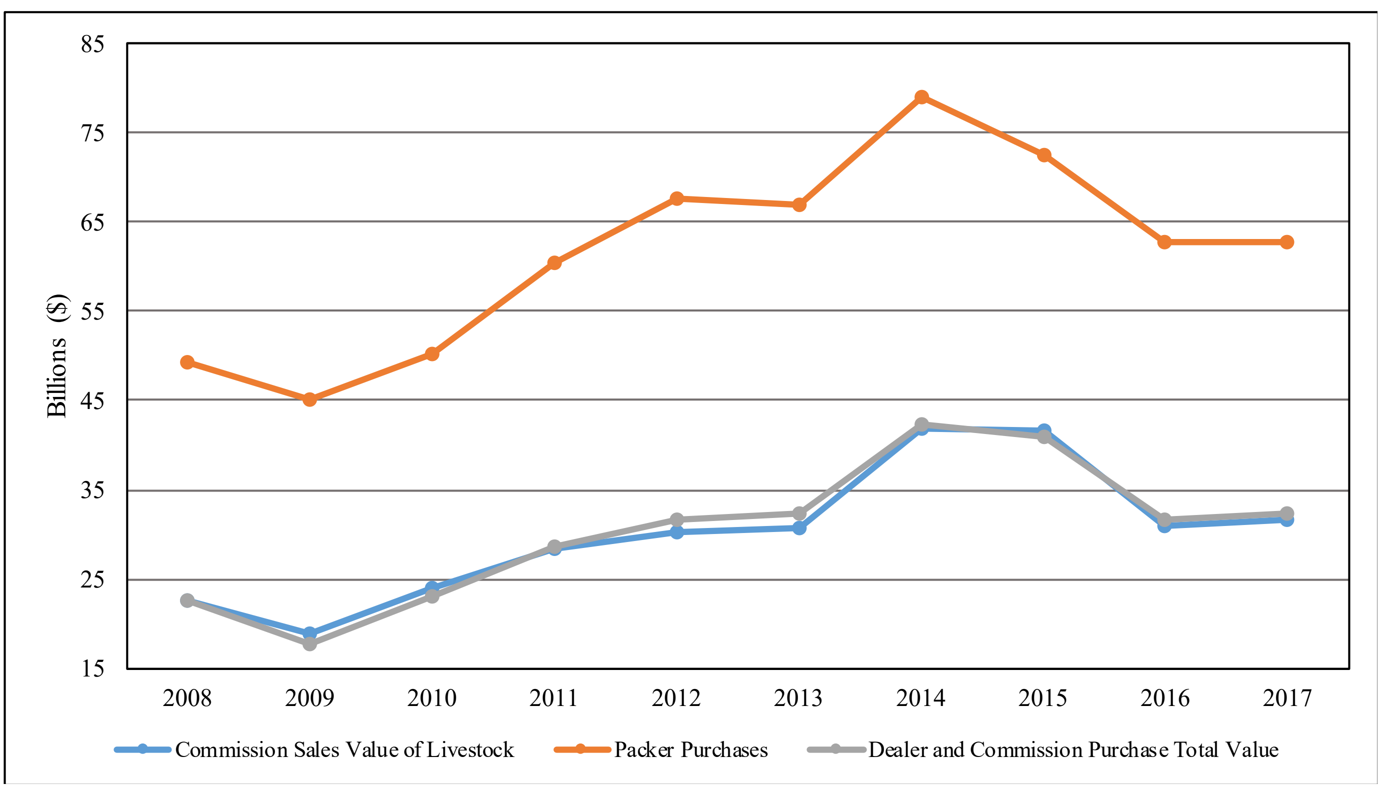
Swine contractors typically provide feed and medication to contract growers who own the growing facilities and provide growing services. PSD regulates the business practices of swine contractors, but swine contractors are not required to register with PSD or maintain bonds.

Table 2. Number of Farms by Swine Grower / Producer Type

Grower / Producer Type	2007	2012	2017
Independent Grower	65,067	47,336	55,739
Contractor or Integrator	737	515	575
Contract (contract grower)	8,995	8,031	8,557
Total	74,789	55,882	64,871

The value of livestock purchases for packers reporting to PSD was $62.8 billion in 2017, the same as 2016. This is down from $72.5 billion in 2015 and $79.0 billion in 2014 (Figure 1). The dollar volume for entities selling on commission and for entities operating as dealers or commission buyers follows a similar trend. Fed cattle prices increased to more than $170 per hundredweight in late 2014, but declined to less than $100 per hundredweight in late 2016. Hog prices also reached a record high in late 2014, but the decline in hog prices was even more steep than for cattle. Cattle prices were stable in 2017 while hog prices showed more improvement.

Figure 1. Value of Livestock Purchased by Packers, Dealers, and Market Agencies Buying on Commission, and Value of Livestock Sold Through Market Agencies Selling on Commission, 2008–2017



ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

PSD requires packers with livestock purchases that equal or exceed $500,000 per year to report the number of head slaughtered annually. The number of cattle slaughtered by packers reporting to PSD increased to over 31 million head in 2017 from 29 million in 2016 (Table 3). Total cattle includes fed steers and fed heifers, cows, and bulls, but excludes calves.

The number of hogs slaughtered by packers reporting to PSD has fluctuated over the past decade between less than 110 million head to over 120 million head. It reached the highest level in 2014, at 122.3 million head and was almost 121 million in 2017 (Table 3).

Sheep and lamb slaughter has been close to 2 million head in most years since 2008, except for 2013 when it was at its highest level of 2.7 million head, 17 percent above the prior year. In 2017, the number of sheep and lambs slaughtered by packers reporting to PSD was 2 million head, unchanged from the prior year.

Poultry processors reporting to PSD processed an estimated 54.1 billion pounds of chicken and 7.6 billion pounds of turkey in 2017. This is the highest level reported for both chicken and turkey in the past decade.

Table 3. Annual Volume of Livestock Purchased for Slaughter by Packers and Poultry Processed by Live Poultry Dealers Reporting to PSD, 2008–2017

	(Million Head)			(Billion lbs.)	
Year	Cattle	Hogs	Sheep and Lambs	Broilers	Turkeys
2008	32.0	109.0	1.8	46.2	7.4
2009	32.1	113.2	2.0	46.4	6.9
2010	33.0	110.1	1.9	48.4	7.2
2011	33.8	108.9	1.8	49.0	7.1
2012	33.5	110.1	2.1	49.4	7.5
2013	31.8	113.3	2.7	52.1	7.4
2014	30.0	122.3	2.3	50.1	7.2
2015	28.1	113.7	2.1	52.2	6.8
2016	29.3	116.3	2.0	54.1	7.3
2017	31.3	120.7	2.0	54.1	7.6

PSD = Packers and Stockyards Division

The number of hog plants increased slightly in 2017 while the total count of cattle plants continued a decline that began in 2012. The number of plants slaughtering sheep and lambs increased significantly from 2008 to 2015, and declined to 69 in 2017. Many of these are small multispecies plants that slaughter only a few sheep and lambs (Table 4). Poultry plant counts which include facilities that process broilers, turkeys, duck, and other fowl are only available for the most recent years, and fluctuate between 220 and 240.

Table 4. Number of Slaughter Plants Operated by Packers and Live Poultry Dealers Reporting to PSD, 2008–2017

Year	Cattle and Calves	Hogs	Sheep and Lambs	Poultry
2008	135	126	52	NA
2009	133	134	54	NA
2010	135	129	59	NA
2011	147	136	70	NA
2012	168	157	81	NA
2013	166	143	79	NA
2014	163	125	72	230
2015	161	138	81	240
2016	150	141	73	220
2017	142	147	69	224

PSD = Packers and Stockyards Division NA = Not Available

In Table 5, industry concentration data on Total Value Purchases are the total dollar value of livestock purchases reported to PSD on packer annual reports filed with PSD. Data on total head of steers and heifers, cows and bulls, hogs, and sheep and lambs are from federally inspected slaughter plants. Data on broiler and turkey slaughter are total slaughter reported to PSD on live poultry dealer annual reports filed with PSD.

The four largest packers' share of industry expenditures on livestock for slaughter has ranged from 66 to 71 percent for the past decade (Table 5). The four largest packers that slaughter steers and heifers accounted for 83 percent of total steer and heifer slaughter in 2017, a slight decrease from the previous year. Concentration in steer and heifer purchases increased from 79 percent in 2008 to 86 percent in 2009 and has remained over 80 percent since.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

Cow and bull slaughter has been consistently less concentrated than fed cattle slaughter. The four-firm concentration ratio increased to its highest level of 60 percent in 2013, and has been between 55 and 58 percent for the past 4 years. The four-firm concentration ratio for hog slaughter has remained in the low to mid-60's range for the last 10 years.

Due to the small total slaughter volume for sheep and lambs, moderate volume adjustments by any of the largest four packers can result in relatively large changes in market shares. The four-firm concentration ratio in the sheep and lamb market was between 62 and 70 percent from 2008 through 2012. Since 2013 it has been between 55 and 59 percent. The market shares and other concentration measurements likely overstate concentration in the lamb market because non-traditional markets account for as much as one-third of the lambs slaughtered in the United States and are not included in the totals.

Concentration in broiler slaughter has been between 50 and 51 percent for the past 4 years, a sharp decline from 57 percent in 2008. The share of production accounted for by the four largest turkey slaughter firms declined to 53 percent in 2017 from 57 percent in 2016.

Table 5. Annual Four-Firm Concentration Ratios Among Meat Packing and Poultry Processing - Federally Inspected Plants, 2008–2017

Year	Total Value Purchases (Total $ Value) %	Steers & Heifers (Total Head) %	Cows & Bulls (Total Head) %	Hogs (Total Head) %	Sheep & Lambs (Total Head) %	Broilers (Total Lbs.) %	Turkeys (Total Lbs.) %
2008	68	79	55	65	70	57	51
2009	71	86	55	66	68	53	58
2010	67	85	53	65	65	51	56
2011	67	85	52	64	67	52	55
2012	68	85	57	64	62	51	53
2013	67	85	60	64	59	54	53
2014	67	83	57	62	55	51	58
2015	68	85	58	66	56	51	57
2016	67	84	58	66	59	50	57
2017	67	83	55	66	56	51	53

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Procurement and Pricing Methods

The pricing method that sellers and purchasers agree to use for a transaction is a fundamental characteristic of any market transaction. For livestock, pricing methods are most often divided into two categories: live-weight and carcass pricing methods.

In live-weight purchasing of livestock, the final payment is based on the weight of the live animal. Transactions that use some variation of live-weight purchasing are usually on an “as-is” basis with a single price per pound for all animals in the entire transaction. The price may be fixed by negotiation in advance or established by formula from prices reported by AMS or a market price reporting service when the animals are delivered or slaughtered. In some instances, provisions may be made for paying different prices for animals that differ significantly from other animals in the transaction (e.g., animals that are much smaller than the average for the transaction may receive a different price).

In a carcass-based purchase, the final payment is based on each animal’s hot carcass weight, which is the weight of the carcass after the animal has been slaughtered and eviscerated. Carcass-weight transactions can involve a single price per pound for all of the carcasses in a lot. They can also involve schedules of premiums or discounts based on the quality of the carcasses. These may be referred to as "carcass-merit" transactions. The price of carcasses can also be determined by other features, such as time of delivery and number of animals in the transaction. The price before premiums or discounts is referred to as the base price. One benefit of carcass-based pricing is the ability to convey market signals to livestock producers through premiums and discounts. The proportion of cattle purchased on a carcass basis has varied over the last 10 years with no obvious trend, ranging from around 59 percent to 66 percent of total purchases. The proportion of calves purchased on a carcass-weight basis is considerably less than the percentage of cattle, but has also exhibited a mixed pattern (Table 6).

Table 6. Percentage of Livestock Purchases on a Carcass-Weight Basis Packers Reporting to PSD, 2008–2017

Year	Cattle %	Calves %	Hogs %	Sheep and Lambs %
2008	62.3	46.1	87.8	55.2
2009	61.8	27.5	76.5	30.6
2010	59.1	36.2	77.5	31.6
2011	59.2	44.0	76.0	40.8
2012	60.6	28.9	76.4	36.2
2013	63.9	35.7	83.1	27.5
2014	62.9	38.7	76.9	26.5
2015	63.1	42.4	82.1	29.2
2016	66.1	41.3	82.3	30.4
2017	65.8	14.9	81.5	26.3

PSD = Packers and Stockyards Division

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Carcass-based purchases have become the predominant procurement method of buying and selling hogs for slaughter and has comprised between 76 and 88 percent of the total over the last decade. The proportion of sheep and lambs purchased on a carcass basis was about 55 percent in 2008 and since then has declined to between 26 and 40 percent (Table 6).

The number of cattle sold through livestock auctions increased from 33 million head in 2016 to more than 35 million head in 2017 (Table 7). Stockers (heifers and/or steers that are being raised on pasture or other forage for sale later) and feeders (weaned calves that have been raised to a certain weight and then sent to feedlots to be fattened) make up the majority of cattle sold. Breeding stock, such as replacement heifers, young cows, and bulls, also tend to sell through livestock auctions. Livestock auctions also sell a significant number of slaughter cows and bulls (beef or dairy cows and bulls that are no longer needed for breeding or milk production).

The volume of hogs marketed by market agencies selling hogs on commission from 2008 to 2017 has been between 7 and 9 million head in most years. The highest level of 9 million head occurred in 2009, and volume has been less than 8 million since 2012 (Table 7).

The volume of sheep and lambs sold through market agencies selling on commission has varied slightly over the past 10 years, but remained close to 3 million head in most years (Table 7).

Table 7. Volume of Livestock Marketed Through Market Agencies Selling on Commission Reporting to PSD, 2008–2017 (Thousand Head)

Year	Cattle	Hogs	Sheep and Lambs
2008	32,792	7,553	2,872
2009	33,214	9,047	2,883
2010	35,623	8,471	2,974
2011	34,956	8,919	3,046
2012	33,683	8,119	2,857
2013	33,690	7,319	3,162
2014	33,426	7,185	3,079
2015	31,650	7,453	3,015
2016	32,970	7,662	3,416
2017	35,065	7,744	3,293

PSD = Packers and Stockyards Division

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Packers use multiple direct exchange procurement methods to obtain livestock for slaughter. The methods commonly fall into two categories: (1) cash or "spot" sales for immediate delivery or delivery within 14 days, and (2) "committed procurement" arrangements that commit the livestock to a particular packer more than 14 days prior to delivery.

Committed procurement usually uses some form of formula pricing. In cash sales, the prices generally are negotiated, although the transaction may include grids to establish premiums and discounts.

Important components of committed procurement are "packer fed" livestock, "forward contracts", and "marketing agreements." PSD defines "packer fed" livestock as all livestock obtained for slaughter that a packer, a subsidiary of the packer, the packer's parent firm, or a subsidiary of the packer's parent firm owns, in whole or part, for more than 14 days before the packer slaughters the livestock.

PSD considers "forward contracts" to be agreements between packers and sellers for deliveries more than 14 days in the future of specific lots or quantities of livestock. The price of the livestock in a forward contract can be set at the time of the contract or determined upon delivery based upon an agreed-pricing arrangement.

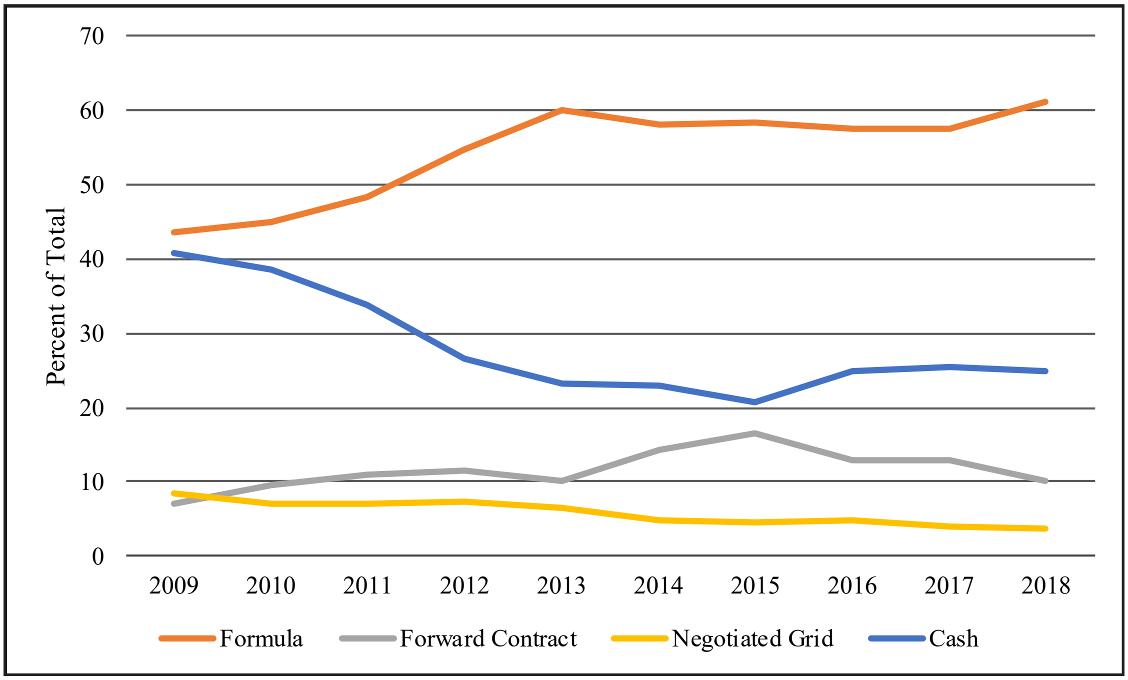
The term "marketing agreements" includes a variety of arrangements that establish an ongoing relationship for trading multiple lots of livestock rather than negotiating single lots. In these arrangements, the seller agrees to deliver livestock to the packer at a future date, with the price generally determined by some type of formula pricing mechanism. The price is often based on the reported cash market or meat price at the time of delivery, with premiums or discounts determined by evaluation of carcass characteristics.

AMS publishes prices and volumes of livestock purchased under alternative pricing methods as reported under the provisions of the Mandatory Price Reporting Act (https://mpr.datamart.ams.usda.gov/). Individual packers use a variety of procurement methods, ranging from packers that are fully integrated to packers that rely primarily on the open market.

In 2018, formula pricing represented 61 percent of total fed cattle procurement compared to 44 percent in 2009 (Figure 2). Forward contracting, which accounted for 10 percent in 2018, has been declining as a share of the total since 2015. Negotiated pricing, including negotiated grid and cash or spot market transactions, made up over 29 percent of total fed cattle procured (not including packer-owned cattle) in 2018, down from over 50 percent in 2009.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Figure 2. Fed Cattle Procurement by Purchase Type, 2009–2018

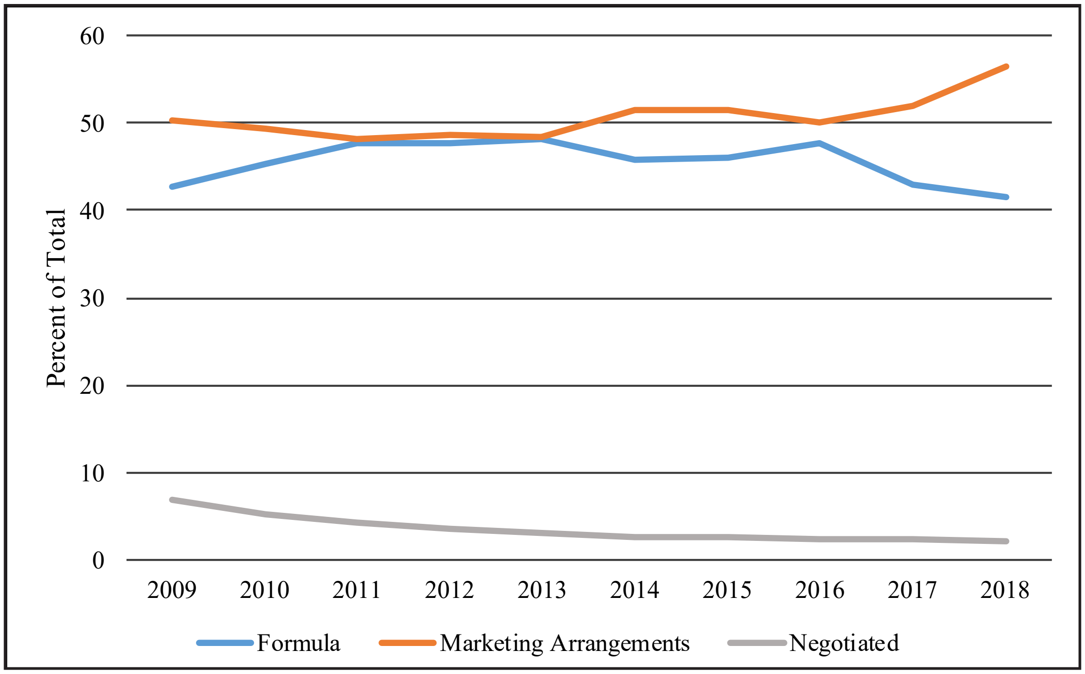


Most pork packers use some combination of packer-fed hogs, marketing agreements, forward contracts, and negotiated spot market procurement. These combinations typically vary by plant for multi-plant packers. For all pork packers reporting to AMS in 2018, about 42 percent of procurement was based on some type of formula pricing (Figure 3). Pork packers obtained about 2 percent of their hogs on the negotiated spot market in 2018, compared to about 7 percent in 2009. Procurement based on negotiated pricing has been under 3 percent since 2014. Marketing agreements accounted for about 56 percent of hog slaughter reported to AMS in 2018.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

With the decline in the volume of negotiated spot market hogs, both production and slaughter sectors increasingly question whether the negotiated live price fully reflects the value of fed hogs sold for slaughter. Consequently, the industry began migrating from formulas based on negotiated live or carcass prices to other publicly reported prices. A popular replacement price is the pork carcass cutout price reported by AMS.

Figure 3. Hog Procurement by Purchase Type, 2009–2018



In some respects the market for slaughter lambs is similar to markets for cattle and hogs, but in others it is considerably different. Lambs tend to be marketed in one of two channels. In the traditional market for slaughter lambs, the lambs are fed in feedlots and marketed to packers. It is this traditional market that supplies most of the lamb to supermarkets and traditional stores.

Lamb packers use similar methods to purchase lambs as beef and pork packers. The methods include spot markets, marketing agreements, forward contracts, and packer feeding. In the traditional lamb market in 2018, packers purchased approximately 19 percent of their lambs under a negotiated price. They purchased about 54 percent with marketing agreements based on formula pricing, and packers fed about 27 percent of the lambs for slaughter (Figure 4).

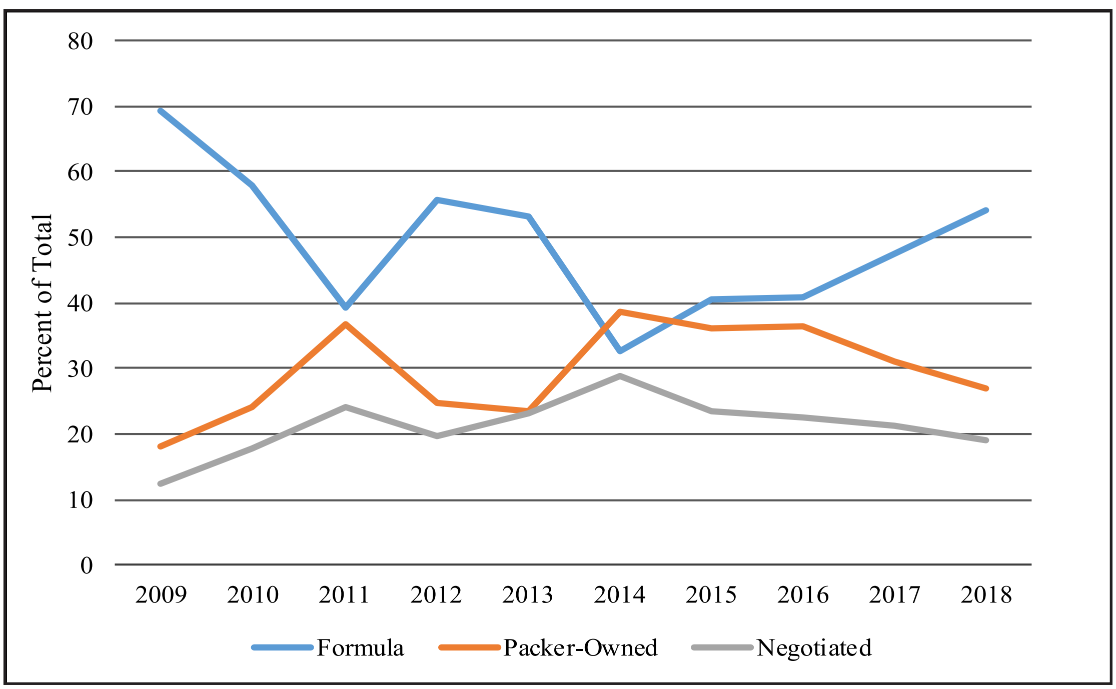
The non-traditional market is much different. It is characterized by small butchers and meat shops that process lambs and sell directly to consumers. Consumers can often choose the lamb before slaughter, and consumers may have the choice of purchasing the lamb and processing it themselves.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

One aspect of the non-traditional market is that lambs are not typically processed in federally inspected slaughter facilities. Also, the packers that process the lambs are far too small to meet any of the mandatory price reporting requirements. Consequently, there are very limited data available on the number of lambs in the non-traditional market. There are also limited data on the prices paid for the lambs or the amount of meat produced. Some estimates suggest that the non-traditional market for lambs may account for as much as one-third of the lambs produced in the United States.

There are also small butchers and meat shops that process cattle and hogs to sell directly to end consumers, and there are consumers that purchase cattle or hogs and have them butchered. However, these buyers purchase a very small portion of the cattle and hogs produced in the United States.

Figure 4. Lamb Procurement by Purchase Type, 2009–2018



CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

CHANGES IN OPERATION AND ORGANIZATION

PSD uses information about business practices at the packing plant level to identify industry trends. One significant measure may be the intensity of operations (e.g., one or two shifts per day). The number of plants in business at any given time might be another. The ownership of those plants may also be significant. Plant closures or re-openings can affect competition by shifting supply and demand patterns. The Federal Trade Commission (FTC) and the DOJ Antitrust Division review industry mergers and acquisitions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435).

PSD monitors packers' mergers and acquisitions to determine whether a change in business practices might reduce competition. Other changes in operations and industry conditions may also affect competition as entities attempt to adjust to changing conditions. PSD monitors these industry events for any competitive effects.

Cattle, Sheep, and Hogs

In March 2018, a receiver took control of **Bartels Packing, Inc**. of Eugene, Oregon, to liquidate its assets. **Bartels Packing** processed mainly dairy and beef cows and bulls. When it closed in March, Bartels Packing had not paid for livestock valued at several million dollars. Sellers received $1.15 million from the packer statutory trust and packer bond. Sellers that protected their rights to the packer trust received 100 percent of the amount owed. Sellers that signed agreements waiving their rights to the packer trust received a fraction of the amount they were owed.

In April 2018, **Marfrig Global Foods S.A**., a Brazilian company announced its indirect subsidiary, **NBM U.S. Holdings,** would purchase a 51-percent interest in **National Beef Packing Company, LLC**, the fourth largest U.S. beef packer. The purchase, which became final in June 2018, made Marfrig the world's second largest beef processor, behind **JBS S.A**., also of Brazil. The operations and management of National Beef remained the same. The previous majority owner, **Leucadia National Corporation**, now known as **Jefferies Financial Group** retained a 31-percent interest, and producer group **U.S. Premium Beef** kept its 15 percent interest in National Beef.

Three new hog plants have been under construction since 2015, and in September 2017, two of these plants operated their first shifts. The first plant is a joint venture between **Seaboard Foods** and **Triumph Foods** in Sioux City, Iowa. **Clemens Food Group**, which owns **Hatfield Qualilty Meats**, opened a second plant in Coldwater, Michigan. In October 2018, **Seaboard Triumph Foods** began operating the second shift in its slaughter facility in Sioux City, Iowa. This increased the daily slaughter capacity at that plant to 21,000 hogs. The third slaughter plant being built in Eagle Grove, Iowa, is owned by **Prestage Farms** of North Carolina and is scheduled to begin operating in March 2019.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Hormel Foods sold its Fremont, Nebraska, plant to **WholeStone Farms, LLC,** in December 2018. WholeStone Farms is a consortium of 220 hog farms that is associated with **Pipestone System,** the Nation's fourth largest hog producer. Although plant ownership changed, the plant continues to supply pork to Hormel.

Poultry

In May 2018, **Tyson Foods Inc.** permanently closed a poultry processing plant in Dawson, Georgia, that was damaged by fire in April.

In June 2018, **Tyson Foods Inc.** acquired **Tecumseh Poultry**, which produces organic chicken and has a plant in Tecumseh, Nebraska.

In July 2018, **House of Raeford** reopened a processing plant in Teachey, North Carolina that had been badly damaged by fire more than a year earlier.

In July 2018, **West Liberty Foods** announced the closure of its **Crystal Lake Farms** poultry processing plant in Jay, Oklahoma. The plant processed pasture-raised broilers that had a certification from Global Animal Partnership (GAP). The company indicated the closure was due to economic conditions.

In November 2018, **Zacky Farms** filed for Chapter 11 bankruptcy, and its processing plants in Fresno and Stockton, California shut down in January 2019. The family-owned business produced free-range chicken and turkey without the use of antibiotics.

George's Inc. completed its acquisition of **Ozark Mountain Poultry** (OMP) at the end of October 2018. Both George's and OMP are fully integrated poultry companies and have plants in Arkansas, while George's has plants in Missouri and Virginia.

In November 2018, **Tyson Foods Inc.** completed its acquisition of **Keystone Foods** which is part of **Marfrig Global Foods SA** based in Brazil. Keystone's Equity Group has poultry processing plants in Alabama, Georgia, and Kentucky.

<u>CHANGING BUSINESS PRACTICES</u>

In 2018, the largest U.S. beef packers finished divesting their feedlot interests. **Cargill** sold the last of its feedlots in 2017. In January 2018, **JBS USA Food Company** announced the sale of its cattle feeding subsidiary, **JBS Five Rivers Cattle Feeding, LLC**, to **Pinnacle Asset Management**. **Five Rivers Cattle Feeding** was the largest cattle feeding operation in the world, consisting of 11 feed yards in Arizona, Colorado, Idaho, Kansas, Oklahoma, and Texas, with total feeding capacity of more than 900,000 head of cattle. Five Rivers continued to be led by its previous management team. **JBS Australia** also announced in July 2018, it would sell its five Australian feedlots to a real estate investment trust.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

The sale of **Five Rivers,** completed in March 2018, marked the exit of the top four beef packers from ownership of feedlots. Packers will still be able to purchase cattle and have them fed in custom feedlots, but selling their feedlots is likely an indication of a desire to own fewer cattle and a preference for contracting rather than ownership for upstream coordination.

Some regional packers still own feedlots. **Agri Beef Co**. based in Boise, Idaho, has subsidiaries that own a beef processor in Toppenish, Washington, and three feedlots in Idaho and Washington. **Harris Ranch Beef Company** of Hanford, California, has an affiliate, **Harris Feeding Company**, that owns a feedlot in Coalinga, California. **CS Beef Packers, LLC**, which began processing cattle at its new plant in Kuna, Idaho, in 2017, has indirect common ownership with **J.R. Simplot Company** which owns feedlots in Grand View, Idaho and Pasco, Washington. CS Beef Packers is a joint venture of **Caviness Beef Packers** and **J.R. Simplot Company**.

The trend of consolidation in the feedlot industry continued in 2018. **Cattle Empire** sold two of its feedlots in Haskell County, Kansas to **Friona Industries**, based in Amarillo, Texas. Friona Industries is the second largest cattle feedlot operation in the United States behind only **Five Rivers Cattle Feeding**.

In August 2018, **Green Plains, Inc.**, which bought the former **Cargill** feedlots in Yuma, Colorado, and Leoti, Kansas, in 2017, bought **Bartlett Cattle Co**.'s cattle feeding operations in Kansas and Texas. The two Bartlett feedlots had a combined capacity of 97,000 head. Green Plains is now the fourth largest U.S. cattle feeding company and one of the world's largest ethanol producers. The company entered the cattle feeding business in 2014 and has benefited from the importance of distiller's grains in feeding cattle.

The increase in U.S. hog production since 2014 has altered the organization of hog producers. The largest 40 hog producers added 192,980 sows to their breeding inventories in the past year. These firms now control 4.2 million sows or two-thirds of the total. The companies that added the most sows include **Smithfield Foods** (40,000), **The Hanor Company** (20,000), **AMVC Management Services** (18,000), **Tyson Foods** (16,000), **Seaboard Foods** (15,000), **Pipestone System** (11,000), and **Reicks View Family** (10,000). In contrast, **Hormel Foods** has lowered its stock from 63,000 sows in 2007 to 23,500 sows in 2018 at the same time it reduced the number of hog slaughter facilities from three to one. **The Maschhoffs**, which is the fifth largest producer with 204,000 sows, also decreased its stock by 14,000 from a year ago.

INDUSTRY CONDITIONS AND EVENTS

Livestock Dealer Statutory Trust

The 2018 Farm Bill requires the USDA to conduct a study of the feasibility of establishing a livestock dealer statutory trust. The study will be conducted by PSD to assist Congress in determining if there is a need to establish a livestock dealer statutory trust for the financial protection of livestock sellers. PSD will complete the study in FY 2020.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Rulemaking

On December 20, 2016, the USDA issued an Interim Final Rule (IFR) stating that when enforcing sections 202(a) or (b) of the Act, the USDA did not need to find that a challenged conduct or action adversely affects competition. Concurrently, the USDA published proposed rules 9 CFR 201.210 and 201.211 that established conduct and criteria to determine unfair and unjustly discriminatory practices, and undue, and unreasonable preferences.

On October 18, 2017, USDA withdrew the IFR and issued a notice of no further action on 9 CFR 201.210 and 201.211. USDA cited its concern that unintended consequences of the rules could be detrimental to agricultural markets.

However, the 2008 Farm Bill continues to require the Secretary of Agriculture to establish criteria to consider when determining whether an undue or unreasonable preference or advantage has occurred in violation of section 202(b) of the Act. The USDA intends to meet this requirement by proposing a revised version of 9 CFR 201.211 during FY 2019.

Price-Fixing Litigation

On June 28, 2018, a Class Action Complaint and Demand for Jury Trial was filed in the United States District Court, District of Minnesota, on behalf of 11 consumers against Agri Stats, Inc. and 8 major pork packers. The Complaint alleged that Agri Stats, et al. "entered into a conspiracy from at least 2009 to the present to fix, raise, maintain, and stabilize the price of pork." Similar lawsuits have been filed against Agri Stats and poultry processors.

Cattle, Sheep, and Hogs

Large beef packers generally reported strong revenues in 2018. **Tyson, JBS, Cargill**, and **National** all reported record earnings citing strong beef demand, export demand, and availability of cattle as factors in making the year profitable.

JBS, SA's earnings before interest, taxes, depreciation and amortization (EBITDA) were the largest it ever reported for a single quarter in its second quarter ended June 2018, only to be surpassed yet again in its third quarter. Strength in JBS USA Beef and its Brazilian unit contributed to its strong earnings.

Cargill cited rising export and domestic demand for North American beef for what it called one of its best performances during the fiscal year ended May 2018. Its third quarter earnings would have eclipsed its earnings from the same quarter in 2017 but for a one-time charge stemming from tax reform legislation in the United States and lower grain prices. For its entire fiscal year ended December 2017, **National Beef Packing** reported its largest annual EBITDA ever, surpassing its previous record earnings from the previous year by 17 percent. **Tyson Foods** reported record profits for its beef segment for its fiscal year ended September 2018, also surpassing its previous record from 2017.

Favorable economic conditions in the United States and the global economy, low feed costs, and increased U.S. slaughter capacity supported an increase in U.S. pork production in late 2017 and 2018. In the first half of 2018, the outlook for U.S. pork producers was positive, but as the year progressed, international trade disputes became a concern. China imposed a 25-percent tariff on U.S. pork that was effective on April 2, 2018, and it was followed by a further 25-percent tariff in July. Mexico levied a tariff of 10 percent on U.S. pork imports effective on June 5, which was increased to 20 percent on July 5, 2018.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Export data in late 2018 did not reveal any adverse effect on the U.S. pork industry due to the increased tariffs, however, as the decline in trade with China and Mexico was offset by increased exports to other countries, such as South Korea and Philippines. China is the world's largest pork producer, and the discovery of African Swine Fever in several provinces in 2018 resulted in significant numbers of hogs being culled to prevent further outbreaks of the disease. China may need to import larger quantities of pork to meet domestic demand.

Poultry

Several lawsuits were also filed against chicken companies in 2018 following a 2016 class action lawsuit accusing the largest poultry firms of price-fixing since 2008. In January 2018, food distribution companies **Sysco Corporation**, **US Foods Holding Corporation**, and **Winn-Dixie**, a retail grocery, filed separate antitrust lawsuits alleging **Tyson Foods Inc.**, **Sanderson Farms**, **Koch Foods**, **Perdue,** and other poultry firms conspired to curtail the supply of chicken and artificially inflate prices.

In May 2018, a group of food distributors and grocery retailers filed an antitrust lawsuit contending that 17 of the largest poultry processors and **Agri Stats** conspired to collectively reduce breeder flocks and artificially increase chicken prices between 2008 and 2016.

In June 2018, **Albertsons Companies Inc.**, **Kroger Co.** and **Hy-Vee Inc.** filed a lawsuit against major chicken companies accusing them of price-fixing in the same 8-year period. In August 2018, **BJ's Warehouse Club** filed a complaint alleging **Tyson Foods Inc**. and **Perdue Farms** and more than 15 other chicken companies worked together to inflate chicken prices.

Fieldale Farms, part of the original class-action lawsuit in 2016, finalized a settlement in November 2018 they had entered into in the summer of 2017 with the Direct Purchase Plaintiffs. The settlement of $2.25 million is intended to resolve class action claims against the company and in addition **Fieldale Farms** agreed to cooperate in good faith in litigation against the other defendants in the lawsuit. That complaint, which was originally filed in 2016, alleged that the defendants combined and conspired to fix prices of broilers sold in the United States through coordinated supply restrictions, sharing comparatively sensitive price and production information, and fixing the **Georgia Dock,** a wholesale chicken price index.

In November 2016, the Georgia Department of Agriculture implemented new price reporting requirements that included the submission of an affidavit vouching for the accuracy of data that poultry companies submitted. The number of participants decreased significantly after the new reporting requirements were established and the index was suspended.

In January 2017, the index was replaced by the **Georgia Premium Poultry Price Index** (GPPPI). This index relied on information submitted weekly by poultry processors on poultry processed in Georgia and sold on contract in the prior week. The reported price indices measured the aggregate change in the price of poultry sold on contract over 1-month, 6-month and 12-month base periods. The data provided by poultry processors was subject to verification through random reviews. In February 2017, the Georgia Department of Agriculture stated it had ceased its efforts to publish the GPPPI due to a lack of data.

Two hurricanes in September and October disrupted production in the poultry industry and caused substantial losses for poultry growers and processors. In September, an estimated 4.1 million head of poultry were lost in North Carolina due to Hurricane Florence. In October, Hurricane Michael caused the destruction of about 84 chicken houses in the State of Georgia and the loss of over 2 million birds. The same storm caused damage to between 50 and 75 chicken houses in Alabama and the loss of thousands of birds.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

INDUSTRY CONCERNS

Cattle, Sheep, and Hogs

While international trade disputes remain a concern, the beef sector had strong export performance in 2018. For the year ended September 30, 2018, beef exports (carcass weight basis) were up 10.1 percent compared to the same period ending 2017, while beef imports were nearly steady, up 0.6 percent. In terms of value, beef and veal exports increased 18.6 percent over that period, providing support for the beef market in general. Nonetheless, indirect effects from trade disruptions such as reduced economic growth and tariffs on variety meats and hides are an ongoing concern for the industry. The value of beef variety meats and cattle hides exported during the year ended September 30, 2018, was off 11.4 percent from the same period the prior year.

The meat industry continues to watch developments in cell-cultured meat products and plant-based meat substitutes. These segments, while still relatively small compared to animal meats, have attracted much attention in the media and scrutiny by government regulators.

Beef packers, both large and small, continued to express concern that although cattle supplies are plentiful, they may not have enough skilled and unskilled labor to enable them to operate plants at the required capacity. Nonetheless, for the year ended September 30, 2018, the U.S. beef industry processed 32.3 million head of cattle in federally inspected plants, up 2.9 percent from the same period a year earlier. During that same period, the industry produced 26.4 billion pounds of beef, up 2.8 percent from the prior year. However, packers have noted that the shortage is hampering their ability to operate at maximum efficiency. Competition from the pork and poultry industries, which have both recently added slaughter capacity, has contributed to the tight labor market in the beef sector.

As of September 2018, the future viability of **Sam Kane Beef Processors, LLC** packing plant in Corpus Christi, Texas, is of great concern to the cattle feeding industry in South Texas because the nearest fed cattle plant is about 650 miles away. The cost of shipping cattle to another plant would place these cattle feeders at a big disadvantage. Sam Kane Beef Processors has had difficulty paying for cattle timely for the last 2 years.[2]

There is less concern that hog slaughtering will be dominated by the top four firms now that several large hog producers (or consortium of producers) and smaller packers have built or acquired new plants. Similarly, **Hormel Foods,** previously the fourth largest packer, has sold two of its slaughter facilities to focus more on further processed and value-added products.

There is more concern that hog production will be increasingly dominated by the 40 largest producers. Each year, these firms account for a larger percent of the breeding herd, but smaller independent producers' only option to remain in hog production is to align themselves with larger producers through contract production. This process accelerates during periods of financial hardships such as high feed costs or low hog prices.

Poultry

Three different strains of avian flu were confirmed in the United States in 2018. The first case reported was a low pathogenic form of H7N1 in a turkey flock in Jasper County, Missouri, in March. The same strain was confirmed in a commercial breeder flock of chickens in Hopkins County, Texas, later in the month.

In September and October, low pathogenic H5N2 was confirmed in 4 separate turkey flocks in Minnesota after routine testing. A total of 178,000 turkeys were affected, 3 flocks in Stearns County and 1 in Kandiyohi County. In the same time period, H7N3 strain of the disease was found in 5 different turkey flocks in Stanislaus County, California. The flocks were depopulated in all cases.

[2] STX Beef Co., a subsidiary of JDH Capital LLC, acquired Sam Kane Beef Processors in a court-approved bankruptcy auction in February 2019.

PSD REGIONAL OFFICE ACTIVITIES

PSD conducts two broad types of activities at the regional office level — investigations and regulatory activities. PSD generally categorizes regulatory and investigative activities as addressing areas of competition, trade practice, or financial concerns.

Investigations and regulatory activities are conducted by agents stationed in a regional office or by resident agents. PSD resident agents located in the field are the agency's frontline staff who work daily with regulated entities as well as livestock producers and poultry growers. They are typically the first responders for complaints and, because of their daily contact with the industry, primary sources of market intelligence. The locations of PSD offices and resident agents are shown in Figure 8 in Appendix B.

Regulatory activities are compliance reviews carried out to determine if a regulated entity is complying with the Act and regulations. Regional offices initiate regulatory activities based on annual business volume of the regulated entity, time elapsed since the last review, information obtained from an annual report submission, or from the PSD Strategic Business Plan that is used to determine the annual industry compliance rate. Examples of regulatory activities include:

- Registering market agencies, dealers, and packer buyers who operate subject to the Act,
- Conducting orientations for new dealers, livestock auctions, and packers,
- Checking the accuracy and repeatability of weighing livestock, carcasses, live poultry, and feed,
- Auditing custodial accounts and payment practices,
- Reviewing marketing practices and determining the adequacy of bond amounts,
- Assisting producers with filing bond and trust claims, and
- Analyzing bond and trust claims.

Regulatory activities also include market-level price monitoring. PSD monitors industry markets using publicly available data. For example, every week PSD monitors fed cattle and hog prices as reported by AMS. PSD also analyzes structural changes in the livestock, meat, and poultry industries. These monitoring activities have led to firm-level investigations.

PSD initiates an investigation when it has information that a violation of the Act may have occurred. For example, PSD may initiate an investigation in response to:

- a complaint from an industry participant,
- finding of possible violations during a routine regulatory activity,
- self-reported violations on annual and special reports filed with PSD,
- possible violations found through other monitoring activities, and
- a need for follow-up on previously identified violations of the Act

Stakeholders in the livestock and poultry industries and the public may report complaints in one of three ways. They may call the PSD hotline at (833) 342-5773 (DIAL PSD). They can call any of the regional offices to discuss their concerns, or they can send an e-mail to PSDComplaints@usda.gov. If desired, complainants may register their concerns anonymously. PSD responds to all of these external contacts.

PSD REGIONAL OFFICE ACTIVITIES

PSD sees a range of outcomes from its investigative and regulatory activities. PSD agents frequently find minor violations or none at all. The regional offices often attempt to achieve informal compliance of minor violations by asking regulated entities to take immediate corrective action.

When agents uncover violations that are more serious, the regional office typically issues a Notice of Violation as a first step. If the regulated entity fails to correct the identified violations, the regional office generally refers a formal investigative case file to LEAD with a recommendation for more formal enforcement. LEAD may stipulate[3] the violation(s) with the entity to resolve the violations. It may pursue administrative enforcement through USDA's Office of the General Counsel before a USDA Administrative Law Judge or through the Department of Justice in Federal court.

Administrative enforcements[4] may result in a civil penalty against the regulated entity, suspension of the entity's Packers and Stockyards registration, both a fine and suspension, and an order to cease and desist from repeating the violation(s). In FY 2018, 29 entities stipulated to penalties totaling $77,725. Administrative Law Judges levied $154,000 in penalties and Federal courts awarded $145,950 for a total of $377,675 in civil penalties (Table 8). Total civil penalties in 2018 are lower than in 2017 and all previous years, except 2016. There are many factors determining the number of enforcement actions and penalties. Industry compliance rates vary over time and may be influenced by external factors such as general economic conditions and livestock prices. Penalties are dependent on the type and severity of the violations, and the regulated entity's ability to pay and stay in business.

[3] A stipulation is a legal agreement citing violation(s) found, and the civil penalty amount PSD will accept in settlement without pursuing a formal action. In signing the stipulation agreement, respondents agree to pay the civil penalty and waive the right to a hearing.

[4] Administrative enforcement is legal action taken within USDA. A complaint alleging specific violations is filed against a firm or individual. The accused party has a right to a hearing before an administrative law judge. The judge's decision may be appealed to the USDA Judicial Officer. The accused party may appeal the Judicial Officer's ruling to a U.S. Appeals Court, and further to the Supreme Court of the United States.

Table 8. Penalties Levied for Packers and Stockyards Act Violations 2014–2018

Type Judgment	2014	2015	2016	2017	2018
Stipulations	$118,025	$158,950	$155,425	$128,575	$77,725
Administrative Penalties	$1,230,150	$499,300	$128,900	$489,950	$154,000
Department of Justice Civil Penalties	$12,400	$299,360	$74,468	$128,950	$145,950
Total Penalties	$1,360,575	$957,610	$358,793	$747,475	$377,675
Suspensions	11	6	7	5	11

PSD REGIONAL OFFICE ACTIVITIES

ENFORCING BUSINESS PRACTICE PROVISIONS

The regional offices are responsible for conducting regulatory reviews and investigations of competition and trade practice provisions of the Act, collectively referred to as business practice provisions. The regional offices investigate alleged anti-competitive practices and unfair and deceptive trade practices by market agencies, livestock dealers and commission buyers, packers, and live poultry dealers.

Resident agents and resident auditors conduct investigations and regulatory activities from field locations throughout the region. Economists, legal specialists, and investigative attorneys conduct the more complex competition investigations and regulatory activities. For example, an economist might monitor market and firm prices for indications of anti-competitive behavior. Marketing specialists conduct trade practice investigations and regulatory actions related to inaccurate scales or carcass evaluation instruments, improper weighing practices, and compliance with contracts.

Competition

PSD investigates complaints alleging anti-competitive behavior such as collusion, price fixing, failure to compete, buyers acting in concert to purchase livestock, apportionment of territory, price discrimination, price manipulation, and predatory pricing. PSD's economists, legal specialists, and investigative attorneys collaborate with USDA's OGC on competition investigations. When the results of an investigation, the evidence, and circumstances support legal action, PSD formally refers the case file to OGC for enforcement. OGC further refers some cases to DOJ.

PSD monitors changes in industry behavior in order to understand the nature of and reasons for changes, and to anticipate potential competition issues that may result from those changes. PSD also conducts economic analysis of significant industry events, including mergers, acquisitions, and plant closings. PSD interacts with DOJ and the Commodity Futures Trading Commission (CFTC) on competition investigations and when analyzing mergers and acquisitions.

Fed Cattle and Hog Market Price Monitoring

PSD's fed cattle and hog market price monitoring program includes a weekly internal reporting protocol based on statistical models, one for the fed cattle markets and the other for hog markets. The statistical models rely on publicly reported price data to assess regional price differences.

In 2018, PSD price monitoring activities identified 14 outliers in the fed cattle markets and 30 outliers in the hog markets. In reviewing these price differences, PSD determined that, in each instance, it could attribute the price anomalies to external market factors, such as weather conditions or other circumstances.

PSD REGIONAL OFFICE ACTIVITIES

Poultry Contract Compliance Review Process

Poultry is almost exclusively grown under production contracts. Under a production contract, the live poultry dealer provides the poultry grower with many inputs including the live chicks, feed, and medications. The poultry grower will in turn provide the housing, equipment, labor, and fuel to grow the birds to a target weight established in the production contract. Once the birds meet the target slaughter weight, the live poultry dealer picks up the birds for slaughter. The payment to the poultry grower for the growing services is often determined by a poultry grower ranking system (commonly referred to as a tournament) outlined in the production contract.

PSD regularly conducts poultry contract reviews in which it reviews poultry contracts and payment practices for consistency and compliance with the Act and regulations. PSD generally selects a sample of payment data from the live poultry dealer's records for a detailed review for accuracy and completeness and compares the results to the integrator’s ranking sheets, settlement sheets, and payments to ensure adherence to the contract.

In FY 2018, PSD conducted 68 poultry contract compliance reviews, and 42 were conducted pursuant to a Strategic Business Plan random sample and included as a component of PSD’s performance measure (see Packers and Stockyards Division's Performance and Efficiency section).

If PSD uncovers discrepancies, it opens an investigation. If PSD does not find evidence of a violation, the review is closed with a finding that the live poultry dealer is in compliance.

Trade Practices

PSD reviews the activities of regulated entities to ensure that packers, market agencies, livestock dealers, and live poultry dealers do not engage in unfair or deceptive practices in the procurement and marketing of livestock, meat, and live poultry.

Regulated entities that own or use a scale for the purchase, sale, or payment for livestock or poultry are required to file scale test reports as evidence of accuracy of scales, but PSD also examines scales and weighing practices. PSD also evaluates the accuracy and use of electronic carcass evaluation devices when the equipment is used to determine payment for livestock.

Entities that furnish stockyard services in commerce, i.e., services at a stockyard in connection with the receiving, buying, selling, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling livestock, are required to post a notice that informs the public that the stockyard meets the definition of a stockyard under the Act. Once posted, the stockyard remains posted until PSD de-posts it through public notice.

PSD REGIONAL OFFICE ACTIVITIES

Historically, several commission firms bought and sold livestock at the terminal stockyards, but most of these are gone now. Today, nearly all of the posted stockyards are local livestock auctions. Internet and video auctions that hold sales of livestock over the internet or through a video platform are still subject to the Act and regulations, even if they do not operate at a posted stockyard. An amendment to the Act in 2016 made clear that farmers and ranchers selling through online and video auctions are offered the same protections as those selling at traditional livestock auctions.

PSD meets with new auction owners and managers, ideally before they begin operations, to ensure that operators understand their responsibilities under the Act and regulations. Visits in the early stages of operation also serve to protect livestock producers who rely on the livestock auction to provide a nondiscriminatory and competitive marketplace.

PSD reviews procurement practices of packers to determine if they have engaged in unfair or deceptive trade activities or have provided undue or unreasonable advantages in procuring livestock or poultry. The reviews assess procurement and pricing methods, payment practices, and weighing of livestock and carcasses.

Anyone who believes that an action or omission of a stockyard, market agency, or dealer caused personal loss or damage in violation of the Act may file a complaint seeking reparation (damages) with PSD within 90 days of learning of the action that caused damages.

PSD REGIONAL OFFICE ACTIVITIES

A transaction made on false or inaccurate weights, including instances in which a livestock auction, livestock dealer, or packer modifies the actual weight of the livestock or fails to pass on a shrink allowance, is an unfair and deceptive practice. The Act and regulations require livestock auctions, dealers, and packers to test scales used for the purposes of determining payment two times per year, with one test in the first 6 months and one test in the second 6 months and to file scale-test reports as evidence of scale maintenance and accuracy. State or local governments and private companies provide scale test services.

PSD inspects the scales used by livestock auctions, dealers, and packers for weighing live animals. PSD also inspects hopper scales for weighing poultry feed. It tests static and dynamic monorail scales used to weigh livestock carcasses in slaughter plants and also conducts feed weighing inspections on truck scales and hopper scales at feed mills.

In addition, PSD conducts several types of regulatory and investigative inspections to ensure scale operators and entities subject to the Act are using their scales properly and recording weights accurately in the purchase and sale of livestock and for payments to hog and poultry contract growers.

These inspections include check weighing to assure repeatability of weight. The types and number of weighing inspections conducted by PSD and violations from 2014 to 2018 appear in Table 9. In 2018, out of 926 inspections conducted, PSD agents found a total of 157 violations, or 83 percent in compliance, continuing the improvement from 2016.

Table 9. Weighing Inspections and Violations, 2014–2018

Type	2014	2015	2016	2017	2018
Inspections					
Livestock Auctions	319	376	391	294	300
Dealers	294	247	253	241	301
Packers	156	160	143	138	159
Poultry	106	101	110	108	98
Feed	81	75	88	83	68
Total	**956**	**959**	**985**	**864**	**926**
Violations					
Livestock Auctions	65	108	134	56	59
Dealers	52	44	56	30	34
Packers	42	36	39	37	43
Poultry	10	7	21	14	16
Feed	14	13	15	17	5
Total	**183**	**208**	**265**	**154**	**157**

PSD REGIONAL OFFICE ACTIVITIES

ENFORCING FINANCIAL PROVISIONS

The financial provisions of the Act and regulations support the financial integrity of regulated entities and foster liquidity in markets for livestock, meat, and poultry. PSD enforces these provisions through several activities that include on-site financial compliance reviews and investigations and reviewing annual and special reports submitted by regulated entities. Financial compliance reviews and investigations address five issues. These issues include maintenance of custodial accounts, solvency, payment to livestock sellers and poultry growers, bond claims, and trust claims.

Under the Act, most regulated entities are required to be solvent, i.e., current assets must exceed current liabilities. PSD monitors solvency by conducting on-site financial compliance reviews and investigations. PSD also monitors solvency by reviewing financial data in annual and special reports filed by regulated entities. PSD requires special reports from entities whose annual reports disclose insolvencies. If PSD determines that an entity is insolvent, it notifies the entity that it must correct the insolvency immediately. In addition, PSD conducts on-site financial investigations. These investigations confirm whether entities correctly reported insolvencies. The investigations also confirm whether entities resolved other financial issues. PSD initiates formal disciplinary action when appropriate.

Market agencies selling livestock on commission, such as local livestock auctions and video and internet auctions, are required by the Act and regulations to establish and maintain a bank account designated as “custodial account for shippers’ proceeds.” This account is a trust account which holds in trust proceeds from the sale of consigned livestock for the benefit of livestock sellers. The market agency selling on commission acts as a fiduciary depositor to the account.

PSD monitors custodial accounts in several ways. It reviews annual and special custodial account reports from market agencies and conducts on-site custodial account audits. When the reviews reveal custodial account shortages, PSD acts to have the livestock auction bring the account into balance by issuing a Notice of Violation or preparing for a formal enforcement. Table 10 shows the number of custodial reviews conducted by PSD in the past 5 years, the number of violations found, and the value of shortages corrected by market agencies because of the intervention by PSD.

PSD conducted 420 custodial reviews in 2018 and found 170 violations. The number of shortages in 2018 has declined from the previous 3 years, and the dollar value of the shortage corrections has decreased to $1.6 million from $1.7 million in 2017.

Table 10. Number of Custodial Account Reviews, Violations Found, and Shortages Corrected, 2014–2018

Year	Reviews	Account Violations	Shortage Corrections
2014	342	98	$3,846,844
2015	400	180	$2,978,657
2016	453	204	$3,317,866
2017	417	193	$1,668,901
2018	420	170	$1,577,974

PSD REGIONAL OFFICE ACTIVITIES

Bond Protections for Unpaid Livestock Sellers

All market agencies, all livestock dealers, and packers purchasing over $500,000 of livestock annually must file and maintain bonds or bond equivalents for the protection of livestock sellers. The bonds are for the benefit of unpaid livestock sellers should a regulated entity fail to pay for livestock. Those required to meet the bonding requirement may choose from three options to comply.

They may obtain a surety bond or in lieu of a surety bond, they may pledge one or more savings accounts or certificates of deposit under a Trust Fund Agreement. Alternatively, they may obtain one or more irrevocable, transferable, standby letter(s) of credit, issued by a federally insured bank or institution, and pledge the letter(s) of credit to a Trust Agreement. They may use a combination of these options to meet the total bond requirement.

To be eligible to receive payment under the bond, a livestock seller who does not receive payment for a transaction must file a bond claim within 60 days of the transaction. The seller may obtain claim forms from PSD regional offices or at https://www.gipsa.usda.gov/psp/forms.aspx.

The seller must file a completed claim form, accompanied by supporting documents, with PSD, or the surety company. PSD analyzes each claim to determine whether the claimant filed it timely and whether the claimant provided adequate documentation to support the claim. PSD provides its analysis to the principal and to the bond surety or trustee on a bond equivalent. The surety or the trustee decides whether claims are valid and timely filed and how much will be paid.

When circumstances warrant, PSD immediately deploys a rapid response team to conduct an investigation for potentially serious financial situations that may cause imminent and irreparable harm to livestock producers.

PSD REGIONAL OFFICE ACTIVITIES

Bonds often do not cover the entire loss sustained when a firm fails to make full payment. In that case, the claimant(s) receives a pro-rata share of the bond based on the value of the bond and the total amount of the valid, timely claims.[5]

The dollar amount of total claims on dealer bonds often varies significantly from the dollar amount of valid claims. This is because sellers frequently file claims beyond the 60 days after the transaction took place and in this circumstance, the surety may deny the claim. Over the past 9 years, the largest dollar amount of valid claims were filed in 2011 and the rate of recovery in 2011 was a low of 11 percent. Claims filed in subsequent years declined substantially until 2016 when the dollar value of valid claims increased to over $11 million. The share of valid claims recovered also fell to 14 percent in that year. In 2018, the dollar amount of valid dealer bond claims filed increased again to over $3.7 million and as of the end of the fiscal year, 45 percent of that amount has been recovered (Table 11).

Table 11. Dealer Bond Claims and Recovery, 2010–2018

Fiscal Year	Total Claims	Valid Claims	Bond	Other	Total Recovered	% Valid Claims Recovered
2010	$213,332	$101,512	$51,781	$4,479	$56,260	55
2011	$38,521,193	$18,516,016	$1,132,329	$851,944	$1,984,273	11
2012	$1,060,117	$516,344	$95,000	$68,811	$163,811	32
2013	$3,877,665	$3,828,780	$328,810	$2,411,470	$2,740,281	72
2014	$15,315	$13,315	$10,315	$0	$10,315	77
2015	$838,700	$20,926	$4,510	$16,416	$20,926	100
2016	$11,466,498	$11,331,648	$1,308,839	$273,947	$1,582,786	14
2017	$1,028,459	$752,707	$290,133	$151,813	$441,946	59
2018	$5,139,226	$3,710,515	$420,000	$1,264,830	$1,684,830	45

Claims against livestock auctions have varied widely each year over the past 9 years, and the total dollar amount of valid claims has been less than $1 million in any year (Table 12). The proportion of claims recovered was lowest in 2012, but since then there has been restitution on up to 90 percent of valid claims. In 2017, 73 percent of the total dollar value of valid claims was recovered and in 2018, there has been over 90 percent restitution on valid timely filed claims.

[5] In all bond claim tables, total claims are computed for the fiscal year in which the first claim was received. Bond claims are not always closed in the same fiscal year they were first opened and recovery for claims may be ongoing. Claims that are withdrawn are not included in any of the totals. Claims may be amended or adjusted resulting in changes in totals. Total Recovered amount is as of the end of FY 2018.

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Table 12. Livestock Auction Bond Claims and Recovery, 2010–2018

Fiscal Year	Total Claims	Valid Claims	Bond	Other	Total Recovered	% Valid Claims Recovered
2010	$20,901	$4,547	$4,547	$0	$4,547	100
2011	$75,119	$23,518	$22,162	$1,357	$23,519	100
2012	$877,861	$201,657	$82,953	$0	$82,953	41
2013	$763,422	$0	$0	$0	$0	NA
2014	$12,181	$706	$706	$0	$706	100
2015	$69,307	$66,307	$60,000	$0	$60,000	90
2016	$397,946	$0	$0	$0	$0	NA
2017	$441,433	$197,913	$143,468	$639	$144,107	73
2018	$165,099	$80,052	$72,473	$13,751	$74,092	93

NA = Not Applicable

As discussed earlier, the Act authorizes unpaid livestock sellers to claim against packer trust assets. The trust provides additional protection above that of any bond held by the packer. Packer bond and trust claims increased dramatically in 2016 and 2017 and rose to almost $146 million in 2018 (Table 13). The vast majority of the packer bond and trust claims in the last 3 years are the result of the claims filed against Sam Kane Beef Processors, LLC due to its difficulty in timely paying for its cattle purchases.

Claims against packer bonds and trust assets resulted in a recovery of almost 100 percent of the total owed for valid claims opened in 2016, 96 percent of claims in 2017, and 73 percent in 2018. Like the claims, the vast majority of recoveries over the past 3 years are the result of Sam Kane paying for livestock that had been

Table 13. Packer Bond and Trust Claims and Recovery, 2010–2018

Fiscal Year	Total Claims	Valid Claims	Bond	Trust	Other	Total Recovered	% Valid Claims Recovered
2010	$5,960,684	$5,960,684	$748,435	$0	$3,825,518	$4,573,953	77
2011	$586,293	$586,293	$0	$81,978	$422,502	$504,480	86
2012	$22,706	$4,422	$0	$0	$0	$0	0
2013	$0	$0	$0	$0	$0	$0	NA
2014	$39,765	$0	$0	$0	$0	$0	NA
2015	$191,298	$114,992	$0	$99,485	$0	$99,485	87
2016	$14,210,690	$14,210,690	$20,000	$14,172,296	$7,259	$14,199,556	99.9
2017	$23,757,904	$23,757,904	$0	$22,722,824	$0	$22,722,824	96
2018	$145,748,438	$141,185,985	$4,035,000	$97,770,129	$1,052,193	$102,857,322	73

NA = Not Applicable

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subjected to packer bond and trust claims in 2018. After Sam Kane paid for those livestock, sellers rescinded their bond and trust claims and often submitted new claims as Sam Kane continued to fail to pay timely for its livestock purchases. This process of claims and recensions continued over the past three years, which explains the majority of the high value of claims and recoveries in the last 3 years.

Poultry growers and live poultry sellers do not file claims against live poultry dealers as frequently as livestock sellers, and there were no claims filed for several years (Table 14). In 2017, there was full restitution for claims filed against poultry dealers and the poultry trust accounted for all of the reimbursement. In 2018, no poultry trust claims were filed. Live poultry dealers are not required to maintain bonds or bond equivalents.

Table 14. Poultry Trust Claims and Recovery, 2010–2018

Fiscal Year	Total Claims	Valid Claims	Trust	Other	Total Recovered	% Valid Claims Recovered
2010	$0	$0	$0	$0	$0	NA
2011	$8,010,978	$702,881	$270,525	$427,905	$698,430	99
2012	$387,688	$375,988	$187,354	$0	$187,354	50
2013	$127,596	$0	$0	$0	$0	NA
2014	$1,579,548	$1,579,548	$0	$0	$0	0
2015	$0	$0	$0	$0	$0	NA
2016	$0	$0	$0	$0	$0	NA
2017	$82,840	$82,840	$82,840	$0	$82,840	100
2018	$0	$0	$0	$0	$0	NA

NA = Not Applicable

PSD PROGRAM PERFORMANCE AND EFFICIENCY

PSD achieves its mission by identifying broad, strategic, multi-year goals. It also sets shorter term tactical annual objectives and activities as set forth in its annual Strategic Business Plan. This section addresses how PSD strives to improve its performance and efficiency, and the demonstrated results.

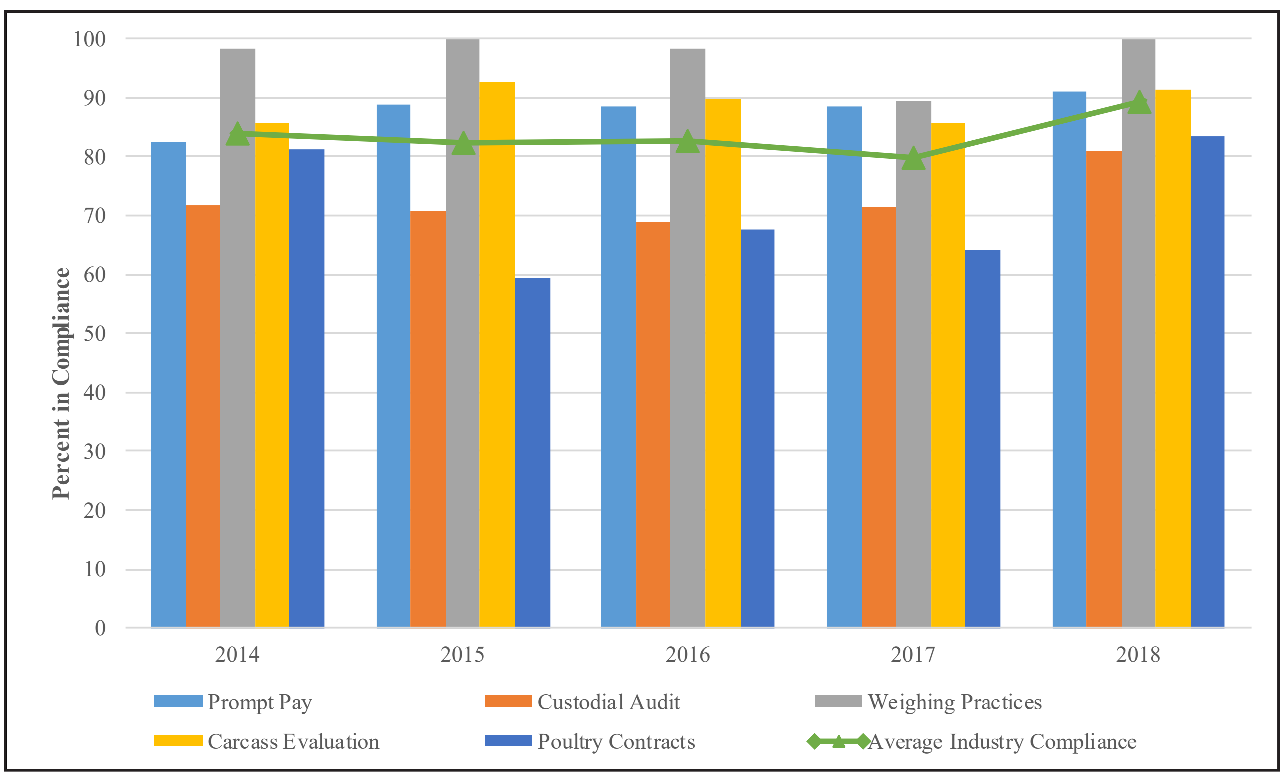
PERFORMANCE MEASUREMENT

PSD assesses its performance annually by measuring industry compliance with the Act and regulations. PSD performs compliance reviews of a random sample of regulated entities to estimate compliance rates in the following five areas:

1) Prompt payment of livestock auctions, dealers, and packers,
2) Financial reviews of livestock auction custodial accounts,
3) Scales and weighing practices at livestock auctions, dealers, and live poultry dealers,
4) Static and dynamic monorail scales, carcass evaluation devices, and related practices at livestock packing plants purchasing more than 1,000 head per year, and
5) Contract compliance of live poultry dealers with contract poultry growers.

PSD analyzes compliance data and general economic conditions. It uses this information to deploy its resources effectively to meet changing industry conditions. Compared to FY 2017, the overall compliance rate increased from 80 percent to 89 percent in FY 2018. All of the components also improved over the prior year. Weighing practices compliance increased from 90 percent to 100 percent, carcass evaluation compliance rose from 86 percent to 91 percent, and poultry contract compliance increased from 64 percent to 83 percent. Custodial audit review and prompt pay compliance increased from 71 percent to 81 percent, and from 89 to 91 percent, respectively (Figure 5).

Figure 5. Industry Compliance by Component and Average Industry Compliance, 2014-2018



PSD PROGRAM PERFORMANCE AND EFFICIENCY

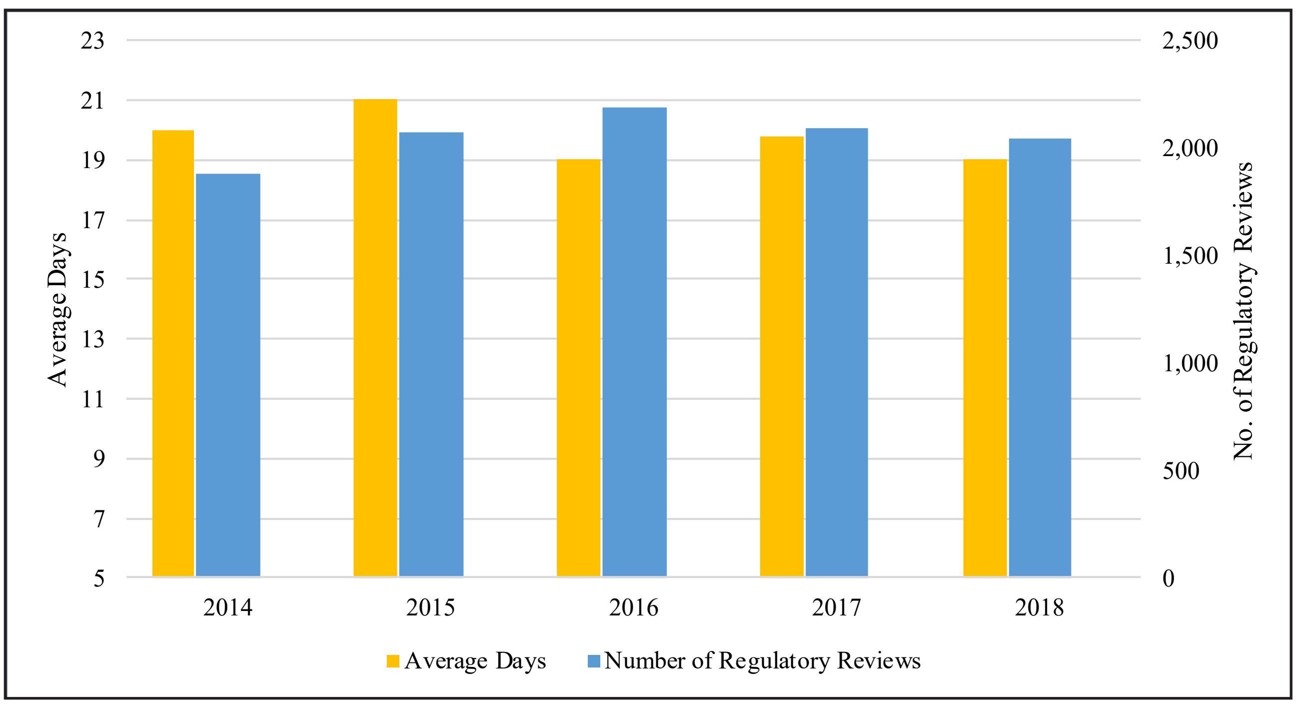
PSD puts emphasis on educational and outreach activities that improve industry compliance. During each regulatory review or investigation, PSD agents discuss how to achieve compliance with regulated entities. However, economic conditions within the industry affect compliance rates. Weak economic conditions or highly volatile livestock prices may contribute to lower rates of compliance.

EFFICIENCY MEASUREMENT

PSD measures its efficiency at conducting regulatory reviews and investigations by comparing the total days between when it opens and closes each type of activity. The following figure shows the total number of regulatory reviews conducted by PSD and the average number of days to complete a review (Figure 6).

The average number of days to complete a regulatory activity has ranged from 19 days to 21 days over the past 5 years and declined to 19 days in 2018 from 20 days in 2017. The number of regulatory reviews completed declined from 2,093 in the prior year to 2,048 in 2018.

Figure 6. Number of Regulatory Reviews and Average Days to Complete a Review, 2014–2018



PSD PROGRAM PERFORMANCE AND EFFICIENCY

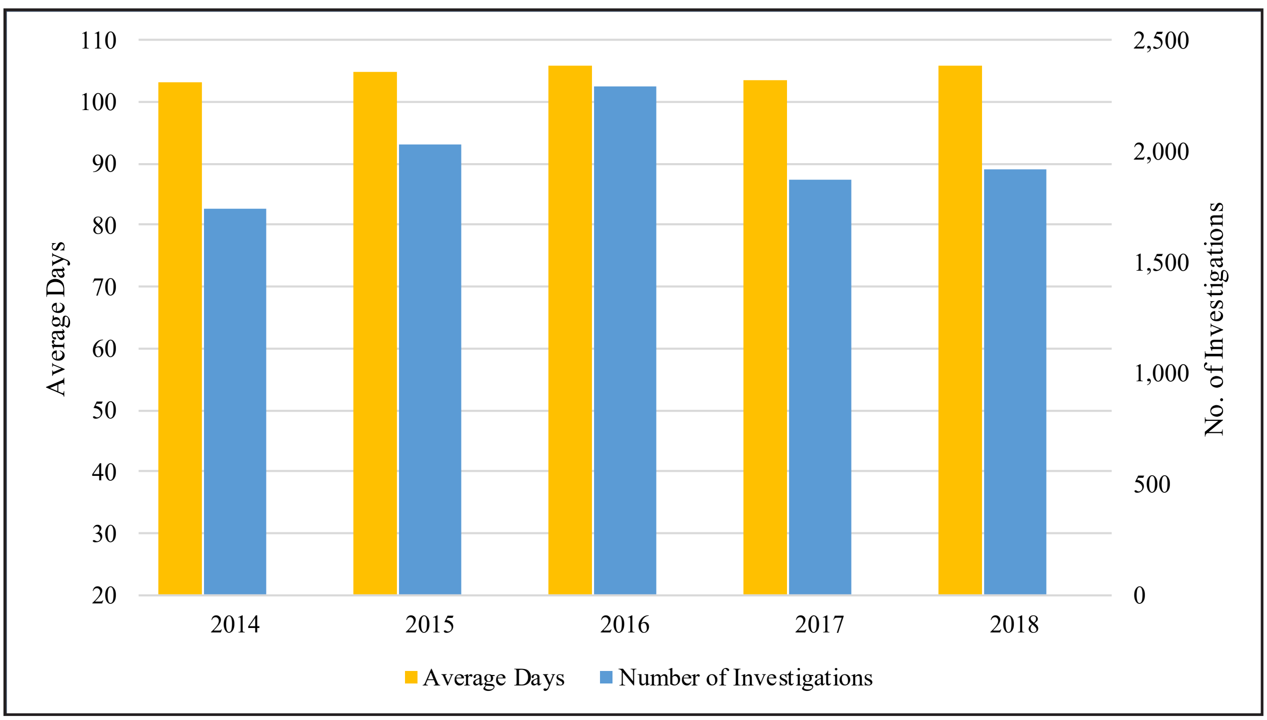
The total number of investigations closed in the field by PSD and the average number of days to complete an investigation appear in Figure 7. PSD considers an investigation complete when it is closed by PSD at the regional office level, closed by LEAD, or when the formal enforcement action related to the investigation has been completed for cases referred to OGC or DOJ.

For investigations closed in FY 2018, the average number of days to complete and close an investigation in the field increased slightly to 106, from 104 days in 2017.

The number of investigations completed and closed in the field increased to 1,919 in FY 2018 from 1,873 in the previous year. PSD completed these investigations in several ways. For some, PSD found no violations or reached an informal agreement to correct minor violations. PSD resolved and closed other investigations by issuing formal Notices of Violation.

In the remainder of the investigations, the regional offices submit formal case files to LEAD with a recommendation for stipulation or enforcement by OGC or DOJ. If a regulated entity agrees to a stipulation, it waives the right to a hearing, admits the violation(s), and voluntarily agrees to pay a penalty. PSD then closes the investigation. Cases referred to OGC or DOJ remain open until OGC or DOJ completes the enforcement action. It takes much longer to resolve and close investigations referred to the OGC or DOJ for prosecution through a hearing before an administrative law judge or a Federal Court.

Figure 7. Number of Investigations and Average Days to Complete, 2014–2018



APPENDIX A

Data Sources for Tables and Charts:

Table 1: Number of entities registered and/or bonded as recorded in PSD databases.

Table 2: Data are taken from the 2017 and 2012 Census of Agriculture since swine contractors do not file reports with PSD.

Table 3: Data are compiled from annual reports filed by packers and live poultry dealers with PSD.

Table 4: PSD databases.

Table 5: Total Value Purchases is the total of livestock purchases reported by packers filing annual reports to PSD. Concentration statistics for livestock slaughter (heifers and steers, cows and bulls, hogs, and sheep and lambs) are compiled from federally inspected plant data. Concentration statistics for broiler and turkey slaughter are computed from live poultry dealer annual reports filed with PSD.

Table 6: Data are compiled from annual reports filed by packers with PSD.

Table 7: Data are compiled from annual reports filed with PSD by livestock markets selling on commission.

Table 8: Enforcement data from PSD databases.

Table 9: Scales and weighing inspection data from PSD databases.

Table 10: Data on custodial account reviews are from PSD databases.

Tables 11 and 12: Data are from bond claims filed with PSD by livestock sellers against the bonds of livestock dealers and market agencies.

Table 13: Data are from bond and trust claims filed with PSD by livestock sellers against packer bonds and packer trusts.

Table 14: Data are from trust claims filed with PSD by live poultry sellers against poultry trusts held by live poultry dealers.

Figure 1: Dollar value of livestock purchases packers, livestock purchases reported by livestock dealers and market agencies, and livestock sold through market agencies selling on commission compiled from annual reports filed with PSD by packers, livestock dealers and markets selling on commission.

Figures 2 to 4: Statistics on types of procurement methods compiled from data reported to USDA's AMS under the provisions of the Mandatory Price Reporting Act.

Figure 5: Data on compliance rates from PSD databases. The margin of error in compliance performance measures in 2018 is (+/-) 6.3% for prompt pay, 8.0% for custodial account, 0.0% for weighing practices, 1.9% for carcass evaluation and 9.3% for poultry contract compliance.

Figures 6 and 7: Data on investigations and regulatory reviews from PSD databases.

APPENDIX B

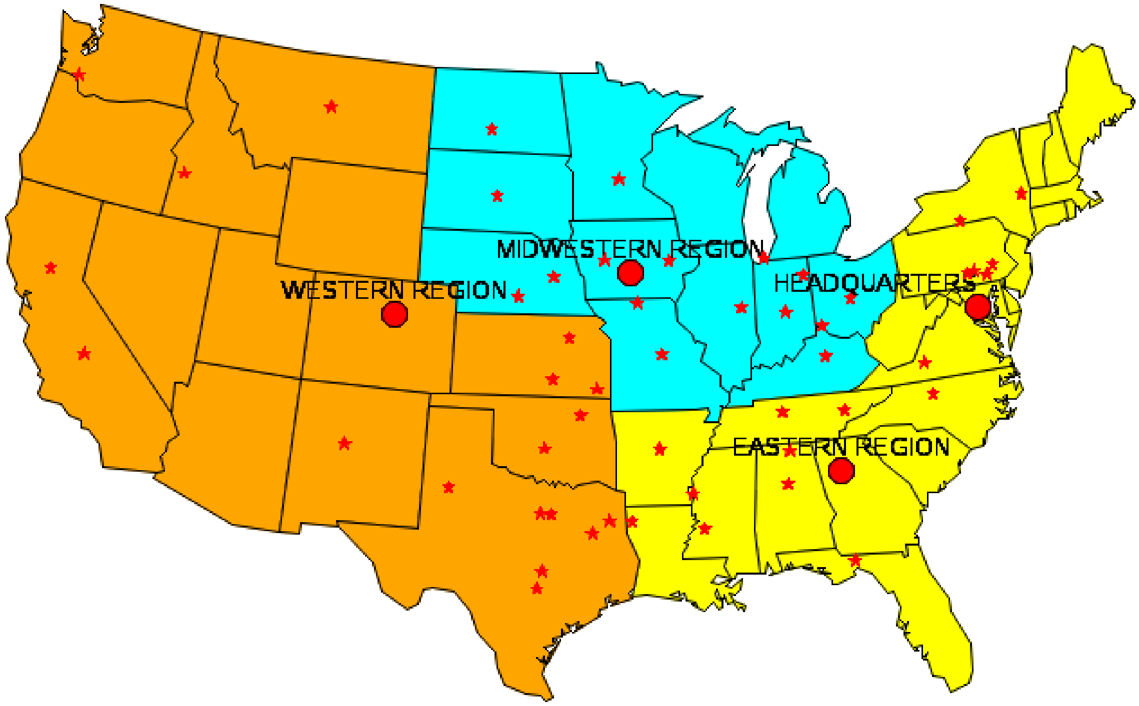


Figure 8. PSD Regional Offices and Resident Agent, Resident Auditor, and Market Inspector Locations

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