United States Department of Agriculture

Agricultural Marketing Service

Packers and Stockyards Division

Annual Report 2019

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 (USDA), Agricultural Marketing Service (AMS), Fair Trade Practices Program (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) 2019, PSD's budget was $23.3 million and it had 117 employees as of the end of the fiscal year. PSD's three regional and two headquarters offices are:

- Eastern Regional Office in Atlanta, Georgia
- Midwestern Regional Office in Des Moines, Iowa
- Western Regional Office in Aurora, Colorado
- Enforcement Branch in Washington, D.C.
- Competition Branch 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 regulated entities' business locations. A Central Reporting Unit (CRU) located in the Western region processes annual reports filed by entities subject to the Act.

The Enforcement Branch (EB) provides litigation support by reviewing investigations and preparing sanction and stipulation recommendations. It also assists and coordinates with the USDA Office of the General Counsel (OGC) and the U.S. Department of Justice (DOJ) on investigations, preparing for hearings, negotiating settlements, and testifying at hearings. The EB also develops PSD policy; prepares informational materials; and issues press releases, notices, and regulations under the Act.

The Competition Branch (CB) identifies, monitors, and seeks to resolve competition and industry concentration challenges in the cattle, hog, poultry and lamb industries. The CB also processes and summarizes industry data, and provides regulatory impact analyses on proposed rules and regulations.

REGIONAL EXPERTISE

In addition to its geographic area, each 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 2019, PSD had 117 employees, which included 72 office staff and supervisors in headquarters and in the regional offices. PSD also had resident employees (resident agents, auditors, and market inspectors) 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 (entities selling on commission, e.g., auction markets and ommission 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 regulations issued under the Act mandate certain business practices by regulated entities. These include mandatory registration of market agencies and dealers.

All 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. Market agencies selling on commission must also promptly remit seller proceeds.

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.

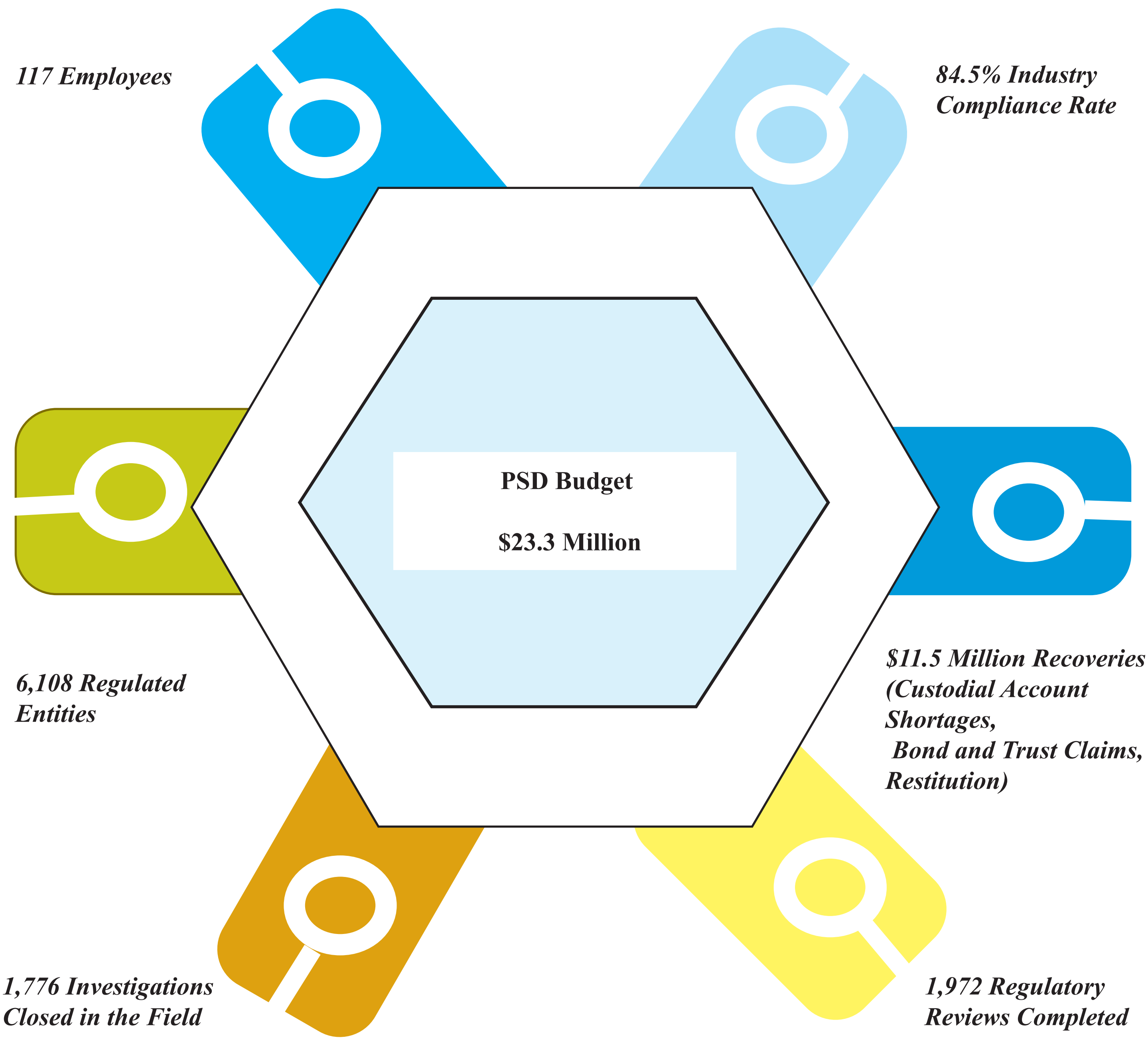
After receiving a claim, the packer must hold in trust livestock inventories and receivables, and proceeds from meat, meat food products, or livestock products until it makes full payment to all unpaid cash sellers.

PSD can penalize a packer for failing to pay for livestock in violation of the Act and can bring an action to prevent 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 2019 and its accomplishments in promoting industry compliance with the Act.



ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

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 2019 calendar-reporting year are not due until April 15, 2020. As a result, most data series in this section end with the 2018 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. 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.
- **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 account or 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 that sell on commission, 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

Table 1 lists the number of regulated entities subject to the Act as of the end of the FY 2019.[1] There were 319 bonded packers, 90 live poultry dealers, 4,495 registered livestock dealers and market agencies buying on commission, and 1,204 market agencies selling on commission. The number of bonded packers increased to its highest level in the past decade. The number of market agencies selling on commission declined from 2018, as did the number of livestock dealers and market agencies buying on commission, but firm totals have been relatively stable for the past decade. The total number of livestock dealers and market agencies buying on commission includes packer buyers, whose bond coverage is provided by their employing packers.

The number of live poultry dealers has fluctuated 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 total number of poultry firms has been declining in recent years as some smaller companies exited the industry and others were acquired by larger operations. The pace of consolidation has picked up in recent years, with the number of live poultry dealers declining from 99 to 90.

[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, 2010–2019

Year	Bonded Packers	Livestock Dealers, Market Agencies Buying On Commission and Packer Buyers	Market Agencies Selling on Commission	Live Poultry Dealers
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	105
2016	294	4,660	1,221	101
2017	304	4,634	1,223	99
2018	312	4,582	1,236	94
2019	319	4,495	1,204	90

PSD = Packers and Stockyards Division

There were 575 swine contractors as of 2017 (Table 2). 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.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

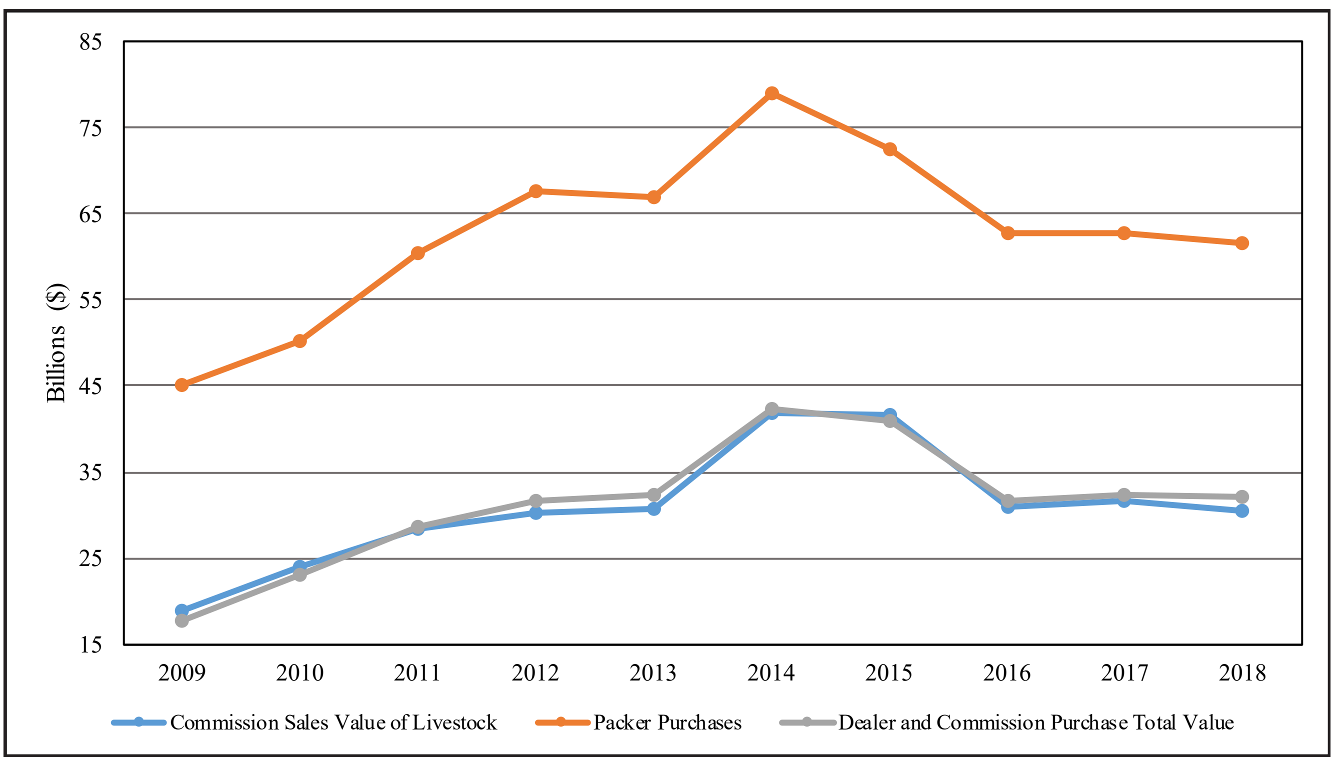
Swine contractors typically provide feed and medication to contract growers who own the growing facilities and provide growing services. PSD regulates the business practices of swine contractors, but swine contractors are not required to register with PSD or maintain bonds.

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 $61.5 billion in 2018, down from $62.8 in 2017 (Figure 1). The dollar volume for livestock sold on commission follows a similar trend, as does the value of livestock for entities operating as dealers or commission buyers, decreasing to $30.5 and $32.0 billion, respectively. Fed cattle prices have continued to decline from the historical high of over $170 per hundredweight in late 2014. Hog prices have also fallen sharply from the record levels reached in 2014.

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, 2009–2018



ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

PSD requires reporting packers to report the number of head slaughtered annually. The number of cattle slaughtered by packers reporting to PSD has been increasing steadily in recent years, from 28.1 million head in 2015 to 32 million in 2018 (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 in 2018 is the highest in the past decade at 122.8 million head.

Sheep and lamb slaughter has been close to 2 million head in most years since 2009, except for 2013, when slaughter was 2.7 million head, a 28-percent increase from the prior year. In 2018, the number of sheep and lambs slaughtered by packers reporting to PSD was 2.3 million head, slightly higher than the prior year.

Live poultry dealers reporting to PSD processed an estimated 55.7 billion pounds of chicken, the highest level reported in the past decade. Turkey production reported to PSD declined to 7.5 billion pounds in 2018, from 7.6 billion in 2017.

Table 3. Annual Volume of Livestock Purchased for Slaughter by Packers and Poultry Processed by Live Poultry Dealers Reporting to PSD, 2009–2018

	(Million Head)			(Billion Pounds)	
Year	Cattle	Hogs	Sheep and Lambs	Broilers	Turkeys
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
2018	32.0	122.8	2.3	55.7	7.5

PSD = Packers and Stockyards Division

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

There were only minor changes to the number of hog and cattle plants from 2017 to 2018, and the total counts of both types of operations are lower than in 2012. The number of plants slaughtering sheep and lambs increased significantly from 2009 to 2015, but has decreased to 65 in 2018. Many of these are small multispecies plants that slaughter only a few sheep and lambs (Table 4). Poultry plant counts for 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, 2009–2018

Year	Cattle and Calves	Hogs	Sheep and Lambs	Poultry
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	150	145	70	224
2018	151	144	65	223

PSD = Packers and Stockyards Division NA = Not Available

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

In Table 5, industry concentration data on Total Value Purchases are the total dollar value of livestock (cattle, hogs, sheep and lambs) 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 on live poultry dealer annual reports filed with PSD.

The four largest packers' share of industry expenditures on livestock for slaughter has ranged from 67 to 71 percent for the past decade (Table 5). The four largest packers that slaughter steers and heifers accounted for 85 percent of total steer and heifer slaughter in 2018, an increase from the previous year. Concentration in steer and heifer purchases ranged from 83 to 86 percent in the past decade.

Cow and bull slaughter has been consistently less concentrated than fed cattle slaughter. The four-firm concentration ratio was 52 percent in 2018 down from its highest level of 60 percent in 2013.

The four-firm concentration ratio for hog slaughter increased to 70 percent in 2018, but was in the low to mid-60's range in most 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 68 percent from 2009 through 2012. Since 2013 it has been below 60 percent, until it increased to 62 percent in 2018. 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 ranged between 50 and 54 percent in the past decade. The share of production accounted for by the four largest turkey slaughter firms has been between 53 and 58 percent over the last 10 years.

Table 5. Annual Four-Firm Concentration Ratios Among Meat Packing and Poultry Processing - Federally Inspected Plants, 2009–2018

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.) %
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
2018	68	85	52	70	62	54	55

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 USDA, 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 ranged from 59 percent to 66 percent of total purchases, while the proportion of calves purchased on a carcass-weight basis is much lower and varies widely from 14 percent to 44 percent (Table 6).

Carcass-based purchases have become the predominant method to procure hogs for slaughter and have comprised between 76 and 83 percent of the total over the last decade. The proportion of sheep and lambs purchased on a carcass basis has ranged from 26 to 40 percent.

Table 6. Percentage of Livestock Purchases on a Carcass-Weight Basis
Packers Reporting to PSD, 2009–2018

Year	Cattle %	Calves %	Hogs %	Sheep and Lambs %
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
2018	61.0	21.0	83.4	28.9

PSD = Packers and Stockyards Division

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

The number of cattle sold through livestock auctions decreased from 35 million head in 2017 to about 34 million head in 2018 (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 2009 to 2018 has been between 7 and 9 million head in most years. The highest level (of 9 million head) occurred in 2009; volume has totaled less than 8 million since 2012 (Table 7).

The volume of sheep and lambs sold through market agencies selling on commission has fluctuated 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, 2009–2018 (Thousand Head)

Year	Cattle	Hogs	Sheep and Lambs
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
2018	34,425	7,305	3,425

PSD = Packers and Stockyards Division

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) "committed procurement" arrangements that commit the livestock to a particular packer more than 14 days prior to delivery, and (2) cash or "spot" sales for immediate delivery or delivery within 14 days .

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.

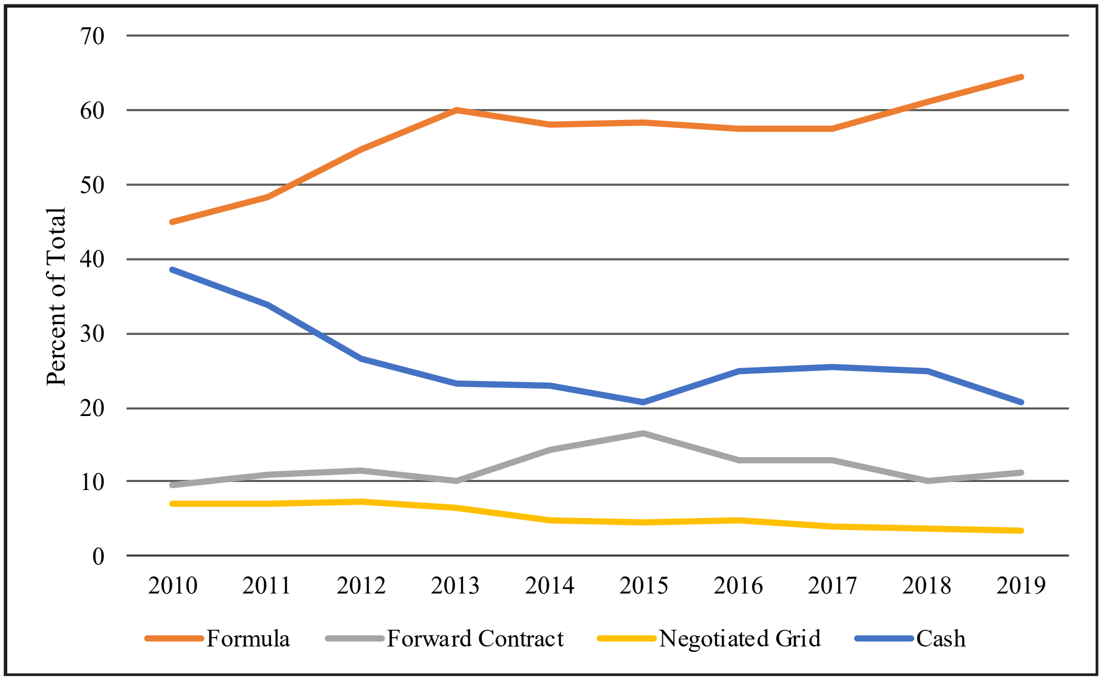
The term "marketing agreements" includes a variety of arrangements that establish an ongoing relationship for trading multiple lots of livestock rather than negotiating single lots. In these arrangements, the seller agrees to deliver livestock to the packer at a future date, with the price generally 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 pricing and procurement methods, ranging from packers that rely on production and marketing agreements to packers that rely primarily on the open market.

In 2019, formula pricing represented almost 65 percent of total fed cattle procurement, compared to about 45 percent in 2010 (Figure 2). Forward contracting increased to over 11 percent in 2019, but has been declining as a share of the total since 2015. Negotiated pricing, including negotiated grid and cash or spot market transactions, has also been declining to about 24 percent of total fed cattle procured (not including packer-owned cattle) in 2019, from over 45 percent in 2009.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

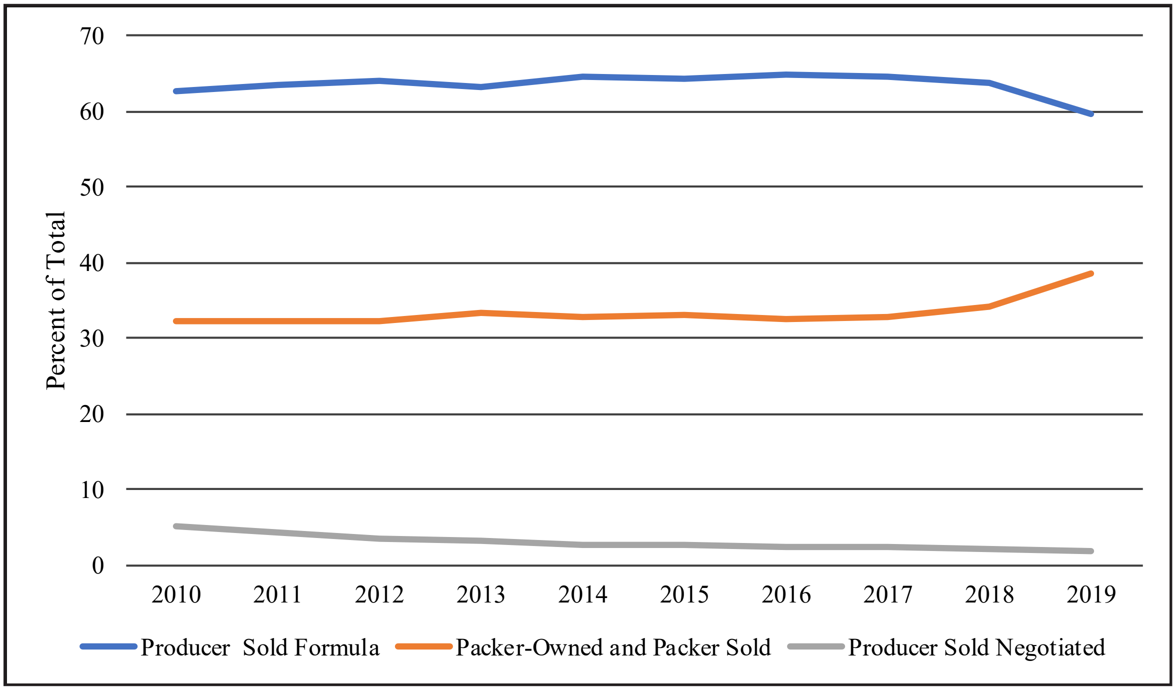
Figure 2. Fed Cattle Procurement by Purchase Type, 2010–2019



Formulas have been the dominant form of pricing for market hogs. For all pork packers reporting to AMS in 2019, almost 60 percent of hog purchases were based on formula pricing (Figure 3). Pork packers obtained about 1.8 percent of their hogs through negotiated purchases in 2019, compared to about 5 percent in 2010. Procurement based on negotiated pricing has been under 3 percent since 2014. Packer-owned hogs accounted for over 38 percent of hog slaughter reported to AMS in 2019.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Figure 3. Hog Procurement by Purchase Type, 2010–2019



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.

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 2019, packers purchased almost 24 percent of their lambs under negotiated prices. They purchased about 59 percent with marketing agreements based on formula pricing, and packers fed about 17 percent of the lambs for slaughter (Figure 4).

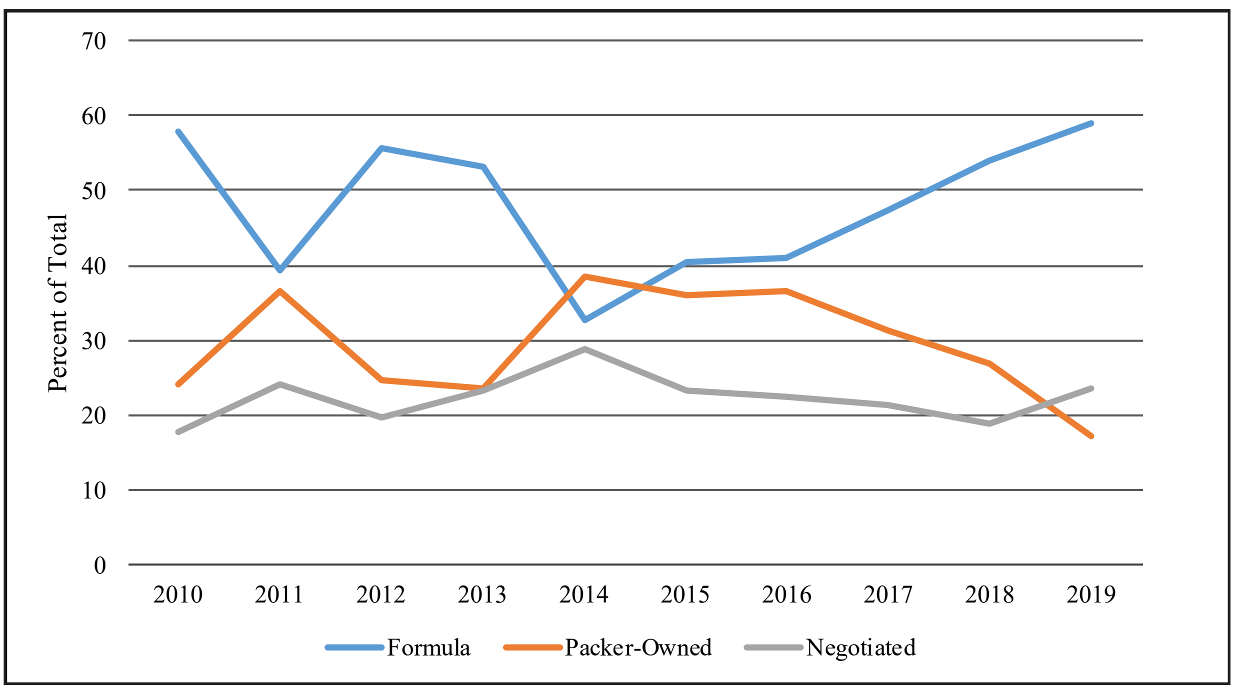
The non-traditional market is much different. It is characterized by small butchers and meat shops that process lambs and sell directly to consumers. Consumers can often choose the lamb before slaughter, and consumers may have the choice of purchasing the lamb and processing it themselves.

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, unlike in the lamb market, these buyers purchase a very small portion of the cattle and hogs produced in the United States.

Figure 4. Lamb Procurement by Purchase Type, 2010–2019



BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

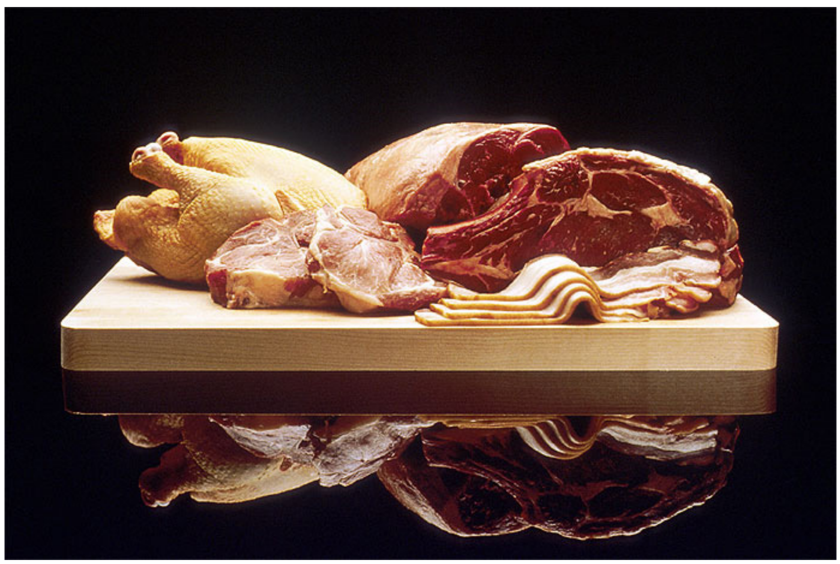
CHANGES IN OPERATION AND ORGANIZATION

PSD uses information about business practices at the packing plant level to identify industry trends. Such information includes the intensity of plant operations (e.g. one or two shifts per day), the number of plants in business at any given time, and the ownership of those plants. Plant closures or re-openings can affect competition by shifting supply and demand patterns. The Federal Trade Commission (FTC) and the DOJ Antitrust Division evaluate all livestock, packer, and live poulty dealer 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 including procurement methods, international trade, and regulatory changes 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

Tyson Foods announced in November 2018 the completion of its $2.16 billion acquisition of **Keystone Foods** from **Marfrig Global Foods**. This acquisition included plants and innovation centers in China, South Korea, Malaysia, Thailand, and Australia, and it also included an innovation center and 6 processing plants in the United States with locations in Alabama, Georgia, Kentucky, North Carolina, Pennsylvania, and Wisconsin. Keystone is a leading supplier of chicken, beef, fish and pork to the growing global foodservice industry and adds to Tyson's international operations.



In January 2019, **Sam Kane Beef Processors LLC** filed for Chapter 11 bankruptcy protection, having been under court-ordered receivership since October 2018. Before the company's financial problems, it processed about 270,000 head of cattle annually and employed over 700 people. In February 2019, **STX Beef Co**., a subsidiary of **JDH Capital LLC,** acquired the company in a court-approved bankruptcy auction. STX Beef reopened the plant in April 2019 and it has gradually resumed packing operations.

In March 2019, **Prestage Farms** opened a new hog slaughter plant in Eagle Grove, Iowa. The plant processes about 5,400 hogs per day. Prestage Farms is the largest family-owned pork producer in the United States.

In April 2019, **Iowa Food Group** suspended operations at a Cherokee, Iowa, plant purchased late in 2018. In July 2019, **Lopez Foods** bought the plant and anticipates reopening it in 2020 after renovations are complete.

Also in April 2019, **Central Valley Meat Holding Company** agreed to acquire **Harris Ranch Beef Holding Company,** in Selma, California. Central Valley Meat has plants in Selma, Hanford, and Vernon, California, and processes up to 1,400 head per day, while Harris Ranch Beef processes about 1,200 head. The two firms will operate independently under the combined ownership of Central Valley Meat Holding Company.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

In May 2019, **Perdue Farms** acquired **Panorama Meats** in Modesto, California, the largest U.S. producer of grass-fed certified organic beef. This acquisition will add to the **Perdue Premium Meat Company** business, which includes **Niman Ranch**, **Coleman Natural, Prairie Grove,** and **Sioux-Preme Packing**. Panorama's operation comprises almost 50 independent family farms in 7 States that raise cattle on USDA Certified Organic grasslands.

In June 2019, **National Beef Packing Company, LLC,** completed its purchase of **Iowa Premium, LLC**. National Beef is the fourth largest beef packing company in the United States and is majority-owned by **Marfrig Global Foods**. Iowa Premium processes about 1,100 head of Black Angus cattle daily in its plant in Tama, Iowa.

In October 2019, **The Maschoffs LLC** completed the purchase of facilities from **Smithfield Foods Inc.** in Albin, Wyoming. The operation consists of sow farms, nursery, finishing space, and a feedmill, and brings the total sow herd at Maschoffs to almost 200,000.

Poultry

In February 2019, **Sanderson Farms** began operations in its new poultry complex in Tyler, Texas. The company expects the complex, which includes a processing plant, feed mill, and hatchery, to reach full production early in 2020.

In April 2019, **Mountaire Farms** opened a processing plant in Siler City, North Carolina. It anticipates it will employ over 1,200 people and have potential capacity to process up to 1.4 million chickens per week when the plant is operating at full capacity. Mountaire Farms purchased the plant from **Townsends** in 2016.

In April 2019, the new **House of Raeford** poultry plant in Teachey, North Carolina opened. The previous facility was torn down and rebuilt after a fire in 2017. The plant is processing about 700,000 chickens per week; volume is expected to increase when the plant is fully operational in 2020.

In June, **Hain Celestial Group Inc**. sold **Hain Pure Protein Corp** to **Aterian Investment Partners III LP**, a private equity company. This sale included its chicken production businesses, **Empire Kosher** operating in Mifflintown, Pennsylvania, and **Freebird Chicken i**n Fredericksburg, Pennsylvania. In February, the company sold its turkey production operations, **Plainville Farms** in New Oxford, Pennsylvania, to **Plainville Brands LLC**, a Delaware limited liability company.

The **Simply Essentials** plant in Charles City, Iowa closed in August 2019. Simply Essentials purchased the plant in June 2016 out of bankruptcy court after the facility had been operating as **Cedar River Poultry.** Simply Essentials employed over 500 people at the plant and associated field operations.

In September 2019, **Costco** opened a new chicken processing complex in Fremont, Nebraska, including a hatchery, feed mill, and processing plant. **Lincoln Premium Poultry** operates the facility on behalf of Costco and will potentially process 100,000 chickens per day and employ 1,000 people.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

In September 2019, the **Jamaica Broiler Group**, headquartered in St. Catherine, Jamaica, acquired the broiler operations of **Gentry's Poultry Company**, Ward, South Carolina. Gentry's Poultry Company is a small, family-owned and operated poultry processing company.

Simmons Foods began operations in September 2019 in a new poultry processing plant located in Gentry, Arkansas. The company estimates it will eventually employ over 2,000 people, including 800 who will transition from an existing plant in Decatur, Arkansas. The Decatur plant will cease operations in 2020.

In September 2019, **Cargill** announced it would end its fresh and frozen turkey operations in Waco, Texas, in November 2019. The company, which processed about 27,000 turkeys per day at the Waco plant, has other turkey operations in Virginia, Minnesota, Arkansas, Nebraska, and Missouri. Cargill offered contract growers in Waco a buyout option for the remaining term of their contracts.

In October 2019, **Mountaire Farms** opened its new $60 million feed mill in Scotland County, North Carolina. The feed mill's location will allow the company to deliver feed faster to growers closer to Mountaire's Lumber Bridge, North Carolina, processing plant, while the company's other feed mill in Candor, North Carolina, will serve growers who raise poultry for the new processing plant in Siler City, North Carolina.

Some turkey processors were dealing with challenging market conditions in 2018 which has been attributed to an oversupply of turkey. In November 2018, **Zacky Farms**, which had been operating the family-owned company for 45 years, filed for bankruptcy, citing difficult industry conditions. The company closed its operations in January 2019, including a turkey slaughter plant in Fresno, California, and in October 2019, **Foster Farms** of California won the bidding auction for the assets of Zacky Farms, consisting of 19 turkey farms.

CHANGING BUSINESS PRACTICES

In October 2019, **JBS USA** stated it was eliminating the use of **Ractopamine** from its supply chain to maximize export opportunities. **Tyson Fresh Meats** also announced in October it would prohibit the use of Ractopamine in market hogs it purchases beginning in February 2020. Ractopamine is a feed supplement that promotes lean meat in hogs, and although the Federal Drug Administration (FDA) approved its use, China, Russia, and the European Union have banned the importing of pork from hogs treated with the drug.

INDUSTRY CONDITIONS AND EVENTS

2018 Farm Bill

On December 20, 2018, President Donald Trump signed the 2018 Farm Bill into law, which will remain in effect through 2023. The Farm Bill appropriates $867 billion over 10 years and includes provisions for funding agricultural subsidies, crop insurance and research efforts.

Livestock Dealer Statutory Trust

The 2018 Farm Bill required the USDA to conduct a study of the feasibility of establishing a livestock dealer statutory trust. PSD conducted the study to assist Congress in assessing the feasibility of establishing a livestock dealer statutory trust for the financial protection of livestock sellers. PSD completed the study in December 2019.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Rulemaking

On December 20, 2016, the USDA published proposed rules that would have established conduct and criteria to determine unfair or unjustly discriminatory practices, and undue, or unreasonable preferences. Concurrently, 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.

On October 18, 2017, USDA withdrew the IFR and issued a notice of no further action on the proposed rules. 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 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 and finalizing a rule during Fiscal Year 2020.

Cattle, Sheep, and Hogs

Price-Fixing Litigation

In April 2019, **Ranchers Cattlemen Action Legal Fund**, **United Stockgrowers of America** (R-CALF USA) filed a lawsuit against Tyson Foods, JBS S.A., National Beef Packing Co., and Cargill, in U.S. District Court, Northern District of Illinois. The complaint alleges the four largest beef packing companies in the United States conspired to depress prices for fed cattle to the detriment of ranchers and cattle futures traders. R-CALF asserted the price depreciation had been going on since at least January 1, 2015.

Following the R-CALF USA lawsuit, two cattle producers, Douglas Wright and Sam Mendenhall, filed a consumer class action lawsuit in April 2019 against the four largest packing companies in U.S. District Court, District of Minnesota. In the suit, the producers allege the packing companies conspired to suppress the price of fed cattle they purchased in the United States. The suit also alleges that the packers' coordinated efforts to reduce slaughter volumes and limit purchases of fed cattle in the cash cattle market led to a collapse in fed cattle prices in 2015.

In May 2019, a live cattle futures trader filed a lawsuit in the United States District Court for the District of Minnesota, alleging he suffered financial losses by transacting in live cattle futures and options at artificial prices. The suit alleges the losses were the direct result of the packing companies' conduct, including their suppression of fed cattle prices.

All three of the lawsuits allege beef packers colluded to suppress beef prices agreeing to reduce slaughter volumes and cattle purchases. Several of the largest packing companies have issued public statements denying the allegations. In July 2019, a Minnesota Federal court consolidated the three lawsuits into one.

In August 2019, a Federal judge in the United States District Court for the District of Minnesota dismissed antitrust lawsuits filed in 2018 against major pork packers including **Hormel Foods Corp**, **JBS USA**, **Smithfield Foods Inc.**, **Tyson Foods Inc.**, and data provider **Agri Stats, Inc.** The complaint alleged the companies conspired to limit supply and increase prices. The dismissal was without prejudice, which means the plaintiffs can amend their complaint.

Extreme Weather

Extreme weather conditions at the beginning of 2019 that continued through the spring caused major damage in the Midwest, especially in agriculture. There were losses in livestock, crops, buildings and machinery, and damage to infrastructure. Midwestern States experienced freezing temperatures in late January that set all-time cold records.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

In February, snowfall in some Western and Midwestern States was at historic levels. The persistent cold temperatures and heavy snow set the stage for disastrous flooding in March. A severe snowstorm in the upper Midwest and the Plains followed by heavy rains caused widespread flooding. In May, numerous tornadoes and heavy rainfall in some Midwestern States led to more flooding. The extreme weather conditions resulted in higher-than-normal livestock losses in the Northern Plains, fewer cattle on feed in Northern States, increased days on feed and cost of gains, delayed marketing of finished cattle, and reduced carcass weights. The extreme weather also caused delayed crop plantings. Continued rain and snow in the fall of 2019 resulted in harvests that were behind schedule.

Trade Agreements

Trade disagreements between the United States and China that began in 2018 continued to impact beef, lamb, and pork exports from the United States to China. The trade disagreements have resulted in each country raising tariffs on each other's imports. Both countries have held numerous rounds of trade talks. As of December 2019, the United States and China still lacked a trade deal, but negotiations were ongoing and eventually led to a bilateral trade agreement between the two countries in 2020.

In November 2018, the United States removed a ban on beef from Argentina imposed after an outbreak of foot-and-mouth disease in 2001. The agreement signed between the United States and Argentina permits the export of up to 22,000 tons of beef from Argentina to the United States, and the United States can export an unlimited amount of beef to Argentina.

In May 2019, the governments of Canada and Mexico announced the removal of their tariffs on U.S. pork and beef imposed in retaliation for tariffs imposed on aluminum and steel imports from those countries. This move by Mexico and Canada sets the stage for ratification of the U.S.-Mexico-Canada Agreement (USMCA), which will replace the **North American Free Trade Agreement** (NAFTA).

In May 2019, Japan lifted restrictions on beef imports from the United States that had been in place since 2003, following the first case of bovine spongiform encephalopathy (BSE) in the United States that year. In September 2019, the United States and Japan signed a preliminary trade agreement allowing reductions in tariffs on up to $7.2 billion of agricultural imports from the United States, including beef and pork. The reduced tariffs on beef and pork imports from the United States will allow U.S. domestic producers to compete more effectively with countries that have preferential trade agreements with Japan.

Fire at the Tyson, Holcomb, Kansas Beef Plant

In August 2019, a fire at a Tyson beef plant in Holcomb, Kansas, disrupted beef production. This raised concern in the cattle industry as the spread between boxed beef and fed cattle prices increased. In response, Agriculture Secretary Sonny Perdue directed PSD to open an investigation into beef pricing margins to ensure that business entities did not violate the P&S Act through unfair practices following the fire. The investigation into potential violations is ongoing, and therefore, PSD has limited ability to publicly report the full scope and status of the investigation. Tyson processed about 30,000 head of cattle per week at the plant before the fire, which represents about 5 percent of the industry total. The company resumed meat fabrication operations soon after the fire, while slaughter did not resume until late 2019 when reconstruction of the plant was complete.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

African Swine Fever

Fearing the spread of **African Swine Fever** (ASF), the **National Pork Producers Council** (NPPC) cancelled the **World Pork Expo 2019** that usually takes place in June in Des Moines, Iowa. ASF is a highly contagious and deadly viral disease affecting both domestic and wild pigs of all ages. The disease cannot be transmitted from animals to humans and is not a food safety issue.

In May 2019, the USDA announced the implementation of a surveillance plan to strengthen detection capabilities and enhance outbreak preparedness. The plan includes adding ASF to existing classical swine fever (CSF) surveillance, coordinating with Canada and Mexico on preventing the spread of the disease, working with U.S. Customs and Border Protection on inspection of cargo from countries affected by ASF, and collaborating with States, industry, and producers to ensure on-farm biosecurity and best practices are followed.

ASF first appeared in China in 2018, and it has since spread to most parts of the country as well as to several other Asian countries, including Vietnam, the Philippines, and Cambodia. Pork production has declined significantly in China with the spread of ASF and substantial losses in the hog herd. Despite higher tariffs on imports from the United States, pork exports to China have almost doubled from the prior year through August.

Poultry

Price-Fixing Lawsuits

Price-fixing lawsuits first filed against poultry processors in 2016 continued to be filed in 2019. In January 2019, **Darden Restaurants** filed an antitrust lawsuit against **Agri Stats Inc.** and some of the top poultry companies in the United States, alleging the companies conspired to increase the cost of chicken sold in the United States. Poultry companies named in the antitrust lawsuit filed in the Illinois Northern District Court include **Tyson Foods**, **Fieldale Farms**, **Foster Farms**, **George's, Harrison Poultry**, **House of Raeford Farms**, **JCG Foods**, **Koch Foods**, **Mar-Jac Poultry**, **Mountaire Farms**, **Claxton Poultry**, **O.K. Foods**, **Peco Foods**, **Perdue Farms**, **Pilgrim's Pride**, **Simmons Foods**, **Sanderson Farms,** and **Wayne Farms**.

In May 2019, **Walmart Inc.** filed a lawsuit in the U.S. District Court for the Western District of Arkansas claiming various U.S. poultry companies conspired to inflate chicken prices. The antitrust lawsuit states significant chicken producers, including **Pilgrim's Pride Corp**. and **Sanderson Farms**, engaged in price fixing from 2008 to 2016. Other defendants named in the latest lawsuit include **House of Raeford Farms Inc.**, **Mar-Jac Poultry Inc**., **O.K. Foods Inc.**, **Foster Farms LLC**, **Mountaire Farms Inc**. and **Agri Stats Inc.**

On June 25, 2019, the Department of Justice (DOJ) filed a motion to intervene and stay discovery of evidence in an antitrust lawsuit involving major poultry processors. The lawsuit (**Maplevale Farms, Inc.**, et al., versus **Koch Foods, Inc**., et.al) filed in 2016, alleges the largest poultry processors conspired to fix broiler prices between 2008 and 2016. On June 27, 2019, the U.S. District Court of Illinois granted the DOJ motion to intervene in the poultry price-fixing lawsuit. The court ordered a 3-month stay of discovery, until September 27, 2019, in connection with the civil lawsuit.

On September 9, 2019, a class-action lawsuit was filed in the U.S. District Court for the District of Maryland, accusing the largest poultry firms of conspiring to depress wages and other compensation paid to employees of poultry companies. **Agri Stats Inc.** and **Webber, Meng, and Sahl, Inc.** (WMS), are also named in the lawsuit for allegedly facilitating the exchange of compensation data.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

INDUSTRY CONCERNS

Trade Uncertainties

Uncertainty about international trade and decreasing export opportunities for American agriculture is perhaps the most pressing issue for American beef and pork producers in 2019. Negotiations to ratify the USMCA and reach a trade deal with China were in progress through the end of December 2019.

Plant-Based and Lab-Created Proteins

Consumer interest in non-meat-based proteins has accelerated in recent years. In response, investment has increased in plant-based proteins and biotechnological innovations such as cultured meat. While **Beyond Meat** and **Impossible Foods** are at the forefront offering alternatives to animal-based burgers, sausage, and chicken, several competitors have also developed their own brands of plant-based proteins, including **Tyson Foods**, **Conagra**, **Nestle**, and **Kellogg**.

Several animal industry trade groups are continuing to educate consumers and policymakers about differences between animal-based meat and alternative-meat products. These trade groups are also seeking protections from the Federal Government and State Governments in the marketing and labeling of plant-based and lab-created protein items to ensure they are not labeled as meat, beef, or burgers, for example.

Poultry

Avian Influenza

Avian Influenza was not a major concern in poultry flocks in 2019. A case of low pathogenic avian influenza (LPAI) in a flock of breeder ducks and geese was reported in Monterey County, California, in April 2019. A second case was detected in a non-commercial duck layer flock in Merced County, California, in June 2019 during routine testing. In both of these cases, the premises were released from quarantine following treatment and testing by USDA and the California Department of Food and Agriculture (CDFA).

PSD INVESTIGATION AND ENFORCEMENT 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 practices, 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, Appendix B.

Regulatory activities are carried out to determine if a regulated entity is complying with the Act and regulations and also to help entities achieve compliance. 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 guidance 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 livestock as reported by AMS. PSD also analyzes structural changes in the livestock, meat, and poultry industries. These monitoring activities have led to investigations at individual company levels.

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 INVESTIGATION AND ENFORCEMENT 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 the Enforcement Branch with a recommendation for more formal enforcement. The EB may stipulate[2] the violation(s) with the entity to resolve the violations. Alternatively, it may pursue administrative enforcement through USDA's OGC before a USDA Administrative Law Judge or through the DOJ in Federal court.

Administrative enforcements[3] 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 2019, 29 entities stipulated to penalties totaling $83,255. Administrative Law Judges levied $697,320 in penalties and Federal courts awarded $16,862, for a total of $797,437 in civil penalties (Table 8). Total civil penalties in 2019 are the highest since 2015 and are more than double that of the prior year. 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.

[2] 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 their right to a hearing.

[3] 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 2015–2019

Type Judgment	2015	2016	2017	2018	2019
Stipulations	$158,950	$155,425	$128,575	$77,725	$83,255
Administrative Penalties	$499,300	$128,900	$489,950	$154,000	$697,320
Department of Justice Civil Penalties	$299,360	$74,468	$128,950	$145,950	$16,862
Total Penalties	$957,610	$358,793	$747,475	$377,675	$797,437
Suspensions	6	7	5	11	9

PSD INVESTIGATION AND ENFORCEMENT 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

In FY 2019, PSD re-established a Competition Branch staffed with economists. 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 market price monitoring program includes a weekly internal reporting protocol based on statistical models for the fed cattle markets. The statistical model relies on publicly reported price data to assess regional price differences. The hog price monitoring program was suspended in FY 2019 as reported negotiated prices in regional markets were no longer adequate and made price monitoring impractical. PSD is currently looking into alternatives for its hog price monitoring program.

In FY 2019, PSD price monitoring activities identified 43 outliers in the fed cattle 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 INVESTIGATION AND ENFORCEMENT 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 provides 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 to examine 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 2019, PSD conducted 69 poultry contract compliance reviews, including 41 that 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, swine contractors, and live poultry dealers do not engage in unfair or deceptive practices in the procurement and marketing of livestock, meat, and 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 of 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 INVESTIGATION AND ENFORCEMENT ACTIVITIES

Historically, several commission firms bought and sold livestock at the terminal stockyards, but most of these facilities are no longer operating. 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 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 INVESTIGATION AND ENFORCEMENT 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. PSD 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 2015 to 2019 appear in Table 9. In 2019, out of 869 inspections conducted, PSD agents found a total of 128 violations, or 85 percent in compliance, slightly higher than the prior year.

Table 9. Weighing Inspections and Violations, 2015–2019

Type	2015	2016	2017	2018	2019
Inspections					
Livestock Auctions	376	391	294	300	305
Dealers	247	253	241	301	278
Packers	160	143	138	159	155
Poultry	101	110	108	98	88
Feed	75	88	83	68	43
Total	**959**	**985**	**864**	**926**	**869**
Violations					
Livestock Auctions	108	134	56	59	32
Dealers	44	56	30	34	37
Packers	36	39	37	43	41
Poultry	7	21	14	16	14
Feed	13	15	17	5	4
Total	**208**	**265**	**154**	**157**	**128**

PSD INVESTIGATION AND ENFORCEMENT 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, livestock dealers, market agencies, and packers 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 409 custodial reviews in 2019 and found 137 violations. While the number of violations in 2019 declined from previous years, the dollar value of shortage corrections has increased to over $3.5 million, the highest in the past 5 years.

Table 10. Number of Custodial Account Reviews, Violations Found, and Shortages Corrected, 2015–2019

Year	Reviews	Account Violations	Shortage Corrections
2015	400	180	$2,978,657
2016	453	204	$3,317,866
2017	417	193	$1,668,901
2018	420	170	$1,577,974
2019	409	137	$3,573,403

PSD INVESTIGATION AND ENFORCEMENT 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.ams.usda.gov/resources/bond-bond-equivalent-and-claim-forms.

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 INVESTIGATION AND ENFORCEMENT 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.[4]

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 was 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 2019, the dollar amount of valid dealer bond claims filed declined to less than $500,000, and as of the end of the fiscal year, 52 percent of that amount has been recovered (Table 11).

Table 11. Dealer Bond Claims and Recovery, 2010–2019

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	$501,032	$1,429,830	$1,930,862	52
2019	$1,329,822	$475,183	$188,563	$58,064	$246,627	52

[4] 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. Recoveries for claims are recorded in the same year as the original claims were filed. 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 2019.

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

Claims filed against livestock auctions have varied widely over the past 10 years, with the total dollar amount of valid claims consistently under $1 million until 2019 (Table 12). There was a big increase in bond claims filed against auction markets in the past year, with a total of $2.1 million in valid claims. The recovery rate for claims filed against auction markets in 2019 is the lowest for several years at 13 percent.

Table 12. Livestock Auction Bond Claims and Recovery, 2010–2019

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
2019	$2,700,707	$2,108,679	$233,437	$37,016	$270,453	13

NA = Not Applicable

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

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. Valid packer bond and trust claims increased dramatically in 2016 and 2017 and rose to almost $144 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 74 percent in 2018. Like the claims, the vast majority of recoveries from 2016 to 2018 are the result of Sam Kane paying for livestock that had been 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 rescindments continued over the past 3 years, which explains the majority of the high value of claims and recoveries from 2016 to 2018. In 2019, valid claims decreased to $1.23 million, and 96 percent of that amount has been reimbursed.

Table 13. Packer Bond and Trust Claims and Recovery, 2010–2019

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	$323,868	$247,562	$0	$247,562	$0	$247,562	100
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	$149,278,059	$143,734,597	$4,730,000	$99,592,223	$1,338,841	$105,661,064	74
2019	$1,421,703	$1,234,400	$1,131,730	$48,003	$0	$1,179,732	96

NA = Not Applicable

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

Live poultry dealers are not required to maintain bonds, but are covered by a statutory trust. Poultry growers and live poultry sellers do not file trust 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 and 2019, no poultry trust claims were filed.

Table 14. Poultry Trust Claims and Recovery, 2010–2019

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	$4,632,282	$239,341	$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
2019	$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.

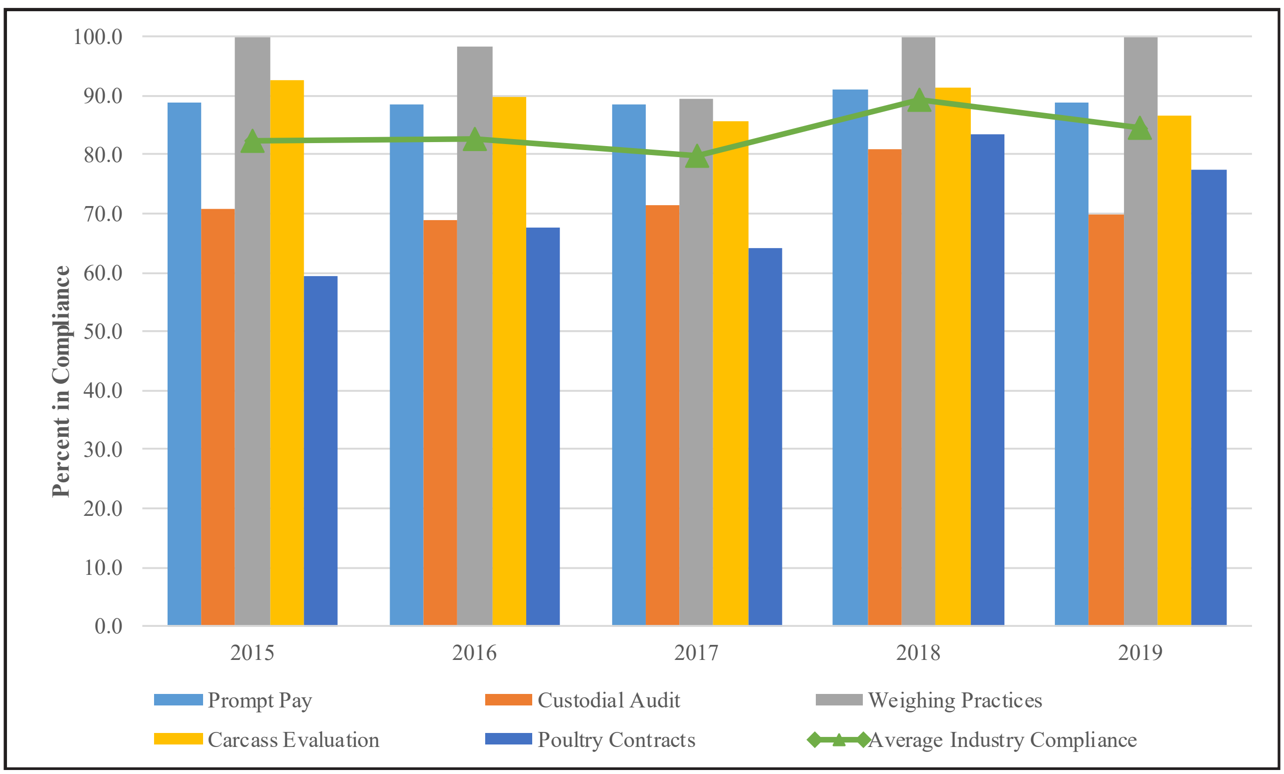
PERFORMANCE MEASUREMENT

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 industry compliance rates in the following five areas:

1) Prompt payment by 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. The overall compliance rate declined from 89 percent in FY 2018 to 85 percent in FY 2019. Compliance with most of the components weakened from the prior year, except weighing practices compliance, which remained at 100 percent. Carcass evaluation compliance fell from 91 percent to 87 percent, and poultry contract compliance slipped from 83 percent to 78 percent. Custodial account compliance decreased the most, from 81 percent to 70 percent, and prompt pay compliance dropped from 91 percent to 89 percent (Figure 5).

Figure 5. Industry Compliance by Component and Average Industry Compliance, 2015-2019



PSD PROGRAM PERFORMANCE AND EFFICIENCY

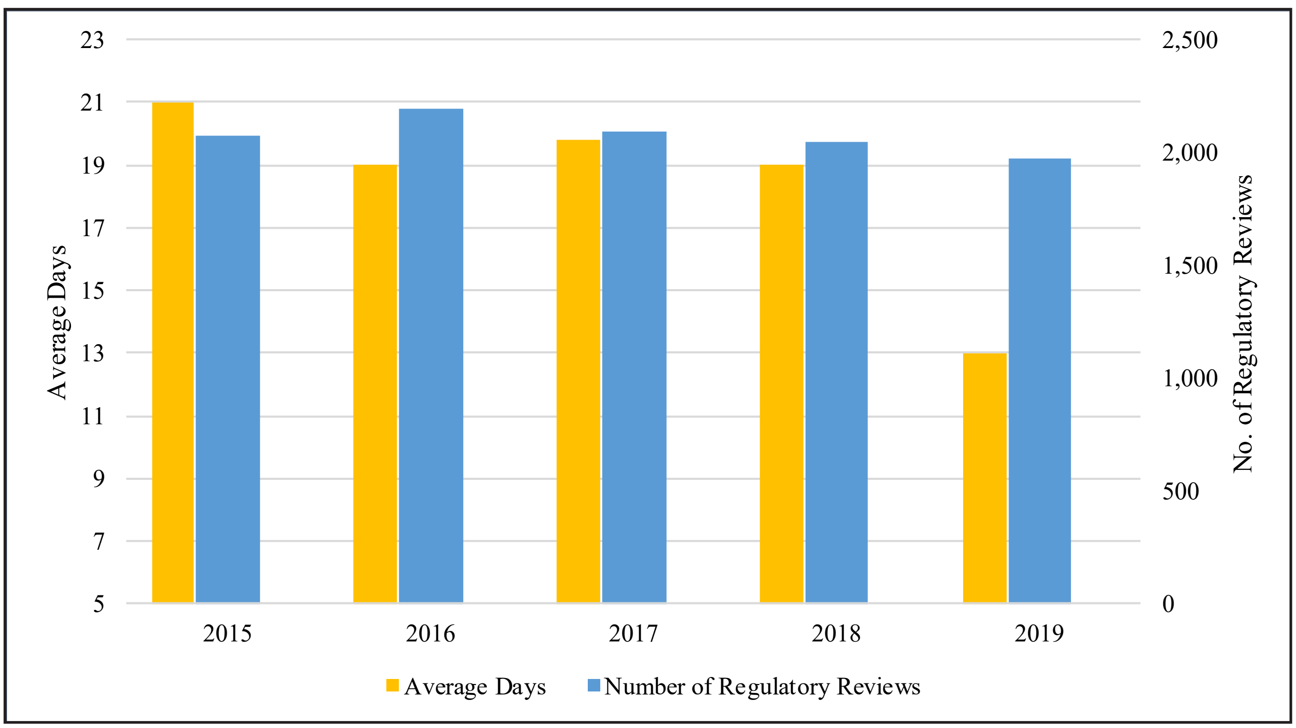
PSD puts emphasis on educational and outreach activities that improve industry compliance. During each regulatory review or investigation, PSD agents discuss how to achieve compliance with regulated entities. However, economic conditions within the industry affect compliance rates. For example, weak 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 ranged from 19 days to 21 days from 2015 to 2018 but declined to 13 days in 2019. The number of regulatory reviews completed declined to 1,972 from 2,048 in 2018.

Figure 6. Number of Regulatory Reviews and Average Days to Complete a Review, 2015–2019



PSD PROGRAM PERFORMANCE AND EFFICIENCY

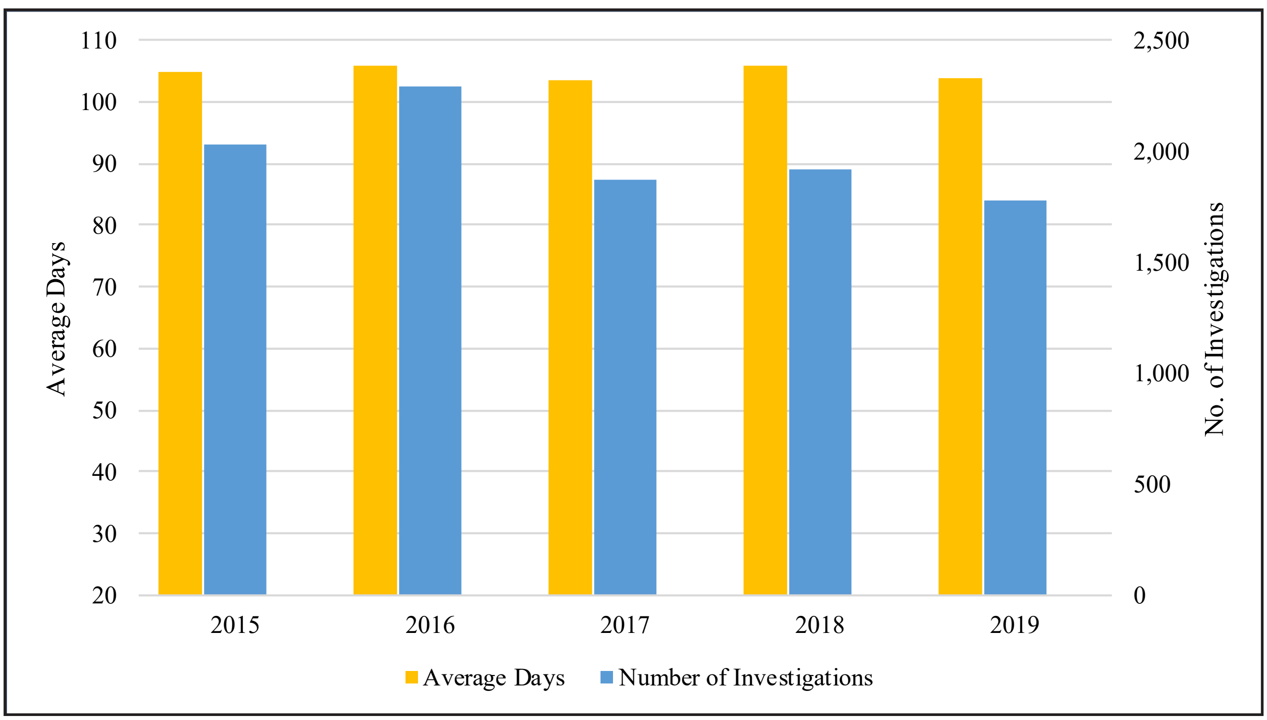
The total number of investigations completed by PSD in the field and the average number of days to complete an investigation appear in Figure 7. PSD considers an investigation complete when it is closed by PSD at the regional office level, closed by the Enforcemet Branch (EB), or when the formal enforcement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

For investigations closed in FY 2019, the average number of days to complete and close an investigation in the field declined from 106 to 104 days.

The number of investigations completed in the field decreased to 1,776 from 1,919 in FY 2018. 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 submitted formal case files to the EB with a recommendation for stipulation or enforcement by OGC or DOJ. If a regulated entity agrees to a stipulation, it waives its 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 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, 2015–2019



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 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.
Table 11	Data are from bond claims filed with PSD by livestock sellers against livestock dealers.
Table 12	Data are from bond claims filed with PSD by livestock sellers against 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 reported by packers, 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 - 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 2019 is (+/-) 6.8% for prompt pay, 9.1% for custodial account, 0.0% for weighing practices, 3.3% for carcass evaluation and 10.6% for poultry contract compliance.
Figures 6 - 7	Data on investigations and regulatory reviews from PSD databases.

APPENDIX B

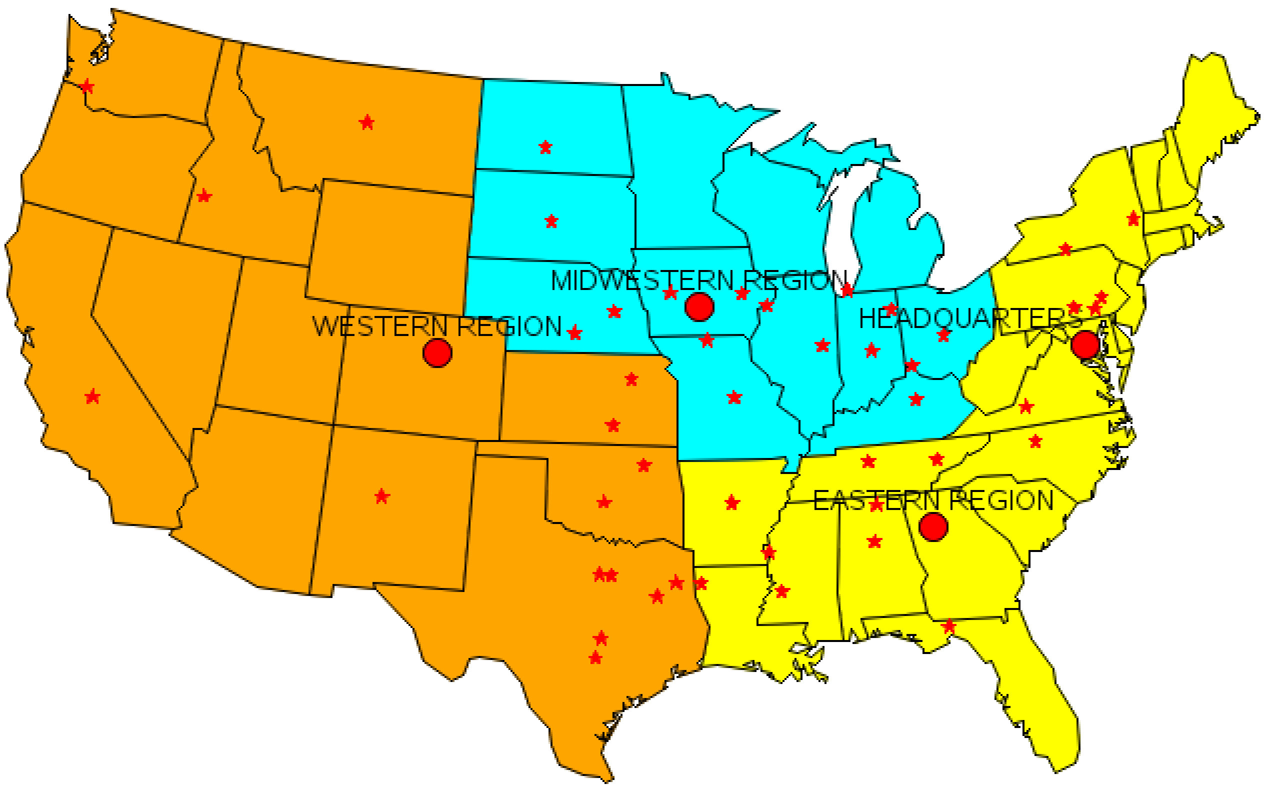


Figure 8. PSD Offices and Resident Agent, Resident Auditor, and Market Inspector Locations.

CONTACTING PSD

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PACKERS AND STOCKYARDS DIVISION SNAPSHOT

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