Agricultural Marketing Service
U.S. DEPARTMENT OF AGRICULTURE

Packers and Stockyards Division

Annual Report 2020

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 Fair Trade Practices Program (FTPP), Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA). 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) 2020, PSD's budget was $23.0 million and it had 115 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, DC
- Competition Branch in Washington, DC

Each Regional Director manages a geographic area. Directors supervise a staff of auditors, marketing specialists, resident agents, 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) monitors and identifies anti-competitive practices 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 2020, PSD had 115 employees, which included 73 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 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)

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.

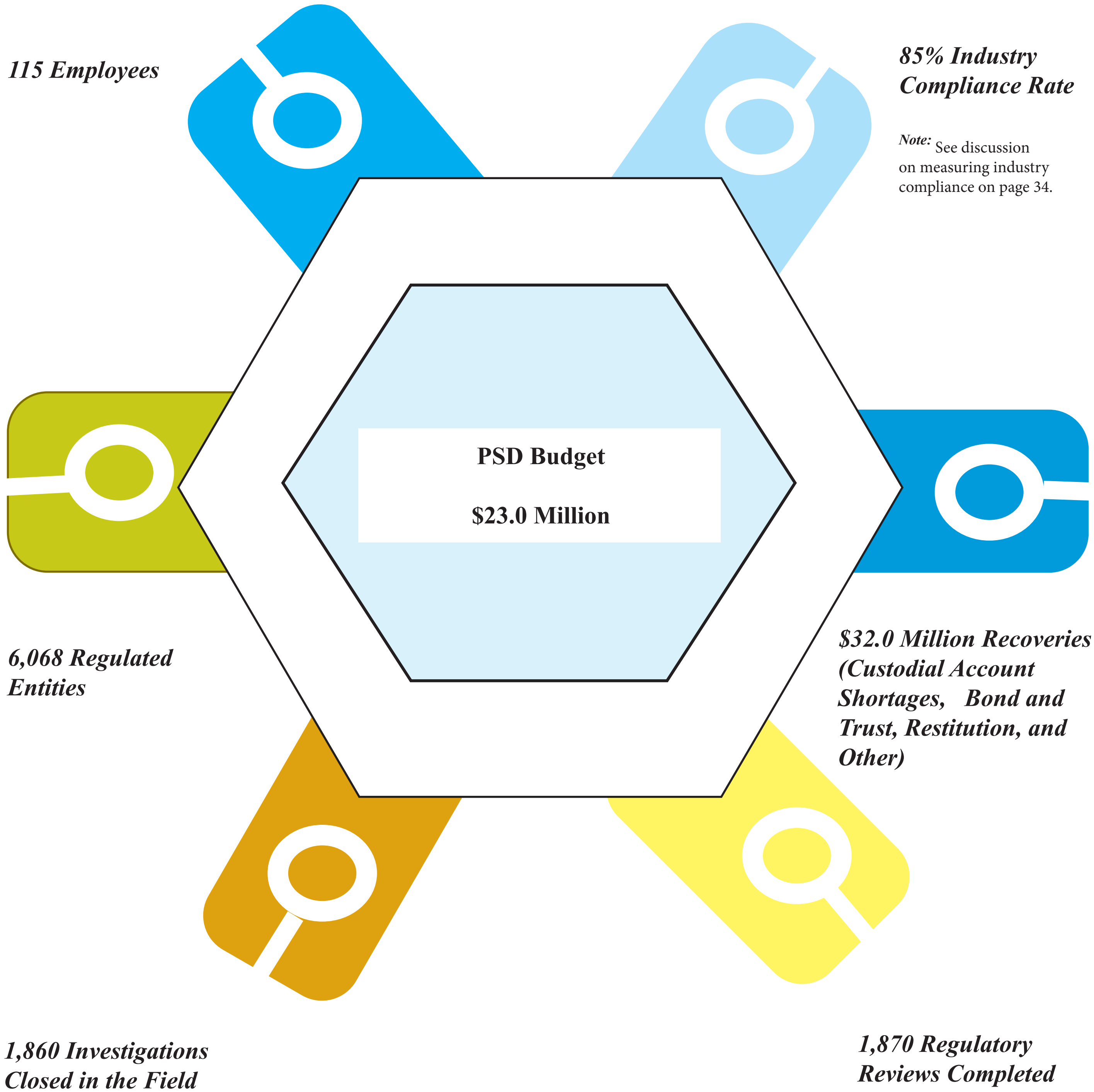
After receiving a claim, the packer must hold in trust livestock inventories and receivables, and proceeds from meat, meat food products, or livestock products until it makes full payment to all unpaid cash sellers.

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 2020 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 2020 calendar-reporting year are not due until April 15, 2021. As a result, most data series in this section end with the 2019 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 2020.[1] There were 313 bonded packers, 92 live poultry dealers, 4,452 registered livestock dealers and market agencies buying on commission, and 1,211 market agencies selling on commission. The number of bonded packers decreased from 319 to 313, and the number of livestock dealers and market agencies buying on commission also fell slightly. The number of market agencies selling on commission increased somewhat from 2019. 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 been declining for most of the past decade. In 2012, as the economy recovered from a severe recession and feed prices returned to more normal levels, poultry production rebounded and there was some expansion in the industry. Since then, the number of firms has been shrinking as some smaller companies exited the industry and others were acquired by larger operations.

[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, 2011–2020

Year	Bonded Packers	Livestock Dealers, Market Agencies Buying On Commission and Packer Buyers	Market Agencies Selling on Commission	Live Poultry Dealers
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
2020	313	4,452	1,211	92

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, maintain bonds, or file an annual report.[2]

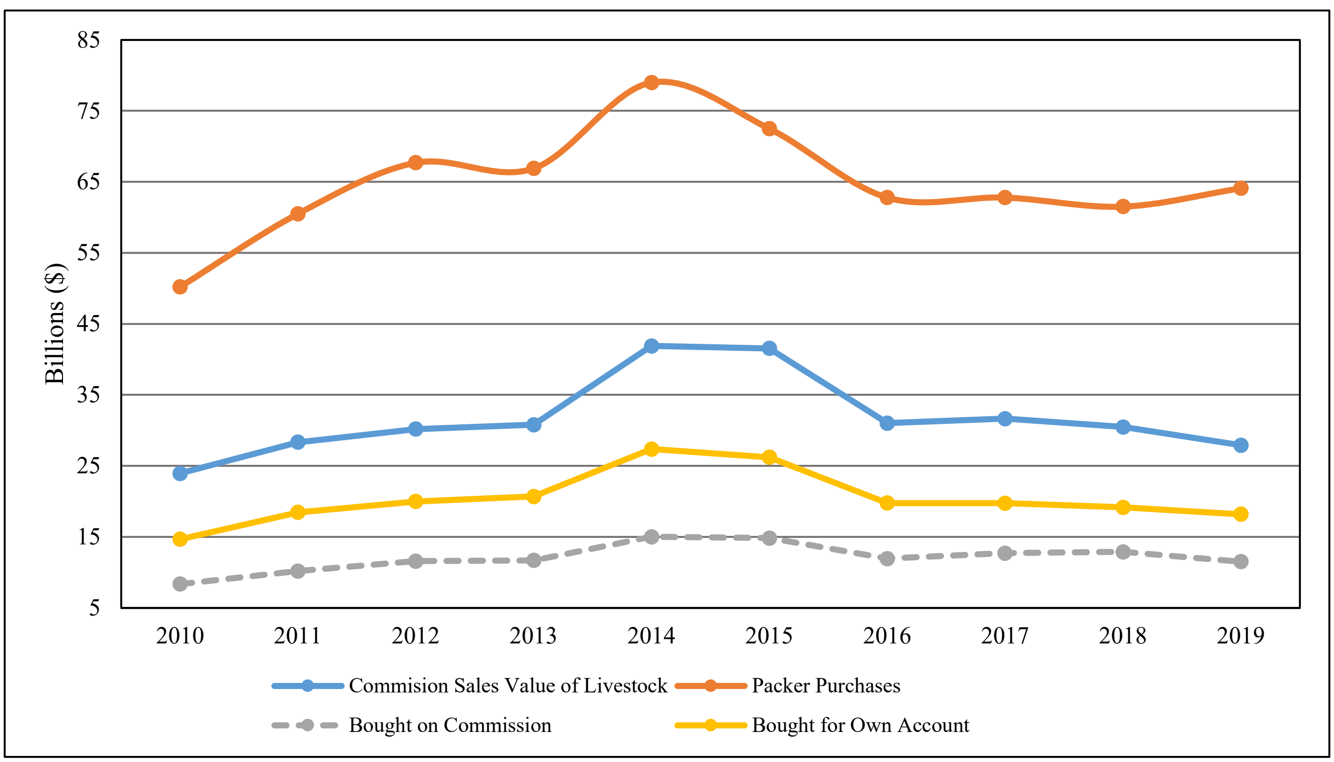
Table 2. Number of Farms by Swine Grower / Producer Type

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

[2] Data from Census of Agriculture

The value of livestock purchases for packers reporting to PSD increased to $64.1 billion in 2019 from $61.5 in 2018 (Figure 1). The dollar volume for livestock sold on commission declined to $27.9 billion, and the value of livestock bought as dealers on their own account and the volume bought on commission also decreased from the prior year, to $18.2 billion and $11.5 billion, respectively.

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, 2010–2019



ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

PSD requires packers that purchase more than $500,000 of livestock 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 over 30 million in 2019 (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 2019 is the highest in the past decade at 130.8 million head.

Sheep and lamb slaughter reported to PSD decreased to 1.7 million head from 2.3 million in the prior year.

Live poultry dealers reporting to PSD processed an estimated 56.4 billion pounds of chicken, the highest level reported in the past decade. Turkey production reported to PSD declined to 7.4 billion pounds in 2019, from 7.5 billion in 2018.

Table 3. Annual Volume of Livestock Purchased for Slaughter by Packers and Poultry Processed by Live Poultry Dealers Reporting to PSD, 2010–2019

	(Million Head)			(Billion Pounds)	
Year	**Cattle**	**Hogs**	**Sheep and Lambs**	**Broilers**	**Turkeys**
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
2019	30.6	130.8	1.7	56.4	7.4

PSD = Packers and Stockyards Division

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

There were slight changes in the number of plants in 2019; cattle plants increased to 156 from 151 in 2018, hog plants fell to 143 and the number of plants slaughtering sheep and lambs increased to 71 in 2019. 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 decreased to 218.

Table 4. Number of Slaughter Plants Operated by Packers and Live Poultry Dealers Reporting to PSD, 2010–2019

Year	Cattle and Calves	Hogs	Sheep and Lambs	Poultry
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
2019	156	143	71	218

PSD = Packers and Stockyards Division NA = Not Available

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

Concentration in Meat Packing and Poultry Processing

In Table 5, the "Total Value Purchases" column differs from the other columns insomuch as it measures concentration in dollar values rather than in weight or number of head. It is the four largest packers' share of the total dollar value for all cattle, hogs, sheep, and lambs. Packers provide the data for the total value concentration ratios in their annual reports to PSD.

Concentration ratios for steers and heifers, cows and bulls, hogs, and sheep and lambs are based on the number of head processed. PSD determines the concentration ratios from internal USDA data on the number of head each packer processed as a share of Annual Commercial Slaughter reported by National Agricultural Statistics Service (NASS). Broiler and turkey concentration ratios are the four largest processors' share, by weight, as 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 66 to 68 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 2019, an increase from the previous year. Concentration in steer and heifer purchases ranged from 83 to 85 percent in the past decade.

Cow and bull slaughter has been consistently less concentrated than fed cattle slaughter. The four-firm concentration ratio was 50 percent in 2019, down from its highest level of 60 percent in 2013.

The four-firm concentration ratio for hog slaughter decreased to 67 percent in 2019, and has been in the low to mid-60's range in most years.The four-firm concentration ratio in the sheep and lamb market has been less than 60 percent since 2013. 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.

The Herfindahl-Hirschman Index (HHI) is another measure of industry concentration, and is shown in Table 6. The HHI is calculated by summing the squares of the individual firms' market shares. PSD calculates the HHI of market concentration for packers from the individual packers' market shares based on Annual Commercial Slaughter totals. For context, these concentration levels are particularly important for understanding the firms' market power in the wholesale and retail-facing national market for the relevant meat or poultry. Comparing the numbers in the table to the DOJ/FTC (Department of Justice/Federal Trade Commission) Horizontal Merger Guidelines, steer and heifer slaughter has been moderately concentrated in recent years, while cow and bull slaughter, and lamb slaughter are relatively unconcentrated. The HHI for hog slaughter passed the 1,500 mark in 2018, but was in the unconcentrated range in the other years.

Because of constraints on the distance live animals can be efficiently transported, livestock producers and poultry growers face regional markets for their products that are more concentrated than the national concentration measures indicate. For example, a study using the Agricultural Resource Management Survey (ARMS) found that almost 22 percent of broiler growers have only one integrator in their area, and another 30 percent have only two integrators.[3] Similarly, the regional markets in which cattle are principally acquired are, in most cases, significantly more concentrated than the national markets into which beef products are sold.

[3] MacDonald, James M. 2014. *Technology, Organization, and Financial Performance in U.S. Broiler Production.* USDA Economic Research Service, Economic Information Bulletin No. 126.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

Table 5. Annual Four-Firm Concentration Ratios Among Meat Packing and Poultry Processing - Federally Inspected Plants, 2010–2019

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.) %
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	84	52	70	55	54	55
2019	66	85	50	67	53	53	55

Table 6. HHI Meat Packing - Federally Inspected Plants, 2015–2019 [4]

Year	Steers & Heifers (Total Head)	Cows & Bulls (Total Head)	Hogs (Total Head)	Sheep & Lambs (Total Head)
2015	1,933	1,048	1,327	1,093
2016	1,902	1,068	1,337	1,324
2017	1,852	1,004	1,418	1,210
2018	1,869	938	1,547	1,077
2019	1,878	923	1,475	1,059

DOJ/FTC Horizontal Merger Guidelines on Market Concentration and HHI

- Unconcentrated Markets: HHI below 1,500
- Moderately Concentrated Markets: HHI between 1,500 and 2,500
- Highly Concentrated Markets: HHI above 2,500

[4] A concentration analysis of national cattle slaughter reflects the number of head slaughtered by each company nationally. The regional markets where cattle are principally acquired for slaughter are, in most cases, significantly more concentrated.

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 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 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 livestock 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 68 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 7).

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 7. Percentage of Livestock Purchases on a Carcass-Weight Basis
Packers Reporting to PSD, 2010–2019

Year	Cattle %	Calves %	Hogs %	Sheep and Lambs %
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
2019	68.1	18.3	80.1	25.1

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 2010 to about 32 million head in 2019 (Table 8). Stockers (heifers and/or steers that are being raised on pasture or other forage) 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 (cull) cows and bulls (beef or dairy cows and bulls that are no longer needed for breeding or milk production).

The volume of hogs sold through market agencies selling hogs on commission from 2010 to 2019 has declined from more than 8 million head to just over 7 million in recent years (Table 8). 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 8).

Table 8. Volume of Livestock Marketed Through Market Agencies Selling on Commission Reporting to PSD, 2010–2019 (Thousand Head)

Year	Cattle	Hogs	Sheep and Lambs
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
2019	32,562	7,276	3,285

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 specific lots or quantities of livestock to be delivered more than 14 days in the future. 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.

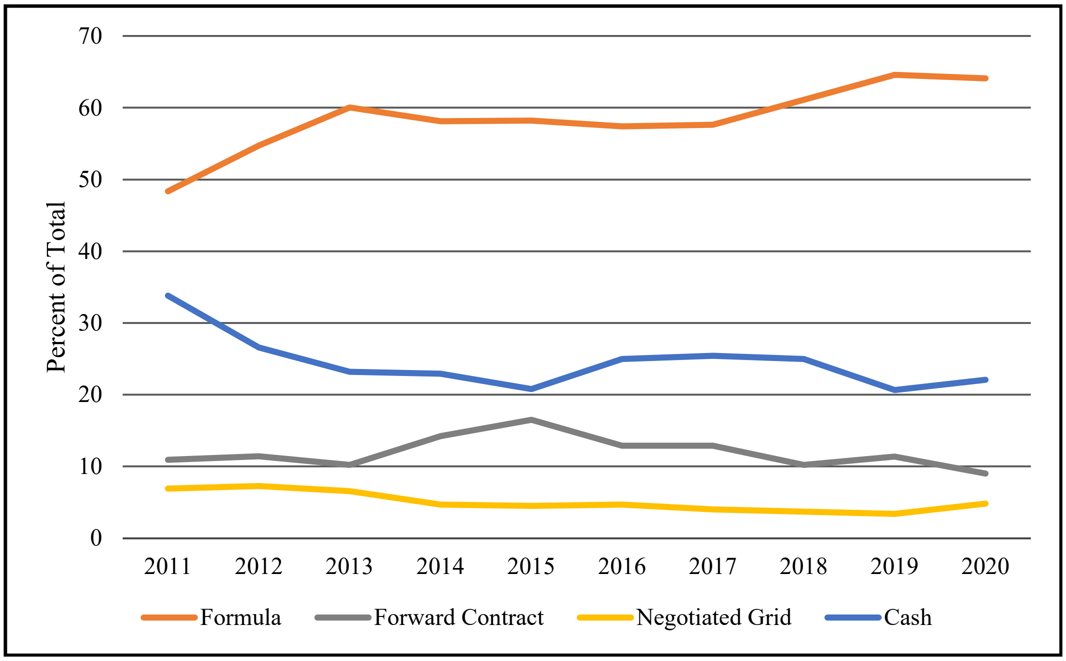
The term "marketing agreements" includes a variety of arrangements that establish an ongoing relationship for trading multiple lots of livestock rather than negotiating single lots. In these arrangements, the seller agrees to deliver livestock to the packer at a future date, with the price generally 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 2020, formula pricing represented 64 percent of total fed cattle procurement, compared to about 48 percent in 2011 (Figure 2). Forward contracting decreased to 9 percent in 2020, and has been declining as a share of the total since 2015. Negotiated pricing, including negotiated grid and cash or spot market transactions, increased from the prior year to about 27 percent of total fed cattle procured (not including packer-owned cattle) in 2020, but is down from 40 percent in 2011.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

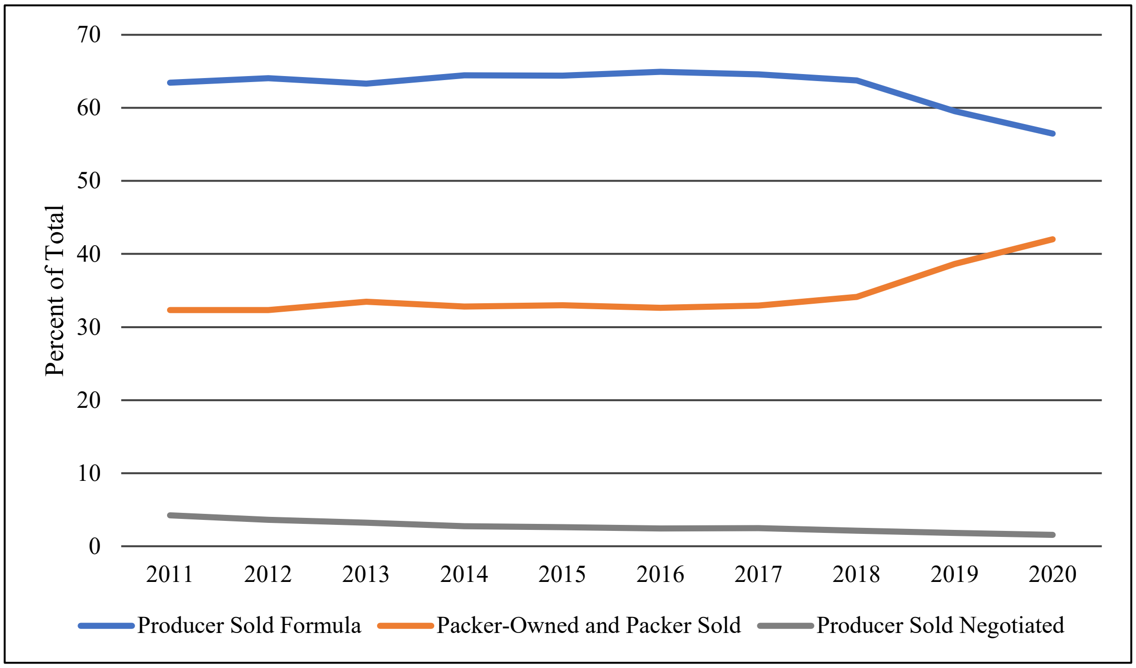
Figure 2. Fed Cattle Procurement by Purchase Type, 2011–2020



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 common replacement price is the pork carcass cutout price reported by AMS.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Figure 3. Hog Procurement by Purchase Type, 2011–2020



For all pork packers reporting to AMS in 2020, over 56 percent of hog purchases were based on formula pricing (Figure 3). Pork packers obtained about 1.5 percent of their hogs through negotiated purchases in 2020, compared to about 4 percent in 2010. Procurement based on negotiated pricing has been under 3 percent since 2014. Packer-owned hogs accounted for about 42 percent of hog slaughter reported to AMS in 2020.

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 2020, packers purchased almost 28 percent of their lambs under negotiated prices. They purchased about 68 percent with marketing agreements based on formula pricing, and packers fed about 4 percent of the lambs for slaughter (Figure 4).

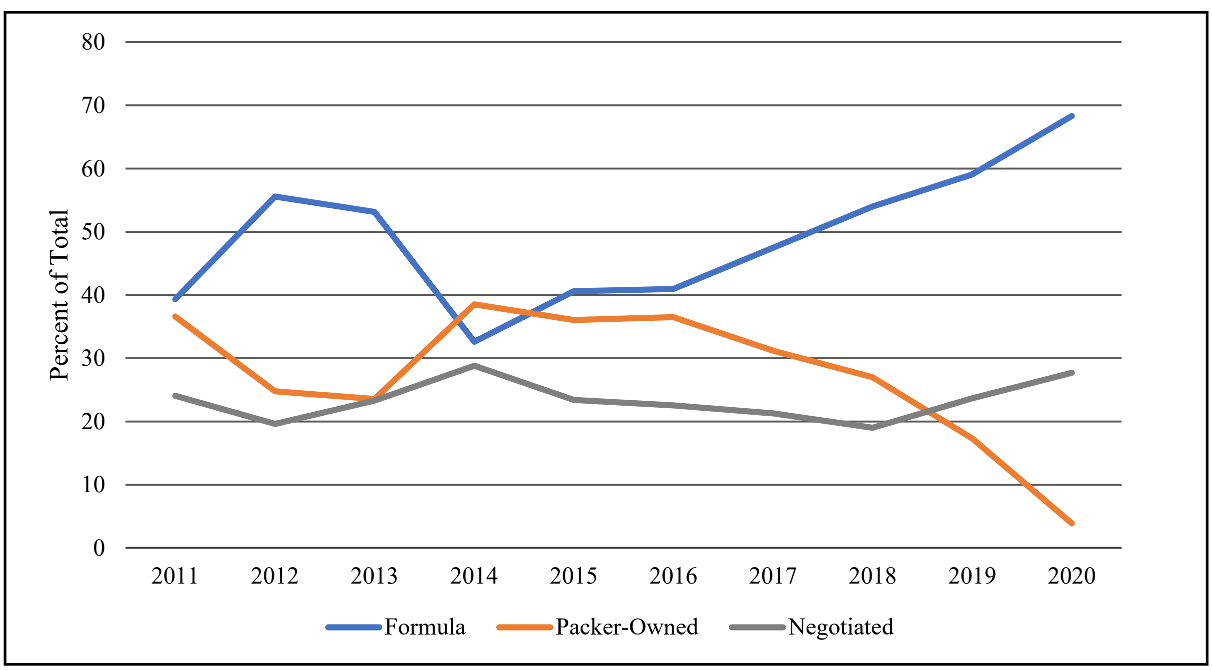
The non-traditional market is much different. It is characterized by small butchers and meat shops that process lambs and sell directly to consumers. Consumers can often choose the lamb before slaughter and may have the choice of purchasing the lamb and processing it themselves.

One aspect of the non-traditional market is that lambs are not typically processed in federally inspected 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.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

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, 2011–2020



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 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

Relatively few mergers, acquisitions, openings, or closings took place in 2020. It is likely the uncertainty created by the COVID-19 pandemic discouraged investment to some extent. Following are some of the more prominent mergers, acquisitions, opening, or closings in fiscal year 2020.

In December 2019, **Tyson Fresh Meats, Inc.** reopened its beef packing plant in Holcomb, Kansas. The plant had been inoperative since August when fire damage forced Tyson to close it for repairs. Tyson's Holcomb plant was one of the largest in the United States, processing over 5,000 head per day.

In December, **JBS USA** announced plans to lease and eventually acquire the **J&B Group, Inc.** beef processing plant in Pipestone Minnesota. J&B had planned to close the facility by the end of December before JBS USA agreed to lease and ultimately purchase the plant.

Marfrig Global Foods purchased the remaining shares of **National Beef Packing Co., LLC** that were owned by Jeffries Financial Group in December 2019. Marfrig was already the majority owner in National Beef along with Jeffries Group, U.S. Premium Beef, and some members of National Beef's management. The purchase brought Marfrig's ownership share in National Beef to over 80 percent. Marfrig is among the world's largest meat packing firms. It is a Brazilian corporation and its stock is publicly traded on the Brazilian Stock Exchange.

Walmart opened a case-ready facility in Thomasville, Georgia in January, 2020. Walmart is a new entrant into the beef processing industry. **FPL Foods, Inc.** in Augusta, Georgia will manage the operations of the plant. The facility is part of a branding program in which Walmart sources cattle from producers, has them processed at Creekstone Farms in Arkansas City, Kansas, and then further processes the boxed primals at the case-ready facility in Thomasville, Georgia.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

Mountain States Lamb Cooperative ceased operations in July 2020 and sold its slaughter and breaking plant in Greely, Colorado to **JBS USA** in a bankruptcy auction. JBS immediately announced that it would not process sheep or lambs at the facility but would convert it to a further processing plant for beef and pork. Mountain States had been the second largest lamb processor in the United States and the only major lamb packer that had been organized as a cooperative in recent decades.

In July 2020, **American Foods Group** in Green Bay, Wisconsin purchased **Calihan Pork Processors, Inc**. in Peoria, Illinois. American Foods was the fifth largest U.S. beef packer, and Calihan specialized in producing hot boned pork.

In August 2020, **Maxwell Foods**, which is a subsidiary of Goldsboro Milling Co., announced it would permanently close its hog operations in 2021. The company cited low prices and the effects of the coronavirus COVID-19 pandemic, making current and projected financial losses unsustainable for the company to continue operating. The business, which includes 150 contract farms in North Carolina, will cease operations in a phased approach based on growing cycles.

Colorado Lamb Processors, Inc. began operations in September 2020 at its new slaughter facility in Brush, Colorado. Initially, the firm only processed a few hundred head per day, but it expects to increase slaughter to over 1,000 head per day. Colorado Lamb Processors did not have facilities to fabricate carcasses although it has indicated that it might add breaking capacity in the future. In the near term, Colorado Lamb Processors expects to sell lamb carcasses with breakers as its primary customers.

Johnsonville LLC purchased **Vermont Smoke and Cure** in September 2020. Vermont Smoke and Cure produced beef, pork, and poultry meat snacks as well as pepperoni and summer sausage. Johnsonville plans to continue operations at the Vermont plant as part of the Johnsonville organization.

CHANGING BUSINESS PRACTICES

The world's largest grocery retailer, Walmart, became a beef packer as defined in the Packers and Stockyards Act. Walmart is developing an Angus brand to sell at its supermarkets in the Southeast. It is using a vertically integrated model that controls the seedstock; feeds the calves at Mc6 Feedyard in Hereford, Texas; processes the finished cattle at Creekstone Farms in Arkansas City, Kansas; and further processes the boxed beef at Walmart's new further processing plant in Thomasville, Georgia. Walmart stated that concern over industry concentration was one of the factors that caused it to enter the packing industry.

Walmart is not the first large retailer to recently enter the meat and poultry processing industries. In 2019, Costco Wholesale opened a poultry complex near Fremont, Nebraska with the primary purpose of supplying Costco retail stores with rotisserie chickens.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

COVID-19 caused many changes in business practices for packers in 2020. Most are likely temporary changes that will only last as long as the COVID-19 crisis, but some will become permanent. At some point, almost every large packing facility and or poultry processing plant temporarily closed or reduced production due to COVID-19. Efforts to mitigate transmission of the SARS-CoV-2 virus included the use of personal protective equipment, spacing out workstations, and adding protective barriers between workstations among other measures.

The entire livestock, meat, and poultry complex was forced to adopt COVID-19 mitigation measures. Unlike meat packers and poultry processors, livestock producers do not tend to have large numbers of employees in comparatively small spaces. Therefore, the mitigation measures implemented by most livestock producers were less extensive.

COVID-19 has changed the way people consume meat and poultry. In 2019, well over half of consumer's food dollars were spent on food away from home, but that changed in 2020 with "stay at home" orders, restaurants that were closed or limited in capacity, closed schools, and public events that were cancelled. After several months, consumer's habits have changed, and only time will tell if consumers' habits return to pre-COVID-19 levels.

INDUSTRY CONCERNS

There were several competition concerns in 2020. Among the most prominent was the indictment of poultry executives for conspiring to fix prices. In June, the U.S. Justice Department indicted four people for conspiring to fix prices and rig bids for broilers. In October, the Justice Department indicted six more for conspiring to fix prices and rig bids from 2011 to at least early 2019. The people indicted were executives or directors for Pilgrim's Pride Corp., Tyson Foods, George's Inc., and Claxton Poultry Farms. The Justice Department did not indicate whether more indictments were expected.

Class action lawsuits alleging conspiracies to fix prices among the largest U.S. poultry processors that began in 2016 are ongoing. Allegations included manipulating the Georgia Dock price reported by the Georgia Department of Agriculture, and sharing production and sales information through a third party consolidated data service, Agri Stats Inc. Similar class action lawsuits have been filed against pork packers.

A fire closed the Tyson plant near Holcomb, Kansas from August to December 2019. Prices for fed cattle immediately fell and boxed beef prices increased. The spread between fed cattle prices and boxed beef prices increased to record levels. PSD received numerous complaints from cattle producers with concerns that the large packer margins were due to restrictions of competition and price manipulation. Secretary Perdue directed PSD to investigate cattle and beef markets for violations of competition provisions of the Packers and Stockyards Act.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

In March 2020, when States began implementing "stay at home" orders and closing non-essential businesses, prices for boxed beef surged again, and cattle prices decreased. The spread between fed cattle prices and boxed beef prices increased to levels higher than in the period following the closure of the Tyson plant. Beef packers closed plants or reduced production in April and May as plant employees began contracting COVID-19, and boxed beef prices increased further. The spread between fed cattle prices and boxed beef prices increased to historical highs. PSD again received complaints from cattle producers with concerns that beef packers' margins were due to price manipulation and a restriction in competition, and Secretary Perdue directed PSD to extend the investigation that it started after the Tyson plant closed to include disruptions related to COVID-19.

PSD conducted a thorough investigation of cattle and beef market prices and beef packers' practices after the Tyson plant was closed from August to December 2019, and when COVID-19 disrupted markets during March, April, and May 2020. Investigation findings were released by USDA in a July 22, 2020 report, https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf. The findings at that point did not preclude the possibility that individual entities or groups of entities violated the Packers and Stockyards Act during the aftermath of the Tyson Holcomb fire and the COVID-19 pandemic. The investigation into potential violations under the Packers and Stockyards Act is continuing.

With respect to COVID-19, the market for hogs and pork took a similar course as cattle and beef markets. Retail and wholesale pork prices increased in March as States enacted "stay at home" orders. In April and May, when plants closed or reduced output with employees contracting COVID-19, prices for market hogs fell, and wholesale pork prices increased. More finished hogs were available than packers could process. Some producers who were unable to sell their market-ready hogs, chose to euthanize them. PSD received complaints that packers' feeding hogs for slaughter contributed to the problem alleging that packers processed their own hogs timely but would not accept hogs from independent producers. PSD has opened an investigation into pork packers' practices when COVID-19 disrupted markets.

The large price swings caused by COVID-19 raised concerns about price discovery in cattle and hog markets. An increasingly small share of cattle and hogs are traded on a negotiated cash basis each week. There are concerns that prices established with the small weekly cash trade do not represent the value of the livestock. Some contracts and marketing agreements for fed hogs incorporate pork cutout or other price series to set base prices. Fed cattle contracts and marketing agreements tend to rely on reported negotiated cash prices.

The share of hogs traded on a negotiated cash basis is typically less than 5 percent. While the share of fed cattle traded on a negotiated cash basis is considerably larger, it is often below 20 percent.

A number of changes have been offered by Members of Congress, the National Cattlemen's Beef Association (NCBA), and other stakeholders, to increase the number of cattle that packers purchase on a cash basis. Most involve a requirement that packers purchase a certain percentage of their cattle on a negotiated basis. A report prepared by several agricultural economists for NCBA recommended employing "market makers" that would sell cattle on the cash market while formula and committed sellers compensate the market makers to give them an incentive to sell cattle on a cash basis.

BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES

As the number of cattle sold on a cash basis has decreased, the frequency with which confidentiality requirements have prevented AMS Market News from publishing regional price reports has increased. AMS contracted with industry experts to examine possible new reporting regions enabling AMS to publish more prices while protecting confidentiality. The recommendations were made available to the public in 2020.

Confidentiality requirements in AMS Market News reports have been a concern in lamb markets for several years. The number of lamb packers reporting cash trades to the AMS mandatory price reporting program is so small that AMS has difficulty reporting prices. AMS has made a number of changes over the years to keep the reports available, but the issue remains a concern.

COVID-19 exposed several concerning issues in the latter half of fiscal 2020. Meat and poultry packing facilities were vulnerable to COVID-19. Most of the largest plants had to slow production or cease operating at times. The numbers of people that contracted COVID-19 in meat and poultry facilities raise concerns about the health and welfare the plants' production workforce.

The market effects of large plants closing or slowing production also raise concerns. Particularly in beef and pork markets, the major plants are so large that closing one plant has substantial effects up and down the supply chain. Closing or slowing production in several plants can be catastrophic, resulting in retail food shortages while producers are forced to euthanize hogs or chickens.

Another concern is the difference in the supply chains for retail markets and hotels, restaurants, and institutions (HRI). When restaurants began closing due to COVID-19 in March 2020, restaurants and food services significantly reduced the amount of meat and poultry they purchased. At the same time, demand for meat and poultry in retail markets increased dramatically. The shift in consumer demand for meat and poultry strained the supply chain in part because products sold to retail markets are not readily interchangeable with products sold to HRI. Meat and poultry sold to restaurants is usually packaged differently with equipment that cannot be easily adjusted for retail products. Broilers raised for HRI trade are typically smaller birds processed at facilities dedicated to processing broilers for the HRI. The industry was able to adjust fairly quickly but for a time, parts of the supply chain could not meet demand while other parts were nearly idle.

African Swine Fever (ASF) has devastated China's pork industry for the last few years. China was by far the world's largest pork producer, but some estimates indicate that ASF reduced China's sow herd by as much as half. While China's misfortune represented an opportunity for the U.S. pork industry to increase exports to China, it also raised concerns that ASF could spread to the United States.

Poultry

A low pathogenic variant of avian influenza, H7N3, was detected in 11 commercial turkey farms in North Carolina and in one commercial turkey farm in South Carolina in March and April. Two of the premises were breeding farms, while the other 10 farms raised turkeys for meat production and about 300,000 birds were affected. H7N3 highly pathogenic avian influenza was also confirmed in a commercial meat turkey farm in South Carolina where about 32,000 turkeys were affected.

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

Investigations and regulatory activities are two broad types of activities conducted at the regional office level. PSD generally categorizes regulatory and investigative activities as addressing areas of competition, trade practices, or financial concerns.

Investigations and regulatory reviews 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 reviews 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 annual reports, or randomly selected as part of 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.

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 followup on previously identified violations of the Act.

When investigating failures to pay for livestock, PSD assists producers with filing bond and trust claims where applicable.

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 (EB) with a recommendation for more formal enforcement. The EB may stipulate[5] 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[6] 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 2020, 18 entities stipulated to penalties totaling $122,700. Administrative Law Judges levied $653,256 in penalties and Federal courts imposed $10,000 in fines, for a total of $785,956 in civil penalties (Table 9), a slight decline from the 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.

[5] 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.

[6] 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 9. Penalties Levied for Packers and Stockyards Act Violations 2016–2020

Type Judgment	2016	2017	2018	2019	2020
Stipulations	$155,425	$128,575	$77,725	$83,255	$122,700
Administrative Penalties	$128,900	$489,950	$154,000	$697,320	$653,256
Department of Justice Civil Penalties	$74,468	$128,950	$145,950	$16,862	$10,000
Total Penalties	$358,793	$747,475	$377,675	$797,437	$785,956
Suspensions	7	5	11	9	19

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

ENFORCING BUSINESS PRACTICE PROVISIONS

The regional offices are responsible for conducting regulatory reviews and investigations of trade practice provisions of the Act, collectively referred to as business practice provisions. The regional offices investigate alleged 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. 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 prices. 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.

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 2020, PSD conducted over 100 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 scale accuracy, 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 marketed 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 livestock sales 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.

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, packer, or live poultry dealer 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, packers and live poultry dealers 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, live poultry 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 2016 to 2020 appear in Table 10. In 2020, out of 736 inspections conducted, PSD agents found a total of 89 violations, an 88-percent compliance rate.

Table 10. Weighing Inspections and Violations, 2016–2020

Type	2016	2017	2018	2019	2020
Inspections					
Livestock Auctions	391	294	300	305	275
Dealers	253	241	301	278	202
Packers	143	138	159	155	138
Poultry	110	108	98	88	74
Feed	88	83	68	43	47
Total	**985**	**864**	**926**	**869**	**736**
Violations					
Livestock Auctions	134	56	59	32	22
Dealers	56	30	34	37	15
Packers	39	37	43	41	33
Poultry	21	14	16	14	15
Feed	15	17	5	4	4
Total	**265**	**154**	**157**	**128**	**89**

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 onsite 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 onsite financial compliance reviews. 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 onsite 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 onsite 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 11 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 410 custodial reviews in 2020 and found 141 violations. The number of violations increased slightly from the prior year, and the dollar value of shortage corrections also increased to over $3.8 million.

Table 11. Number of Custodial Account Reviews, Violations Found, and Shortages Corrected, 2016–2020

Year	Reviews	Account Violations	Shortage Corrections
2016	453	204	$3,317,866
2017	417	193	$1,668,901
2018	420	170	$1,577,974
2019	409	137	$3,573,403
2020	410	141	$3,813,221

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

Bond Protections for Unpaid Livestock Sellers

All market agencies, 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.[7]

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 5 years, the total dollar amount of valid claims decreased from $11.3 million in 2016 to over $1 million in 2020.

Table 12. Dealer Bond Claims and Recovery, 2016–2020

Year Opened	Total Claims	Valid Claims	Year Closed	Bond	Other	Total Recovered
2016	$11,466,498	$11,331,648	2016	$618,839	$273,947	$892,786
			2017	$690,000	$0	$690,000
2017	$1,028,459	$752,707	2017	$136,803	$0	$136,803
			2018	$153,331	$151,813	$305,144
2018	$5,139,226	$3,710,515	2018	$420,000	$1,264,830	$1,684,830
			2019	$81,032	$165,000	$246,032
2019	$1,329,822	$477,524	2019	$118,994	$54,729	$173,723
			2020	$77,353	$3,335	$80,688
2020	$1,146,789	$1,001,257	2020	$311,284	$200	$311,484

All years are fiscal years ending September 30. Year closed corresponds to date of recovery.

[7] In all bond claim tables, total claims are computed for the fiscal year in which the claim was opened. Bond claims are not always closed in the same fiscal year they were first opened and recoveries for claims are recorded in the year the claims were closed. Claims that are withdrawn are not included in any of the totals.

PSD INVESTIGATION AND ENFORCEMENT ACTIVITIES

Total claims against livestock auctions decreased from less than $400,000 in 2016 to less than $100,000 in 2018 (Table 13). In 2019, timely filed valid bond claims increased to $2.1 million but in 2020 valid claims declined to over $43,000.

Table 13. Livestock Auction Bond Claims and Recovery, 2016–2020

Year Opened	Total Claims	Valid Claims	Year Closed	Bond	Other	Total Recovered
2016	$397,946	$397,946	2016	$0	$0	$0
2017	$441,433	$197,913	2017	$143,468	$639	$144,107
2018	$165,099	$80,052	2018	$72,359	$1,619	$73,978
			2019	$114	$0	$114
2019	$2,700,707	$2,108,679	2019	$9,217	$37,016	$46,233
			2020	$224,220	$1,909,808	$2,134,028
2020	$58,174	$43,339	2020	$40,805	$2,534	$43,339

All years are fiscal years ending September 30. Year closed corresponds to date of recovery.

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. The vast majority of the packer bond and trust claims completed from 2017 to 2019 are the result of claims filed against Sam Kane Beef Processors, LLC, due to its difficulty in paying timely for its cattle purchases.

Table 14. Packer Bond and Trust Claims and Recovery, 2016–2020

Year Opened	Total Claims	Valid Claims	Y ear Closed	Bond	Trust	Other	Total Recovered
2016	$14,210,690	$14,210,690	2016	$20,000	$14,092,732	$7,259	$14,119,991
			2017	$0	$79,564	$0	$79,564
2017	$23,757,904	$23,757,904	2019	$0	$22,722,824	$0	$22,722,824
2018	$149,259,337	$143,715,875	2018	$525,000	$3,436,237	$552,193	$4,513,430
			2019	$4,195,000	$96,155,986	$786,648	$101,137,635
2019	$1,440,425	$1,253,123	2020	$1,141,730	$48,002	$0	$1,189,732
2020	$2,311,428	$2,240,034	2020	$235,000	$1,118,547	$393,080	$1,746,627

All years are fiscal years ending September 30. Year closed corresponds to date of recovery.

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 15). In 2017, there was full restitution for claims filed against poultry dealers, and the poultry trust accounted for all of the reimbursement. From 2018 to 2020, no poultry trust claims were filed.

Table 15. Poultry Trust Claims and Recovery, 2016–2020

Fiscal Year	Total Claims	Valid Claims	Trust	Other	Total Recovered
2016	$0	$0	$0	$0	$0
2017	$82,840	$82,840	$82,840	$0	$82,840
2018	$0	$0	$0	$0	$0
2019	$0	$0	$0	$0	$0
2020	$0	$0	$0	$0	$0

PSD PROGRAM PERFORMANCE AND EFFICIENCY

PSD achieves its mission, in part, 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.

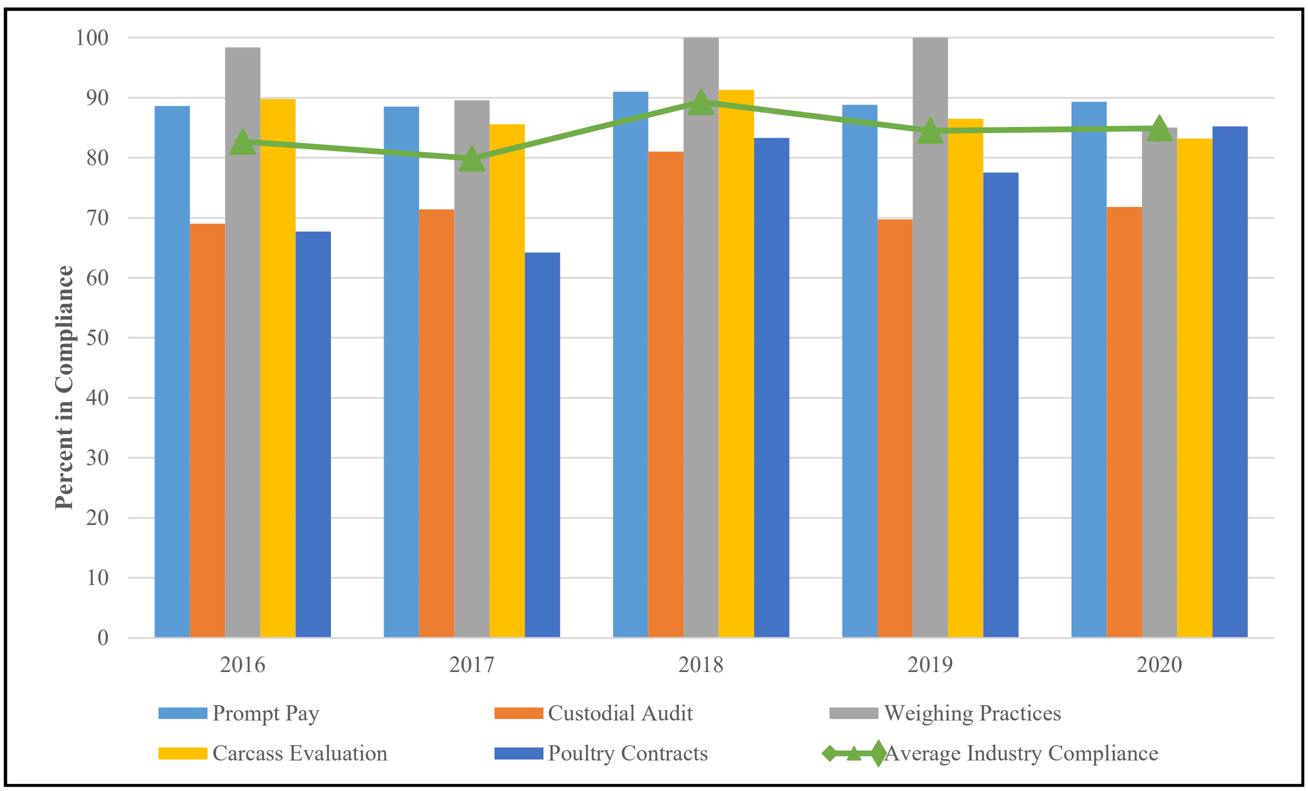
PERFORMANCE MEASUREMENT

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. While the overall compliance rate remained at 85 percent from FY 2019, the results of the components that comprise the aggregate index were mixed compared to the prior year. Weighing practices compliance declined from 100 percent to 85 percent, and carcass evaluation compliance also fell, from 87 percent to 83 percent. Poultry contract compliance increased from 83 percent to 85 percent, and custodial account compliance improved from 70 percent to 72 percent. Prompt payment compliance was unchanged at 89 percent (Figure 5).

Figure 5. Industry Compliance by Component and Average Industry Compliance, 2016–2020



PSD PROGRAM PERFORMANCE AND EFFICIENCY

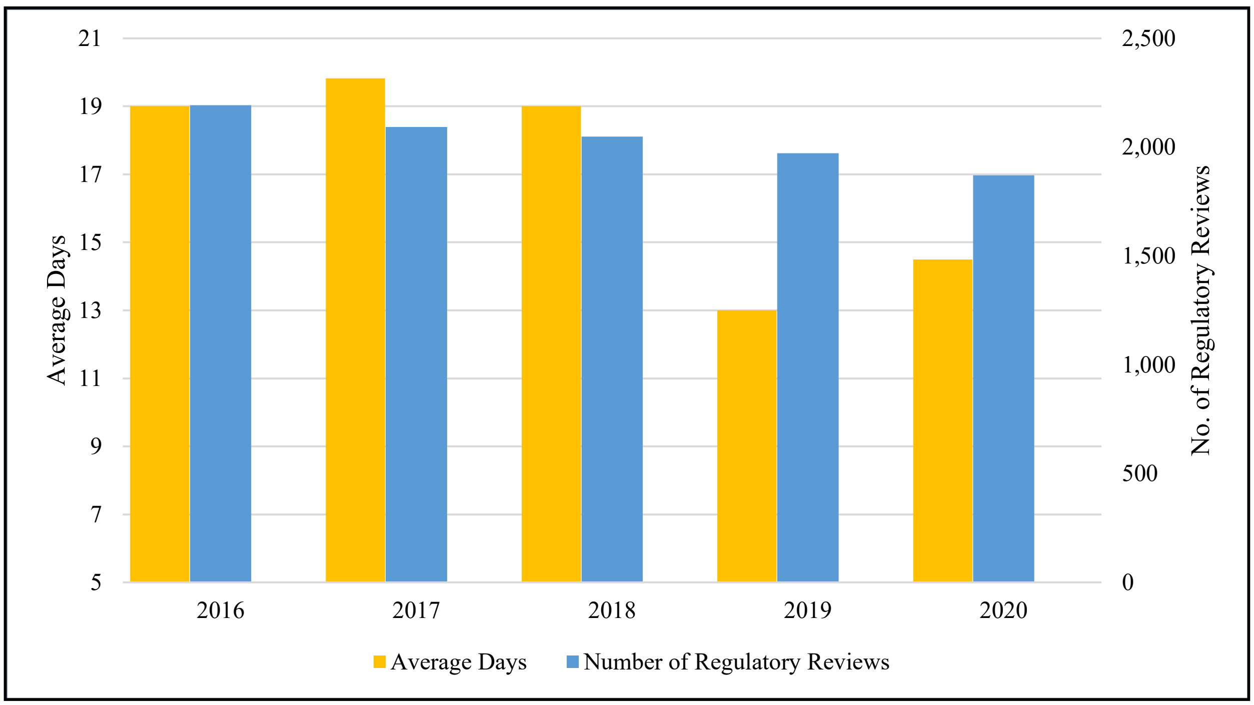
PSD puts emphasis on educational and outreach activities that improve industry compliance. During each regulatory review or investigation, PSD agents discuss how to achieve compliance with regulated entities. However, economic conditions within the industry affect compliance rates. For example, weak 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 increased from 13 in 2019 to 15 in 2020 and the number of regulatory reviews completed declined to 1,870 from 1,972 in 2019.

Figure 6. Number of Regulatory Reviews and Average Days to Complete a Review, 2016–2020



PSD PROGRAM PERFORMANCE AND EFFICIENCY

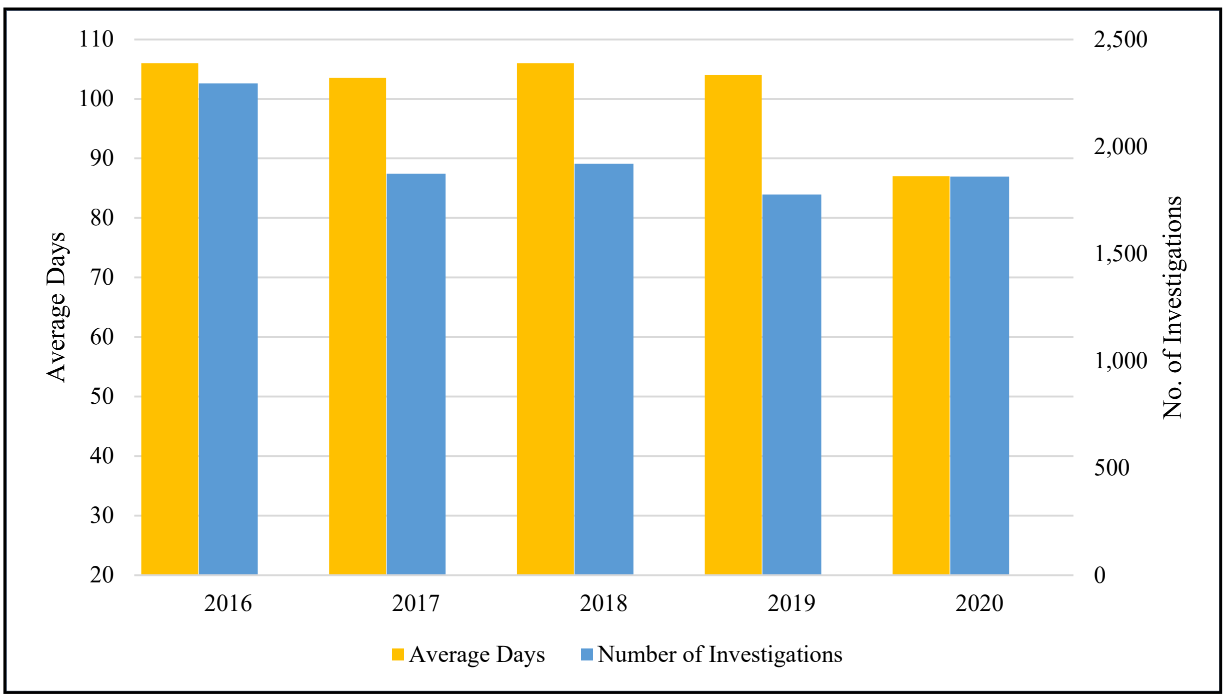
The total number of investigations completed by PSD in the field and the average number of days to complete an investigation appear in Figure 7. PSD considers an investigation complete when it is closed by PSD at the regional office level, closed by the Enforcemet Branch (EB), or when the formal enforcement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

For investigations closed in FY 2020, the average number of days to complete and close an investigation in the field declined to 87 days from 104 in FY 2019.

The number of investigations completed in the field increased to 1,860 from 1,776 in FY 2019. PSD completed these investigations in several ways. For about 85 percent of cases, PSD found no violations or reached an informal agreement to correct minor violations. PSD resolved and closed 11 percent of 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.

Figure 7. Number of Investigations and Average Days to Complete, 2016–2020



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 and Table 6	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 NASS reports on commercial slaughter. Concentration statistics for broiler and turkey slaughter are computed from live poultry dealer annual reports filed with PSD.
Table 7	Data are compiled from annual reports filed by packers with PSD.
Table 8	Data are compiled from annual reports filed with PSD by livestock markets selling on commission.
Table 9	Enforcement data from PSD databases.
Table 10	Scales and weighing inspection data from PSD databases.
Table 11	Data on custodial account reviews are from PSD databases.
Table 12	Data are from bond claims filed with PSD by livestock sellers against livestock dealers.
Table 13	Data are from bond claims filed with PSD by livestock sellers against market agencies.
Table 14	Data are from bond and trust claims filed with PSD by livestock sellers against packer bonds and packer trusts.
Table 15	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 2020 is (+/-) 7.2% for prompt pay, 9.4% for custodial account, 12.5% for weighing practices, 1.5% for carcass evaluation and 11.1% for poultry contract compliance.
Figures 6–7	Data on investigations and regulatory reviews from PSD databases.

APPENDIX B

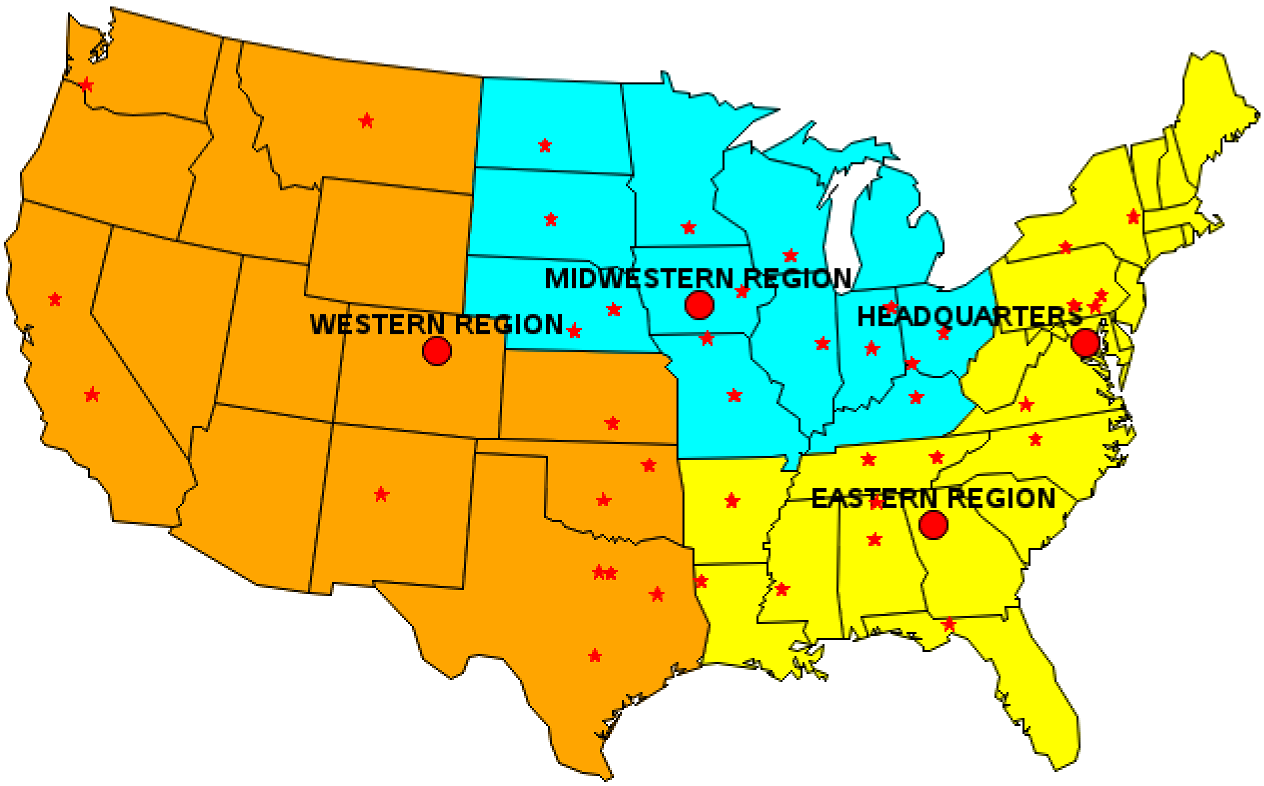


Figure 8. PSD Offices and Resident Agent, Resident Auditor, and Market Inspector Locations

CONTACTING PSD

To file a complaint, e-mail PSDComplaints@usda.gov, call PSD's hotline at (833) 342-5773, or contact the relevant regional office location:

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December 2021