United States Department of Agriculture

2013 Annual Report

Packers and Stockyards Program

Our Mission:

> "To protect fair trade practices, financial integrity, and competitive markets for livestock, meat, and poultry."

March 2014

Grain Inspection, Packers and Stockyards Administration

EXECUTIVE SUMMARY

Overview—The Packers and Stockyards Program (P&SP) operates under the authority of the Packers and Stockyards Act (P&S Act). P&SP is administered by a Deputy Administrator, who reports to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the U.S. Department of Agriculture (USDA). The Deputy Administrator provides leadership to five program directors—two in the Washington, D.C., headquarters and three in regional offices located in Atlanta, Georgia; Aurora, Colorado; and Des Moines, Iowa.

Each regional office director manages a Business Practices Unit, a Financial Unit, and two Resident Agent Units, which enforce the P&S Act through regulatory actions and investigations. Each director also oversees an administrative Program Support Unit, and the Western Regional Office director oversees the Central Reporting Unit, which processes annual reports filed with P&SP by entities subject to the P&S Act.

Unit Level Activities—To ensure compliance with the P&S Act, P&SP agents conduct two broad types of activities: investigative and regulatory. Investigations are carried out when a violation of the Act appears to be occurring. Regulatory activities are monitoring activities to determine if a regulated entity is complying with the P&S Act and result in correction of identified deficiencies.

Program Management—P&SP measures its overall performance by annually measuring the regulated entities' compliance with the P&S Act. The performance measure encompasses activities P&SP conducts that directly or indirectly influence industry compliance. The compliance rate declined to 83 percent in 2013 after increasing 10 percentage points from 2011 to 2012, but was still higher than the compliance rates in 2010 and 2011.

P&SP measures its efficiency at achieving industry compliance by the average number of days it takes to complete the investigative phase (the time from complaint until the investigation is closed by P&SP or a decision is made whether to refer the case to the Office of the General Counsel (OGC) or the Department of Justice (DOJ) for possible enforcement action) of investigations. The time decreased from 99 days in 2012 to 96 days for investigations closed in 2013, including investigative time spent on cases eventually referred to USDA's OGC and DOJ.

Industry Assessment—P&SP completed the annual assessment of the industries regulated under the P&S Act, which is based on data from the annual reports filed by regulated entities covering the entities' 2012 fiscal year.

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1. OVERVIEW OF THE PACKERS AND STOCKYARDS PROGRAM

This section provides a brief overview of the Packers and Stockyards Program's (P&SP) authority and responsibilities under the Packers and Stockyards Act of 1921 (P&S Act), P&SP's position within the organizational structure of USDA, and P&SP's own internal organization.

1.1 Authorities and Responsibilities

Under the P&S Act, the Secretary of Agriculture (Secretary) has authority over businesses engaged in the marketing of livestock, wholesale meat, and poultry. The Secretary, through the Under Secretary for Marketing and Regulatory Programs, has delegated this authority to the GIPSA Administrator for regulation and enforcement. Regulated business entities include livestock market agencies (which include auction markets), livestock dealers, stockyards, packers, swine contractors, and live poultry dealers (this includes most poultry slaughterers or "poultry integrators"). These businesses assemble and process livestock and poultry, and move their products through the first manufacturing, or meatpacking, phases of the livestock and poultry marketing channels. P&SP does not have jurisdiction over livestock producers, feedlots, and poultry growers at the originating or upstream ends of the market channels and most retailers at the opposite downstream end of the market channels.

The P&S Act prohibits unfair, unjustly discriminatory, and deceptive practices. It also prohibits regulated businesses from engaging in specific anti-competitive practices.

In addition to describing unlawful behavior, the P&S Act mandates certain business practices by regulated industries. For example, market agencies and dealers must be registered; market agencies, packers whose annual livestock purchases exceed $500,000 and dealers must be bonded to protect livestock sellers; and buyers must make prompt payment for livestock. To protect unpaid cash sellers of livestock, packers are also subject to trust provisions that require that livestock inventories and receivables or proceeds from meat, meat food products, or livestock products be held in trust for unpaid cash sellers until payment is made in full. A similar provision applies to live poultry dealers.

P&SP uses its statutory authority to investigate alleged violations of the P&S Act and regulations. USDA's Office of the General Counsel (OGC) prosecutes violations identified through those investigations in administrative actions or through referrals to the Department of Justice (DOJ).

Under the Food Security Act of 1985, States may establish central filing systems to pre-notify buyers, commission merchants, and selling agents about security interests against farm products. P&SP administers the section of the statute commonly referred to as the "Clear Title" provision by certifying the filing systems of States that apply to P&SP for certification. P&SP does not have authority to decertify States unless a State requests such decertification, and it does not have the authority to determine if States are maintaining certification standards.

1.2 Packers and Stockyards Program's Business Organization

The Packers and Stockyards Program is administered by a Deputy Administrator, who reports to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA). In addition to the P&SP, the GIPSA Administrator oversees the Federal Grain Inspection Service (FGIS). Within USDA, the GIPSA Administrator reports to the Under Secretary for Marketing and Regulatory Programs (Figure 1). P&SP's allocated portion of the GIPSA appropriation for fiscal year 2013 was $20.8 million compared to $21.3 million in 2012.

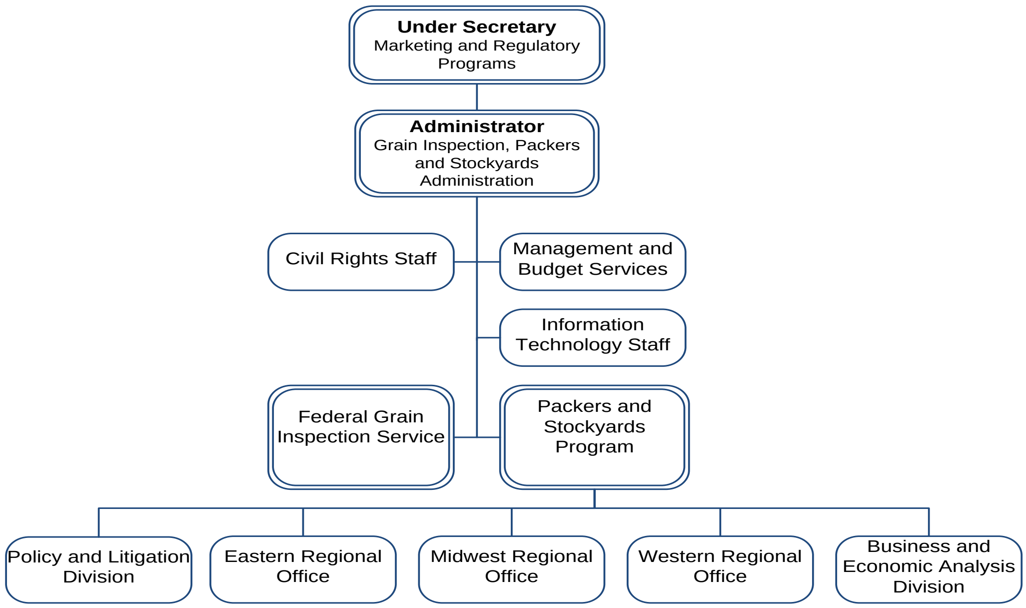

Figure 1. GIPSA Administration Organizational Structure

The Deputy Administrator of the P&SP provides strategic leadership to five program directors—two of whom are at headquarters in Washington D.C., and three of whom are in regional offices: the Eastern Regional Office in Atlanta, Georgia; the Western Regional Office in Aurora, Colorado; and the Midwestern Regional Office in Des Moines, Iowa (Figure 2). At the beginning of fiscal year 2013, P&SP had a total of 147 full-time staff.

Each regional director manages an administrative Program Support Unit and four program units: a Business Practices Unit, a Financial Unit, and two Resident Agent Units. The units are organized based on responsibilities under the P&S Act and are designed to capitalize on the tactical advantages of placing staff in the field. Each unit is comprised of 5 to 10 staff members. Each unit has a supervisor who reports to the Regional Director. Staff members supervised in the regional offices are responsible for conducting investigations and regulatory activities such as business audits, weighing verifications, and day-to-day industry monitoring. These activities are described in greater detail in the next section. Additional information on the P&SP structure is available on the P&SP web page at http://www.gipsa.usda.gov/psp.html.

Each regional office maintains expertise in one or more species of livestock or in poultry. The Eastern Regional Office focuses on poultry, the Midwestern Office on hogs, and the Western Regional Office on cattle and sheep. Forty-five resident agents, seven resident auditors, two market inspectors, and three resident agent field supervisors, who report to the regional offices, are located throughout the country to provide core services nationwide (Figure 2). The geographically dispersed resident agents enable P&SP to maintain close contact with the entities P&SP regulates, which are similarly dispersed throughout the United States (Figures 3 through 6).

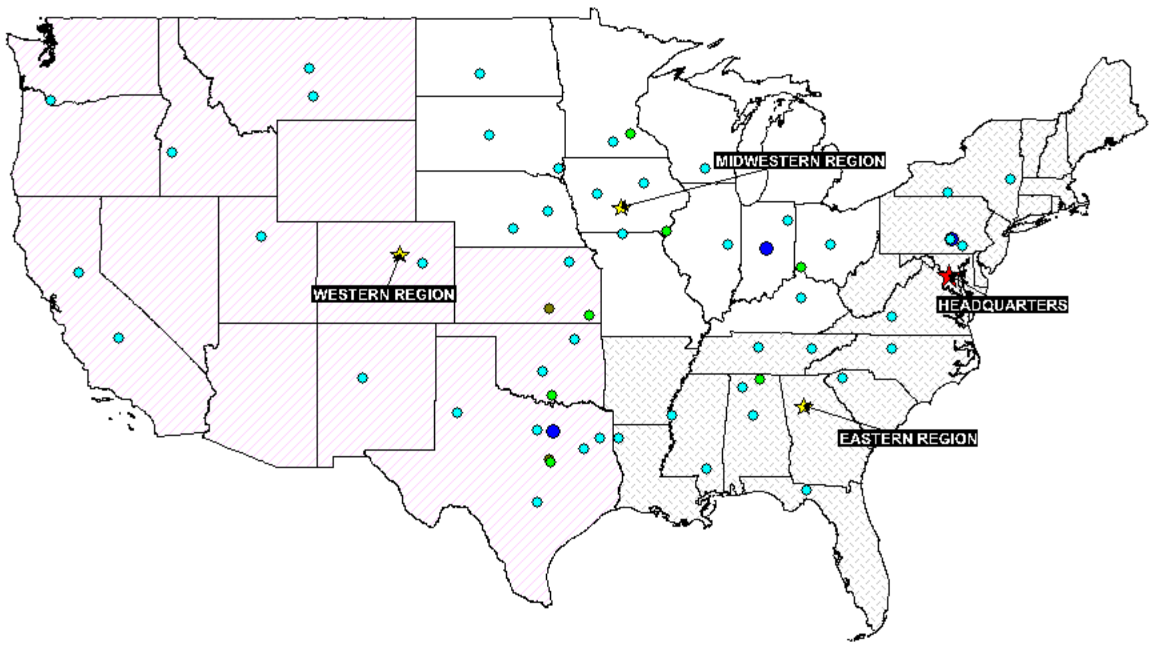

Figure 2. P&SP Regional Offices and Resident Agent and Auditor Locations

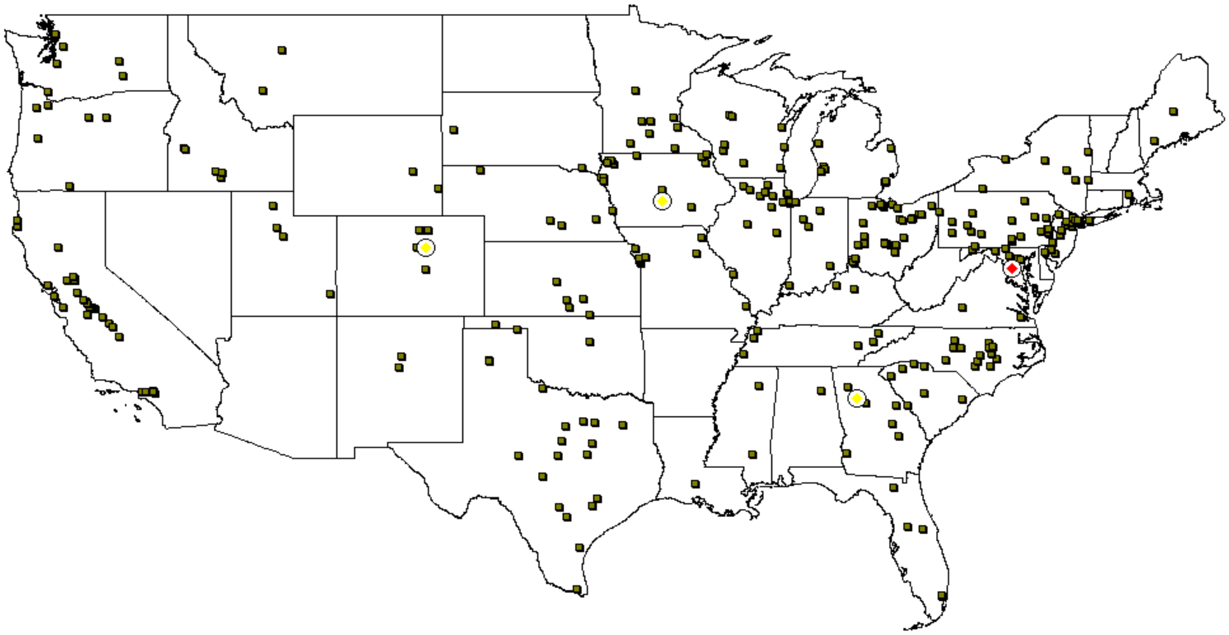

Figure 3. Location of Livestock Packers Subject to the P&S Act

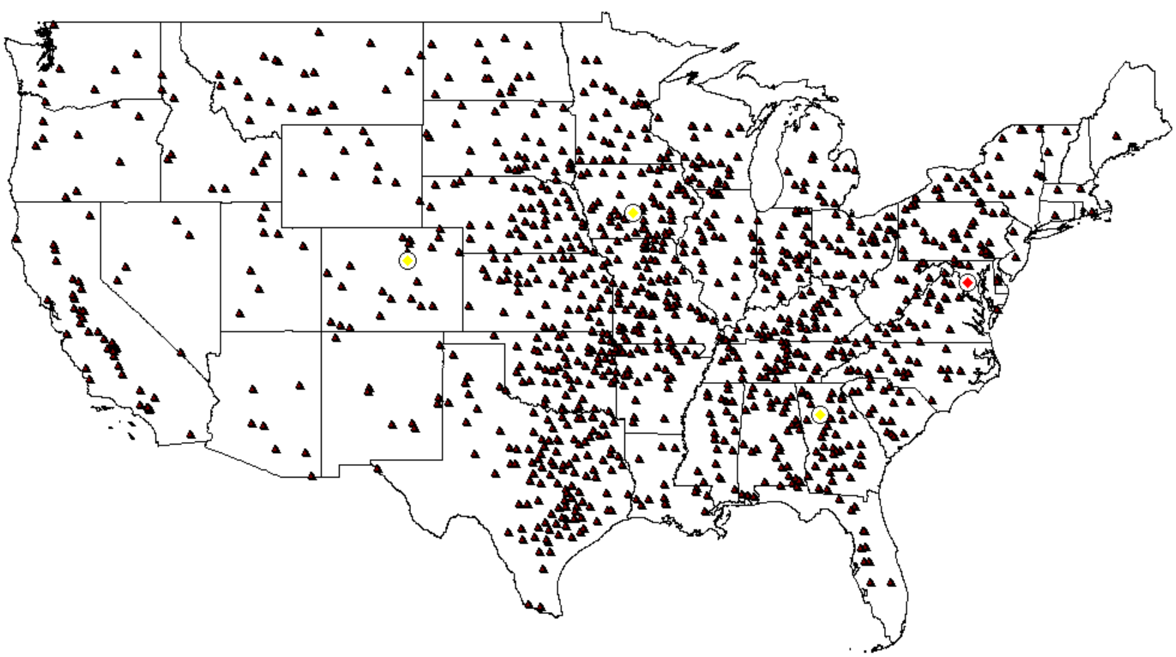

Figure 4. Location of Livestock Markets and Entities Selling on Commission Subject to the P&S Act

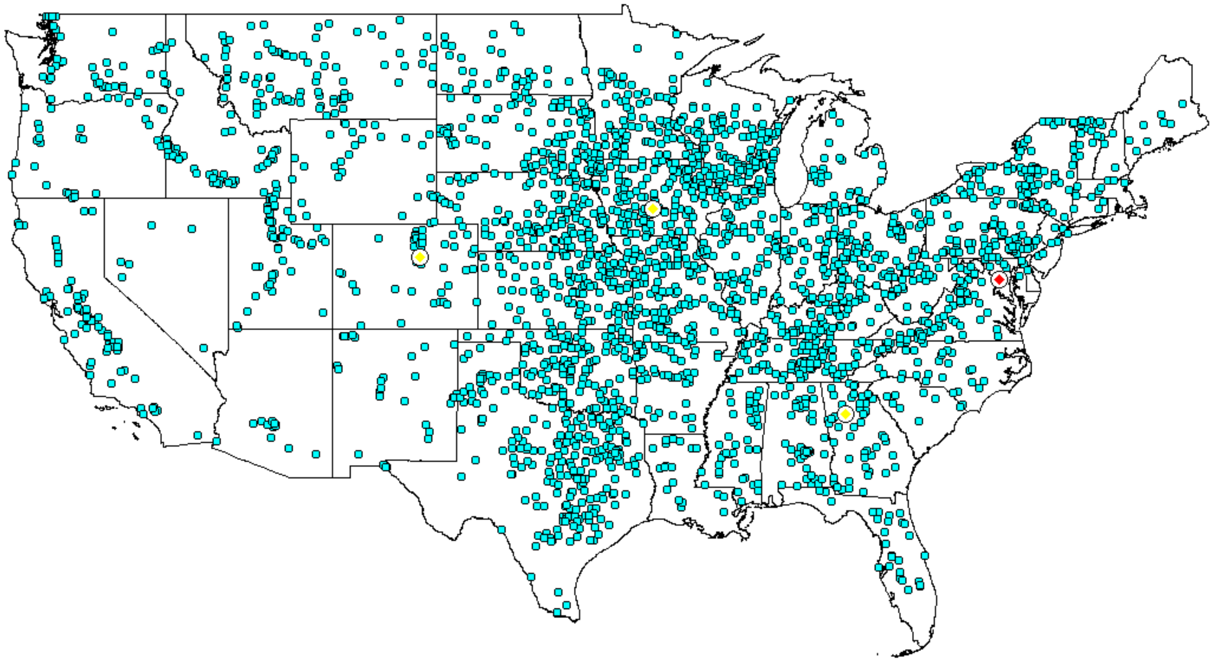

Figure 5. Location of Livestock Dealers Subject to the P&S Act

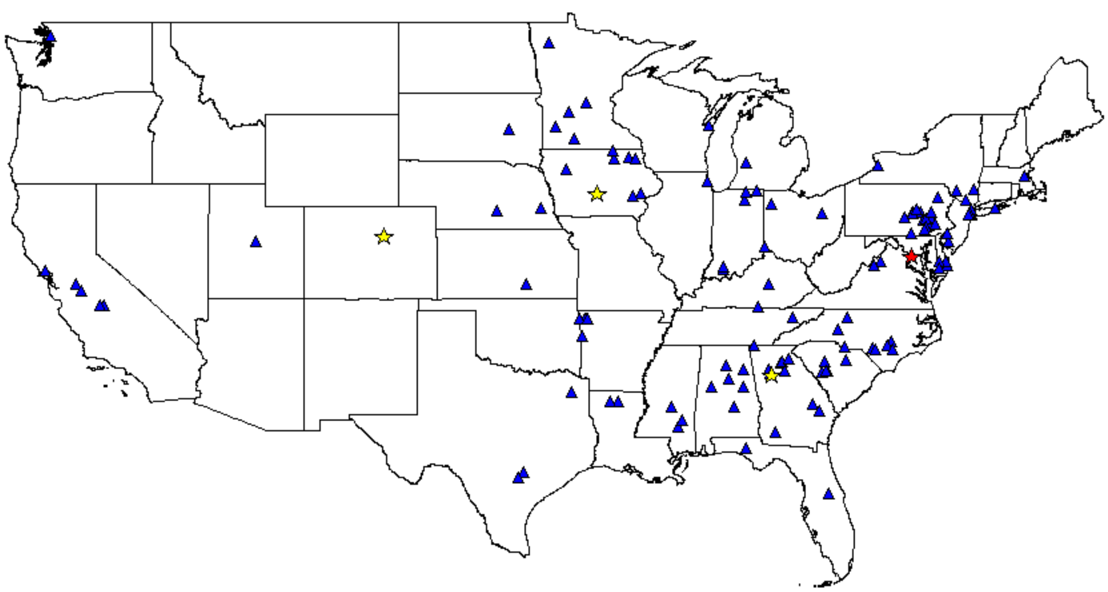

Figure 6. Location of Live Poultry Dealers Headquarters Subject to the P&S Act

2. Packers and Stockyards Program Unit-Level Activities

P&SP conducts two broad types of activities at the unit level—investigative and regulatory. Investigations are conducted when there is reason to believe a violation of the P&S Act is occurring or has occurred. Regulatory activities are monitoring activities carried out to determine if a regulated entity is complying with the Act. Agency resident agents and marketing specialists 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.

Besides conducting routine regulatory activities, the resident agents often rely on their awareness of local activities to initiate more complex investigations and regulatory activities. The regional offices' Business Practices and Financial units support the work of the resident agents. The Business Practices units include a legal specialist, investigative attorneys, economists, and marketing specialists who focus on competition and trade practice issues. The Financial units are staffed with auditors who investigate and undertake regulatory activities related to enforcing the financial requirements of the Act. Investigations at a firm level may be a follow-up to previously identified violations of the P&S Act. In other instances, investigations may be initiated in response to complaints from industry participants, possible violations found while conducting regulatory activities on a business's premises, or possible violations found through other monitoring. Investigations may be conducted as rapid response actions if necessary to prevent irreparable harm to the regulated industries.

Members of the livestock and poultry industries and the public may report complaints at (800) 998-3447 or by e-mail at PSPComplaints@usda.gov. Individuals or entities with complaints about the livestock and poultry industries also are encouraged to call the appropriate regional office to discuss their concerns, anonymously if desired. P&SP responds to all of these external contacts. P&SP also initiates investigations independently, for example, as a result of information obtained from monitoring industry behavior.

Regulatory activities include, but are not limited to, checking the accuracy and repeatability of weighing livestock and feed; custodial account and prompt payment audits; procurement and marketing business practice reviews; registering market agencies, dealers, and packer buyers who operate subject to the P&S Act; assisting producers in filing bond and trust claims; analyzing bond and trust claims; and conducting orientations for new dealers, markets, and packers.

Regulatory activities also include market-level monitoring, which is generally conducted using data that are available in the public domain. Examples include, but are not limited to, monitoring fed cattle and hog prices and analyzing structural changes in the livestock, meat, and poultry industries. Monitoring activities have led to firm-level investigations. Regulatory activity may occur entirely or partially at an entity's place of business or at a Regional Office.

P&SP regulatory and investigative activities are categorized as generally addressing areas of competition, trade practice, or financial concerns. Program expenditures on regulatory activities, investigations, and enforcement were greatest within the financial area in 2013 (Table 1)[1].

Table 1. Total Regulatory and Investigation Expenditures, 2010-2013*

	Regulatory ($000)			Investigation ($000)		
Fiscal Year	Competition	Trade Practice	Financial	Competition	Trade Practice	Financial
2010	81	1,342	4,463	388	4,928	8,621
2011	183	924	2,141	414	8,909	6,464
2012	129	1,494	2,614	431	8,588	5,414
2013	26	1,298	2,360	101	5,029	9,139

Estimated expenses of regulatory and investigative activities include headquarters participation and direct support, but exclude general administrative and other overhead expenses.

P&SP's regulatory and investigative actions frequently find that entities are in compliance with the P&S Act. When violations are discovered, P&SP levies agency-established fines (stipulations) for admitted violations or pursues litigation through USDA's OGC before a USDA Administrative Law Judge or through the U.S. Department of Justice (DOJ). Litigation may result in a fine against the offending entity or in suspension of the entity's P&SP registration. Not all cases result in monetary penalties. In 2013, P&SP levied $106,387 in stipulations and an additional $2,998,614 in penalties through Administrative Law Judge decisions for a total of $3,105,001, an average of $19,406 per case (Table 2). Penalties obtained through DOJ actions averaged about $16,980 for a total of an additional $84,900.

Table 2. Penalties Levied for P&S Act Violations, 2010-2013

Type Judgment	2010	2011	2012	2013
Administrative Penalties ($)	341,027	662,470	1,473,093	**2,998,614**
DOJ Civil Penalties ($)	346,705	70,480	425,540	84,900
Total Civil Penalties($)	687,732	732,950	1,898,633	3,083,514
Stipulations ($)	127,787	364,800	305,390	**106,387**
Complaints Issued	50	38	124	75
Suspensions	6	9	24	34

[1] Historical data presented in this section begins with Fiscal Year 2010, roughly corresponding to the full implementation of a new automated business process tracking system.

2.1 Enforcing Business Practice Provisions

The regional business practices units have responsibility for inspections and investigations of trade practice and competition provisions of the P&S Act. Supported by resident agents, the units conduct investigations of alleged anti-competitive practices and unfair and deceptive trade practices by market agencies, livestock dealers and order buyers, slaughtering packers, live poultry dealers, and meat dealers and brokers.

Economists, legal specialists, and investigative attorneys in the units conduct competition investigations and regulatory activities. For example, an economist might monitor market and firm prices for indications of anti-competitive firm behavior. The business practice unit marketing specialists conduct trade practice investigations and regulatory actions related to inaccurate weighing practices or carcass evaluation instruments and compliance with contracts. The competition and trade practice work conducted by these units is discussed in more detail below.

2.1.1 Competition

Investigations are a central activity of our competition program. P&SP investigates complaints alleging anti-competitive behavior such as attempted restriction of competition, failure to compete, buyers acting in concert to purchase livestock, apportionment of territory, price discrimination, price manipulation, and predatory pricing. P&SP's economists, legal specialists, and investigative attorneys collaborate with USDA's OGC on all competition investigations. When the results of an investigation indicate that the evidence and circumstances support legal action, P&SP formally refers the case file to OGC for action.

P&SP conducts many activities that monitor changes in industry behavior in order to understand the nature of and reasons for changes, and to anticipate potential competitive issues that may result from those changes. Details of specific, ongoing individual monitoring efforts are described in the next three sections.

2.1.1.1 Fed Cattle and Hog Market Price Monitoring

The current fed cattle and hog market price monitoring program was first implemented in 2004, but has since evolved into an enhanced program that includes a weekly internal reporting regime based on statistical models, one for the fed cattle markets and the other for hog markets. The statistical models rely on USDA's Agricultural Marketing Service's (AMS) publicly reported price data to assess regional price differences. If a statistically significant price difference is detected, P&SP initiates a regulatory review work plan to determine whether those price differences are caused by an undue or unreasonable preference or disadvantage in violation of section 202(b) of the Act or by uncontrollable external factors, such as weather or other external macroeconomic conditions. If the initial regulatory reviews of price differences do not clarify whether they were caused by external market factors, a field investigation is opened into the incident.

Whether P&SP is monitoring fed cattle or hog prices, when the statistical model reports an outlier, an economist from the Business and Economic Analysis Division in headquarters reviews the suspect price and makes a recommendation report, which is reviewed by an economist in the regional office. Based on the report and reviewer comments, the supervisor either closes the review or opens an investigation and requests individual firm transactions data from AMS.

2.1.1.2 Committed Procurement Review and Audit

P&SP monitors the use of "committed procurement" arrangements, which commit cattle and hogs to a packer more than 14 days prior to delivery. Each year, P&SP economists obtain fed-cattle and hog procurement data for the previous calendar year from the largest beef packers and largest hog packers. If the packers change their procurement arrangements with suppliers from previous years, P&SP also collects any new or modified written marketing agreements or contracts. P&SP reviews the contracts and, if necessary, discusses them with the packers to determine how the terms of the agreements relate to committed procurement categories of interest. Economists then classify, review, and tabulate the individual transactions data and calculate the reliance of the top packers on committed procurement methods. Finally, P&SP economists reconcile the calculations based on the detailed transaction data on committed procurement as reported by the packers in their Packer Annual Reports.

If there are significant differences between the transaction data and the Packer Annual Report submissions on committed procurement, the economists contact the packers to identify the cause of the discrepancy. If necessary, P&SP meets with the packers in person to discuss the packers' procurement methods and explain how they should be reported on the Packer Annual Report. These meetings foster a mutual understanding of the reporting requirements for committed procurement and more reliable reporting and calculation of the packers' reliance on committed procurement methods.

Relying on written contracts and other information collected during the committed procurement reviews, P&SP agents analyze the various procurement and pricing methods used by hog and fed-cattle packers. Agents obtain and review contracts and agreements as necessary to determine if there have been any competition violations of the Act. The contracts are also used in procurement reviews of the packers to help determine if proper payment practices are being followed.

2.1.1.3 Poultry Contract Compliance Review Process

In FY 2013, P&SP conducted 54 poultry contract compliance reviews; 35 of these reviews were pursuant to a random sample and included as a component of P&SP's performance measure (see Performance and Efficiency Measurement section). Poultry contract reviews may be initiated based on industry intelligence or complaints in addition to those conducted based on random samples.

The standard procedure for conducting reviews is electronically documented in the Packers and Stockyards Automated System (PAS), the P&SP's automated workflow software. P&SP agents follow these procedures when conducting poultry contract reviews. In general, the agent will collect relevant background information on the firm that is under review prior to conducting a site visit. Once onsite, the agent will conduct an interview and obtain copies of the grower contract being used at the plant location and 3 months of weekly ranking sheets for the contract. These documents are reviewed for consistency and adherence to P&S Act regulations. One week of payment data from the settlement sheet is selected as a random sample for a detailed review for accuracy and completeness. The results are compared to the firm's ranking sheets, settlement sheets, and payments to the growers to ensure consistency with the contract. If discrepancies are found, an investigation is opened. If the firm's practices are determined to be free of violation, the agent provides an exit interview indicating this to the firm's management.

2.1.2 Trade Practices

Entities that furnish stockyard services in commerce are required to post a notice that informs the public that the stockyard meets the definition of a stockyard under the P&S Act. Once posted, the stockyard remains posted until it is de-posted through public notice. P&SP meets with new auction market owners and managers as the market begins operations to ensure that market operators understand their fiduciary responsibilities under the P&S Act.

These visits in the early stages of a market's operation also provide important protection to livestock producers who rely on the market to provide a nondiscriminatory and competitive marketplace. Similarly, P&SP conducts orientations for hog and poultry growout contractors who operate feed mills to ensure they understand the regulatory requirements for feed weights used to calculate producer/grower payments.

P&SP reviews procurement practices to determine if unfair or deceptive trade activities are occurring in the procurement of livestock, meat, and poultry. The reviews assess pricing methods; payment practices; weighing of livestock, carcasses, and poultry; carcass grades used for payment; and accounting issued to sellers.

The P&S Act and regulations require markets, dealers, and packers to test scales at least semi-annually and file scale-test reports as evidence of scale maintenance. State or local government entities and private companies test scales. In addition, P&SP conducts several types of regulatory and investigative inspections to ensure scale operators and entities subject to the P&S Act are properly using their scales and properly recording weights in the purchase and sale of livestock and poultry (Table 3).

These inspections include checking weighing plus all other activities conducted by P&SP to ensure accurate weights of livestock, poultry, and poultry feed. Market, dealer, and packer inspections are conducted for scales weighing live animals, including truck scales used for weighing poultry. Carcass inspections are conducted on scales that weigh carcasses in slaughter plants. Feed weighing inspections are conducted on truck scales and scales at feed mills.

Table 3. Weighing Inspections and Violations, 2010-2013

Type	2010	2011	2012	2013
Inspections				
Markets	215	223	307	358
Dealers	61	132	208	231
Packers	5	35	34	49
Carcass	242	104	115	99
Poultry	74	70	77	95
Feed	74	62	55	65
Total	671	626	796	897
Violations				
Markets	23	33	48	68
Dealers	6	23	30	33
Packers	2	15	8	19
Carcass	30	17	13	14
Poultry	7	7	7	11
Feed	9	9	12	8
Total	77	104	118	153

A transaction made on false or inaccurate weights, including instances in which a dealer modifies the actual weight of the livestock or fails to pass on a shrink allowance, is an unfair and deceptive practice. Anyone who believes that an action of a stockyard, market agency, or dealer caused personal loss or damage in violation of the P&S Act may file a complaint seeking reparation (damages) with P&SP within 90 days of learning of the action that caused damages. P&S investigates the facts and circumstances involved in the complaint and provides the information to OGC for resolution of the complaint, with review and concurrence by the Judicial Officer.[2] The Act does not provide for reparation complaints to be filed against packers, live poultry dealers, or swine contractors.

2.2 Enforcing Financial Provisions

P&SP's financial units enforce the financial provisions of the P&S Act and regulations. These enforcement actions support the financial integrity and stability of the livestock, poultry, and meatpacking industries. Enforcement is carried out through reviews of annual and special reports, onsite financial compliance reviews, and investigations. Financial compliance reviews and investigations address solvency issues, payment to livestock sellers and poultry growers, bond claims, trust claims, and maintenance of custodial accounts. When P&SP identifies a

[2] Reparation procedures are prescribed by the **Rules of Practice Governing Proceedings under the Packers and Stockyards Act Reparation Proceedings** (Part 202 of the P&S Regulations, Sections 202.101 et seq.)

potentially serious financial situation that may cause imminent and irreparable harm to livestock producers, rapid response teams are deployed immediately to conduct an investigation.

Under the P&S Act, most regulated entities must be solvent (current assets must exceed current liabilities). P&SP monitors the solvency of regulated entities by reviewing financial data in annual and special reports, and by onsite financial compliance reviews and investigations. P&SP notifies entities of their insolvencies and the immediate need to correct them. P&SP requires special reports from entities whose annual reports disclose insolvencies. In addition, P&SP conducts onsite financial investigations to ensure correction of reported insolvencies or other financial issues. Formal disciplinary action is initiated against entities when appropriate.

Market agencies selling livestock on commission (auction markets) must establish and maintain a bank account designated as a “custodial account for shipper’s proceeds” to hold proceeds from the sale of consigned livestock. The commission firm or auction market acts as a fiduciary depositor to the account, and the funds in the account are trust funds held for the benefit of livestock sellers. P&SP monitors custodial accounts by reviewing annual reports from market agencies, analyzing special custodial account reports, and conducting onsite custodial account audits. When the monitoring reveals shortages in the account, P&SP acts to have the account balance corrected (Table 4).

Table 4. Number of Market Reviews, Violations Found, and Shortages Corrected Through On-Site Investigations, 2010-2013

Year	Reviews	Account Violations	Shortage Corrections ($)
2010	297	79	3,402,608
2011	318	96	2,861,471
2012	331	105	5,960,677
2013	423	158	3,364,543

The P&S Act also establishes a statutory trust on certain assets of packers and live poultry dealers for the benefit of unpaid cash sellers of livestock and unpaid cash sellers or contract growers of live poultry grown for slaughter. Packer trust assets include all livestock purchased in cash sales, inventories, receivables, and proceeds from meat, meat food products, and livestock products derived from the purchase of livestock in cash sales. Poultry trust assets include all poultry obtained by live poultry dealers in cash poultry purchases or by poultry growing arrangements, inventories, receivables, or proceeds from such poultry or poultry products. Valid trust claims come before secured creditor claims in bankruptcy.

To be eligible for payment under the trust, a seller must file a claim with the packer or live poultry dealer and the Secretary within 30 calendar days of the unpaid transaction or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored. When a trust claim is filed, P&SP and OGC analyze the claim to assess whether it is timely and supported by adequate documentation.

P&SP then makes the analysis available to the packer or live poultry dealer (the statutory trustee) and to trust claimants so that they can take any necessary action.

Additionally, all market agencies, dealers, and slaughtering packers purchasing over $500,000 of livestock annually are required to file and maintain bonds or bond equivalents for the protection of livestock sellers. To be eligible to receive payment under the bond, a seller (cash or credit) who does not receive payment for a transaction must file a bond claim within 60 days of the transaction. P&SP analyzes the claim to ensure it was filed within the timeline and supported by adequate documentation. P&SP provides its analysis to the principal and to the bond surety or trustee on a bond equivalent. In some instances the analysis is made available to all claimants to facilitate joint legal action. In some cases, claims may be made against and paid by both bond and trust assets.

Bonding requirements usually do not cover the entire loss sustained when a firm fails to make full payment.[3] Furthermore, livestock sellers do not always determine the current bond status of smaller packers, dealers, and market agencies before selling livestock to them, making those sellers vulnerable to insufficient bond protection if the smaller entities fail. A large packer's failure to pay may impact auction markets and dealers from whom it purchased livestock and failed to pay.

Since 2010, bond claims closed averaged 7 dealers each year, with a range of 3 to 14 per year. During that same time period, producers received an annual average 22 percent payment of amounts owed to them, with recovery ranging from 9 to 47 percent (Table 5).

Table 5. Number of Dealers With Bond Claims and Restitution, 2010-2013

	Open at Year End		Closed during Year		Restitution on Closed Cases		
Year	No.	Owed ($)	No.	Owed ($)	Bonds ($)	Other ($)	Return (%)
2010	2	NA	7	213,332	20,000	0	9
2011	6	23,632,101	14	878,620	407,105	4,479	47
2012	3	718,166	3	512,255	100,000	40,600	27
2013	2	227,992	5	5,488,753	274,629	1,128	5

Dollar amounts for all years are for claims closed as of most recent year-end, so historical data may have been updated to reflect any settlements after the year the claim occurred. Bond claims processing by P&SP has been submitted to the bonding surety companies in the 2011 Eastern Livestock Market failure; however, it is being classified as open, as not all claims have been settled pending final outcome of proceedings in bankruptcy court.

Auction markets may be especially vulnerable to a domino effect from dealer failures to pay since many dealers purchase livestock from auction markets. The failure of a large dealer may

[3] On the other hand, in many cases claims are withdrawn if the purchasers voluntarily make proper payment before the claims are processed. Such instances are not included in the tables in this section.

impact every auction market that it failed to pay. Since 2010, bond claims closed averaged 4 auction markets per year. Consignors received average restitution of 41 percent of amounts owed to them, with a range of 8 to 57 percent (Table 6). Dollar amounts for all years are for failures with claims closed as of most recent year-end, so historical data may have been updated to reflect any settlements after the year the failure occurred.

Table 6. Number of Auction Markets With Bond Claims and Restitution, 2010-2013

	Open at Year End		Closed during Year		Restitution on Closed Cases		
Year	No.	Owed ($)	No.	Owed ($)	Bonds ($)	Other ($)	Return (%)
2010	1	NA	4	20,901	4,547	0	22
2011	0	0	4	158,279	0	89,586	57
2012	3	858,322	4	328,264	25,000	0	8
2013	0	0	2	109,492	82,953	0	76

To maximize recovery, bond claims filed against packers are normally paid after claims made against the packer trust are dispensed. Since 2010, claims closed averaged 5 packers per year owing livestock sellers on average a total of $1,657,844 per year, but the amount varies widely from nearly $6 million in 2010 to no claims in 2013 (Table 7).

Table 7. Number of Packers With Bond Claims and Restitution, 2010-2013

	Open at Year End		Closed during Year		Restitution on Closed Cases		
Year	No.	Owed ($)	No.	Owed ($)	Bonds ($)	Other ($)	Return (%)
2010	5	NA	7	5,960,684	748,435	3,825,518	77
2011	1	80,000	10	647,986	0	62,195	10
2012	0		2	22,706	0	0	0
2013	0		0	0	0	0	0

The bond payout for packers likewise varied widely. Additional restitution from packer trust assets and other sources brought the recovery to 77 percent of the total owed for claims closed in 2010 but only 10 percent in 2011, with no recovery recorded for the claims in 2012.

As the livestock and meat industries evolve, P&SP continues to examine alternate ways to effectively regulate and monitor the industries and to effectively allocate its resources for planning and conducting regulatory compliance reviews. For example, P&SP adopted a statistical model to identify characteristics that place a livestock dealer, market, or packer at risk of financial failure. The characteristics identified are used, along with other firm information and market intelligence, to assess the need for financial audits.

3. PACKERS AND STOCKYARDS PROGRAM MANAGEMENT

The P&SP executes its management function through strategic, broad, multi-year goals and shorter term tactical annual objectives and activities. The next section addresses how P&SP improves its performance and efficiency, and the results P&SP is demonstrating.

3.1 Performance Measurement

P&SP measures its overall performance by annually measuring the regulated entities' compliance with the P&S Act. The performance measure encompasses activities P&SP conducts that directly or indirectly influence industry compliance. The overall performance rate is a composite index of five program-wide audit and inspection activities based on a scientifically drawn random sample of subject entities. In 2013, the index included the following: 1) the financial components of the poultry contract compliance; 2) financial reviews of custodial accounts; 3) financial reviews of prompt payments of a random sample of entities; 4) inspection of scales and weighing practices at markets, dealers, and poultry integrators, and 5) inspection of all carcass evaluation devices and carcass evaluation practices for packing plants purchasing more than 1,000 head per year.

P&SP calculates the percent of industry entities in compliance using random samples designed to provide an estimate of compliance with a 90-percent confidence level for the estimated population compliance. Note that this sampling approach provides estimates of industry-wide compliance among all subject entities, which will generally differ from simple ratios of number of violations found to number of entities investigated or inspected as illustrated in some previous tables in this report. The compliance rate declined to 83 percent in 2013 after increasing 10 percentage points from 2011 to 2012, but was still higher than the compliance rates in 2010 and 2011 (Figure 7).

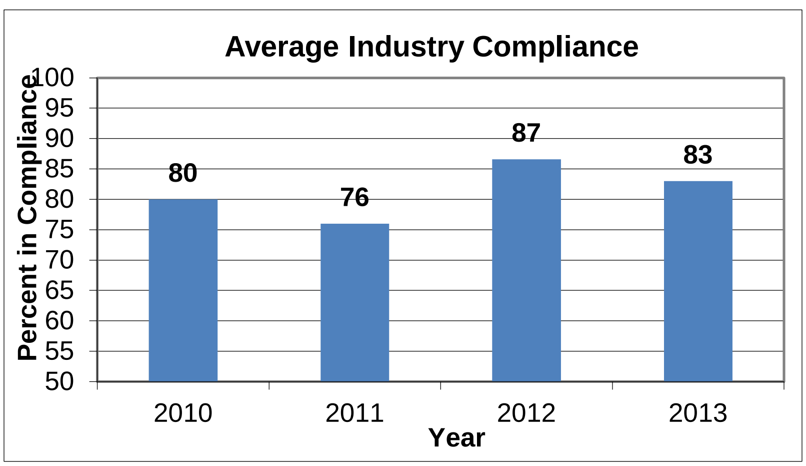

Figure 7. Aggregated Industry Compliance 2010-2013

Financial reviews are conducted and overseen by P&SP staff auditors and supervisors, many of whom are licensed Certified Public Accountants. The reviews are carried out in accordance with general accounting standards. Business practice inspections of scales and weighing practices are conducted based on standards established by the National Institute of Standards and Technology and supervised by staff trained in inspection procedures. P&SP validates reviews and inspections through internal compliance reviews, which were designed in conjunction with a private consultant, and adhere to the P&SP Standard Operating Procedures.

While there has been additional focus on activities to achieve industry compliance, general economic conditions within the industry also affect year-to-year compliance. Weak economic conditions may increase the incentive for industry non-compliance in the financial components to a larger degree than in the business practice enforcement areas. The full effect of these external conditions on the compliance rate are not known, and to the degree that this measure only has a 5-year history, understanding the interaction of these variables on the overall compliance rate will be a challenge GIPSA confronts in future years. Additionally, GIPSA is just beginning to use the data to make internal adjustments to ensure resources are effectively deployed to meet changing industry conditions that result from external factors such as liquidity concerns.

The results of the individual component inspections and audits that comprise the aggregate index showed mixed results in 2013 compared to 2012. Prompt payment and weighing practice compliance were nearly the same in 2013 as in 2012 and custodial account compliance improved slightly, but carcass evaluation accuracy and poultry payment compliance declined (Figure 8).

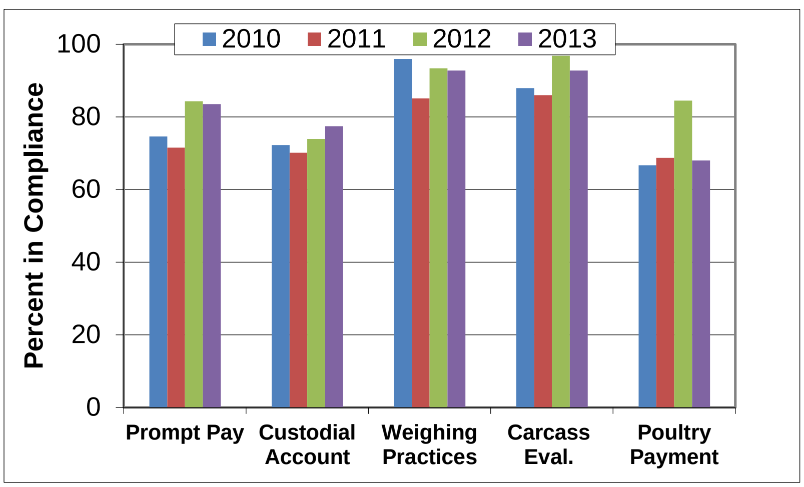

Figure 8. Compliance Performance Measures, 2010 – 2013[4]

[4] Margin of error in 2013 is (+/-) 8.4% for prompt pay, 8.4% for custodial account, 5.8% for weighing practices, 2.8% for carcass evaluation, and 10% for poultry payment.

3.2 Efficiency Measurement

P&SP measures its efficiency at achieving industry compliance by the number of days it takes to complete the investigative phase (the time from complaint until the investigation is closed by P&SP or a decision is made whether to refer the case to OGC or DOJ for possible enforcement action) of investigations. The time to conduct the investigative phase is only one measurement in the complex process of conducting an investigation and potentially building a case. After referral, P&SP and OGC typically work together to develop adequacy and quality of evidence, determine witness availability, and complete final case preparation. The average days for P&SP to conduct an investigation and close the case decreased in 2013 for the second year in a row (Figure 9).

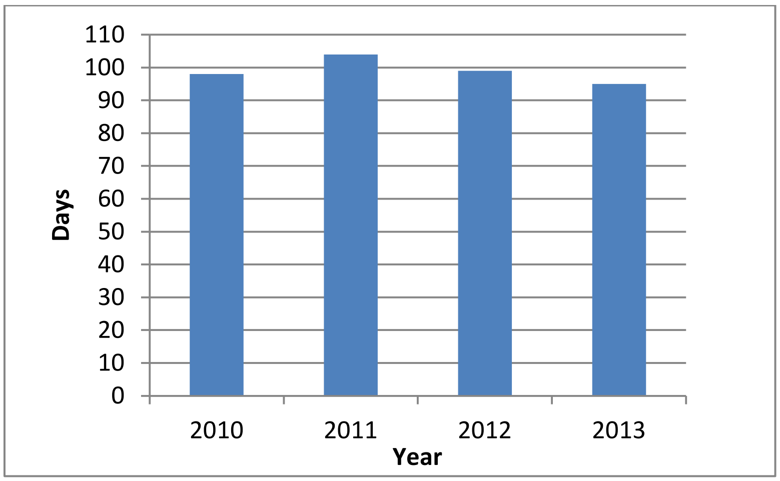

Figure 9. Average Days to Conduct Investigation from Opening to Closing or Referral to OGC, 2010 – 2013

Table 8 shows total days to complete investigative and regulatory field and office activities, averaged across activities completed by P&SP regional offices. Field activities are conducted at the location of the regulated business entity. Office activities are conducted in GIPSA offices and are typically filing violations, e.g., failure to submit required documentation. Activities are considered closed at the regional level if a file is forwarded to Headquarters for additional case development and processing. Thus, the total investigative activities closed at the regional level in Table 8 and Table 9 differs from the total resolved and closed by P&SP including cases closed at Headquarters as shown in Table 10.

Table 8. P&SP Investigations and Regulatory Activities at the Regional Level, Fiscal Year 2013

Type	Field Activities No.	Field Activities Avg. Days Open	Office Activities No.	Office Activities Avg. Days Open
Investigative Activities				
Closed during year:				
Open at beginning year	288	213	341	143
Opened during year	371	105	1,335	39
Total closed	659	152	1,676	60
Remaining open at end of year:				
Open at beginning year	2	990	26	671
Opened during year	49	160	430	80
All remaining open	51	193	456	114
Regulatory Activities				
Closed during year:				
Open at beginning year	56	39	31	42
Opened during year	1,310	15	764	12
Total closed	1,366	16	795	14
Remaining Open at end of year:				
All opened during year	23	13	18	13

Investigations address a broad range of potential violations under the P&S Act and are grouped into three categories: competition, financial, or trade practice violations (Table 9). Competition violations often involve preferential treatment or restriction of competition, such as through apportionment of territory. Examples of financial violations include misuse of custodial accounts, failure to pay, and failure to pay when due. Examples of trade practice violations include offenses such as unfair or deceptive practices, failure to register properly, tariff misrepresentation, and misuse of scales and improper weighing practices, including at any location where scales are used to weigh feed when feed is a factor affecting payment to livestock producers or poultry growers.

Table 9. Number of Investigations Closed at Regional Level in 2013 by Investigative Category

Investigative Category	Number
Competition	
Restriction of Competition	9
Preferential Treatment	5
Financial	
Bond Activities	599
Failure to Pay/Pay When Due	251
Custodial Accounts	195
Solvency	164
Annual Report	6
Packer/Poultry Trust	6
Trade Practice	
Registration/Jurisdiction	551
Weighing Practices and Scales	359
Unfair/Deceptive Practices	117
Contract Poultry Arrangements	29
Inadequate or False Records	18
Procurement or Sales Review	12
Tariff	6
Merchandising	3
Grower Termination	3
Reparations	2
Total*	**2,335**

* Includes investigations for which regional-level work was completed in 2013 and the cases were referred to headquarters, but may have remained open at headquarters at year-end. Thus, the total differs from the total in Table 10.

P&SP's regulatory and investigative actions often find that entities are in compliance with the P&S Act. When non-compliance is identified, P&SP either assesses fines or stipulations for admitted violations or pursues enforcement litigation with OGC. After referral but before filing, OGC works with P&SP to prepare the referred cases for filing and litigation before a USDA Administrative Law Judge or for referral to DOJ.

In fiscal year 2013, P&SP opened 2,481 investigations, of which 2,456 were alleged violations for financial or trade practice behaviors. During the fiscal year, P&SP closed 2,272 cases without referring them to OGC (Table 10). Investigations resolved by P&SP are closed either through a finding of no violation, a Notice of Violation letter issued to the entity, or a stipulation settlement in which the respondent admits the violation and voluntarily agrees to a penalty. P&SP closed investigations that were not referred to OGC or DOJ in an average of 87 days in 2013. This is significantly shorter than cases that enter into the enforcement channel for a hearing before an Administrative Law Judge or a Federal court as would be expected.

Of the investigations closed by P&SP without referral to OGC, 56 resulted in stipulations and 248 resulted in a Notice of Violation to the entity, with another 523 resulting in findings of minor violations that were corrected upon informal notice to the entity by P&SP. In the remainder of the investigations closed, no violations were found.

Another 133 cases were resolved that had been referred to OGC, with 121 closed by OGC and 12 closed that had been referred further to DOJ. Cases are referred to OGC when P&SP determines that the investigation merits formal administrative or judicial action. Frequently, in competition and cases involving large financial failures, OGC and P&SP continue to develop evidence with the goal of filing a complaint.

The average number of days for cases referred to OGC is calculated based on whether the cases were referred to DOJ for prosecution. Cases not referred to DOJ required an average of 257 days in P&SP; cases referred to DOJ required an average of 249 days in P&SP.

Table 10 (sections B-D) represents only cases that were closed in 2013 and include some cases that were initiated in years prior to 2013. As a result of referrals from P&SP, 102 enforcement actions that had been filed by OGC were closed in 2013, and OGC closed an additional 19 cases after determining that evidence did not support formal enforcement action. DOJ closed 10 cases that OGC had referred to it without formal action, and closed 2 cases with formal action.

Table 10. Number of Investigations Opened and Closed by Category and Enforcement Action, with Average Days to Complete Stages for Closed Cases, Fiscal Year 2013*

	Average Days				
Status & Type	In P&SP	Referral to Filing	Filing to Resolution	Start to Resolution	Number
A. Total Investigations Opened					
Livestock					
Competition					24
Financial					1,278
Trade Practice					1,083
Poultry					
Competition					1
Financial					14
Trade Practice					81
Total Opened					**2,481**
B. Total Investigations Resolved and Closed by P&SP					
Livestock					
Competition	135			135	12
Financial	83			83	1,178
Trade Practices	88			88	1,002
Poultry					
Competition	39			39	1
Financial	148			148	8
Trade Practices	122			122	71
Weighted Averages & Sub Total	**87**			**87**	**2,272**
C. Total Referred to OGC and Closed					
Livestock					
Competition w/ Enforcement Action	53	776	67	895	1
Financial w/ Enforcement Action	242	265	244	752	65
Financial w/o Admin Action	307			600	10
Trade Practice w/ Enforcement Action	268	299	255	823	33
Trade Practice w/o Admin Action	281			696	7
Poultry					
Financial w/Enforcement Action	229	355	168	753	2
Financial w/o Admin Action	284			717	1
Trade Practice w/Enforcement Action	226	140	548	914	1
Trade Practice w/o Admin Action	390			563	1
Weighted Averages & Sub Total	**257**	**282**	**248**	**756**	**121**
D. Total Referred to DOJ by OGC and Closed					
Livestock					
Financial w/Enforcement Action	198	796	69	1,192	1
Financial w/o Admin Action	192			1,124	8
Trade Practice w/Enforcement Action	241	321	87	719	1
Trade Practice w/o Admin Action	490			874	2
Weighted Averages & Sub Total	**249**	**559**	**78**	**1,057**	**12**
Overall Weighted Averages and Total	**96**	**287**	**244**	**125**	**2,405**

* Investigations opened during the fiscal year are not necessarily closed by year end. The number of days per stage applies only to cases closed during the fiscal year. Typically, some closed cases were opened in prior years. Cases closed by P&SP after referral to OGC without a formal administrative enforcement action are indicated by “w/o Admin Action.” The “Referral to Filing” column is the time that the case is in OGC or DOJ prior to filing. The “Filing to Resolution” is the time from when a complaint is formally filed with the court clerk until a judicial decision.

4. Assessment of the Industries

This section contains an assessment of the cattle and hog industries as required by Section 415 of the P&S Act. *(7 U.S.C. 228d).* The first subsection provides an assessment of the general economic state of the regulated industries, including trends in the number of entities, financial conditions, and market share of the four largest entities of a particular sector (market concentration). The second subsection examines changing business practices of entities in the regulated industries, including pricing and procurement methods, and the volume marketed through market agencies via commissions versus direct purchases. Finally, this section outlines specific concerns about the behavior or conduct of the entities regulated under the P&S Act and P&SP's actions to address those concerns.

Data in this section are generally from regulated industry annual reports to P&SP for the most recent 10 years. Since the reports for the 2013 reporting year are not due until April 15, 2014, most data series in this section end with the entities' 2012 reporting year. Exceptions are statistics on entities currently bonded and/or registered as recorded in P&SP databases, and statistics on types of procurement methods compiled from data reported to USDA's Agricultural Marketing Service under the provisions of the Mandatory Price Reporting Act.

The number of entities subject to the P&S Act shows some sign of stabilizing in recent years, but there was an increase in bonded slaughter entities in 2013 and a decline in bonded market agencies. At the end of fiscal year 2013, there were 297 bonded livestock slaughter entities, 136 live poultry dealers, 4,639 registered livestock dealers, and 1,216 market agencies that were subject to the P&S Act (Table 11). There were also 1,241 posted stockyards.

- Bonded slaughter entities include entities operating federally-inspected plants as well as some entities operating plants that are not federally-inspected. Some entities with smaller volume purchases voluntarily bond but do not file annual reports. All packers operating in interstate commerce are subject to the P&S Act, which requires entities that purchase $500,000 or more of livestock for slaughter to be bonded and to file annual reports.
- Live poultry dealers, commonly called poultry integrators, contract with producers for grower services to raise chicks or poults to slaughter size and weight. The integrator owns the birds, supplies the feed, slaughters, and further processes the poultry.
- Livestock dealers purchase livestock for resale on their own accounts and take title to the animals. They may also purchase or sell as the agent or vendor of another entity.
- Market agencies are entities engaged in the business of buying or selling livestock in commerce on a commission basis, furnishing stockyard services, or, in rare cases, an entity providing State brand inspection services.
- Posted stockyards are physical facilities and are not necessarily separate businesses. Terminal market agencies and auction market agencies are located at posted stockyards but may or may not be the same entities that own and operate the stockyards.

Table 11. Number of Slaughterers, Live Poultry Dealers, Bonded Dealers and Market Agencies, and Posted Stockyards Subject to the P&S Act, 2004-2013

Year	Bonded slaughter entities	Live poultry dealers	Bonded livestock dealers	Bonded market agencies	Posted stockyards
2004	314	NA	4,152	1,457	1,443
2005	312	NA	4,100	1,447	1,426
2006	304	NA	3,984	1,433	1,400
2007	296	NA	3,883	1,410	1,413
2008	281	126	4,685	1,326	1,392
2009	284	125	4,529	1,225	1,170
2010	233	117	4,468	1,205	1,209
2011	258	136	4,572	1,220	1,218
2012	295	133	4,619	1,234	1,238
2013	297	136	4,639	1,216	1,241

4.1 General Economic State of the Livestock Industry

This section addresses slaughter volume, changes in plant size, and industry concentration based on data obtained from annual reports filed by the industry with P&SP. The volume of business of packers and the dollar volume for entities selling on commission and for entities operating as dealers or purchasing on a commission basis continued to increase in 2012, following increases in 2010 and 2011. The temporary decline in these measures in 2009 may have reflected a changeover in GIPSA's data tracking system (Figure 10).

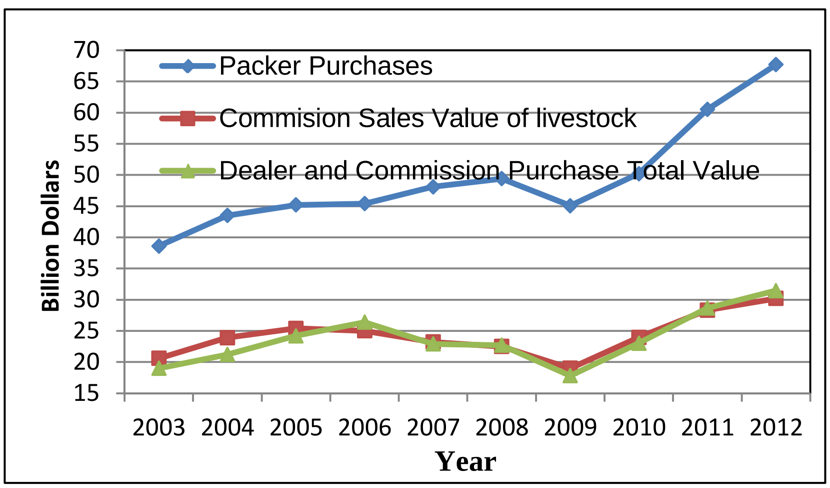

Figure 10. Dollar Volume of Slaughter Entities, Dealers, and Market Agencies Selling and Buying on Commission Subject to P&S Act, 2003-2012

The number of cattle slaughtered as reported by entities to P&SP (packers with livestock purchases that equal or exceed $500,000 per year) fluctuates with the cattle cycle. Total cattle slaughter by entities reporting to P&SP has remained within a 1 million head band since 2007. Total cattle includes steers and heifers (often collectively called “fed cattle”), cows, and bulls, but excludes calves. In most, but not all cases, individual plants operated by entities that report to P&SP tend to slaughter either fed cattle or cows and bulls (Table 12).

The number of hogs slaughtered as reported by entities to P&SP trended upward through most of the last decade and increased by 1.2 million head, or 1 percent, after declining by around 3 percent or 3.1 million head in 2010 and another 2 percent or 1.2 million head in 2011.

Except for 2004 and 2007, the volume of sheep and lambs slaughtered by packers reporting to P&SP has ranged between approximately 1.8 million and 2.1 million head annually. Although the year-to-year changes in sheep and lamb slaughter would be relatively large on a percentage basis, sheep and lamb slaughter has been a very small number for many years in comparison to other types of livestock slaughter.

Table 12. Slaughter by Type of Livestock, Entities Reporting to P&SP, 2003-2012 (Thousand Head)

Year	Cattle	Hogs	Sheep and Lambs
2003	35,124	97,161	2,179
2004	32,460	98,588	2,464
2005	31,254	101,183	1,988
2006	32,106	104,549	2,033
2007	33,023	108,582	2,504
2008	31,959	109,002	1,847
2009	32,145	113,222	1,955
2010	32,988	110,106	1,927
2011	33,780	108,941	1,819
2012	33,530	110,140	2,052

Historically, the pattern of changes in slaughter plant numbers has reflected the increasing size of slaughter plants, as economic conditions, mergers and acquisitions, and efforts to improve efficiencies resulted in a large decline in the number of plants, while total slaughter remained stable or even increased. The increase in the number of plants reporting to P&SP may seem to suggest a reversal of that trend in the last 2 years (Table 13). However, this may in part simply result from the increase in number of bonded entities reporting to P&SP, as shown in Table 11 above. Some of this may in turn be due to higher livestock prices; thus, more packers reach the $500,000 threshold and are required to report. Also, while the number of plants slaughtering sheep and lambs shows an increase of over 50 percent since 2008, many of these are small multispecies plants that slaughter only a few sheep and lambs.

Table 13. Number of Slaughter Plants Operated by Type of Livestock, Entities Reporting to P&SP, 2002 - 2011

Year	Cattle	Hogs	Sheep and Lambs
2003	164	154	55
2004	173	166	56
2005	172	163	58
2006	168	159	55
2007	165	165	56
2008	135	126	52
2009	133	134	54
2010	135	129	59
2011	147	136	70
2012	168	157	81

While four-firm slaughter concentration is relatively high in some types of livestock, e.g., steers and heifers, the major slaughter entities tend to be multispecies entities. The various meat outputs, especially beef and pork, compete as substitutes in their product markets. When evaluated on a multispecies basis, concentration is relatively moderate. The four largest slaughter entities' share of total industry expenditures on livestock for slaughter increased slightly to 68 percent in 2012 (Table 14). Cross-species competition among the entities in output, e.g. beef versus pork, may tend to limit the effects of concentration in procurement.

The percentage of the total volume of steer and heifer slaughter accounted for by the four largest entities that slaughter steers and heifers returned to the 2010 level of 85 percent after dropping to 84 percent in 2011. Prior to 2010, concentration in steer and heifer purchases had remained around 81 percent since the mid 1990s. Concentration in cow and bull slaughter has always been less than fed-cattle slaughter concentration. After declining in 2009 through 2011, the share increased to 56 percent in 2012.

The four-firm concentration ratio for hog slaughterers has remained in the low to mid 60s range for the last 10 years.

Due to the small total slaughter volume sheep and lambs, relatively moderate volume adjustments by any of the largest four entities result in relatively large changes in the percent of total slaughter accounted for by those entities. The combined market share of the four largest sheep and lamb slaughter entities increased by 5 percentage points in 2005, and the share stayed near 70 percent through 2009. The share then decreased by 5 percentage points in 2010 and six in 2011, but again reversed direction and increased slightly in 2012. Throughout these years, changes in shares represented only a few thousand head of slaughter lambs.[5]

Table 14. Four-Firm Concentration in Livestock Slaughter by Type of Livestock, 2003-2012

Year	Total Value Purchases (%)	Steers & Heifers (%)	Cows & Bulls (%)	Hogs (%)	Sheep & Lambs (%)
2003	69	80	44	64	65
2004	67	79	43	64	65
2005	67	80	48	64	70
2006	66	81	54	61	68
2007	66	80	55	65	70
2008	68	79	55	65	70
2009	71	81	54	63	70
2010	67	85	53	65	65
2011	67	84	53	64	59
2012	68	85	56	64	62

Future changes in concentration are expected to follow the patterns of the last 5 years, subject to possible changes due to uncertainties about developments in the overall economy that began in 2008. Future changes in sheep slaughter concentration will continue to be variable due to adjustments among the four largest entities, but will likely remain in the 65-70 percent range.

4.2 Changing Business Practices in the Livestock Industry.

4.2.1 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, and for cattle transactions in particular, pricing methods are most often divided into two categories: live-weight and carcass pricing methods.

In live-weight purchasing of livestock, the price is quoted and the final payment is determined 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 from prices reported by a market price reporting service after the animals are delivered or slaughtered. In

[5] Note also that the concentration statistics in Table 14 represent share of federally inspected slaughter and may differ slightly from concentration in procurement data reported to P&SP. Differences arise to the extent that some Federally-inspected slaughter is custom slaughter of animals reported to P&SP as purchased by other entities, and not all purchases for slaughter reported to P&SP are slaughtered in federally inspected plants. Both conditions are especially the case in sheep slaughter.

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 lower price).

In a "carcass-based" purchase, the price is quoted, and the final payment is determined based on each animal's hot weight, which is the weight of the carcass after it has been slaughtered and eviscerated. Carcass-based purchase methods often involve schedules of premiums or discounts based on animal quality and 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 "target" or "base" price. Carcass-based pricing typically rewards sellers with livestock that meet or exceed the target standard. Livestock carcasses graded below the target result in the seller receiving discounts.

The proportion of cattle purchased on a carcass basis has varied the last 10 years with no obvious trend, ranging from around 53 percent to 63 percent of total purchases (Table 15). The proportion of cattle purchased on a carcass basis is expected to remain near 60 percent with modest fluctuation year over year, with some potential for increase if contracting and formula pricing continue to increase.

The proportion of calves purchased on a carcass-weight basis is considerably less than other types of livestock, but has exhibited a mixed pattern with increases in 2010 and 2011 nearly offsetting a large decline in 2009, but followed by a decline in 2012 nearly back to the 2009 rate.

Table 15. Percentage of Livestock Purchased on Carcass-Weight by Packers Reporting to P&SP, 2003-2012

Year	Cattle	Calves	Hogs	Lambs
2003	59.8	40.6	76.9	53.0
2004	53.4	50.4	76.6	46.1
2005	56.3	36.3	78.8	52.3
2006	53.3	33.7	76.6	48.1
2007	57.2	38.9	78.6	46.6
2008	62.3	46.1	87.8	55.2
2009	61.8	27.5	76.5	30.6
2010	59.1	36.2	77.5	31.6
2011	59.2	44.0	76.0	40.8
2012	60.6	28.9	76.4	36.2

Carcass-based purchases have become the predominant method used for hogs purchased for slaughter. Some carcass-based purchases, often known as "carcass-merit" purchases, include a base price that applies to all carcasses in the transaction, with premiums or discounts for individual carcasses based on quality or other attributes of each carcass, such as quality grade, yield grade, yield, or percentage of lean meat in the carcass. Some carcass merit transactions use USDA grades to determine carcass quality. A growing number of transactions include price adjustments for quality characteristics that are not covered by USDA grades, such as percent of lean meat in the carcass and depth of the loin.

The proportion of sheep and lambs purchased on a carcass basis declined through the last decade to about 31 percent of the total in 2009, followed by an increase of nearly 10 percentage points in 2011, but then declined again in 2012.

Another business practice affecting transactions involves the location in the market channel of the transaction. P&SP monitors two major transaction location points in livestock marketing. One major transaction point is exchange between the livestock producer and an assembly point, usually a market that accepts the livestock on a commission basis. The buyer procures the livestock through the market, generally with no direct contact between seller and buyer. These transactions are not necessarily procurements for slaughter, as they often consist of sales of feeder livestock.

Although the volume of cattle handled by commission entities declined through 2008, these entities continue to play an important role in the cattle industry, particularly for cull cows (Table 16). The number of cattle marketed through commission entities actually increased to near the 2006 level in 2010 but has since declined back to approximately the same level as in 2009.

Table 16. Volume of Livestock Marketed Through Entities Selling on Commission, by Type of Livestock, Entities Reporting to P&SP, 2003-2012 (Thousand Head)

Year	Cattle	Hogs	Sheep and Lambs
2003	38,319	7,274	3,444
2004	37,746	7,317	3,560
2005	37,284	7,573	3,145
2006	35,696	7,846	3,144
2007	35,263	8,395	2,772
2008	32,792	7,553	2,872
2009	33,214	9,047	2,883
2010	35,623	8,471	2,974
2011	34,956	8,919	3,046
2012	33,683	8,119	2,857

The volume of hogs marketed by entities selling hogs on commission trended steadily upward from 2003 through 2007, but the pattern has varied in the last 4 years. It remains to be seen whether this component of the industry will attain a stable level of activity.

Use of commission entities for the sale of sheep and lambs has followed a pattern similar to that of cattle, with increases in 2008 through 2011, but a decline in 2012 back to slightly under the level of 2008.

The second transaction location point monitored by P&SP is direct exchange between the livestock seller and the packer. Packers use multiple direct exchange procurement methods to obtain live cattle for slaughter. The methods commonly fall into two categories: (1) cash or "spot" sales for immediate delivery or normally delivery within at most 14 days, and (2) "committed procurement" arrangements that create an assured exchange and commit the cattle to a particular packer more than 14 days prior to delivery. Cash sales generally are priced on a negotiated basis, although various formulas may exist to establish premiums and discounts after the transfer. Committed procurement usually uses some form of formula pricing.

P&SP 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. Marketing arrangements termed "forward contracts" are 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 cattle 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 cattle rather than negotiating single lots. In these arrangements, the seller agrees to deliver cattle to the packer at a future date, with the price generally being determined by some type of formula pricing mechanism. The price is often based on the current cash market at the time of delivery, with premiums or discounts determined by evaluation of carcass characteristics.

USDA's Agricultural Marketing Service (AMS) publishes prices and volumes of livestock purchased under alternative pricing methods as reported under the provisions of the Mandatory Price Reporting Act (http://mpr.datamart.ams.usda.gov). The use of formula pricing methods for fed cattle has increased as a share of total procurement since 2009 as the use of negotiated pricing declined (Table 17).

Like beef packers, pork packers use multiple procurement methods. For all pork slaughter entities reporting to AMS, 3.3 percent of hogs were obtained on the negotiated spot market in 2013 compared to 6.8 percent in 2009. About 29 percent were packer-owned hogs in 2013. These packer-owned hogs are normally supplied from a packer-owned farrowing operation and often fed by an independent operation under contract for the packer. The rest of the hogs were purchased using other marketing arrangements, usually either marketing agreements or forward contracts. Marketing agreements for hogs generally are based on multi-year contracts under which the producer agrees to deliver a set number of pigs per year to a packer. Some of these arrangements are verbal agreements. "Forward contracts" for hogs are typically simple one-time contracts for a given number of hogs to be delivered within a certain time window, with price based on a futures contract. Other modes of procurement for hogs are largely verbal contracts.

Table 17. Percent of Purchases by Type of Procurement Method, Fed Cattle versus Hogs, Entities Reporting to AMS, 2009-2013

Method	2009	2010	2011	2012	2013

Fed Cattle					
Packer Owned	4.7	5.0	5.3	5.9	5.5
Forward Contract	8.4	10.6	12.1	10.9	9.7
Formula	36.5	39.3	43.2	49.2	55.4
Negotiated	50.4	45.1	39.4	34.0	29.4
Hogs					
Packer Sold	5.8	5.6	4.7	4.3	4.0
Packer Owned	25.2	26.7	27.8	28.0	29.2
Negotiated	6.8	5.2	4.4	3.6	3.3
Other Arrangements	62.1	62.5	63.1	64.1	63.5

Procurement methods used by individual packers vary significantly among packers, ranging from packers that are fully integrated to packers that rely primarily on the open market. Most hog packers use some combination of packer-fed hogs, marketing agreements, forward contracts, and negotiated spot market procurement. These combinations typically vary by plant for multi-plant packers.

Procurement methods used to purchase sheep and lambs for slaughter are similar to those used for other species and include purchase in spot markets, use of marketing agreements, use of various other forms of advance sales contracts, and packer feeding. Some producers who feed their own lambs market their lambs through a lamb feeding operation or feedlot that has a supply contract agreement with a packer. There also are business arrangements in which individuals who have financial interests in large lamb packing companies also have lamb feeding operations and supply lambs to the packing company. Some producers participate in cooperatives, associations, or pools of lamb producers to collectively market their lambs and lamb products. As with other species, the various procurement methods used for lambs continue to evolve, but P&SP has not observed major changes in the methods in recent years and expects this stability to continue.

4.2.2 Changes in Operations and Organization

Information about business practices at the plant level such as intensity of operations (e.g., one or two shifts per day), along with number of plants in business at any given time and ownership of them, is also significant in describing industry trends. Plant closures or re-openings can have direct competitive effects by shifting supply and demand patterns. The P&S Act does not provide authority to the Secretary for pre-merger review. Rather, that is the responsibility of either DOJ or the Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Public Law 94-435, known commonly as the HSR Act). Mergers and acquisitions, however, cause changes in business practices that may impact competition. Other changes in operations and industry conditions may also affect the nature of competition as entities attempt to adjust to changing conditions. P&SP monitors these industry events for any competitive effects.

Plant Closures

The dwindling cattle supply due to the prolonged drought was to blame at least in part for several plant closures in 2013. As of January 1, 2013, all cattle and calves in the United States totaled 89.3 million head—the lowest January 1 inventory since the 88.1 million count in 1952.

In October 2012 a new beef packer, Northern Beef Packers, LP, located in Aberdeen, South Dakota, began limited slaughter and processing for testing purposes. A month later, it was authorized to process up to 500 head per day. However, the company had financial difficulty and ceased operations at the end of April 2013. The state-of-the art facility was the first large-scale beef packing plant built in the United States since 2001, and at full capacity, the plant was projected to employ 660 workers and slaughter 1,500 cattle per day. It filed for bankruptcy in July 2013, and was to attempt to sell the plant at auction in December 2013. The plant was opened at a time of shrinking cattle supplies and tight beef packing margins.

Cargill closed a beef processing plant in Plainview, Texas, in February 2013, which employed 2,000 people. The company cited higher feed costs as a result of the prolonged drought and the reduced cattle supply due to herd liquidations as reasons for idling the plant.

In late March 2013 San Angelo Packing, Co., Inc. in San Angelo, Texas, a beef packer that primarily processed cows and bulls, suspended operations indefinitely. The Company made efforts to have another company acquire and operate the plant, and it re-opened briefly at the end of April but shut down again in June 2013 and remains closed.

Martin’s Abattoir & Wholesale Meats, Inc., Godwin, North Carolina, announced in September 2013 that it had suspended operations. Martin’s was one of seven major cow/bull packers in the Eastern United States. The plant has been in operation since 1955. The company said it was closing due to the economic climate in the industry, and because declining cattle numbers in the region made it increasingly difficult for the company to operate profitably. In October 2013, Cargill Cattle Feeders announced plans to close its Lockney, Texas, feedlot in the summer of 2014 due to depleted cattle supplies in the region. The feedlot is 15 miles east of the Plainview plant.

Animal Health/Exports

Russia announced plans in October 2012 to require testing of imported beef and pork for the widely used feed supplement ractopamine used to promote leanness in animals. In February 2013, Russia imposed a ban on U.S. beef due to a zero tolerance policy for ractopamine. The ban on exports to Russia remains in place. China followed suit by restricting imports of beef and pork that were not verified ractopamine-free by a third party.

Japan partially lifted its trade restriction in February 2013 and began to accept U.S. beef from cattle less than 30 months of age. Ground beef from under-30 cattle was not included. The lifting of the age restriction caused a significant increase in U.S. beef exports in March 2013 and subsequent months, which helped offset the decline in exports to Russia.

In August 2013, major beef packers announced that they would stop buying cattle fed Zilmax, a widely used feed additive that boosts weight gain in cattle. Packers expressed concerns regarding the supplement's effect on animal mobility and well-being. Merck Animal Health, the maker of Zilmax, temporarily suspended sales pending further research into the use and effects of the product. Sales of Zilmax remain suspended, but producers have other options for growth-promoting supplements.

USDA's National Veterinary Services Laboratory confirmed the first case of Porcine Epidemic Diarrhea Virus (PEDV) in Iowa in May 2013. PEDV testing data from the National Animal Health Laboratory Network in October indicated that the virus had been confirmed in 828 premises in 18 states. The virus can result in high mortality rates in newborn piglets. The virus is not transmittable to humans, thus posing no danger to human health, and it does not affect the safety of pork.

Mergers and Acquisitions

In late October 2012, XL Foods Inc.'s Brooks, Alberta, plant in Canada restarted operations under the management of JBS USA, LLC, after being shut down for a month due to an E. coli-related beef recall. The plant processes fed steer and heifers. JBS completed the purchase of most of XL Foods' Canadian assets in January 2013. In April 2013, JBS completed its purchase of two XL Four Star Beef, Inc. beef cow packing plants in the United States, one in Omaha, Nebraska, and the other in Nampa, Idaho, each of which have a capacity to process 1,100 head of cattle per day. The Nampa plant had been closed since June 2011 and remains closed. The acquisition of the two plants followed the conclusion of an anti-trust investigation by the U.S. Department of Justice.

Smithfield Foods Inc. announced in February 2013 it had signed a non-binding letter of intent to form a 50/50 joint venture with Kansas City Sausage, LLC, including its sister company, Pine Ridge Farms, LLC. The venture will allow Smithfield to increase its presence in the packaged meats business.

In May 2013, Sam Kane Beef Processors, LLC, acquired Sam Kane Beef Processors, Inc. The new owners will continue to operate the company and its plant in Corpus Christi, Texas, and will continue to do business under the Sam Kane Beef Processors name.

Also in May, Superior Livestock Auction was acquired by National Livestock Credit, a partnership formed by National Livestock and cattlemen from several states. Founded in 1987, Superior Livestock introduced satellite video marketing to the U.S. cattle industry and has become the largest livestock auction in the Nation, marketing over one million head of cattle annually.

In September 2013, Shuanghui International Holdings Limited completed acquisition of Smithfield Foods, the largest pork producer in the United States. Shuanghui International is the majority shareholder in Henan Shuanghui Investment and Development Co., China's largest publicly traded meat processing enterprise. Smithfield is now a wholly owned independent subsidiary of Shuanghui International Holdings.

Also in September 2013, a consortium consisting of the Murphy Brown subsidiary of Smithfield Foods Inc. and the Cohoma Pork and High Plains Pork entities owned by TriOak Foods purchased substantially all the assets of AgFeed USA LLC. AgFeed USA, founded in 2002 and formerly known as M2P2, LLC, is based in Ames, Iowa, with farrowing operations in Colorado, Oklahoma, and North Carolina, supported by a network of independent contract finishing sites across Iowa.

The Maschoffs, LLC, the largest family-owned pork production company in North America, announced in November 2013 that it was acquiring GNP Company. GNP Company, which has headquarters in St. Cloud, Minnesota, markets its chicken products under the brand Gold’n Plump, and others.

Blizzard Losses

A blizzard struck South Dakota and parts of North Dakota, Wyoming, and Colorado early in the month of October 2013. The storm dumped several feet of snow, causing significant numbers of livestock to drown, suffocate under the snow, or die from hypothermia. As of early November 2013, South Dakota had reports of the death of 14,957 cattle, 1,258 sheep, 288 horses, and 40 bison.

4.3 General Economic State of the Poultry Industry

In 2012, poultry processors reporting to P&SP slaughtered an estimated 49.4 billion pounds of chickens (Table 18). By comparison, in 2012 the federally inspected (FI) volume was 50.2 billion pounds. Turkey slaughter was essentially the same as the FI reported volume in 2012, at an estimated 7.5 billion pounds by entities reporting to P&SP for 2012. P&SP and FI statistics may differ in part due to the fact that the reporting years for some P&SP entities are not the same as the calendar year represented by the FI statistics.

Table 18. Poultry Slaughter by Entities Reporting to P&SP, and Four-Firm Concentration, 2008 – 2012

	Broilers	Turkeys	Broilers	Turkeys
Year	Slaughter (billion lbs.)		Four-Firm Share (pct.)	
2008	46.2	7.4	57	51
2009	46.4	6.9	53	58
2010	48.4	7.2	51	56
2011	49.0	7.1	52	55
2012	49.4	7.5	51	53

Concentration in broiler and turkey slaughter dropped slightly in 2012. The four largest broiler slaughterers accounted for 51 percent of the market share compared to 52 percent in 2011, while the share of the four largest turkey slaughterers continued the decline starting in 2010, to a 53 percent market share in 2012.

4.4 Changing Business Practices in the Poultry Industry

4.4.1 Procurement and Pricing Methods

Unlike the livestock industry, which still relies to some extent on negotiated markets to coordinate the market supply channel, the poultry industry is highly vertically integrated. As a result, the use of spot markets for poultry is virtually nonexistent.

Technological advances in the 1940s and 1950s set the stage for growth and development of the broiler industry, with incorporation of the technology greatly facilitated by development of contractual arrangements between broiler growers and feed company-integrators. Contracting and vertical integration have enabled entities to maintain large volumes and control the flow of broilers at each stage to capture economies of scale, standardize production inputs, and gain a large degree of control over the production process.

P&SP regulates live poultry dealers under the Packers and Stockyards Act (Act). Under the Act, the term "live poultry dealer" means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another. Live poultry dealers are commonly called poultry integrators and typically contract with producers for grower services to raise chicks to slaughter size and weight. The integrator owns the birds throughout the process and slaughters and further processes the poultry.

4.4.2 Changes in Operations and Organization

Perdue Farms, Salisbury, Maryland, sold its broiler complex in Dothan, Alabama, to Georgia-based Wayne Farms on January 1, 2013. The sale included the Dothan plant and hatchery and a feed mill and grow-out office in DeFuniak Springs, Florida. Perdue continues to operate a broiler complex in Perry, Georgia.

Sanderson Farms announced in November 2012 that they will not build a new poultry processing complex in Nash County, North Carolina. The decision ended a long-running local battle between supporters and opponents concerned about the plant's environmental impact that included lawsuits and became a campaign issue. Sanderson still plans to build a new complex somewhere, but those plans are on hold pending improvements in market fundamentals.

House of Raeford Farms announced in March 2013 that it would close its Raeford, North Carolina turkey slaughter plant and turkey growing operations over a 4–6 month period. The company said it will work with the 140 turkey growers to see if they have interest in transitioning to growing chickens. The company's chicken business now represents over 90 percent of sales. It intends to further expand the chicken business over the next 2–3 years so that the increased chicken volume will replace the turkey production it is phasing out.

Koch Foods of Illinois announced in April 2013 that it would add two processing lines to its Pine Mountain Valley, Georgia poultry plant. Koch's subsidiary, JCG Foods, LLC, bought the plant out of bankruptcy in 2012 from Cagle's, Inc.

Horizon Food, LLP, Pine Bluff, Arkansas, closed in June 2013, a year after it opened. Horizon had purchased a former Tyson broiler plant and changed it to a spent fowl plant primarily for foreign markets.

California poultry processor Vikon Farms will move to a processing facility in Arkadelphia, Arkansas, and expects to employ more than 172 people within 4 years. The plant is the former Petit Jean processing facility. Vikon produces a specialty breed of chicken that serves Asian markets. The facility was expected to open by late December 2013.

In late August 2013, Pilgrim's Pride announced $25 million of investments in Alabama, including the construction of a new feed mill in Pinckard and the renovation of the processing facility in Enterprise. The new feed mill will replace the existing one in Enterprise.

Wayne Farms announced a $3 million expansion of its operation in Laurel, Mississippi, that will create 150 new jobs. The expansion involves adding a new processing line and renovating the company's existing facility.

Pilgrim's Pride announced in early November 2013 that it would close its Boaz, Alabama, processing plant by January 24, 2014. The Boaz plant employs about 1,100 workers and contracts with independent poultry growers to supply broilers. Pilgrim's Pride will expand other plant operations in Russellville, Alabama, and Douglas, Georgia, to absorb the fresh poultry processing now done in Boaz, Alabama. The company estimated the consolidation would generate about $200 million in savings in 2014. The consolidation would also allow the company to maintain current production levels and more efficiently use idle capacity.

4.5 Industry Concerns

Livestock and poultry production, marketing, and processing is a dynamic industry that has gone through major adjustments since 1921 when Congress passed the Packers and Stockyards Act. Preceding pages document the industry's continued structural and behavioral adaptation to economic and technological realities. Changes in the marketing of livestock and poultry have been dramatic, with the shift from negotiated transactions to alternative processor ownership or producer-processor contractual relationships essentially complete in poultry, nearly so in pork, and trending likewise in cattle. Whether the trends in the latter two continue to the same level as in poultry remains to be seen.

While several studies have provided evidence that the industry adjustments have been associated with increased efficiency and resulted in added product value to the benefit of industry members and consumers, some industry participants and observers continue to raise concerns about the competitive effects of some of the changes. The conflict between these opposing viewpoints has played a major role in public policy debates and in demands on GIPSA’s regulatory and enforcement resources. GIPSA does not have statutory authority to directly address changes of a structural nature, e.g., industry consolidation and concentration. Nonetheless, GIPSA will continue to respond to both legal and policy concerns to ensure a competitive market environment while also addressing the actions of individuals and firms that violate the Act and regulations.

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United States Department of Agriculture
Grain Inspection, Packers and Stockyards Administration
Packers and Stockyards Program
1400 Independence Avenue, SW.
Washington D.C. 20250-3601

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