



2016 Annual Report

**PACKERS AND
STOCKYARDS
PROGRAM**

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

TABLE OF CONTENTS

OVERVIEW OF P&SP.....	3
AUTHORITIES OF P&SP AND RESPONSIBILITIES OF P&SP.....	4
P&SP HIGHLIGHTS.....	5
ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES.....	7
CHANGING BUSINESS PRACTICES IN THE LIVESTOCK AND POULTRY INDUSTRIES.....	12
PROCUREMENT AND PRICING METHODS.....	12
CHANGES IN OPERATION AND ORGANIZATION.....	16
INDUSTRY CONDITIONS AND EVENTS.....	20
CONCERNS IN THE LIVESTOCK AND POULTRY INDUSTRIES.....	22
P&SP REGIONAL OFFICE ACTIVITIES.....	24
ENFORCING BUSINESS-PRACTICE PROVISIONS.....	26
<i>Competition</i>	26
<i>Trade Practices</i>	28
ENFORCING FINANCIAL PROVISIONS.....	31
P&SP PROGRAM PERFORMANCE AND EFFICIENCY.....	36
PERFORMANCE MEASUREMENT.....	36
EFFICIENCY MANAGEMENT.....	37
CONTACTING P&SP.....	39
APPENDIX A-B.....	41

OVERVIEW OF P&SP

P&SP operates under the authority of the Packers and Stockyards Act of 1921 (P&S 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. The P&SP Deputy Administrator, who reports to the Administrator of the U.S. Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA), manages P&SP (Appendix A). In fiscal year (FY) 2016, P&SP's allocated portion of the GIPSA appropriation was \$23.0 million, the same as 2015, but an increase from \$22.3 million in 2014. At the close of FY 2016, P&SP had 139 full-time staff and 7 vacancies for a total of 146 full-time positions.

P&SP's Deputy Administrator provides strategic leadership to the directors of three regional offices and the director of a headquarters division, shown below

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

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

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

LEAD provides litigation support through reviewing investigations and preparing sanction and stipulation recommendations. It also assists the Office of General Counsel (OGC) or the Department of Justice (DOJ) in preparing for hearings and negotiating settlements. Staff members testify at hearings. LEAD also processes and summarizes industry data, develops P&SP policy, and prepares information materials, press releases, and notices and regulations under the P&S Act.

REGIONAL EXPERTISE

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

At the end of FY 2016, P&SP had 139 full-time staff which included 88 office staff and supervisors in headquarters and in the regional offices. P&SP had 43 resident agents, 5 resident auditors, 1 market inspector and 2 field supervisors who report to the regional offices and are located throughout the country to provide core services nationwide. Each regional office unit has agent supervisors who manage teams of agents, marketing specialists and auditors.

The geographically dispersed resident employees enable P&SP to maintain close contact with the entities P&SP regulates as well as livestock producers and poultry growers (see Appendix A, figure 9).

OVERVIEW OF P&SP

OVERVIEW OF P&SP AUTHORITIES AND RESPONSIBILITIES OF P&SP

Under the P&S Act, the Secretary of Agriculture (Secretary) regulates specified activities of businesses engaged in the marketing of livestock, meat, and poultry. The Secretary, through the Under Secretary for Marketing and Regulatory Programs, delegated this authority to the GIPSA Administrator. GIPSA's P&SP fulfills these responsibilities under the P&S Act. Regulated business entities include:

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

P&SP does not have jurisdiction over livestock producers, feedlots, poultry growers or most retailers. In addition to describing unlawful behavior, the P&S Act and associated regulations mandate certain business practices by regulated entities. For example, market agencies and dealers must register with P&SP.

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

P&SP uses its authority to investigate alleged violations of the P&S Act and regulations. USDA's OGC represents the Secretary in enforcements under the P&S Act and regulations. OGC takes administrative action against violations alleged in P&SP investigations. OGC may also refer matters to the DOJ for prosecution, when warranted.

TRUST PROVISIONS

To protect unpaid cash sellers of livestock, the P&S 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 P&SP.

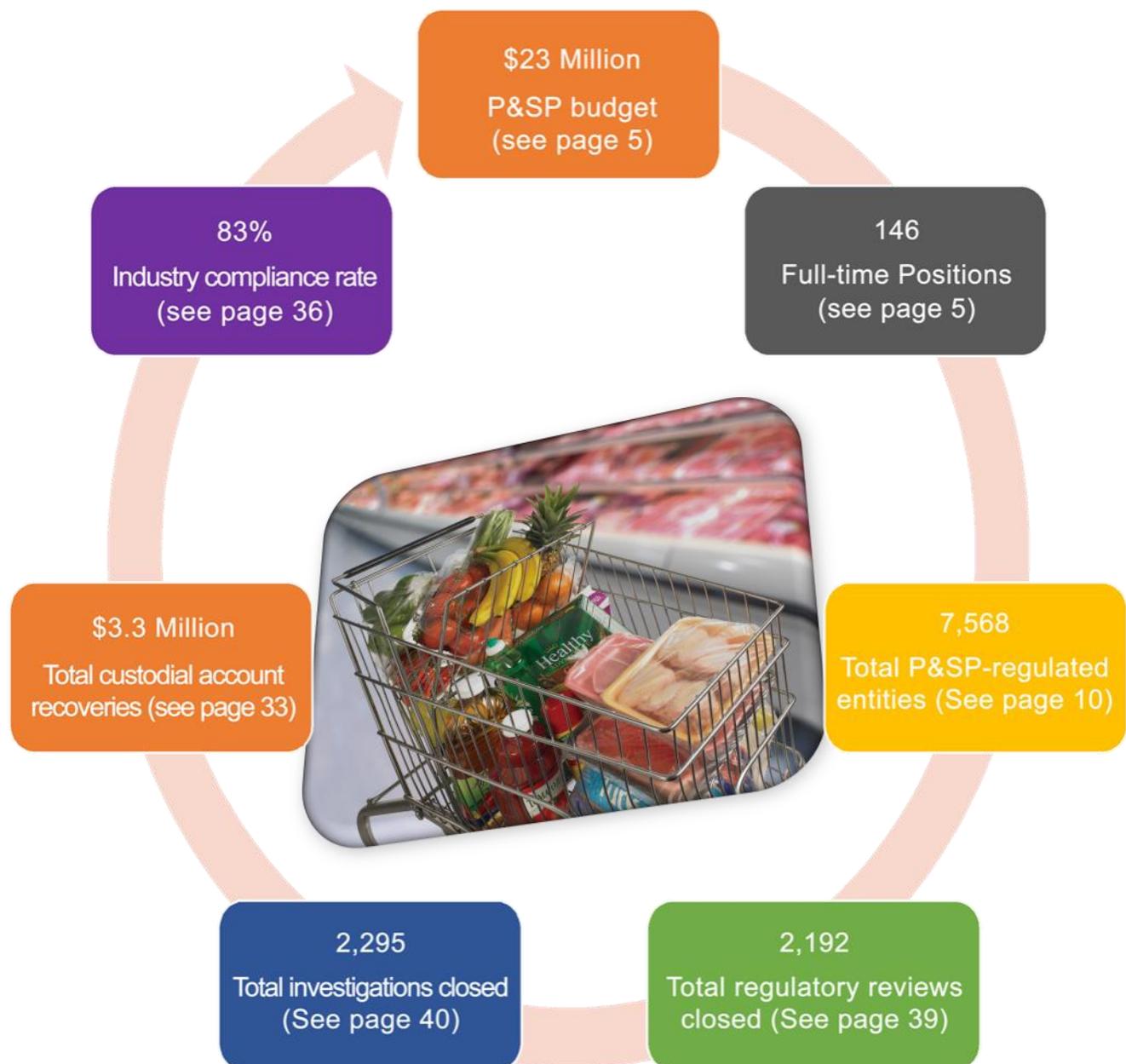
After receiving a claim, the packer must hold livestock inventories and receivables, and proceeds from meat, meat food products, or livestock products in trust until it makes full payment to all unpaid cash sellers.

A similar provision applies to live poultry dealers.

P&SP HIGHLIGHTS

IN BRIEF...

P&SP benefits America's agriculture and consumers by enforcing provisions for fair trade, prompt payment, and open competition in the marketing of livestock, meat, and poultry. The circular graphic below provides a snapshot of the agency and its 2016 accomplishments in promoting industry compliance with the P&S Act.



P&SP HIGHLIGHTS

NUMBER AND TYPE OF REGULATED ENTITIES 2016



ECONOMIC STATE OF THE LIVESTOCK AND POULTRY 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 part of this section assesses the general economic state of the industries that are regulated by P&SP. 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 via commissions versus direct purchases. Finally, this section outlines specific concerns about the events and conditions in the industries regulated under the P&S Act and P&SP's actions to address those concerns.

In this section, P&SP generally uses data from regulated entities' annual reports for the most recent 10 years. The annual reports for the 2016 calendar-reporting year are not due until April 15, 2017. As a result, most data series in this section end with entities' 2015 reporting year. There are exceptions. These include statistics on entities currently bonded and/or registered as recorded in P&SP databases, USDA Agricultural Census statistics on swine contractors, statistics on types of procurement methods compiled from data reported to USDA's Agricultural Marketing Service (AMS) under the provisions of the Livestock Mandatory Reporting Act (LMR) (7 U.S.C. § 1635 et seq.). LMR is also referred to as livestock mandatory price reporting (LMPR) and mandatory price reporting (MPR).

The following entities are subject to the P&S Act:

- ***All packers operating in interstate commerce*** are subject to the unfair and deceptive practices restrictions and prompt payment provisions of the P&S Act. Entities that purchase \$500,000 or more of livestock for slaughter annually are required to be bonded and file annual reports. Bonded slaughter entities 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 who purchase poultry for slaughter and poultry integrators who contract with producers for grower services to raise chicks or poults to slaughter weight.
- ***Livestock dealers*** purchase livestock for resale on their own accounts, or they may purchase or sell as the agent or representative of another entity.
- ***Market agencies*** are entities engaged in the business of buying or selling livestock in commerce on a commission basis. They usually own and operate auction markets, but some only furnish stockyard services, or, in rare cases, provide State brand inspection services.
- ***Posted stockyards*** are physical facilities and are not necessarily separate businesses. Auction market agencies are usually located at posted stockyards, but may or may not be the same entities that own and operate the stockyards.
- ***Swine contractors*** are entities that contract with swine production contract growers to care for and raise the contractors' swine for slaughter.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

The number of entities subject to the P&S Act varies somewhat from year to year. The number of bonded slaughter entities, bonded market agencies and live poultry dealers declined slightly in 2016 from the prior year. The number of bonded livestock dealers, and posted stockyards increased (Table 1).

Table 1. Number of Bonded Slaughterers, Live Poultry Dealers, Bonded Dealers and Market Agencies, and Posted Stockyards - Entities Reporting to PSP

Year	Bonded Slaughter Entities	Live Poultry Dealers	Bonded Dealers	Bonded Market Agencies	Posted Stockyards
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
2014	295	137	4,650	1,202	1,247
2015	305	133	4,607	1,224	1,256
2016	294	132	4,660	1,221	1,261

At the end of fiscal year 2016, there were 294 bonded livestock slaughter entities, 132 live poultry dealers, 4,660 registered livestock dealers, and 1,221 market agencies that were subject to the P&S Act. There were also 1,261 posted stockyards and, as of 2012, just over 500 swine contractors (Table 2). From 2007 to 2012, the total number of hog farms declined from 74,789 to 55,882 (Table 2). This represented a decline of 18,907 farms or 25.3 percent.

The number of contractors and contract growers also declined from 2007 to 2012. However, contractors as a percentage of total farms remained the same at 1 percent. As a

Table 2. Number of Farms by Swine Grower/Producer Type²

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

percentage of total farms, contract growers increased 2 percent from 12 percent to 14 percent. The use of contract growing arrangements in the hog industry has remained relatively stable over the last two Census of Agriculture years of 2007 and 2012 with the percentage of hogs grown under contract at 43 and 44 percent, respectively. When slaughter hogs are grown under contract, swine contractors typically own the hogs and sell the finished hogs to pork packers. The swine contractors typically provide feed and medication to the contract growers who own the growing facilities and provide growing services. P&SP regulates the business practices of swine contractors.

² Note swine contractors do not file an annual report with the Packers and Stockyards Program, data from Census of Agriculture.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

Packers' livestock purchases decreased to \$72.5 billion in 2015 from \$79.0 billion in the previous year. The dollar volume for entities selling on commission and for entities operating as dealers or purchasing on a commission basis also declined, following increases in the prior 3 years (see below, Figure 1).

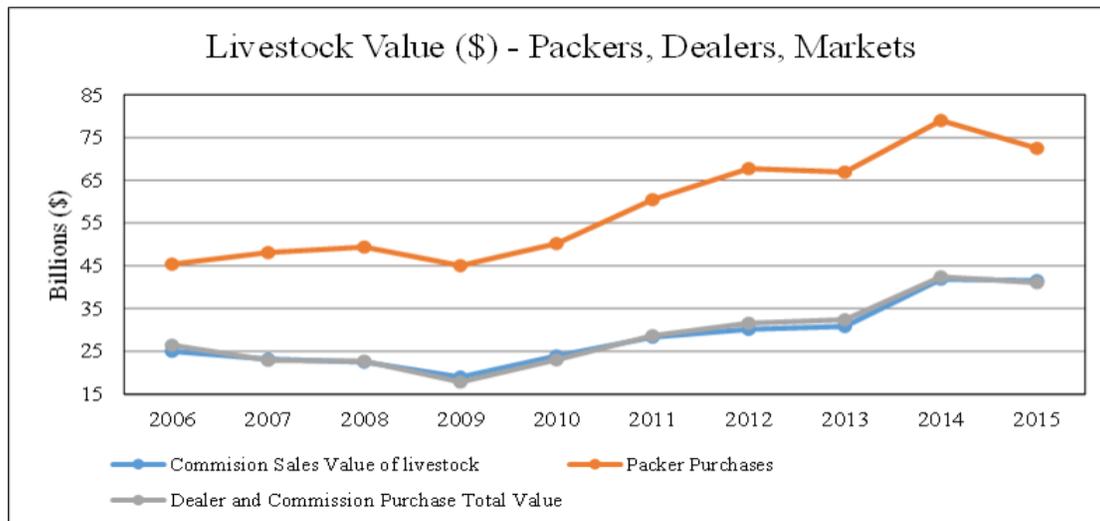


Figure 1. Dollar Value of Packers, Dealers, and Market Agencies Selling and Buying on Commission Subject to P&S Act, 2006 - 2015

P&SP requires packers with livestock purchases that equal or exceed \$500,000 per year to report the number of head slaughtered annually. The number of cattle slaughtered by packers reporting to P&SP declined over the past 4 years from 33.8 million head in 2011 to just over 28 million head in 2015 (Table 3). 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.

The number of hogs slaughtered as reported by packers to P&SP increased each year from 2006 to 2009, then declined by around 3 percent or 3.1 million head in 2010 and another 2 percent or 1.2 million head in 2011. Hog slaughter reached the highest level in the past decade in 2014, at over 122 million head, but fell to less than 114 million in 2015 (Table 3).

Sheep and lamb slaughter reached the highest level in the past decade in 2013, increasing 30 percent from the prior year to 3.2 million head. In 2015, the number of sheep and lambs slaughtered by packers reporting to P&SP increased to 2.9 million head from 2.7 million in the prior year.

Poultry processors reporting to P&SP slaughtered an estimated 52.2 billion pounds of chicken and 8.1 billion pounds of turkey in 2015. These are the highest levels reported in the past decade.

Changes in slaughter plant numbers for cattle and hogs reflect the increasing size of slaughter plants, as economic conditions, mergers and acquisitions, and efforts to improve efficiencies resulted in a significant decline in the number of plants while total slaughter remained stable or even increased.

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

Table 3. Purchases of Livestock and Poultry for Slaughter - Entities Reporting to P&SP

Year	Cattle	Hogs	Sheep and Lambs	Broilers	Turkeys
(Million Head)				(Billion lbs.)	
2006	32.1	104.5	2.0	NA	NA
2007	33.0	108.6	2.5	45.6	6.6
2008	32.0	109.0	1.8	46.2	7.4
2009	32.1	113.2	2.0	46.4	6.9
2010	33.0	110.1	1.9	48.4	7.2
2011	33.8	108.9	1.8	49.0	7.1
2012	33.5	110.1	2.1	49.4	7.5
2013	31.8	113.3	3.2	52.1	7.4
2014	30.0	122.3	2.7	50.1	7.2
2015	28.1	113.7	2.9	52.2	8.1

The apparent reversal in this trend in 2015 for hog and lamb plants may be due to higher livestock prices causing more packers to reach the \$500,000 reporting threshold. Also, while the number of plants slaughtering sheep and lambs has increased significantly since 2008, many of these are small multispecies plants that slaughter only a few sheep and lambs (Table 4). Poultry plant counts are available only for the most recent years.

Table 4. Number of Slaughter Plants Operated by Entities Reporting to P&SP

Year	Cattle	Hogs	Sheep and Lambs	Poultry*
2006	168	159	55	NA
2007	165	165	56	NA
2008	135	126	52	NA
2009	133	134	54	NA
2010	135	129	59	NA
2011	147	136	70	NA
2012	168	157	81	NA
2013	166	143	79	NA
2014	163	125	72	230
2015	161	138	81	240

* Includes Broilers, Turkeys and Ducks

ECONOMIC STATE OF THE LIVESTOCK AND POULTRY INDUSTRIES

The four largest slaughter entities' share of livestock slaughter has ranged from 66 to 71 percent for the past decade (Table 5). The four largest entities that slaughter steers and heifers accounted for 85 percent of total steer and heifer slaughter in 2015, a slight increase from the previous year. Prior to 2009, concentration in steer and heifer purchases had remained around 80 percent. Cow and bull slaughter has consistently been less concentrated than fed cattle slaughter. The share increased to its highest level of 60 percent in 2013, but declined to 57 percent in 2014 and 2015. The four-firm concentration ratio for hog slaughterers has remained in the low- to mid-60's range for the last 10 years.

Due to the small total slaughter volume for sheep and lambs, moderate volume adjustments by any of the largest four entities can 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 stayed near 70 percent from 2005 through 2009. The share then decreased by five percentage points in 2010 and six in 2011, reversed direction in 2012 but fell to 57 percent in 2015. Throughout these years, changes in market shares represented only a few thousand head of slaughter lambs. The market shares and other concentration measurements likely overstate concentration in the lamb market because non-traditional markets account for as much as one-third of the lambs slaughtered in the United States and are not included in the totals.

Concentration in broiler slaughter has been at 51 percent for the past two years, a sharp decline from the 57 percent level seen in 2007. The share of production accounted for by the four largest turkey slaughter firms in 2014 and 2015 was higher than it had been in some previous years.

Table 5. Four-Firm Concentration in Livestock Slaughter by Type of Livestock and Poultry - Federally-Inspected Plants *

Year	Total Value Purchases (%)	Steers & Heifers (%)	Cows & Bulls (%)	Hogs (%)	Sheep & Lambs (%)	Broilers (%)	Turkeys (%)
2005	67	80	48	64	70	NA	NA
2006	66	81	54	61	68	NA	NA
2007	66	80	55	65	70	57	52
2008	68	79	55	65	70	57	51
2009	71	86	54	63	70	53	58
2010	67	85	53	65	65	51	56
2011	67	85	53	64	59	52	55
2012	68	85	56	64	62	51	53
2013	67	85	60	64	59	54	53
2014	67	83	57	62	58	51	58
2015	68	85	57	66	57	51	57

* Concentration statistics for Total Value Purchases are livestock purchases from packer annual reports. Statistics for Broiler and Turkey Slaughter are computed from P&SP poultry annual reports.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

Procurement and Pricing Methods

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

In live-weight purchasing of livestock, the final payment is 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 by formula from prices reported by AMS or a market price reporting service when the animals are delivered or slaughtered. In some instances, provisions may be made for paying different prices for animals that differ significantly from other animals in the transaction (e.g., animals that are much smaller than the average for the transaction may receive a lower price).

In a carcass-based purchase, the final payment is determined based on each animal’s hot carcass weight, which is the weight of the carcass after the animal has been slaughtered and eviscerated. Carcass-based purchase methods often involve schedules of premiums or discounts based on the quality of the carcasses. The price of carcasses can also be determined by other features, such as time of delivery and number of animals in the transaction. The price before premiums or discounts is referred to as the base price. Carcass-based pricing may reward sellers with livestock that exceeds certain thresholds of carcass quality. Livestock carcasses graded below the thresholds may result in the seller receiving discounts. One benefit of carcass-based pricing is the ability to convey consumer preferences to livestock producers through premiums and discounts.

The proportion of cattle purchased on a carcass basis has varied over the last ten years with no obvious trend, ranging from around 53 percent to 64 percent of total purchases. The proportion of calves purchased on a carcass-weight basis is considerably less than the percentage of cattle, but has also exhibited a mixed pattern with a large decline in 2015 to 19.5 percent (Table 6).

Carcass-based purchases have become the predominant procurement method used for hogs purchased for slaughter and has been between 76 and 88 percent over the last decade (Table 6). The industry also refers to these as “carcass-merit” purchases. Carcass-based purchases include a base price that applies to all carcasses in the transaction. Carcass-based pricing methods typically include premiums or discounts for individual carcasses based on quality or other carcass attributes such as lean percent or percentage of lean meat in the carcass. The industry calculates lean percent using the carcass back-fat and loin-eye measurements using electronic evaluation equipment along with mechanical measurements.

The proportion of sheep and lambs purchased on a carcass basis fell to about 31 percent of the total in 2009, followed by an increase of nearly 10 percentage points in 2011, and was just over 29 percent in 2015.



CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

P&SP monitors two major transaction locations in livestock marketing. In one, producers deliver livestock to an auction market that accepts the livestock for sale on a commission basis. The livestock may also be offered for sale through a video or internet auction. Buyers may procure the animals for slaughter or for feeding or other purposes. The second transaction point is direct exchange between the livestock seller and a livestock dealer, commission buyer, or packer.

The number of cattle handled by livestock auction markets declined from 35.7 million head in 2006 to 31.7 million head in 2015 (Table 7). However, these commission entities continue to play an important role in the cattle industry. Stockers (heifers and/or steers that are being raised on pasture or other forage for sale later as feedlot replacements) 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. Livestock auction markets also sell a significant number of cull cows (beef or dairy cows that are no longer needed for breeding or milk production).

The volume of hogs marketed by entities selling hogs on commission from 2006 to 2012 has been between 7 and 9 million head in most years. The highest level of 9 million head occurred in 2009 but since then volume declined most years to 7.5 million head in 2015 (Table 7). Hogs sold on commission are typically older sows and boars or hogs of lower quality.

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

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

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

Table 6. Percentage of Livestock Purchased on a Carcass-Weight Basis - Entities Reporting to PSP

Year	Cattle %	Calves %	Hogs %	Lambs %
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
2013	63.9	35.7	83.1	27.5
2014	62.9	38.7	76.9	26.5
2015	63.1	19.5	82.1	29.2

Table 7. Volume of Livestock Marketed Through Auction Markets - Entities Reporting to PSP (Thousands of Head)

Year	Cattle	Hogs	Sheep and Lambs
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
2013	33,690	7,319	3,162
2014	33,426	7,185	3,079
2015	31,650	7,453	3,015

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

Important components of committed procurement are “packer fed” livestock, “forward contracts” and “marketing agreements.” 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.

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

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

AMS publishes prices and volumes of livestock purchased under alternative pricing methods as reported under the provisions of the Mandatory Price Reporting Act (<https://mpr.datamart.ams.usda.gov/>).

Individual packers use a variety of procurement methods, ranging from packers that are fully integrated to packers that rely primarily on the open market. 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.

The use of formula pricing methods and forward contracting for fed cattle has increased as a share of total procurement over the past decade as the use of negotiated pricing declined.

In 2016, formula pricing represented 58 percent of total fed cattle procurement compared to 33 percent in 2007. Forward contracting accounted for 12 percent, this has increased from 8 percent in 2007. Negotiated pricing, including negotiated grid and cash or spot market transactions, made up 30 percent of total fed cattle procured (not including packer-owned cattle) in 2016, down from almost 60 percent in 2007.

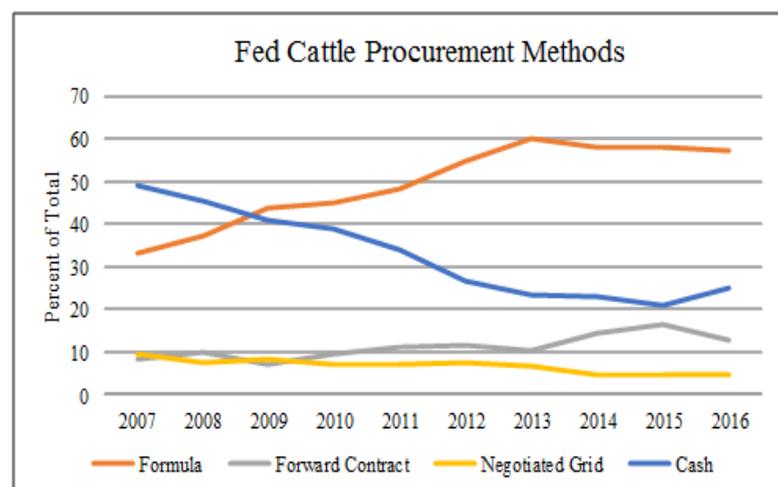


Figure 2.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

For all hog slaughter entities reporting to AMS in 2016, about 50 percent of procurement was based on some type of formula pricing (Figure 3). Hog packers obtained about 2 percent of hogs on the negotiated spot market in 2016, compared to about 9 percent in 2007. Marketing agreements based on a formula accounted for 48 percent of hog slaughter reported to AMS. These agreements are generally multi-year contracts. In these contracts, the producer agrees to deliver a set number of hogs per year to a packer. They base the contract price on a formula that includes a publicly reported hog or pork price. They base the contract price on a formula that includes a publicly reported hog or pork price.

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

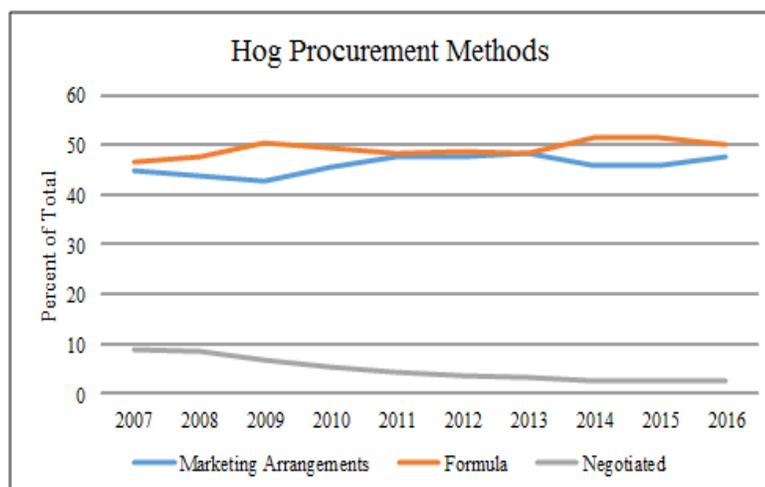


Figure 3.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

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

Lamb packers use similar methods to purchase lambs as beef and pork packers. The methods include spot markets, marketing agreements, forward contracts, and packer feeding. In the traditional lamb market, packers purchased approximately 23 percent of their lambs under negotiated price. They purchased about 41 percent with marketing agreements, and packers fed about 36 percent of the lambs for slaughter (Figure 4).

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

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

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

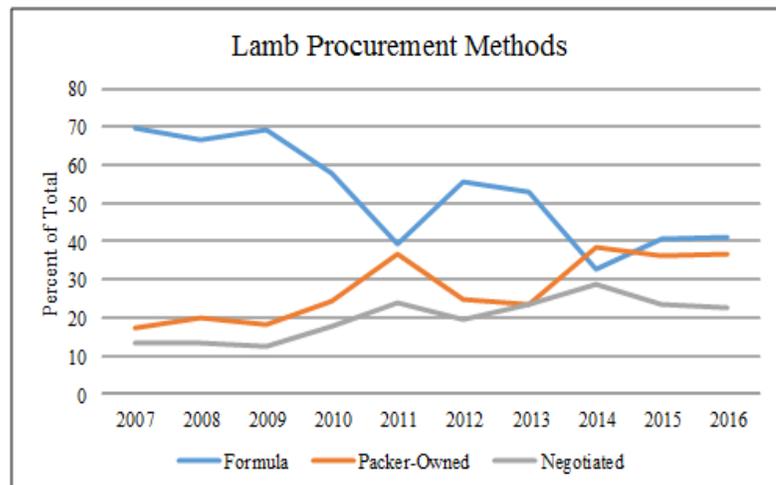


Figure 4.

Changes in Operation and Organization

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

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

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

Cattle, Sheep, and Hogs

In September 2015, **PM Beef Holdings, LLC** suspended operations at its beef slaughter and processing facility in Windom, Minnesota. Its last day of production was September 25, 2015. The company President cited years of deteriorating industry conditions, including rising cattle prices and limited cattle supply. The plant had been operating for 67 years. In February, 2016, the company announced that it would sell the plant to a partnership that plans to convert it to a pork processing facility and operate under the name **Prime Pork**. The new company said the converted plant would slaughter more than 4,000 hogs per day at full production.

In October 2015, the former **Northern Beef Packers** plant in Aberdeen, South Dakota reopened under the name **New Angus, LLC**. The plant had closed in July 2013 after seven months of operations. **White Oak Global Advisors**, a San Francisco-based investment firm bought the business out of bankruptcy. The plant was ramping up production but processed less than its capacity of 1,600 head of cattle per day as of the middle of 2016. **New Angus** said it would sell its beef under the **DemKota Ranch Beef** brand and would have source verification programs in place.

In November 2015, **Mountain States Lamb Cooperative** entered into an agreement with **JBS USA** to acquire the **JBS Greeley Lamb** plant and all related assets. Mountain States Lamb Cooperative, based in Douglas, Wyoming, is a multi-state producer-owned marketing cooperative. It also owns **Mountain States Rosen, LLC**, a meat marketing company with fabrication, distribution and marketing assets in Greeley, Colorado and Bronx, New York. The acquisition gave **Mountain States** its own slaughter capabilities. It had a prior arrangement with JBS whereby JBS custom slaughtered Mountain States' lambs. JBS retained its Australian lamb operations. The acquisition placed Mountain States as the second largest lamb processor in the United States, behind **Superior Farms**. The acquisition was completed in early January 2016.

In March 2016 **Central Beef Industries, LLC** in Center Hill, Florida ceased operations and filed for bankruptcy. It had been Florida's largest beef processor. It was reported that the company was looking for a buyer.

In April 2016, **SuKame**, Mexico's largest beef company opened a beef processing plant in Durango, Mexico. The plant is now the largest beef plant in Mexico, and the company said it expects to process 600,000 fed cattle and 200,000 cows per year. The plant will be supplied mainly by feedlots adjacent to the plant, but may also purchase cattle from U.S. feedlots.

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

In July 2016, **Cargill Meat Solutions Corporation** announced it had reached an agreement to sell its cattle feed yards in Bovina and Dalhart Texas to **Friona Industries**, LP based in Amarillo, Texas. The feed yards had a combined one-time capacity of approximately 140,000 head. Cargill will keep its cattle feed yards in Yuma, Colorado and Leoti, Kansas. Prior to this acquisition, Friona Industries operated four feedlots with an approximate combined one-time capacity of 300,000 head.



In May 2016, the **Fed Cattle Exchange**, an online trading platform for slaughter cattle, began operating on a weekly basis, with sales scheduled for every Wednesday. The Fed Cattle Exchange provides a web-based interface where feedlots can offer pens of market ready cattle for sale, and packers can bid on those offerings in a timed format, similar to an online auction. The exchange held sales for three weeks, and then suspended operations for about 3 months. It resumed weekly sales in mid-September. On September 29, 2016, AMS announced that it would report the Exchange's sales in its Livestock Mandatory Reporting cattle reports as negotiated purchases beginning October 5, 2016. While the Exchange reported a weekly average of just under 1,700 head sold per week during September, its weekly sales volume increased to approximately 7,500 head per week in October and November 2016. The Fed Cattle Exchange is owned by Fed Cattle Exchange, LLC, a wholly owned subsidiary of Superior Livestock Auction, LLC.

Existing pork processing facilities were pressed to handle the glut of hogs in the fall of 2016 with Saturday slaughter often exceeding 300,000 head. With the closure of one slaughter facility and the opening of another, slaughter capacity was largely unchanged. **Greenwood Pack** (3,000 head capacity) in Greenwood, South Carolina ceased slaughtering hogs in May. **Moon Ridge Foods** in Pleasant Hope, Missouri with a daily capacity of 2,500 head, however, began operation in August. In 2016 plant construction was under way or in the planning stages for four new facilities with a combined daily slaughter capacity of 36 thousand head, but are not expected to come on line until 2017 and 2019 (**Prime Pork** in Windom Minnesota, **Triumph Foods** in Sioux City, Iowa, **Hatfield Foods** in Coldwater, Michigan, and **Prestage Foods** in Wright County, Iowa).



CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

Poultry

While there were some broiler plant closures in 2016, processing capacity was not reduced. Rather, production was centralized or consolidated at larger locations. Also several poultry firms expanded production capacity during the year or announced plans to do so in the next year.

In February, **Pilgrim's Pride** announced plans to invest almost \$200 million in capital improvements that target its feed production, fresh chicken and prepared foods operations in various locations including Moorefield, Virginia and Mayfield, Kentucky. Later in the year, Pilgrim's Pride announced it would purchase **Gold'n Plump Co.**, the St. Cloud, Minnesota-based producer of Gold'n Plump chickens. It is expected that the sale will close during the first quarter of 2017.

In March, **Allen Harim, LLC** announced the closure of a plant in Cordova, Maryland to centralize broiler operations in Harbeson, Delaware. In April, **Ozark Mountain** closed its processing plant in Warren, Arkansas to consolidate its operations in Batesville, Arkansas. **Twin Rivers Foods** closed its Neosho, Missouri plant early in June and moved those broiler operations to its plant in Fort Smith, Arkansas.

In April, **Tyson** announced plans to build a new broiler processing plant close to its existing facility in Green Forest, Arkansas. The new plant increases capacity by 200,000 square feet and is expected to be complete late in 2017.

In May, **Mountaire Farms** announced plans to acquire a former **Townsend's** broiler processing plant in Siler City, North Carolina and renovate it to expand capacity. **Holly Poultry** revealed in August its plans to build a new 37,500 square foot processing plant in Baltimore, Maryland that it anticipates will be operating early in 2017. **Wayne Farms** re-opened a facility in Dothan, Alabama mid-year that had been closed in 2014 with broiler processing capacity increased to 120,000 square feet and employing over 600. In November, **Simply Essentials** began production in a plant in Charles City, Iowa that it had purchased earlier in the year.

In September, **Butterball** announced plans to expand its turkey production in the River Valley region of Arkansas by adding about 30 turkey farms and also increase employment at its processing plant in Ozark, Arkansas.



CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

Industry Conditions and Events

Cattle and Hogs

In December 2015, the mandatory country of origin labeling (COOL) requirements for muscle cuts of beef and pork, and ground beef and pork were repealed. The law had been in place since 2009. COOL requirements remained in place for poultry and lamb.

On August 1, 2016, USDA announced that it had reached an agreement with Brazil for the United States to reopen its market to fresh Brazilian beef, and that United States beef and beef products would have access to the Brazilian market for the first time since 2003. The United States had remained closed to imports of fresh Brazilian beef until this announcement due to concerns surrounding foot and mouth disease in Brazilian cattle herds. The trade had little impact in 2016 as it was not until the end of September that Brazil shipped its first container of fresh beef to the United States.

With continued large corn and soybean supplies lowering hog production costs, the increasing number of pigs per litter, solid consumer demand, the absence of significant outbreaks of diseases, and the expectation of significant additional slaughter capacity in 2017 and 2019, U.S. hog inventories set record highs in September 2016 at 70.9 million head, two percent above that of 2015.

The number of U.S. hogs slaughtered in 2016 largely followed that of 2015 until July when it began to significantly exceed the prior year level. In August, weekly slaughter had already hit 2.3 million head, compared to 2015 when that number was reached in October. In October 2016, slaughter exceeded 2.5 million in several weeks, pushing capacity to its limit. Not surprisingly, 2016 carcass prices began to fall below 2015 levels beginning in July. While carcass prices had exceeded \$80/cwt. in June, they drifted steadily lower and by late October were in the low \$50s compared to carcass prices around \$70/cwt. in October, 2015.

The top 35 hog producers added 122,850 sows in 2016 and now own about two-thirds of all U.S. sows. This increase in sows was largely driven by the hog producers who will supply the new plants. **Seaboard Foods**, a partner with **Triumph Foods** in the new Sioux City, Iowa plant, acquired an additional 73,000 hogs from **Christensen Farms** (a Triumph Foods owner) and **Texas Farm**. **Triumph Foods** and **Seaboard Foods** are now the two largest hog producers after **Smithfield Foods**. Several top 35 hog producers, located near the new **Hatfield** plant have moderately increased their number of sows. These include **Sietsema Farms** of Allendale, Michigan; **Cooper Farms** of Oakwood, Ohio; **Fine Swine** of Hilliard, Ohio, **Hord Livestock Co.** of Bucyrus, Ohio; and **Kalmbach Feeds** of Upper Sandusky, Ohio.

Hog diseases that can impair production continued to be a source of concern to U.S. producers in 2016. The Porcine Epidemic Diarrhea or PEDv, which struck in the winter of 2013 and spring of 2014 reminded U.S. producers of the vulnerability to disease. That episode resulted in a mortality rate of up to 10 percent for newborn pigs. Prices rose to \$115/cwt. as packers competed for dwindling hog supplies. While producers braced themselves for another outbreak in 2015, only a few producers were affected. A virulent strain of

CHANGING BUSINESS PRACTICES IN THE LIVESTOCK & POULTRY INDUSTRIES

porcine reproductive and respiratory syndrome (PRRS) had a major adverse impact on hog production facilities located in the Southeast. In the upper Midwest there were outbreaks of Seneca virus A (Seneca Valley virus or SVV) in breeding herds. The virus causes snout and hoof lesions on sows and boars, as well as increased mortality in piglets less than seven days old. While producers remained watchful for PEDv, PRRS and SVV, there were no significant outbreaks nor impacts on slaughter numbers and prices in 2016.



Export sales for pork in 2016 continued the relatively flat trend that began in 2012, running about one percent above 2015 levels. The major growth markets were China and Hong Kong, with sales increasing 112 percent and 63 percent respectively. Declines in exports to Taiwan, Japan, Mexico, and South Korea offset this growth. China surpassed Canada as the third largest market for U.S. pork. Mexico and Japan remain the largest markets for US pork. Pork imports in 2016 remained unchanged from 2015. Feeder pig imports from Canada have continued to recover, running about 8 percent above 2015. However, pig imports are still running 33 percent below the high watermark set in 2008.

Poultry

The U.S. broiler industry is growing more diverse in the type of producers and their products and business strategies. Earlier this year, **Perdue** announced an expansion of its antibiotic-free poultry production. More than two-thirds of its chicken and over half of its turkey are raised with no antibiotics ever (NAE). According to a company statement its entire line of value-added frozen, refrigerated and fresh products are free of antibiotics.



Pilgrim's Pride is also increasing its output of antibiotic-free chicken which it anticipates will account for about 20 percent of total production by the end of 2018. This company announced it will convert one of its existing chicken complexes to USDA-certified organic and expects to capture more than 20 percent of that market once the change is complete in 2017.

Premium traditional turkey company **Kelly Turkeys** achieved a breakthrough by receiving an official go-ahead from USDA to market their dry-processed **KellyBronze** turkeys in the United States. **Kelly Turkeys** has been testing the U.S. Thanksgiving market in Virginia over the last six years and built a pilot processing plant on a small farm near the Blue Ridge Mountains. The facility was designed to establish whether United Kingdom-based Kelly Turkeys could develop a niche market for a top-quality traditional turkey in a market dominated by frozen product. **KellyBronze** turkeys are produced like turkeys used to be in America—in the style of “New York dressed” turkeys. The birds are dry plucked and hung for 10 to 14 days before evisceration as they were in

CONCERNS IN THE LIVESTOCK AND POULTRY INDUSTRIES

Cattle and Hogs

An issue of concern for cattle and beef markets in 2016 and for several previous years has been thinning of the cash markets for fed cattle. Many of the formula price agreements in the fed cattle market rely upon reported cash prices as a starting point, and the proportion of the fed cattle purchased with cash prices has significantly declined in recent years to a low of just above 21 percent in 2015. While the percentage of cash transactions increased by a few points in 2016, it continues to be only about 25 percent. Consequently, a relatively small proportion of cattle traded on a cash basis determine the price for millions of head of fed cattle every year.



Thin markets do not necessarily imply a violation of the Packers and Stockyards Act, but thin markets can create problems. If the market gets “too thin,” stakeholders can lose confidence that reported cash market prices are representative of the fed cattle market as a whole. Any time that a reported average is based on a smaller number of reported prices, the average will be more sensitive to the price of each individual transaction. The implications are that prices may be more volatile and more susceptible to manipulation.

Fed cattle prices hit record highs at just over \$171 per cwt. (live basis) in late November 2014, but declined toward the end of September 2015, with the national weighted average live weight negotiated price for beef type steers and heifers at \$128.10 per cwt. Fed cattle prices mostly remained in the \$130s per cwt. (live basis) for the rest of 2015 and the first few months of 2016 before declining steeply again during the last four months of fiscal year 2016 to hit the year’s low of \$105.83 per cwt. by the end of September 2016.

Not only did cattle prices in all market segments decrease substantially in 2016, but day-to-day changes in market prices, particularly in stocker and feeder prices, have been severe. Market volatility is essentially price risk, and widely fluctuating prices leave producers uncertain of the price they will receive depending on the day of the week that they bring cattle to the market.

The traditional remedy for price risk has been hedging on futures markets, but prices of live cattle and feeder cattle futures contracts have been just as volatile. A volatile futures market increases the difficulty of hedging to reduce risk.

The primary concern in the hog industry for 2016 is slaughter capacity and its subsequent impact on market prices. Since recovering from the 2014 PEDv outbreak, market hog inventory numbers set an all-time high in the September 2016 Quarterly Hogs and Pigs Report. Consequently slaughter numbers set all-time highs as well. Hog prices dropped to the lowest levels since 2002, hovering near \$40 per cwt. on a carcass basis. In spite of relatively inexpensive feed costs, Iowa State University producer profitability estimates show losses through the last quarter of the year.

CONCERNS IN THE LIVESTOCK AND POULTRY INDUSTRIES

Poultry

In November 2016, the Georgia Department of Agriculture required major poultry companies to submit documents verifying the accuracy of the price information they submit for the Whole Bird Dock Price reporting system known as the “Georgia Dock”. Then in December, the Georgia Department of Agriculture announced that it was suspending indefinitely the “Georgia Dock” weekly chicken price index.



P&SP REGIONAL OFFICE ACTIVITIES

The Packers and Stockyards Program conducts two broad types of activities at the regional office level—investigations and regulatory activities. P&SP generally categorizes regulatory and investigative activities as addressing areas of competition, trade practice, or financial concerns.

Investigations and regulatory activities are conducted by agents stationed in a regional office or by resident agents. P&SP 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 P&SP offices and resident agents are shown in Figure 9 in Appendix A.



P&SP initiates an investigation when it has information that a violation of the P&S Act is occurring or has occurred. For example, P&SP 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 P&SP,
- possible violations found through other monitoring activities, and
- a need for follow-up on previously identified violations of the P&S Act.

Regulatory activities are compliance reviews carried out to determine if a regulated entity is complying with the P&S Act and regulations. Regional offices initiate regulatory activities based on annual business volume of the regulated entity, time elapsed since the last review, information obtained from an annual report submission, or from the P&SP 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 P&S Act,
- Conducting orientations for new dealers, auction markets, and packers,
- Checking the accuracy and repeatability of weighing livestock, carcasses, and live poultry,
- Auditing custodial accounts and payment practices,
- Reviewing marketing practices and determining the adequacy of bond amounts,
- Assisting producers with filing bond and trust claims, and
- Analyzing bond and trust claims.

P&SP REGIONAL OFFICE ACTIVITIES

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

P&SP sees a range of outcomes from its investigative and regulatory activities. P&SP 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.

Members of the livestock and poultry industries and the public may report complaints in one of three ways. They may call GIPSA's hotline at (800) 998-3447, call the appropriate regional office to discuss their concerns, or send an e-mail to PSPComplaints@usda.gov. If desired, complainants may register their concerns anonymously. P&SP responds to all of these external contacts.

When agents uncover violations that are more serious, the regional office typically issues a Notice of Violation (NOV) as a first step. If the regulated entity fails to correct the identified violations, the regional office generally refers a formal investigative case file to LEAD with a recommendation for more formal enforcement. LEAD may stipulate³ the violation(s) with the entity to resolve the violations. It may pursue administrative enforcement⁴ through USDA's OGC before a USDA Administrative Law Judge, or through DOJ in Federal court.

Administrative enforcements may result in a civil penalty against the regulated entity, suspension of the entity's P&S registration, both a fine and suspension, or an order to cease and desist from repeating the violation(s). In FY 2016, 55 entities stipulated to penalties totaling \$155,425. Administrative Law Judges levied \$128,900 in penalties, and Federal courts awarded \$74,468 for a total of \$203,368 in civil penalties (Table 8). Total civil penalties in 2016 are lower than in the previous 4 years.

Table 8. Penalties Levied for P&S Act Violations, FY 2012-2016

Type Judgment	2012	2013	2014	2015	2016
Stipulations	\$305,390	\$167,387	\$118,025	\$158,950	\$155,425
Administrative Penalties	\$1,473,093	\$2,998,614	\$1,230,150	\$499,300	\$128,900
DOJ Civil Penalties	\$425,540	\$84,900	\$12,400	\$299,360	\$74,468
Total Penalties	\$2,204,023	\$3,250,901	\$1,360,575	\$957,610	\$358,793
Suspensions	24	34	11	6	7

³ A stipulation is a legal agreement citing violation(s) found, the civil penalty amount P&SP will accept in settlement of the alleged violation(s) without pursuing a formal action, and a statement for signature by the alleged violator, agreeing to pay the civil penalty and waive the right to a hearing.

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

P&SP REGIONAL OFFICE ACTIVITIES



ENFORCING BUSINESS-PRACTICE PROVISIONS

The regional offices are responsible for conducting regulatory reviews and investigations of competition and trade practice provisions of the P&S Act, collectively referred to as business practice provisions. The regional offices investigate alleged anti-competitive practices and unfair and deceptive trade practices by market agencies, livestock dealers and commission order buyers, slaughtering packers, live poultry dealers, and meat dealers and brokers. Resident agents and resident auditors conduct investigations and regulatory activities from field locations throughout the region.

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

Competition

P&SP 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. P&SP'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, P&SP formally refers the case file to OGC for enforcement. OGC further refers some cases to DOJ.

P&SP 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. Details of specific, ongoing individual monitoring efforts are described in the next three sections. P&SP also conducts economic analysis of significant industry events, including mergers, acquisitions, and plant closings. P&SP 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

P&SP's fed cattle and hog market price monitoring program includes a weekly internal reporting protocol based on statistical models, one for the fed cattle markets and the other for hog markets. The statistical models rely on USDA's Agricultural Marketing Service (AMS) publicly reported price data to assess regional price differences.

If a statistically significant regional price difference, referred to as a price outlier, is detected, a LEAD economist reviews the price anomaly to determine whether the price difference is caused by an undue or unreasonable preference or disadvantage in violation of section 202(b) of the Act or by uncontrollable external market factors, such as weather or other external market conditions.

P&SP REGIONAL OFFICE ACTIVITIES

The LEAD economist prepares a recommendation report, which is reviewed by an economist in the WRO for cattle and the MRO for hogs. Based on the report and reviewer comments, the supervisor in the regional office either closes the review as being explained by external market factors or opens an investigation and requests individual firm transactions data from AMS.

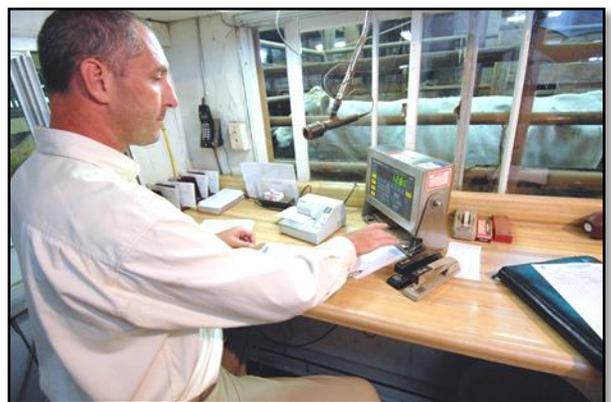
In 2016, P&SP price monitoring activities identified 26 outliers in the fed cattle markets and 6 outliers in the hog markets. The economists reviewing these price differences determined that, in each instance, they could attribute the price anomalies to external market factors, such as weather conditions.

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 the 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 transactions data on committed procurement as reported by the packers in their Packer Annual Reports.

If there are significant differences between the transactions 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 economists 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 potential 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. If potential violations are identified, P&SP conducts a separate and thorough investigation into the potential violations.



P&SP REGIONAL OFFICE ACTIVITIES

Poultry Contract Compliance Review Process

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

In FY 2016, P&SP conducted 70 poultry contract compliance reviews, 46 pursuant to a Business Plan random sample and included as a component of P&SP's performance measure (see Packers and Stockyards Program Performance and Efficiency section).

P&SP agents follow standard operating procedures when conducting poultry contract reviews. In general, the agent will collect relevant background information on the live poultry dealer (integrator) that is being reviewed prior to conducting a site visit. Once on site, the agent will interview managers and employees and obtain copies of all grower contracts used by the integrator at the plant location and three months of weekly ranking sheets for the plant.

The agent reviews these documents for consistency and compliance with the P&S Act and regulations. The agent selects one week of payment data from the settlement sheets for a detailed review for accuracy and completeness. The agent compares the results to the integrator's ranking sheets, settlement sheets, and payments to ensure adherence to the contract.



If the agent uncovers discrepancies, he or she opens an investigation. If the agent does not find evidence of violation, he or she advises the integrator's management of this in an exit interview and the review is closed with a finding that the entity is in compliance.

Trade Practices

P&SP reviews the activities of regulated entities to ensure that packers, market agencies, dealers, and live poultry dealers are not engaging in unfair or deceptive practices in the procurement and marketing of livestock, meat, and live poultry.

P&SP REGIONAL OFFICE ACTIVITIES

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



P&SP investigates complaints against packers, market agencies, and dealers alleging violations of the P&S Act and, when appropriate refers matters to OGC for formal resolution of the complaints.

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

Today, most stockyards are associated with brick-and-mortar livestock auction markets. Internet and video auctions who hold sales of livestock over the internet or through a video platform are still subject to the P&S Act and regulations, even if they do not operate at a posted stockyard. An amendment to the P&S Act in 2016 made clear that farmers and ranchers selling through online and video auctions are offered the same protections as those selling at traditional markets.



P&SP meets with new auction market owners and managers, ideally before the market begins operations, to ensure that market operators understand their responsibilities under the P&S Act and regulations. Visits in the early stages of a market's operation also serve to protect livestock producers who rely on the market to provide a nondiscriminatory and competitive marketplace.

P&SP 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, weighing of livestock and carcasses, carcass grades used for payment, and settlement sheets issued to sellers.

Anyone who believes that an action or omission 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&SP REGIONAL OFFICE ACTIVITIES

A transaction made on false or inaccurate weights, including instances in which a market, dealer, or packer modifies the actual weight of the livestock or fails to pass on a shrink allowance, is an unfair and deceptive practice. The P&S Act and regulations require markets, dealers, and packers to test scales used for the purposes of determining payment two times per year, with one test in the first six months and one test in the second six months and to file scale-test reports as evidence of scale maintenance and accuracy. 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 for payments to hog and poultry contract growers.

These inspections include check weighing to assure repeatability of weight plus all other activities conducted by P&SP to ensure accurate weights of livestock, poultry, and feed when feed is a factor in compensation to contract growers.

P&SP inspects the scales used by auction markets, dealers, and packers for weighing live animals, truck scales used for weighing poultry, hopper scales for weighing poultry feed, and static and dynamic monorail scales used to weigh livestock carcasses in slaughter plants. P&SP also conducts feed weighing inspections on truck scales and scales at feed mills.

The types and number of weighing inspections conducted by P&SP and violations from 2012-2016 appear in Table 9. In 2016, out of 985 inspections conducted, P&SP agents found a total of 265 violations, or 73 percent in compliance, which was lower than the 78 percent without violations in 2015.

Table 9. Weighing Inspections and Violations, 2012-2016

Type	2012	2013	2014	2015	2016
Inspections					
Markets	307	358	319	376	391
Dealers	208	231	294	247	253
Packers	34	49	31	39	34
Carcass	115	99	125	121	109
Poultry	77	95	106	101	110
Feed	55	65	81	75	88
<i>Total</i>	796	897	956	967	985
Violations					
Markets	48	68	65	108	134
Dealers	30	33	52	44	56
Packers	8	19	11	13	19
Carcass	13	14	31	23	20
Poultry	7	11	10	7	21
Feed	12	8	14	13	15
<i>Total</i>	118	153	183	208	265

P&SP REGIONAL OFFICE ACTIVITIES

ENFORCING FINANCIAL PROVISIONS

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

When circumstances warrant it, P&SP 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.

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

Market agencies selling livestock on commission (brick-and-mortar auction markets, video and internet auctions, and other commission selling firms) are required by the P&S Act and regulations to establish and maintain a bank account designated as "custodial account for shippers' proceeds."

This trust account holds 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. P&SP monitors custodial accounts in several ways. It reviews annual and special custodial account reports from market agencies and conducts on-site custodial account audits. When the reviews reveal custodial account shortages, P&SP acts to have the auction market bring the account into balance by issuing an NOV or preparing a formal case file. The nearby table shows the annual number of custodial reviews conducted by P&SP agents, the number of violations found, and the amount of shortages corrected by market agencies because of the intervention of P&SP.

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

Year	Reviews	Account Violations	Shortage Corrections (\$)
2012	331	105	\$5,960,677
2013	423	158	\$3,364,543
2014	342	98	\$3,846,844
2015	400	180	\$2,978,657
2016	453	204	\$3,317,866

The data show that P&SP conducted more custodial reviews in 2016 than in 2015 and found more violations. The total custodial shortages corrected in 2016 was greater than in 2015 and demonstrates the value of P&SP custodial audits to livestock sellers.

P&SP REGIONAL OFFICE ACTIVITIES

Statutory Trust Protections for Unpaid Cash Sellers of Livestock and Poultry and Poultry Growers

The P&S Act establishes a statutory trust on certain assets of packers and live poultry dealers. In either trust, valid trust claims take precedence over secured creditor claims in bankruptcy.

Packer trust assets include all livestock purchased in cash sales, inventories of meat, meat food products, and livestock products derived from the purchase of livestock in cash sales, or the receivables or proceeds from the sale of those items. This livestock trust benefits unpaid cash sellers of livestock. The packer trust applies to packers whose annual purchases of livestock exceed \$500,000.

Under the P&S Act, the packer serves as the designated trustee of the trust assets. P&SP does not have authority to appoint an impartial trustee. P&SP monitors the packer's payments from the trust to ensure the trust is properly preserved and paid out to unpaid cash livestock sellers. If the packer enters bankruptcy, the bankruptcy trustee assumes responsibility for the packer trust assets.

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. This poultry trust benefits unpaid cash sellers or contract growers of poultry grown for slaughter.

Unpaid poultry growers and sellers must give written notice to the live poultry dealer and file the notice with P&SP within the same time limits as apply to the packer trust (see box). P&SP analyzes the claims and provides the analysis to the live poultry dealer and the claimants. The live poultry dealer serves as the designated trustee of the trust assets.

PAYMENT ELGIBILITY

To be eligible for payment under the livestock trust, a seller must notify the packer in writing and file the notice with P&SP.

The unpaid seller must file the notice within 30 calendar days of the transaction. Some sellers initially receive payment instrument and promptly present it for payment, typically a check. However, the issuing bank later dishonors the payment instrument. The trust provision anticipates this potential situation. In this situation, the unpaid seller must file the trust claim within 15 business days after receiving notice that the issuing bank dishonored a payment instrument, promptly presented for payment.

P&SP and OGC analyze each trust claim to determine whether the claim is timely and supported by adequate documentation. P&SP shares the analysis with the packer and trust claimants so that they can take any necessary action.

P&SP REGIONAL OFFICE ACTIVITIES

Bond Protections for Unpaid Livestock Sellers

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

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

To be eligible to receive payment under the bond, a livestock seller (cash or credit) 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 P&SP regional offices or at www.gipsa.usda.gov. The seller must file a completed claim form, accompanied by supporting documents, with P&SP, or the surety company.

P&SP analyzes each claim to determine whether the claimant filed it timely and whether the claimant provided adequate documentation to support the claim. P&SP 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.

Bonding amounts often do not cover the entire loss sustained when a firm fails to make full payment⁵. 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 valid, timely claims.

The dollar amount of total claims against 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 8 years, the share of valid claims recovered has varied from 11 percent to 100 percent. The lowest rate of recovery was in 2016, but some dealer bond claims were still open at the end of the fiscal year so this is not final and will improve as more claims are closed (Table 11).



⁵In many cases, claimants withdraw claims if the purchasers voluntarily pay sellers before the claims are processed. Such instances are not included in the tables in this section.

P&SP REGIONAL OFFICE ACTIVITIES

Table 11. Dealer Bond Claims and Recoveries, 2009-2016

Year	Total Claims	Valid Claims	Recovery as of 9/30/2016			
			Bond	Other	Total Recovered	% Valid Claims Recovered
2009	\$3,134,145	\$3,134,145	\$348,018	\$411,133	\$759,151	24
2010	\$213,332	\$101,512	\$51,781	\$4,479	\$56,260	55
2011	\$20,337,231	\$20,337,231	\$437,105	\$1,556,807	\$1,993,912	10
2012	\$993,855	\$993,855	\$95,000	\$612,544	\$707,544	71
2013	\$2,999,521	\$2,949,508	\$248,810	\$1,645,071	\$1,893,881	64
2014	\$243,307	\$241,307	\$90,315	\$118,250	\$208,565	86
2015	\$838,700	\$20,926	\$4,510	\$16,416	\$20,926	100
2016	\$11,466,498	\$11,331,648	\$1,258,569	\$26,328	\$1,284,897	11

Claims against auction markets also vary widely each year but the recovery rate for claims that have been filed in a timely manner has been quite robust in recent years, except for 2016 when the dollar value of valid claims was not nearly as high as other years (Table 12). The financial strength of auction markets is also enhanced by the regulatory and investigative activities of P&SP that monitor compliance and attempt to correct violations when discovered.

Table 12. Market Bond Claims and Recoveries, 2009-2016

Year	Total Claims	Valid Claims	Recovery as of 9/30/2016			
			Bond	Other	Total Recovered	% Valid Claims Recovered
2009	\$981,189	\$981,189	\$261,498	\$1,365	\$262,863	27
2010	\$20,901	\$4,547	\$4,547	\$0	\$4,547	100
2011	\$75,119	\$23,518	\$22,162	\$1,357	\$23,519	100
2012	\$877,861	\$201,657	\$82,953	\$0	\$82,953	41
2013	\$763,422	\$0	\$0	\$0	\$0	NA
2014	\$12,181	\$706	\$706	\$0	\$706	100
2015	\$69,307	\$66,307	\$60,000	\$0	\$60,000	90
2016	\$397,946	\$11,162	\$0	\$0	\$0	0

P&SP REGIONAL OFFICE ACTIVITIES

As discussed earlier, the P&S Act authorizes unpaid livestock sellers to claim against packer trust assets. The trust is additional protection over any bond held by the packer. Recoveries from packer trust assets has so far resulted in a recovery of 13 percent of the total owed for claims opened in 2016, but several large claims are still being processed and the recovery rate will likely increase (Table 13). This is the largest dollar amount of claims against packer bonds and trusts since 2010. In that instance, the majority of the recovery was from a source other than bonds and the trust. This is referred to as Other and is often a loan or an injection of capital by an owner or investor, which the packer uses to pay unpaid livestock sellers.

Table 13. Packer Bond and Trust Claims and Restitution, 2009-2016

Year	Total Claims	Valid Claims	Recovery as of 9/30/2016			Total Recovered	% Valid Claims Recovered
			Bond	Trust	Other		
2009	\$15,676,349	\$15,676,349	\$196,208	\$9,999,228	\$0	\$10,195,436	65
2010	\$5,960,684	\$5,960,684	\$748,435	\$0	\$3,825,518	\$4,573,953	77
2011	\$586,293	\$586,293	\$0	\$81,978	\$422,502	\$504,480	86
2012	\$4,422	\$4,422	\$0	\$0	\$0	\$0	0
2013	\$0	\$0	\$0	\$0	\$0	\$0	NA
2014	\$71,392	\$31,627	\$0	\$0	\$0	\$0	0
2015	\$203,731	\$150,282	\$0	\$31,627	\$0	\$31,627	21
2016	\$4,078,608	\$4,078,608	\$0	\$510,120	\$0	\$510,120	13

Poultry growers and live poultry sellers do not file claims against live poultry dealers as frequently as livestock sellers and there have not been any claims filed over the past 2 years (Table 14). In 2011 and 2012, however, the poultry trust was a sizeable portion of total recoveries.

Table 14. Poultry Trust Claims and Restitution, 2009-2016

Year	Total Claims	Valid Claims	Recovery as of 9/30/2016			% Valid Claims Recovered
			Trust	Other	Total Recovered	
2009	\$0	\$0	\$0	\$0	\$0	NA
2010	\$0	\$0	\$0	\$0	\$0	NA
2011	\$8,010,978	\$702,881	\$270,525	\$427,905	\$698,430	99
2012	\$387,688	\$375,988	\$187,354	\$0	\$187,354	50
2013	\$127,596	\$0	\$0	\$0	\$0	NA
2014	\$1,579,548	\$1,579,548	\$0	\$0	\$0	0
2015	\$0	\$0	\$0	\$0	\$0	NA
2016	\$0	\$0	\$0	\$0	\$0	NA

P&SP PROGRAM PERFORMANCE AND EFFICIENCY

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

PERFORMANCE MEASUREMENT

P&SP assesses its overall performance annually by measuring industry compliance with the P&S Act and regulations. P&SP begins by scientifically selecting random samples from the population of subject entities. P&SP designs the samples to estimate compliance for the whole population of regulated entities with a 90 percent confidence level. This approach estimates compliance among all subject entities industry-wide.

P&SP agents inspect and audit the selected entities for compliance in the following five areas:

- 1) Prompt payment of auction markets, dealers, and packers,
- 2) Financial reviews of auction market custodial accounts,
- 3) Scales and weighing practices at auction markets, 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.

P&SP analyzes compliance data and general economic conditions. It uses this information to deploy its resources effectively to meet changing industry conditions. Compared to FY 2015, the FY 2016 results of most of the individual component inspections and audits that comprise the aggregate index did not change significantly. Poultry contract compliance was the only component that changed substantially, increasing from 59 percent in 2015 to 68 percent in 2016. (Figure 5).

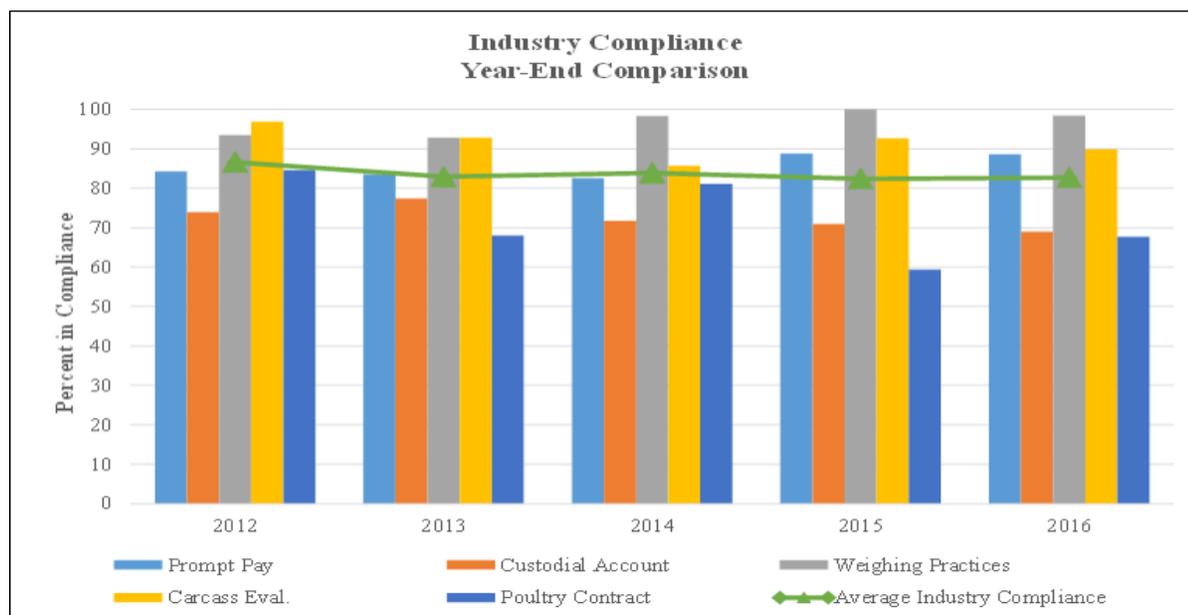


Figure 5. Industry Compliance by Component and Average Industry Compliance, 2012-2016

P&SP PROGRAM PERFORMANCE AND EFFICIENCY

P&SP puts emphasis on educational and outreach activities that improve industry compliance. During each regulatory review or investigation, P&SP agents discuss how to achieve compliance with regulated entities. However, economic conditions within the industry affect compliance rates. Weak economic conditions or highly volatile livestock prices may contribute to lower rates of compliance. These are examples of factors beyond P&SP's control. P&SP routinely analyzes compliance data and general economic conditions. It uses this information to deploy its resources effectively to meet changing industry conditions.

EFFICIENCY MEASUREMENT

P&SP 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 P&SP and the average number of days to complete a regulatory review (Figure 6).

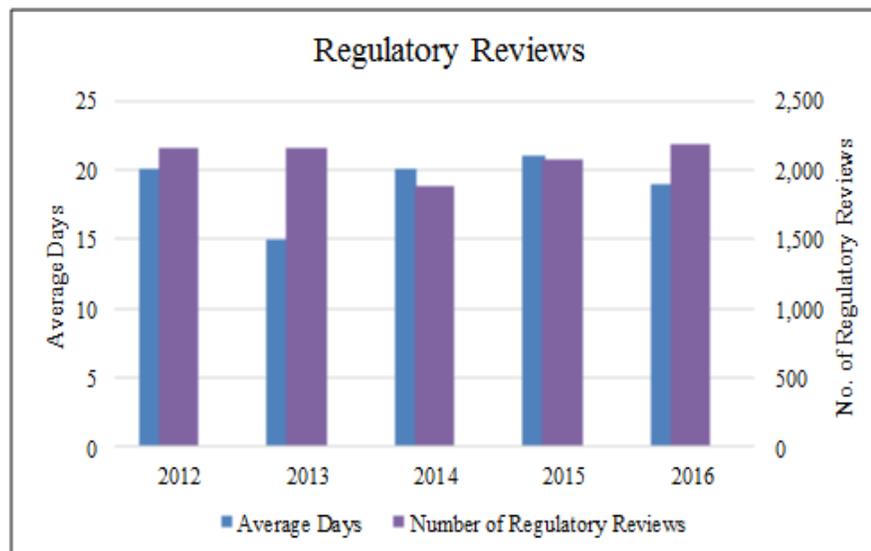


Figure 6. Number of Regulatory Reviews and Average Days to Complete a Review,

The average number of days to complete a regulatory activity increased from 15 days in 2013 to 21 days in 2015, but declined to 19 days in 2016. The number of regulatory reviews has also increased however, from 2,161 in 2013 to 2,192 in 2016.

P&SP PROGRAM PERFORMANCE AND EFFICIENCY

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

For investigations closed in FY 2016, the average number of days to complete and close an investigation increased slightly to 106, from 105 days in 2015. However, the number of investigations completed also increased from 2,031 to 2,295.

P&SP completed these investigations in several ways. For some, P&SP found no violations or reached an informal agreement to correct minor violations. P&SP resolved and closed other investigations by issuing formal NOV's.

In the remainder of the investigations, the Regional Offices submit formal case files to LEAD with a recommendation for stipulation or enforcement by OGC or DOJ. Under stipulation agreements, the regulated entity waives the right to a hearing, admits the violation (s), and voluntarily agrees to pay a penalty. P&SP then closes the investigation. Cases referred to OGC or DOJ remain open until OGC or DOJ completes the enforcement action. It takes much longer to resolve and close investigations referred to OGC or DOJ for prosecution through a hearing before an Administrative Law Judge or a Federal Court.

Additional details on the number of investigations completed in 2016, types of investigations completed, and the number of cases closed by OGC and DOJ appear in Table 15 in Appendix B.

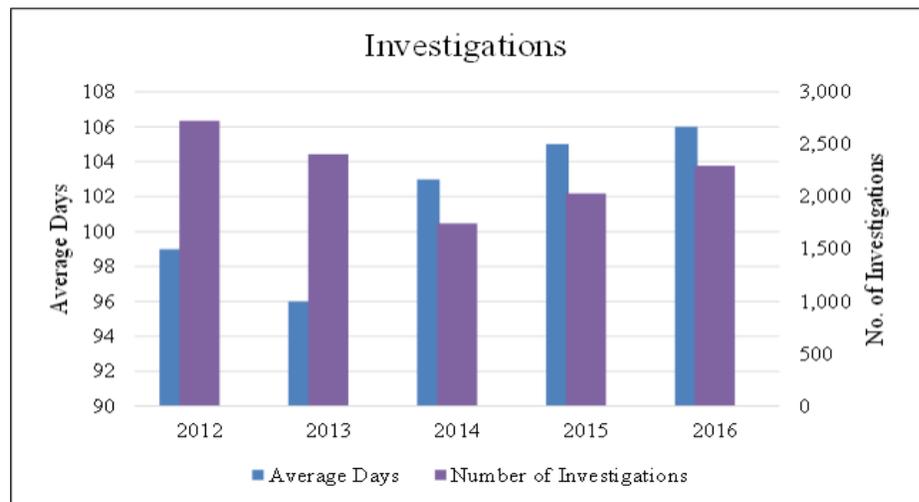


Figure 7. Number of Investigations and Average Days to Complete an Investigation, 2012 – 2016



FAST FACT

Chester Morrill, a 36-year-old Georgetown Law School graduate, was first to lead the newly created Packers and Stockyards Administration (as it was known in 1921).

CONTACTING P&SP

To file a complaint, e-mail PSPComplaints@usda.gov, call GIPSA's hotline at (800) 998-3447, or contact the relevant regional office location:

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APPENDIX A

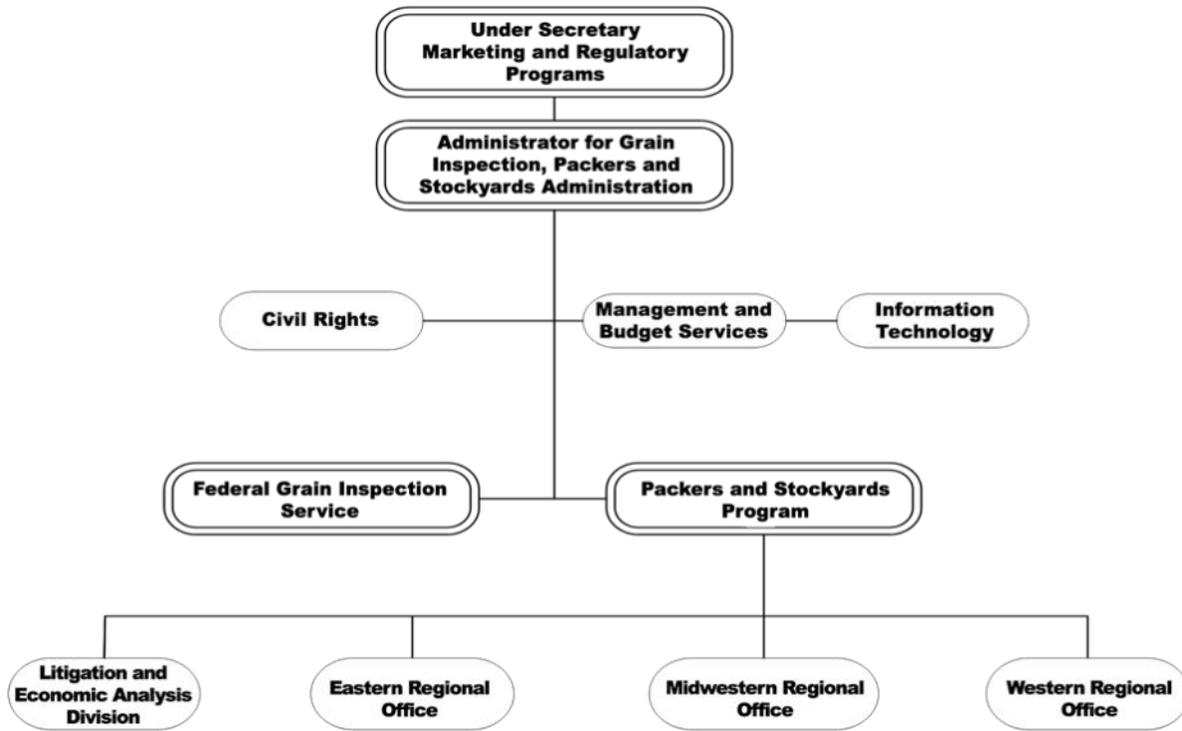


Figure 8. GIPSA—P&SP Organizational Structure

APPENDIX B

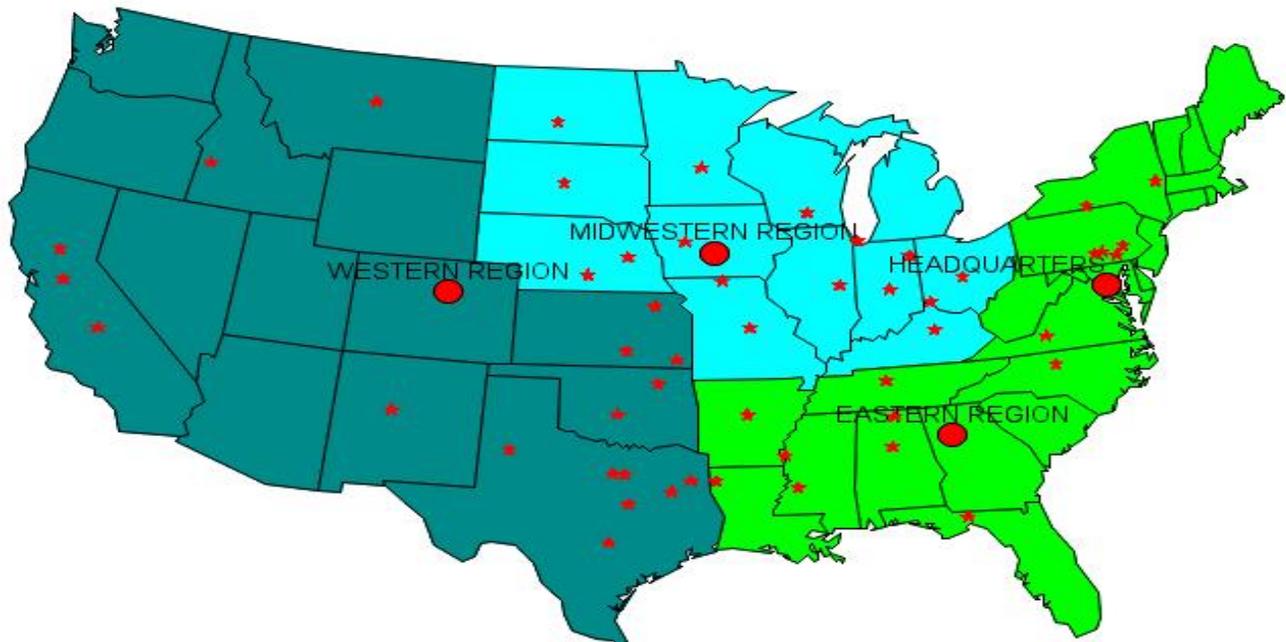


Figure 9. P&SP Regional Offices and Resident Agent, Resident Auditor and Market Inspector Locations.