



# **PERFORMANCE AUDIT REPORT**

## **Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
October 2003**

# ***Legislative Post Audit Committee***

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## ***Legislative Division of Post Audit***

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October 17, 2003

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them*.

The report also contains an appendix showing inspection frequencies for entities regulated by Kansas' food safety system we identified during our work.

We would be happy to discuss the findings presented in this report with any legislative committees, individual legislators, or other State officials. These findings are supported by a wealth of data, not all of which could be included in this report because of space considerations. These data may allow us to answer additional questions about the audit findings or to further clarify the issues raised in the report.

Barbara J. Hinton  
Legislative Post Auditor



# EXECUTIVE SUMMARY

LEGISLATIVE DIVISION OF POST AUDIT

## Overview of Kansas' Food Safety Inspection Programs

*Kansas has a number of programs that inspect facilities that produce or sell food for human consumption. These programs include the Meat and Poultry Inspection Program, the Dairy Inspection Program, and the Egg Inspection Program, all which are housed within the Kansas Department of Agriculture. The fourth program, the Food Protection Program is housed within the Kansas Department of Health and Environment (KDHE).* ..... page 3

*The Department of Agriculture and the Animal Health Department have other inspection programs that inspect facilities producing or selling food items, but these programs don't have food safety as their main objective. These programs include the Weights and Measures Program, Plant Protection and Weed Control Program, Grain Warehouse Inspection Program, Kansas Grain Inspection Service, and Animal Disease Control.*

### **Question 1: Could Food Safety Inspection Programs In Kansas Be Combined To Streamline Operations, Save Money, and Improve Food Safety?**

**Several factors suggest that Kansas' current food safety system needs to be improved.** *Kansas' system is modeled after the federal system, which has been criticized as being inconsistent in oversight and inefficient in its use of resources. Kansas has some of these same problems.* ..... page 7

*Kansas' food safety system has a number of inefficiencies that can increase costs. These inefficiencies include:*

*Inspectors from more than one agency or program inspect the same businesses. Grocery stores are the most likely to see multiple inspectors from the Department of Agriculture and KDHE. This fragmented approach is more costly to the State than if all or most areas of a business' operation could be inspected during one visit.*

*Inspection territories currently overlap even when inspectors aren't going to the same business. Inspectors may not be inspecting the same establishments, but they do go to the same cities to perform inspections. If inspection functions were better coordinated, staff could be assigned to inspect all (or at least more) facilities within a single territory, reducing the need for multiple inspectors to travel to the same location.*

*Some types of establishments are inspected more often than seems necessary, causing inefficient use of inspection staff. For example, federal law doesn't specify how often custom meat processing plants need to be inspected, but Department of Agriculture officials said it's likely they'd need to conduct 24 inspections per year in order to meet federal performance standards. During calendar year 2002, inspectors conducted an average of 39 processing inspections at each of these plants, about 60% more than may have been needed.*

*Coordination can be improved in situations where regulatory authority overlaps. Here's what we found:*

..... page 9

*The Departments of Health and Environment and Agriculture don't routinely share records that could assist in regulation. For example, we reviewed inspection records in 5 rural counties and found 7 businesses that it seemed likely KDHE should be inspecting but wasn't.*

*Overlapping regulatory authority can delay response times. In two recent cases that required KDHE and the Department of Agriculture to coordinate (wheat tainted with a herbicide and uninspected meat being sold in a grocery store), it's likely that responses would have been more timely if inspection programs were housed in one agency or if there was a plan in place to coordinate their roles. In both cases, the federal agencies involved contributed to the delays.*

*Many inspectors say coordination should be improved. A survey of KDHE and Department of Agriculture food safety inspection staff showed that 57% of those that had been involved in an event that required coordination thought the coordination was only somewhat or not well coordinated, while 43% said events were well coordinated or very well coordinated.*

*Kansas food safety inspection requirements are sometimes inconsistent. For example:*

..... page 10

*Some high risk establishments aren't required to be inspected regularly. Kansas law currently doesn't require retail food stores or food processing plants to be inspected on a regular basis. Some of these groceries have delis, seafood counters, bakeries, and also process meat.*

*Kansas laws require similar businesses to be regulated differently. We found significant differences in how meat processing is regulated. For example, State-inspected meat plants must be inspected often (inspections occurred more than twice per week in 2003), while there is no inspection requirement for meat processing at grocery stores. Similarly, milk processing plants regulated by*

*the Department of Agriculture were inspected an average of 9 times each in 2003, while juice or cider processing plants regulated by KDHE aren't required to be inspected.*

*A 2002 change to the licensing laws has resulted in portions of several large food manufacturers being uninspected. To eliminate duplicate licensing of some facilities by KDHE and the Department of Agriculture, the 2002 Legislature re-defined the establishments KDHE is responsible for regulating. In response, KDHE removed 75 processing plants from its licensing and inspection lists. In all, 31 of those plants were primarily meat processing plants whose operation is thoroughly inspected by the Department of Agriculture or the USDA. However, 31 of the remaining 44 plants are considered by KDHE to inherently pose a high food safety risk.*

**Combining food safety inspection programs could produce several benefits.** *Several other states have taken a more coordinated approach to food safety by placing responsibilities within a single department, typically agriculture. A single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently. In addition, communication should improve because the information could be shared more easily.*

..... page 13

*Kansas can realize some significant savings and improve food safety if food safety inspections are combined and inspections are changed to a risk-based approach. Inspections can be grouped in any number of ways, but reorganizing functions into the following groups seemed the most reasonable to us:*

- *dairy inspection, focusing on dairy establishments plus other beverage processing facilities.*
- *food processing inspection, including meat slaughter and processing plants*
- *retail sales inspections, including restaurants and grocery stores*

*Using these groupings, we calculated how many resources would be needed to operate a combined food safety inspection program under three inspection frequencies:*

..... page 16

1. *Continuing to do inspections at the current rate could save the State about \$90,000 per year. The primary savings under this scenario comes from eliminating duplicate drive time caused by the current overlap in territories for KDHE inspectors and contracted local health departments.*
2. *Conducting inspections only as often as required by law could generate about \$1.2 million in annual savings. This could, however, deteriorate the quality of the State's food safety system, because certain facilities that should be inspected aren't required by law to be inspected.*

3. *Conducting inspections under a risk-based approach would generate nearly \$680,000 in annual savings. Under this scenario, we assumed that all types of establishments would continue to be inspected, but at frequencies that appear to better reflect their relative risk (compared to each other) to the public's health and safety.*

*Most of the potential savings we identified from regrouping food safety inspection activities could be achieved whether or not those activities were combined into a single agency. However, placing the programs in one agency could be critical to achieving a risk-based inspection approach, and could lead to better coordination, improved communication, and more consistent regulations. Regardless of how the State's food safety inspection programs are organized, KDHE needs to improve its ability to extract data from its licensing and enforcement databases.*

**Kansas needs to continue taking steps to become prepared for intentional threats to food safety.** ..... page 19  
*Compared to preparedness for other disasters, Kansas is least prepared for bioterrorism threats. The State is developing a bioterrorism preparedness and response plan, but food safety issues that impact the public will be only a small part of the plan*

**Conclusion** ..... page 20

**Recommendations** ..... page 20

**APPENDIX A: Scope Statement** ..... page 23

**APPENDIX B: Inspection Frequencies for Entities Regulated by Kansas' Food Safety System** ..... page 25

**APPENDIX C: Agency Response** ..... page 26

This audit was conducted by Laurel Murdie, Jill Shelley, and Amy Thompson. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Ms. Murdie at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at [LPA@lpa.state.ks.us](mailto:LPA@lpa.state.ks.us).

# Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them

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Kansas has several agencies involved in inspecting food related items. The 2 main agencies are the Department of Agriculture and the Department of Health and Environment. Recently, legislators have questioned whether food safety inspection functions could be performed more cost effectively if they were the responsibility of a single agency.

The 2003 Legislature considered Senate Bill 124 which, among other things, would transfer responsibilities for food safety inspections in restaurants, grocery stores, and certain other facilities from the Department of Health and Environment to the Department of Agriculture.

At the time the bill was being considered, the Department of Agriculture indicated it was unable to give the exact fiscal impact because it had no past experience enforcing the type of food service regulations the Department of Health and Environment has been enforcing.

To provide additional information to aid legislators in making a decision on this issue, the Legislative Post Audit Committee authorized this performance audit, which addresses the following question:

## **Could food safety inspection programs in Kansas be combined to streamline operations, save money, and improve food safety?**

To answer this question, we reviewed State statutes and regulations related to food safety, as well as relevant federal regulations. We reviewed studies conducted by the U. S. General Accounting Office and food safety experts. We interviewed staff from the Departments of Agriculture and Health and Environment (KDHE) and reviewed documents from those agencies. We surveyed staff from KDHE's Food Protection Program and the Department of Agriculture's Dairy Inspection, Meat and Poultry Inspection, Agricultural Commodities Assurance Program, and Weights and Measures Programs.

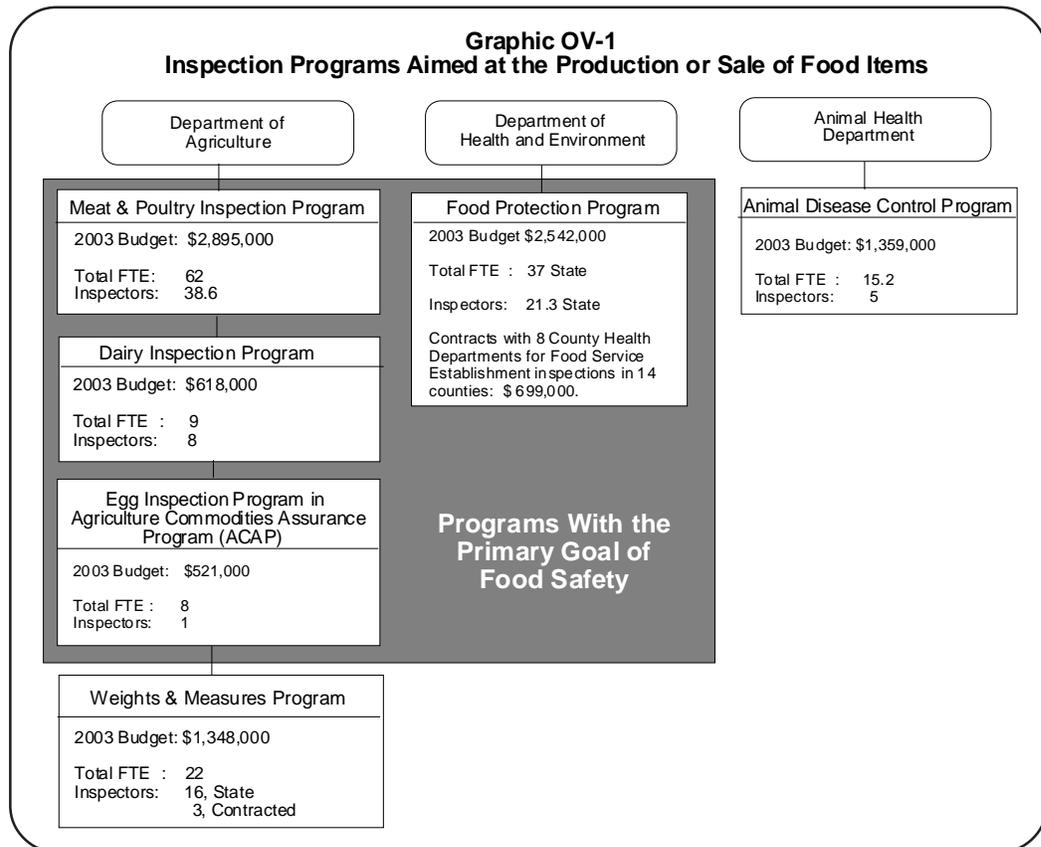
In addition, we reviewed Kansas' plans for addressing food safety issues that would require multiple State agencies to coordinate their regulatory efforts. We also examined the program structure and staffing levels for other states that have combined some or all of their food safety responsibilities into a single agency. Finally, we developed a model for how Kansas' food safety programs might be combined, and used this model to help us determine whether Kansas' programs could be more efficient, and whether food safety could be improved.

A copy of the scope statement the Legislative Post Audit Committee approved for this audit is included in Appendix A.

In conducting this audit, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office, except that, because of time constraints, we didn't test the computer data the agencies supplied to us regarding the number of establishments they inspect or the number of inspections they conducted at those establishments. These data were recently included in an audit we conducted of the Department of Agriculture's Meat and Poultry Inspection Program and KDHE's Food Protection Program within the past 2 years, and because the number of establishments and inspections reported to us by agency staff for this audit appear to be similar to those we had audited previously, we have no reason to believe they are in error. Our findings begin on page 7, following a brief overview.

## Overview of Kansas' Food Safety Inspection Programs

Kansas has a number of programs that inspect facilities that produce or sell food for human consumption. Those programs are shown in Graphic OV-1. The 4 programs we reviewed for this audit are in the shaded box. Each of those programs is described briefly below.



### Department of Agriculture Programs

**Meat and Poultry Inspection Program:** This program primarily regulates the slaughter and processing of meat and poultry at 2 types of plants: State-inspected plants and custom-exempt plants. To maintain a State-level inspection program, Kansas must adopt standards that are equal to federal regulations. Products from State-inspected slaughter and processing plants can only be sold within Kansas. Animals slaughtered in these plants are inspected before and after slaughter to ensure diseased animals aren't processed. Inspectors also verify that plants meet sanitation standards.

Custom-exempt plants return processed meat to the animal's owner and their products must be labeled 'Custom-Not for Sale.' State inspectors verify that these plants are registered, that they meet general sanitation requirements, and that meat products aren't

contaminated or mislabeled. At these plants, inspectors do not have to be present during slaughter.

**Dairy Inspection Program:** This program regulates the dairy industry in Kansas. Regulation starts at the farm and continues as milk and milk products are transported, processed, distributed, and sold. Program regulations include the Pasteurized Milk Ordinance, which is a uniform regulatory standard used by all states and the U.S. Food and Drug Administration (FDA) in cooperation with the Public Health Service. Adopting it allows interstate shipment of milk without additional inspections, with each state being responsible for maintaining uniform standards for the quality of milk its producers and processors ship. The Ordinance was developed by local, state, and federal health and agriculture officials, plus representatives of all segments of the dairy industry.

**Egg Inspection Program:** This Program is actually part of the State Agricultural Commodities Assurance Program (ACAP), which regulates the quality of eggs, feed, pet food, and seed. The egg inspection portion of the program regulates any business where eggs are held. Inspectors examine eggs to verify that they are stored at a proper temperature, are clean and are free of cracks. These inspectors also check to make sure that the eggs meet the size and quality standards of the grade on the label.

## **Department of Health and Environment Programs**

**Food Protection Program:** This Program regulates businesses that produce and handle food intended for human consumption. That includes food service establishments—restaurants, retail food stores, food processing plants, food warehouses, and food vending machines. Food service establishments, retail food stores, and food vending machines are all regulated under the Kansas Food Code, which is based largely upon the FDA’s 1999 Model Food Code. During an inspection, inspectors check to see that the establishment has met the applicable statutes and regulations, dealing with proper food storage and handling procedures, hygienic practices of employees, and physical facilities. State staff inspect establishments in most counties; KDHE has contracted with 8 county health agencies to inspect food establishments in 14 counties. The program also regulates sanitary conditions in lodging facilities and pharmacies.

*Table OV-1* provides more detailed information about the number and types of entities in Kansas that are regulated by these 4 programs, as well as their staffing levels and sources of funding.

**Table OV-1  
Kansas Department of Health and Environment and Department of Agriculture  
Food Safety FTE, Funding Resources and Expenditures**

Agency and Inspection Program	Total FTE	FY 2003				Expenditures
		SGF	Fed Funds	Fee Funds	Total	
<b>KDHE</b> <b>Food Protection Program</b> , inspects establishments related to food intended for human consumption, including <ul style="list-style-type: none"> <li>● 12,227 food service establishments</li> <li>● 3,038 retail food stores</li> <li>● 764 food processing plants and warehouses</li> </ul>	37 State  (a)	\$10,000	\$41,000(b)	\$2,491,000	<b>\$2,542,000</b>	Salaries \$1,341,000 Contractual Services \$469,000 Commodities \$30,000 Capital Outlay \$3,000 Claims/Aid \$699,000 <b>Total \$2,542,000</b>
<b>KANSAS DEPARTMENT OF AGRICULTURE</b> <b>Meat and Poultry Inspection Program</b> inspects: <ul style="list-style-type: none"> <li>● 82 State-inspected slaughter and processing plants</li> <li>● 22 custom-exempt plants</li> <li>● 6 State-inspected slaughter-only plants</li> </ul>	62	\$1,417,000	\$1,418,000	\$60,000	<b>\$2,895,000</b>	Salaries \$2,389,000 Contractual Services \$492,000 Commodities \$10,000 Capital Outlay \$1,000 Claims/Aid \$3,000 <b>Total \$2,895,000</b>
<b>Dairy Inspection Program</b> inspects: <ul style="list-style-type: none"> <li>● 536 dairy farms</li> <li>● 216 dairy milk transporters</li> <li>● 23 dairy processing plants</li> <li>● 2,293 retail locations where dairy products are stored</li> </ul>	9	\$312,000		\$306,000	<b>\$618,000</b>	Salaries \$413,000 Contractual Services \$201,000 Commodities \$3,000 Capital Outlay \$1,000 <b>Total \$618,000</b>
<b>Agriculture Commodities Assurance Program</b> inspects: <ul style="list-style-type: none"> <li>● 2,293 retail locations where eggs are stored</li> <li>● feed</li> <li>● seed</li> </ul>	8 (1 FTE for eggs)	\$30,000	\$42,000	\$449,000	<b>\$521,000</b>	Salaries \$321,000 Contractual Services \$195,000 Commodities \$5,000 <b>Total \$521,000</b>
<b>Totals:</b>	116 (69 food safety field staff)	\$1,769,000	\$1,501,000	\$3,306,000	<b>\$6,576,000</b>	<b>Total \$6,576,000</b>

Sources: Kansas State Agencies

(a) During FY 2003 KDHE contracted with 8 counties for \$699,000 to conduct about 8,400 inspection at 5,200 food services establishments in 14 counties.

(b) Includes a private foundation grant for \$24,000.

**The Department of Agriculture and the Animal Health Department have other inspection programs that inspect facilities producing or selling food items, but these programs don't have food safety as their main objective.** To confirm this, we quickly reviewed the purposes, functions, and activities of these programs.

**Weights and Measures Program:** This Program's primary goal is ensuring the accuracy of measuring devices used to sell goods, including large and small scales, liquid petroleum meters, fuel pumps, scanners, and consumer packages. It has no role in ensuring food safety.

**Plant Protection and Weed Control Program:** This Program helps ensure the health of the State's native and cultivated plants by excluding or controlling destructive pests, diseases, and weeds. The Program monitors crop fields, rangelands, greenhouses, and nurseries, but not facilities that process and sell food.

**Grain Warehouse Inspection Program:** This Program ensures that Kansas grain producers have safe, solvent warehouses where they may store their grain commodities. Inspectors with this program compare the financial records to what's actually stored in the elevators. Inspectors do not ensure that grain stored in the warehouses is safe to eat.

**Kansas Grain Inspection Service:** This Program is a private inspection service that contracts with the State to provide grain inspection services. Inspectors assign product grades to raw grains. However, this program doesn't look for tainted grains or determine if a grain product is safe to eat.

**Animal Disease Control:** The Kansas Animal Health Department operates this program to monitor and control the spread of livestock diseases. In order to do this, public livestock markets, feedlots, disposal plants and trucks, and livestock dealers are all licensed and regulated.

## Question 1: Could Food Safety Inspection Programs In Kansas Be Combined To Streamline Operations, Save Money, and Improve Food Safety?

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Several factors suggest that Kansas could benefit from a more unified food safety system. The current system has a number of problems that cause it to be inefficient, including that some types of food businesses are inspected more often than seems necessary, and that similar businesses are regulated inconsistently. In addition, coordination can be improved in situations where regulatory authority overlaps. Combining all of Kansas' food safety inspection programs could produce several benefits, such as providing an incentive to regulate similar food businesses and processes more consistently, and improving communication. Finally, food safety could be better ensured and the most savings realized—\$680,000—by cross-training staff and implementing comprehensive inspection frequencies that are based on the food safety health risks posed by food businesses and processes. These and related findings are discussed in more detail in the sections that follow.

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### ***Several Factors Suggest That Kansas' Current Food Safety System Needs To Be Improved***

Kansas' system for ensuring food safety was modeled after the federal system which, like Kansas, has 2 main agencies responsible for ensuring food safety. The Food Safety Inspection Service (FSIS) within the U.S. Department of Agriculture (USDA) regulates meat, poultry, and processed eggs. The Food and Drug Administration (FDA) regulates most other foods. Over the past several years, the U.S. Government Accounting Office (GAO) has criticized the federal system as being inconsistent in its oversight and enforcement, and inefficient in its use of resources. Some of these same problems are evident in the Kansas system.

**Kansas' food safety system has a number of inefficiencies that can increase costs.** These inefficiencies are described below.

- *Inspectors from more than one agency or program inspect the same businesses.* Grocery stores are most likely to see multiple inspectors from the Department of Agriculture and from KDHE. KDHE has primary responsibility for inspecting food stores, but it may separately inspect a restaurant within a grocery store. Agriculture inspectors may enter to separately inspect dairy products and eggs. A very few grocery stores also could be inspected by Agriculture meat inspectors. This fragmented approach is more costly to the State than if all or most areas of a business' operations could be inspected during one visit.

**Profile I-1**  
**The U.S. General Accounting Office Recommends**  
**Combining all Federal Food Safety Function into a Single Agency**

According to the U.S. General Accounting Office (GAO), the federal food safety system is fragmented, inefficient, and inconsistent. At the federal level, 12 agencies and 35 laws comprise the food safety system. The GAO also has reported that many state-level food safety inspection programs have patterned themselves after the federal system.

The GAO contends that problems at the federal level could be resolved if all food safety functions were combined into a single agency, and that federal funds would be more effectively used if a risk-based inspection system were implemented.

Risk-based inspections frequencies are determined by establishments' public health risks and compliance histories. This inspection frequency is a much more effective use of resources because establishments are inspected at a rate that is equal to their threat to the general public's health, and not at a frequency that may be arbitrarily imposed by law.

Four countries already have consolidated all food safety functions into one agency, and several more are contemplating this idea.

- *Inspection territories currently overlap even when inspectors aren't going to the same business.* Even when inspectors from different agencies aren't inspecting the same businesses, they might be inspecting another nearby business in the same city. For example, a KDHE inspector based in Hays, a dairy inspector based in Garden City, and a meat inspector living in Lane County all are likely to inspect businesses in Gove County. If inspection functions were better coordinated, inspectors could be assigned to inspect all (or at least more) facilities within a single territory, thereby reducing the need for multiple inspectors to travel to businesses in that location.
- *Some types of establishments are inspected more often than seems necessary, causing inefficient use of inspection staff.* In addition to regulating State-inspected plants, the Department of Agriculture's Meat and Poultry Inspection Program regulates 22 custom-exempt meat plants (these plants process meat brought in by and returned to an individual; they do not sell to the general public). Federal law doesn't specify how often custom plants need to be inspected, but Department officials said it's likely they'd need to conduct 2 inspections per month—or 24 per year—at each plant, in order to meet federal performance standards. During calendar year 2002, the Program conducted an average of 39 processing inspections at each of these plants, about 60% more than may be needed.

The Department's Dairy Inspection Program inspects each of the State's 536 dairies an average of 5 times per year, even though the FDA's Pasteurized Milk Ordinance (which is incorporated into State law) requires inspections only twice per year. Department staff said dairy farms are unlikely to meet federal performance standards if they're inspected only twice a year, and federal officials told us 4 inspections per year would help ensure that farms meet performance standards. Whether the number of annual inspections needed is 2 or 4, the current average of 5 suggests dairy farms are being over-inspected.

**Coordination can be improved in situations where regulatory authority overlaps.** Examples are described below.

- *The Departments of Health and Environment and Agriculture don't routinely share records that could assist in regulation.* During their work, inspectors may become aware of businesses that should be licensed and regulated by another inspection program, but aren't. For 5 rural counties, we reviewed inspection records for establishments regulated by both agencies' food safety inspection programs. Even from this limited work, we found 7 businesses that it seemed likely KDHE should be inspecting but wasn't, including 5 that appeared to be food stores or food manufacturers, and 2 that appeared to be variety stores—a type of retail food store.
- *Overlapping regulatory authority can delay response times.* For example, during an inspection of a retail store, a KDHE inspector found 2 uninspected meat products—one was imported from Mexico, a country known to have hog cholera, and the other was a meat product from out-of-State. Because these were uninspected meat products, KDHE officials contacted USDA officials, who then contacted the Department of Agriculture. KDHE has regulatory authority over retail stores, while USDA has authority over uninspected meat from another country, and the Department of Agriculture has authority over uninspected meat from another state. Because of various delays in making contact, the uninspected meat products weren't disposed of until one week after they were found.

In another case, slightly more than 16 million bushels of wheat were embargoed for one month while KDHE, the Kansas Department of Agriculture, the U.S. Environmental Protection Agency, and the FDA coordinated their efforts to contain and test wheat that was suspected of being sprayed with the herbicide Paraquat.

In both instances—the uninspected meat products and the tainted wheat—it's likely that KDHE and the Department of Agriculture

could have responded more quickly if these inspection programs had been located in one agency, or if they had a plan to coordinate their roles. For more specific details about these instances, see Profile I-2.

- *Many inspectors say coordination should be improved.* We surveyed 126 staff, including inspectors, from food safety inspection programs at KDHE and the Department of Agriculture. In all, 96 returned their surveys for a response rate of 76%. Of those inspectors who had been involved in a situation that called for coordination between other State agencies, only 43% said events were well coordinated or very well coordinated. The remaining 57% said events were somewhat coordinated or not well coordinated. Some comments the inspectors offered:

“First of all they need to start working as a team, not as individuals. They need to talk to each other and share information, data, and lab results if needed.”

“An improved understanding of what each State agency expects of the other agency would be a big help. A system for direct and quick communication is a must.”

“Communications and [a] desire by agency personnel to assist or participate in a joint investigation in the past has been lacking.”

**Kansas food safety inspection requirements are sometimes inconsistent.** Here are some examples.

- *Some high risk establishments aren't required to be inspected regularly.* Kansas law currently doesn't require retail food stores or food processing plants to be inspected on a regular basis. However, KDHE officials told us they thought about 360 of the State's 3,038 retail food stores should be inspected at least annually because they include operations that pose a high risk of food-borne illness, such as a deli, bakery, seafood counter, or meat processing. Likewise, they said about 230 of the State's 764 food processing plants should be inspected at least twice each year because they manufacture food products that could, if mishandled, pose a health risk to the public.
- *Kansas laws require similar businesses to be regulated differently.* Two areas where we found significant differences are meat processing and beverage pasteurization of milk and juice.

State-inspected meat processing plants must be inspected often enough to ensure plants are meeting federal performance standards.

**Profile I-2**  
**At a Minimum, Agencies Need a Plan To Help Them Coordinate Their Efforts  
When Their Regulatory Authority Overlaps**

In the past 2 years there have been a couple of instances when the Department of Agriculture and KDHE needed to coordinate with each other because they both had some sort of regulatory interest in the incident. Coordination issues could likely be more easily resolved if all food safety inspection programs were housed in one agency. If the programs remain in separate agencies, as they are now, then situations that require coordination could be resolved more efficiently if the agencies have a plan in place that outlines:

- areas of overlap that require agencies to coordinate their efforts
- which agencies will be involved, their roles in the coordination,
- the specific steps each agency will take
- who should be informed about the situation, and
- how much information will be given, and when it will be disclosed to the public or other agencies

**Millions of bushels of wheat were embargoed for one month while agencies coordinated their efforts to test for Paraquat.** During the summer of 2001, the Department of Agriculture received a tip that wheat tainted with Paraquat, a restricted-use pesticide regulated by the Department, may have been taken to a grain elevator. Department officials contacted KDHE, which has authority over foodstuff. As a result, KDHE placed millions of bushels of wheat under embargo until it could be tested for Paraquat. Two federal agencies were also involved -the FDA and EPA. The Food and Drug Administration (FDA) became involved when it was discovered that some wheat from an embargoed elevator was shipped to another state. In order to determine the Paraquat tolerance level for the wheat the EPA was consulted. The Department of Agriculture's lab was used to do all of the testing for Paraquat. Since it was not an FDA lab, the FDA required the lab to use a standard sampling protocol, which took a while to set up. Much of the grain embargoed wasn't released for about 1 month. Some wheat was held as long as 2 months, this was the 2,100 bushels that were found to have levels of Paraquat that was more than the EPA recommended level. Much of the delay was caused by the federal agencies, but if KDHE and the Department of Agriculture would have had a plan specifying how they coordinate their efforts, they might have been able to streamline the State's portion of the response.

**Imported meat products appear to be a problem the agencies will have to routinely deal with and a plan would help streamline their efforts.** In April 2003, KDHE found two types of uninspected meat products. Agency officials notified the USDA, but did not contact the Kansas Department of Agriculture. As noted on page 9, both those agencies have authority over uninspected meat. Eventually, the USDA contacted the Department of Agriculture, but it took 5 working days to clear up this incident. Since that time, a joint workgroup has been started to address some of the issues that arose. When uninspected meat products were found in August, the agencies were all able to respond quickly and appropriately.

**A suspected case of Foot and Mouth Disease was resolved within two days because a plan was in place to deal with such a possibility.** In the spring of 2001, a Foreign Animal Disease plan was put together by the Kansas Animal Health Department and the Department of Emergency Management, Adjutant General's Office. This plan outlined who should be involved if a Foreign Animal Disease was found in the State and also what should be done to deal with an outbreak of a Foreign Animal Disease. The following year, in the spring of 2002, the Kansas Animal Health Department was asked to inspect some cows that have a possible case of Foot and Mouth disease. A preliminary diagnosis that the cows did not have Foot And Mouth Disease was made within a few hours of receiving a call to inspect the cows. Following the incident, some revisions were made to the Foreign Animal Disease plan. These changes should improve the plan and make it run even more smoothly should it ever be needed in the future.

In contrast, there is no inspection requirement for meat processing at grocery stores, even though similar equipment and processes are involved. In calendar year 2003, State-inspected plants' processing activities (excluding slaughter) were inspected slightly more than twice per week. KDHE doesn't have summary information on how many of the grocery stores that process meat were inspected in 2003. However, only 52% of all grocery stores were inspected that year.

Similarly, milk processing plants regulated by the Department of Agriculture are required to be inspected at least once every 3 months, and samples are taken regularly to measure bacteria levels. However, juice or cider processing plants regulated by KDHE aren't required to be inspected. In fiscal year 2003, milk processing plants were inspected an average of 9 times each. KDHE doesn't have readily available information on how many of the juice and cider plants were inspected in 2003. However, only half of all food manufacturers were inspected that year. Officials from both KDHE and the Department of Agriculture's Dairy Inspection Program acknowledge that the risk of food-borne illness is similar regardless of the beverage being processed, and that similar inspection protocols should be required.

- *A 2002 change to the licensing laws has resulted in portions of several large food manufacturers being uninspected.* The 2002 Legislature re-defined the establishments KDHE is responsible for regulating, reportedly to eliminate duplicate licensing of some facilities by KDHE and the Department of Agriculture. In response, KDHE removed 75 food processing plants from its licensing and inspection lists. In all, 31 of those plants were primarily meat processing plants whose operation is thoroughly inspected by the Department of Agriculture or USDA.

However, of the remaining 44 plants, 31 are considered by KDHE to inherently pose a high food safety risk. They include some large facilities, such as Sysco Food Services, Dean and Deluca, and Lady Baltimore Foods. The Department of Agriculture inspects only the portion of these plants having to do with meat processing, while other, often large areas go uninspected. KDHE officials say they don't have the authority to inspect these facilities because they no longer license them. However, agency officials haven't approached the Legislature about correcting this gap in inspection coverage.

**Combining Food Safety Inspection Programs Could Produce Several Benefits**

A number of benefits could result from combining food safety inspection programs within a single agency and realigning current food inspection activities to eliminate duplication. Such a move should improve the consistency of food safety regulation, improve communication, and generate some savings. Several other states have combined most of their food safety programs in one agency, typically the agriculture department. These other states also tend to make more extensive use of their local health departments or other localities to conduct inspections on behalf of the state.

**Several other states have taken a more coordinated approach to food safety by placing responsibilities within a single department.** We found 5 states that appeared to have significantly combined their food safety functions in some way. Table I-1 shows that 4 of those states—Michigan, Nebraska, Pennsylvania, and Wyoming—placed primary responsibility for food safety inspection programs within their departments of agriculture.

<b>Inspection area:</b>	<b>KS</b>	<b>CO</b>	<b>MI</b>	<b>NE</b>	<b>PA</b>	<b>WY</b>
<b>Food Service Establishments</b>	Health (a)	Health (a)	Ag (a) (localities only)	Ag (a)	Ag (a)	Ag (a)
<b>Retail Food Stores: Including Groceries, Meat Processing, Delis, Bakeries at these retail locations.</b>	Health	Health (a)	Ag	Ag (a)	Ag (a)	Ag (a)
<b>Food Processing Plants</b>	Health	Health (a)	Ag	Ag (a)	Ag (a)	Ag (a)
<b>Dairy: at Farms, Processing Plants, Transporters, and Retail Food Stores</b>	Ag	Ag	Ag	Ag	Ag (a)	Ag
<b>Eggs: at Retail Food Stores</b>	Ag	Ag	None	Ag	Ag (a)	Ag
<b>Meat and Poultry Processing: Slaughter and Processing at State and Custom-Exempt Plants</b>	Ag	None	None	None	None	Ag
<small>Sources: Kansas Department of Agriculture, KDHE, and Other States.            (a) Local health departments in these states conduct some portion of inspections for these establishments or food products.            *None* means that this state either doesn't have this type of entity or has chosen not to regulate this entity or food product.</small>						

Several of these other states rely heavily on local health departments to conduct food safety inspections. In Kansas, local health departments inspect only restaurants. In contrast, Pennsylvania contracts with local health departments to inspect restaurants, retail food stores, food processing plants, and eggs and dairy products at retail stores.

**A single agency housing all programs could provide the incentive to regulate similar food businesses and processes more consistently.** By combining programs in one agency, it's more likely that inspection protocols could be made more consistent where it is

appropriate to do so. Even more important, with a single agency, there's a greater likelihood of making inspection frequencies reflect the relative risk posed by the food product or processes. For example, Wyoming recently implemented a new uniform set of food safety laws when it combined all its food safety programs into a single agency. Wyoming officials have told us that regardless of the food establishment involved, its inspectors focus on the critical factors associated with food-borne illness, including time and temperature control, sanitation, employee hygienic practices, rodent and pest control, and preventing cross-contamination.

Currently, in Kansas, the Department of Agriculture administers the Meat and Poultry Inspection Act, the 2001 Dairy Act, and the Kansas Egg Law, while KDHE administers the Food Drug and Cosmetic Act, as well as the Food Service and Lodging Act. Each program implementing one of these Acts has a somewhat different regulatory approach, which has caused similar businesses to be regulated very differently. Yet there are many commonalities—each program must assess whether establishments meet basic sanitation requirements, such as having:

- clean water
- proper equipment, that's kept in sanitary condition
- proper facilities to store items to prevent contamination or spoilage
- proper toilet facilities
- proper temperatures to prevent bacterial growth
- clean walls, floors, and ceilings
- the absence of rodents or insects
- operators who understand how to prevent food-borne illness

**Communication should improve because information could be shared more easily.** As noted earlier in this report, sometimes inspectors become aware of businesses that should be, but aren't, licensed and regulated by another inspection program. In addition, housing all programs in a single agency could provide incentive for them to coordinate efforts when they share regulatory jurisdiction. And, if the programs had been housed together, it seems likely there would have been a plan to ensure that food manufacturers still received a complete inspection, even when licensing laws changed.

**Kansas can realize some significant savings and improve food safety if food safety inspections are combined and inspections are changed to a risk-based approach.** In fiscal year 2003, Kansas spent about \$3.2 million to fund salaries for 83 food safety inspection staff (including supervisors and program managers), and nearly \$700,000 on contracts with 8 local health departments to inspect restaurants in 14 counties.

In determining the potential cost savings of combining food safety inspections programs, we reviewed the responsibilities and activities of each program, talked extensively with program staff, and talked with officials in similar positions in other states. Although the inspection activities involved in these programs could be grouped in any number of ways, we selected the following set of assumptions as a reasonable and cost-effective approach:

- inspection activities would be grouped into 3 functional areas:
  - ▶ **dairy inspection** focusing on dairy establishments plus other beverage processing facilities
  - ▶ **food processing inspection** including meat slaughter and processing plants
  - ▶ **retail sales inspections** including restaurants and grocery stores

While these functional areas are similar to the inspection functions already in place, currently both KDHE and the Department of Agriculture are responsible for some inspections within each grouping.

- inspectors assigned to each group would be cross-trained to handle all types of inspections within that group. Because of the similar laws, requirements, and activities affecting each group, we assumed the amount of cross-training needed would be minimal.
  - ▶ Little or no additional training would be required for KDHE inspectors who would take over egg and dairy inspection in retail stores or for the Department of Agriculture dairy inspectors who would take over beverage processing plants.
  - ▶ Some additional training would be required for the meat and poultry inspectors who would take over inspections of food manufacturing plants. KDHE estimates its cost to train a new inspector to this level is \$26,000. However, this doesn't take into account the training meat and poultry staff already have.

We also assumed that inspectors' current salaries and qualification requirements would remain the same. There are some differences between the 2 agencies now, as described in *Profile I-3*. If salaries and qualifications were equalized, the savings we've estimated would be reduced.

### **Profile I-3 Food Safety Inspector Salaries Vary by Agency**

Currently, KDHE inspectors start at salary range 22 and, on average, are compensated about \$3,500 more per year when compared to Department of Agriculture Meat and Poultry Program inspectors, who start at salary range 19. The rationale for this difference probably lies in the qualifications required—KDHE requires a new inspector to have a bachelor's degree in a field related to public health or sanitation; the Department of Agriculture has no similar requirement, although some of its inspectors do have college degrees.

Depending on the types of duties that ultimately are shifted between inspectors in the two agencies, it may or may not be justified to maintain the meat and poultry inspectors at a lower salary range.

- within each group, only 1 inspector would perform all the regular inspections needed at each facility. The amount of time inspectors spend on each type of inspection performed generally would be the same as it is now, but unnecessary drive time would be eliminated.
- within counties where KDHE now contracts with local health departments to inspect food service establishments, those contracts would be expanded to cover grocery store inspections as well, eliminating overlap in inspectors' territories.
- inspectors would continue to do follow-up inspections and complaint investigations at the current rate.
- each group would have its own manager, and supervisor-staff ratios would be the same as they currently are. We didn't try to estimate any administrative overhead cost savings, largely because the food safety inspection programs within KDHE and the Department of Agriculture are very small compared with the overall size and responsibilities of those agencies, so any overhead savings would not likely be significant.

Given these assumptions, we looked at how many resources would be needed to operate a combined food safety inspection program under the following scenarios:

1. the number of inspections conducted would continue at its current rate (as noted earlier, some inspections are being done more frequently than required, and some facilities currently aren't being inspected as often as their likely risk level would suggest is optimal)
2. only those inspections that are required by law would be done
3. inspection frequencies would be changed to reflect the relative food safety and health risks of each food or food processes in relation to others in the State (in other words, a Statewide risk-based approach)

*Table I-2* shows the results of our analyses for each of these scenarios.

The primary results are summarized below:

1. **Continuing to do inspections at the current rate could save the State about \$90,000 per year.** The primary savings under this scenario comes from eliminating duplicate drive time caused by the current overlap in territories for KDHE inspectors and the contracted local health departments in 14 Kansas counties, and from eliminating overlapping inspection duties and drive time for KDHE and Department of Agriculture staff for egg and dairy inspections at retail food stores. (In our 2002 audit of the State's meat processing inspection program, we also noted the State could save \$750,000 to \$1.5 million by scaling back or eliminating that program and allowing the USDA to take over most or all meat inspection in Kansas.)

**Table I-2  
Potential Efficiencies Resulting From Combining Food Inspection Functions**

	<b>Dairy Inspection Group</b>	<b>Processing Inspection Group</b>	<b>Retail Inspection Group</b>	<b>Estimated Total Savings With This Option...</b>
	<p><b>What's covered</b> Dairy farms Dairy transporters Dairy plants Juice processing/ bottling plants</p> <p><b>Who does it now</b> Agriculture Agriculture Agriculture KDHE</p> <p><b>Resources Authorized for the Current Dairy Inspection Program:</b> # of Inspection Staff (FTE): 8.0 # of Supervisors (FTE): 1.0 Cost of contracts with local health depts: not applicable # Hours Spent Conducting Inspections During 2003: 9,711</p>	<p><b>What's covered</b> State-inspected meat processing &amp; slaughter plants Custom-exempt meat plants Food processing plants Food warehouses</p> <p><b>Who does it now</b> Agriculture Agriculture KDHE KDHE</p> <p><b>Resources Authorized for the Current Meat and Poultry Inspection Program:</b> 38.6 6.0 not applicable 60,165</p>	<p><b>What's covered</b> Restaurants Grocery stores eggs only dairy only entire facility</p> <p><b>Who does it now</b> KDHE (local health departments in some counties) Agriculture Agriculture KDHE</p> <p><b>Resources Authorized for the current Food Protection Program:</b> 21.3 4.0 \$700,000 29,056</p>	
<b>Resources needed...</b>				
<i>...if we continue to conduct inspections at the current rate:</i>	# of Inspection Staff (FTE): 6.7 # of Supervisors (FTE): 1.0 Cost of contracts with local health depts: -- Hours for inspections: 8,828	39.4 6.1 -- 63,058	19.6 3.7 \$760,000 26,635	\$88,000
<i>...if we do only those inspections legally required:</i>	# of Staff (FTE): 3.9 # of Supervisors (FTE): 1.0 Cost of contracts with local health depts: -- Hours for inspections: 5,128	26.1 4.1 -- 41,866	14.4 2.7 \$524,000 19,617	\$1,245,000
<i>...if we change inspection frequency to reflect relative risks:</i>	# of Staff (FTE): 5.9 # of Supervisors (FTE): 1.0 Cost of contracts with local health depts: -- Hours for inspections: 7,740	30.1 4.7 -- 48,230	18.2 3.4 \$660,000 24,787	\$680,000
	<p>If inspectors with Kansas' current food safety inspection programs were cross-trained and their duties re-combined into the 3 groups outlined above, then reductions in travel time, staffing, and other efficiencies could be significant, depending on how often food products or businesses are inspected. If inspections frequencies remain at their current rate, the State could save nearly \$90,000. Reducing inspections to the minimum required by State or federal law would result in a projected cost savings of \$1.25 million. Finally, if the State changed the frequency of inspections according to the relative food safety health risk posed by different types of food or food processes, it could save as much as \$680,000 and 14.7 field inspector FTE over current resource requirements. (a)</p> <p>(a) Current resources include the equivalent of about 1 inspector for eggs, not included in the listings above. Also not included in this analysis are additional personnel, such as contract veterinarians for the meat and poultry inspection program, who aren't front-line inspection staff or their direct supervisors.</p>			

2. **Conducting inspections only as often as required by law could generate about \$1.2 million in savings annually, but it could deteriorate the quality of the State's food safety system.**

There are no statutory requirements to inspect retail food stores such as groceries, dairy products within those stores, eggs, or food processing plants. In fiscal year 2003, inspectors spent nearly 9,000 hours inspecting these facilities and products. Agency staff indicated they thought such inspections were important to protect the public's safety and to maintain the overall quality of the State's food safety system. In addition, we found that all 5 states we contacted inspect these facilities and products, except one state doesn't inspect eggs. As a result, it doesn't appear that this option would be desirable.

3. **Conducting inspections under a risk-based approach could generate nearly \$680,000 in savings annually, depending on the number of inspections conducted.** Under this scenario, we assumed that all types of establishments would continue to be inspected, but at frequencies that appear to better reflect their relative risk (compared to each other) to the public's health and safety.

As Appendix B shows, for our analyses, that generally meant meat and poultry plants and lower-risk food service establishments would be inspected less frequently, and that high-risk food service establishments and certain other types of retail food stores and food processing plants would be inspected more frequently.

It's important to note that food safety experts have not yet developed a consensus on the risks posed by various foods and processes. As a result, any decision to move towards a risk-based approach would need to involve food safety experts from government, education, and private industry in determining the appropriate frequencies. If more frequent inspections are performed than we assumed in our analyses, the savings from this approach would be less. However, our analyses suggest the State has a lot of leeway to both refocus its food safety inspection resources on the areas of greatest risk and achieve greater cost efficiencies.

One final point: our analyses did not include the Department of Agriculture's Division of Weights and Measures because it has no role in ensuring food safety, and because none of the other states we reviewed that had combined their programs included weights and measures. However, its inspectors also go into a sample of grocery stores and other retail food stores to check the accuracy of small scales

and scanners. Cross-training food safety inspectors to perform such checks could help eliminate the existing duplication, but other issues need to be considered. For example, weights and measures inspectors carry expensive equipment with them to gauge the accuracy of scales. In addition, they inspect a lot of non-food retail establishments in their areas—such as department stores, hardware stores, and dry cleaners.

**Most of the potential savings we identified from regrouping food safety inspection activities could be achieved whether or not those activities were combined into a single agency.** As discussed earlier, combining all food safety inspection programs could lead to better coordination, improved communication, and more consistent regulations. It could also be critical to achieving a risk-based inspection approach, where the risks that certain foods or food processes pose to the public’s health and safety can be determined relative to each other, rather than in “stovepipe” fashion.

Nonetheless, the potential savings we identified are possible even if food safety inspection activities aren’t combined into a single agency. Some statutory inspection frequencies would have to be changed either way, and realignment of duties as we have done for our analyses could be accomplished either by statutory changes, or by memoranda of agreement between KDHE and the Department of Agriculture.

**Regardless of how the State’s food safety inspection programs are organized, KDHE needs to improve its ability to extract data from its licensing and enforcement databases.** Implementing a risk-based inspection system will also require good information about the compliance history of establishments. For example, a facility that handles lots of temperature-sensitive foods but that has no history of problems, may be less of a risk than a facility that handles few such foods but has a history of sanitation problems. Although the Department of Agriculture’s meat and dairy programs have ready access to the compliance history of various facilities, KDHE’s food protection program can’t readily supply this information. In some instances, staff of the Food Protection Program had to hand-count data from their computer systems to respond to our requests.

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***Kansas Needs to Continue Taking Steps To Become Prepared for Intentional Threats to Food Safety***

Most of our audit work focused on determining whether Kansas’ food safety inspection programs could be combined to better ensure food safety and to be more efficient. However, we also looked briefly at Kansas’ plan for responding to intentional threats to food supplies. Here’s what we found:

**Compared to preparedness for other disasters, Kansas is least prepared for bioterrorism threats.** We interviewed officials with

Kansas' Emergency Management Program at the Adjutant General's office. According to those officials, Kansas is more prepared for natural disasters, radiological disasters, and foreign animal diseases outbreaks than for bioterrorism threats. Bioterrorism includes the intentional or threatened use of viruses, bacteria, fungi, or toxins to cause death or disease in humans, animals, or plants.

**Kansas is developing a bioterrorism preparedness and response plan, but it needs to continue to take steps to ensure that all relevant parties are included in planning efforts.** Officials with the Bioterrorism Program, located within KDHE, told us that food safety issues that impact the general public will be included as a small portion of Kansas' bioterrorism preparedness and response plan. However, in order to develop a comprehensive plan, the Program may need to include staff from the Department of Agriculture's Plant Protection and Weed Control Program and Grain Inspection Service, who, to date, haven't been included in the planning efforts. Kansas has been in the process of building its State bioterrorism plan since 1999. At that time the Bioterrorism Program was funded with \$850,000. Recently it received \$12.3 million in federal funds.

***Conclusion***

Although the State hasn't experienced a high number of food-borne illness outbreaks, Kansas' current food safety system has a number of problems caused by having 2 separate agencies share food safety inspection responsibilities: inefficiencies increase costs, some establishments are inspected more frequently than necessary, some high-risk establishments aren't inspected frequently enough, and communication isn't complete and routine. Housing all inspection programs in a single agency would make it more likely that a comprehensive food safety regulatory system will be planned and implemented. In our opinion, the foundation for such a system should include inspection frequencies that are based on the relative food safety health risk posed by the food product or processes, and the system could – like Wyoming's – be based on similarities in food safety laws and regulations rather than focusing on the differences. Once these risks and the appropriate inspection frequencies are identified, Kansas will need to take the steps necessary to restructure current inspection frequencies and staff inspection duties. This action has the potential to save money for the State, but it also has great potential for improving overall food safety in Kansas.

***Recommendations***

1. To ensure that Kansas' food safety inspection resources are used in the most efficient manner, the Legislature should pass Senate Bill 124 or a bill similar to it, transferring responsibility for all food safety-

related inspections into a single agency, whether that agency is the Department of Agriculture or the Kansas Department of Health and Environment (KDHE).

2. If a decision is made to place all programs within the Department of Agriculture, that Department should establish a system for regularly communicating with KDHE's Bureau of Epidemiology and Disease Prevention to ensure that this Bureau has the information it needs to assist with food-borne illness outbreak investigations.
3. To better promote food safety within the State's available resources, the food safety inspection program should become risk-based, whether or not it is combined into a single agency. To accomplish this, the agencies responsible for food safety-related inspections should convene a task force of representatives from the Departments of Agriculture, Animal Health, and Health and Environment, Kansas State University, private industry, and federal agencies. This task force should work together to develop comprehensive inspection frequencies that are based on food safety health risks, and should develop and propose the regulatory and statutory changes needed to accomplish those frequencies. In determining these frequencies, the task force should develop a hierarchy of health risks posed by food-related businesses, regardless of which regulatory agency or program currently is responsible for regulating those businesses, and should restructure inspection frequencies and staff inspection duties as needed to implement those frequencies. In addition, the compliance history of businesses should be used as a factor in determining inspection frequencies.
4. If the State's food-safety inspection programs are not combined in one agency, the Departments of Agriculture and Health and Environment should do the following:
  - a. develop and implement plans on how they will communicate and coordinate information with each other. Such plans should include strategies on routinely sharing records to help identify food-related businesses that should be regulated. In addition, the plans should include steps that each agency will take to coordinate their efforts when both have jurisdictional authority in a situation.
  - b. enter into a Memorandum of Understanding or seek legislation as needed to realign inspection duties so that responsibilities within each broad functional area—dairy inspections, food

processing inspections, and retail establishment inspections—aren't split among 2 different agencies. To accomplish this, the following actions should be taken:

- i. Transfer responsibility and resources for inspecting juice processing/bottling plant inspections from KDHE to the Department of Agriculture
  - ii. Transfer responsibility and resources for inspecting food processing plants and food warehouses from KDHE to the Department of Agriculture.
  - iii. Transfer responsibility and resources for inspecting eggs and dairy products in grocery stores from the Department of Agriculture to KDHE
- c. to eliminate the need for 2 or more food safety inspectors to visit one facility, inspection staff should be cross-trained and should be assigned to perform all the regular inspections for the facilities they are assigned to cover.
- d. to promote better food safety and ensure that legislative intent is followed, KDHE should work with the Department of Agriculture to make certain that adequate and complete inspections are conducted at the 42 food manufacturers both agencies used to inspect—but that KDHE quit inspecting—after the 2003 Legislature changed the licensing laws to eliminate duplicate licensing fees. The Department of Agriculture still inspects these same food manufacturers, but only those areas that involve meat processing. It is our understanding that the Legislature intended for these facilities to be inspected to the same degree they were before the licensing change.
5. To ensure they have the information they need to manage the Food Protection Program properly, KDHE officials should develop an efficient system for extracting this information from the agency's licensing and enforcement databases. This is a repeat recommendation from our April 2002 performance audit, *Regulation of Food Service Establishments: Determining Whether the Department of Health and Environment is Providing Sufficient Regulatory Oversight*. The Food Protection Program continues to rely on inefficient methods—for example hand-counting—to gather some of the data it needs to manage the Program.

## **APPENDIX A**

### **Scope Statement**

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on March 19, 2003. The audit was requested by the Senate Agriculture Committee.

## SCOPE STATEMENT

### **Evaluating the Costs and Efficiencies of Combining Food Safety Functions of the Departments of Agriculture and Health and Environment**

Three different State agencies provide food service inspection programs in Kansas—the Departments of Health and Environment, Education, and Agriculture. The Department of Health and Environment (KDHE) inspects restaurants, grocery stores, licensed childcare facilities, health facilities, school kitchens, and other local agencies. The Department of Education has the School Food Service Program, which administers school food programs across the State. The Department of Agriculture inspects meat and poultry processing plants, dairy operations (including counter freezer operations), and eggs to ensure they are properly graded and stored at appropriate temperatures. The Department also checks labeling and commercial net weights on food products.

Recently, legislators have questioned whether these food-related programs could be performed more cost effectively if they were the responsibility of a single agency. Such concerns have been raised in several states and at the federal level in recent years, especially since the events of September 11, 2001. In an effort to conserve scarce resources and improve food safety, the Senate Agriculture Committee introduced SB 124, which would combine all 3 programs into one at the Department of Agriculture. The fiscal note for SB 124 stated that the exact fiscal effect currently wasn't available, because the Department of Agriculture had no past experience with the other 2 Departments' types of food service regulations. For this audit request, the main concerns are focused on merging the programs in the Departments of Agriculture and KDHE.

A performance audit of this topic would answer the following question:

- 1. Could food service inspection programs in Kansas be consolidated to streamline operations, save money, and improve food safety?** To answer this question, we would look at the statutory requirements imposed on the Departments of Agriculture and KDHE to inspect food services. As part of our analysis, we would consider such things as the types of businesses or facilities each agency inspects, whether some of those same businesses or facilities are inspected by both agencies, how similar the inspection protocols are for each type of inspection, how many inspectors are involved in each type of inspection, how long each type of inspection takes, and whether drive time, staffing, and administrative costs could be reduced by combining some inspections or by cross-training staff. In addition, we would work with agency officials to try to develop reasonable estimates of the additional costs of merging the programs, such as the extent and cost of cross-training that would be required. We also would look at what steps other states have taken to consolidate their food service inspection processes, and through interviews with officials from those states, we would determine how well they think consolidated inspections have worked. We would interview or survey Kansas inspectors and agency officials to get their opinions about the potential advantages and disadvantages of combining inspection functions. Finally, we would look at the relationship between Kansas food safety agencies and federal programs performing similar functions, and we would review recent studies recommending consolidation of food safety programs at the federal level.

**Estimated completion time:** 10-12 weeks

**Appendix B  
Inspection Frequencies for Entities Regulated by Kansas' Food Safety System**

Number and Type of Food-related Business or Regulated Food	Legally Required Inspection Frequency	Actual # of Inspections completed during FY 2003, <u>Including</u> Follow-up Inspections	Risk-Based Inspection Frequency Assigned, <u>Excluding</u> Follow-up Inspections (a)	Total Inspections if Based on Food Safety Inspection Frequency
<b>Establishments with a high food safety health risk (b)</b>				
<b>364 Retail Food Stores</b> (Grocery stores) with meat department, deli, seafood (c)	0	167 (0.46 inspections per establishment) (d)	1 /year	364
<b>2,044 Restaurants with potentially hazardous foods</b> that are prepared in advance or cooked and served (c)	1 /year	3,147 (1.54 inspections per establishment) (d)	2 /year	4,749
<b>229 Food Processing Plants</b> that store or process potentially hazardous foods	0	64 (0.28 inspections per plant) (d)	2 /year	458
<b>536 Dairy Farms</b>	2 /year	2,747 (5.1/ farm)	4 /year	2,279
<b>23 Dairy Processing Plants</b>	8 /year	211 (9.1 / plant)	8 /year	184
<b>216 Dairy Milk Transporters</b> (exams for drivers who collect samples)	1 /year	280 (1.3 / year)	1 / year	280
<b>82 Meat Processing/Slaughter Plants- State Inspected</b>	sufficient to have plant meet standards (e)	9,745 (2.3 / week / plant)	2 /week	8,528
<b>6 Slaughter-Only Plant- State-Inspected</b>	every kill day	every kill day	every kill day	every kill day
<b>22 Custom Meat Plant</b>	sufficient to have plant meet standards (e)	858 (39 / year)	2 times per month	528
<b>Establishments with a medium food safety health risk (b)</b>				
<b>364 Retail Food Stores</b> with meat department (c)	0	167 (0.46 inspections per establishment) (d)	1 / year	364
<b>8,790 Restaurants with potentially or non potentially hazardous foods</b> , with limited food preparation or no cooking on site (e.g., deli's) (c)	1 /year	13,537 (1.54 per establishment) (d)	1 / year	10,192
<b>Establishments with a low food safety health risk (b)</b>				
<b>1,393 Restaurants with food in manufacturer's containers</b> (c)	1 /year	2,145 (1.54 per establishment) (d)	every 18 months	1,078
<b>2,310 Other Retail Food Stores</b>	0	1,063 (0.46 inspections per establishment) (d)	every 2 years	1,155
<b>2,293 Dairy at Retail Food Stores</b>	0	850 (0.37 per grocery or convenience store)	every 2 years	1,147
<b>535 Food Processing Plants</b> that store or process <u>non</u> potentially hazardous foods	0	150 (0.28 inspections per plant) (d)	every 18 months	357
<b>Eggs Inspections at 2, 293 Retail Food Stores</b>	0	1,192 (0.52 per grocery or convenience store)	included in other retail inspections	0
<b>35 Vending Machines</b>	0	73 (2 /year)	every 2 years	18

Sources: agency documents, Kansas statutes, LPA analysis

(a) Inspection frequency is based on input from a limited number of other states, from Kansas' food safety inspection program staff, and on LPA opinion.

(b) Risk category assigned by LPA

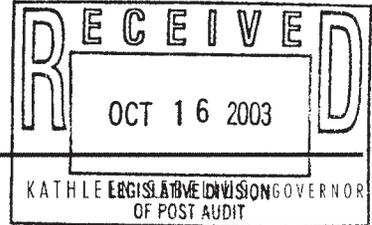
(c) Estimated by LPA, using Agency data.

(d) Data were insufficient to determine an inspection rate by risk category.

(e) Statutes and regulations don't specify a number of inspections; however Department of Agriculture officials state that plants must meet federal performance standards.



# KANSAS



Department of Agriculture  
Adrian J. Polansky, Secretary

Department of Health and Environment  
Roderick L. Bremby, Secretary

October 16, 2003

Barbara J. Hinton  
Legislative Post Auditor  
800 S.W. Jackson  
Suite 200  
Topeka, KS 66612-2212

Dear Ms. Hinton:

The Departments of Agriculture and Health and Environment want to thank the Legislative Division of Post Audit for the opportunity to respond to the audit of food safety programs in Kansas. We recognize your auditors' concentrated work on the very complex subject of food safety for the protection of Kansas consumers. We appreciate the ideas generated on how to best use the state's resources to provide that food safety.

We face many challenges in achieving our goal of ensuring food safety as effectively and efficiently as possible. However, the audit's work and recommendations aid us in focusing our efforts. Risk based assessments are already a part of both departments' everyday inspection activities, but Legislative Post Audit raises further questions and ideas about the use of such assessments which are worthy of study.

As we have reviewed the audit, both departments agree that it is warranted to convene a wide-ranging task force of consumers, professional food safety experts and regulators, industry and other stakeholders to examine the issues of efficient and effective food safety programs for the consumers of Kansas.

It is vital that food safety programs have the resources they need to improve both efficiency and quality of our food safety efforts. We believe the food safety task force must meet and make recommendations before this program can be designed.

For both KDHE and KDA, the regulated world is dynamic. Professional regulators and food safety experts must constantly make decisions to shift financial and staff resources to the areas of highest risk. If a change is to be made to one food safety agency, it should be designed with the greatest of care with our mission always in mind--protecting Kansas consumers. Federal funding and regulations must also be carefully analyzed so that resources are not lost through any change that is made.

In the meantime, the departments continue to seek ways to communicate quickly and effectively and maximize all efforts to protect food safety for consumers, as well as protect the food supply from attacks by incidental or intentional biological hazards. These efforts include meetings of the food safety task force and utilization of KDHE's web-based food safety reporting system. As the audit suggests, the

Barbara J. Hinton  
Legislative Post Auditor  
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Page 2

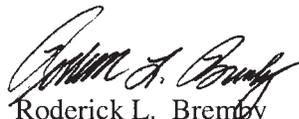
accessibility and sharing of information of mutual interest is another priority. Continued efforts will promote this through data systems that support program interaction between the departments. Each department values customer-friendly service and seeks opportunities to instill this among its field staff so that Kansans with food safety issues are put in contact with the appropriate state agency and personnel.

The departments also agree that food security as it relates to biological hazards, whether intentional or accidental, need to be included in preparedness and response planning efforts. Groundwork is being laid to coordinate efforts with the Kansas bioterrorism plans within the limits of federal grant guidance.

Respectfully,



Adrian J. Polansky  
Secretary of Agriculture



Roderick L. Bremby  
Secretary of Health and Environment