

Approved: 1-14-99
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on January 13, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Bruce Kinzie, Revisor of Statutes
 Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

 Allie Devine, Secretary, Kansas Department of Agriculture

Others attending: See attached list

Chairperson Steve Morris welcomed all members of the Committee, noting new member Senator Harry Stephens, replacing Jerry Karr. Guests attending the committee meeting introduced themselves and Secretary of Agriculture Allie Devine introduced her staff.

A motion was made by Senator Clark to introduce a Concurrent Resolution requesting the Kansas State Legislature urge the U. S. Congress to lift sanctions on limitation of exportation. The motion was seconded by Senator Umbarger. Motion carried.

Allie Devine, Secretary, Kansas Department of Agriculture, presented a review of the Department of Agriculture (Attachment 1). She advised that all Department Managers now report directly to her. Secretary Devine pointed out that taking into consideration the mandatory salary and wage increase for state employees, the Department's budget has demonstrated negative average real growth.

Secretary Devine proposed that all program managers and administrative positions within the Kansas Department of Agriculture be placed in the unclassified service of the Kansas civil service system. Senator Corbin made a motion to introduce a bill to propose this change. Senator Clark seconded. The motion carried.

In Secretary Devine's review of the fertilizer fees and pesticide use, she requested a bill introduction that would request a survey of the types and amounts of pesticides used in the state. There is proposed a one time usage of \$100,000.00 from the fertilizer fee reserve fund to be utilized for the funding of this pesticide use survey. Senator Biggs made a motion to introduce such bill and Senator Downey seconded. The motion carried.

The next meeting is scheduled for January 14, 1999.

KANSAS DEPARTMENT OF AGRICULTURE
TESTIMONY
TO THE
SENATE COMMITTEE ON AGRICULTURE

By

Alice A. Devine
Secretary of Agriculture

Presented: January 13, 1999

Senate Agriculture
1-13-99
Attachment 1

KDA's Vision and Mission

Agency Vision: We will have effective, efficient regulatory programs, which, if challenged, will be proven credible. Our mission is to administer the laws and programs assigned to the Department of Agriculture for the benefit of the people of Kansas.

◆ The Kansas Department of Agriculture is a regulatory agency. Areas of jurisdiction include pesticides, weeds and insect crop pests; meat, poultry and dairy products; eggs, fertilizers, seeds, chemicals and feeding stuffs; commercial weighing and measuring devices; water resources; statistical data, grain warehouse auditing; and marketing and promotion of Kansas corn, grain sorghum and soybeans. Questions should be directed to the Secretary of Agriculture at 785-296-3558.

◆ The budget for FY 1998 totaled \$20.83 million, of which approximately \$9.83 million was state general funded, \$2.52 million from federal funds and \$8.48 million from fee funds. There are 330 positions in the agency.



Contacts

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Grain Commodity Commissions
Administrator Trent LeDoux.....296-3738
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Dairy Commissioner George Blush.....296-3511
Meat and Poultry Inspection
Program Manager Dr. Butch Krukenberg....296-3511
Pesticide Use
Program Manager John Stamer.....296-3786
Plant Protection
Program Manager Tom Sim.....296-2263
Records Center
Manager Nancy Anderson.....296-2263
Grain Warehouse
Program Manager Ron White.....296-3786
Agricultural Commodities Assurance Program
(ACAP) Program Manager Fred Gatlin.....296-3511
Laboratories
Program Manager Constantine Cotsoradis...862-0108
Statistics
State Statistician Eldon J. Thiessen.....233-2230
Weights and Measures
Program Manager Constantine Cotsoradis...862-2415
Water Resources
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The Kansas Department of Agriculture



Kansas Department of Agriculture Programs and Purposes

The department is organized into programs: administrative and statistical services; commodity commissions; and poultry inspection; dairy inspection; agricultural commodities; grain warehousing; agricultural laboratories; pesticides and plant pests; weights and measures; and water resources.

◆ Administrative services provide policy, coordination and management functions. These functions include fiscal, personnel, legal, research, office of the secretary and computerization and information services. Statistical services collect, analyze and disseminate information about Kansas agriculture which is used by other arms of government, producers, agribusiness and consumers. These programs are financed by a budget of \$3.07 million, with slightly more than \$395,000 from federal funds.

◆ The Kansas Commodity Commissions for Grain Sorghum, Corn and Soybeans work to improve the marketing, promotion and utilization of those crops. They are funded by \$4.57 million in check-off fees from first sales by growers.

◆ Protecting the public by ensuring the safe use of pesticides and effective control of

plant pests are programs in the area of plant health. The pesticide use program provides licensing, certification and services for pesticides and pesticide applicators. The plant protection program works to control the spread of foreign plant pests and weeds, to eradicate noxious weeds already occurring in the state, and provides certificates to assure foreign purchasers of Kansas crops that shipments are free of undesirable pests. These programs operate with a budget of \$2.69 million, of which \$1.12 million is from the state general fund; \$830,000 from federal funds; and \$740,000 from fees.

◆ Inspections functions provide public safety and consumer protection. Budget totals of \$3.53 million break down in this manner: \$2.26 million for meat and poultry inspection, with \$1.01 million from state general funds, \$1.01 million from federal funds, and \$60,000 from fees; \$472,000 for dairy inspection, with \$170,000 from state general funds and \$302,000 from fees; and the agricultural commodities assurance program (ACAP) with a total budget of \$631,000, of which \$600,000 is from fees and \$31,000 from federal funds.

◆ The weights and measures program protects consumers by inspecting large and small scales, scanners, fuel quality and quantity. Private service companies and technicians are trained and certified to perform tests of measuring devices. A certified laboratory is maintained to calibrate weights and measures for business and other entities. Funds are

\$1.34 million, with \$720,000 in state general funds and \$620,000 in fee funds.

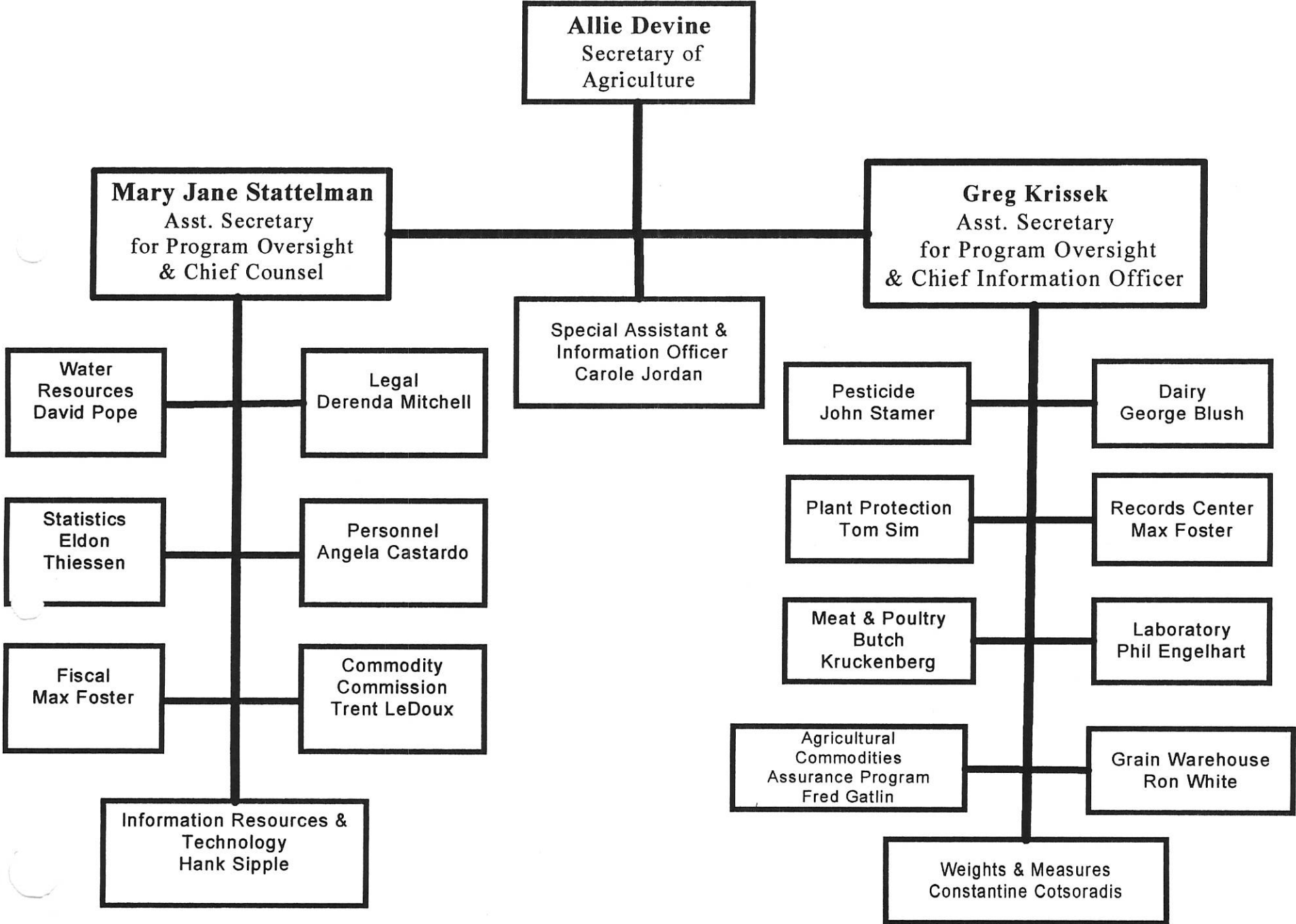
◆ The laboratories program supports consumer protection by analyzing and testing regulatory samples collected by employees in the field. A seed laboratory performs various service analyses on seed samples submitted by farmers, seedsmen and the agricultural industry. A budget of \$1.08 million comes from the state general fund in the amount of \$550,000, the federal government in the amount of \$56,000 and \$474,000 in fees.

◆ The grain warehouse program performs audits of state licensed grain storage facilities to ensure the protection of farmers' assets maintained in storage. The program is funded by \$435,000 in fees.

◆ The division of water resources manages supplies of water and water structures. The water appropriation segment manages and allocates limited supplies of ground and surface water through permits, reviews and inspections. The water structures subprogram inspects and regulates dams and stream obstructions. Also administered is the state's participation in four interstate river compacts and the sub-basin resource management plan, which is developed in conjunction with local agencies to create a long-term statewide water usage plan. The budget totals \$4.31 million, with \$3.74 million from the state general fund and \$570,000 from fees. The program also benefits from \$1,025,000 in State Water Plan funding.

Kansas Department of Agriculture (KDA)

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Customer Service and Change at the Kansas Department of Agriculture

The Kansas Department of Agriculture continues the initiatives begun in 1995 to improve customer satisfaction. Methods include identification of internal and external program customers, analysis and continuous improvement of processes, equipment and technology improvement, and employee training and education. The foundation for many improvements was laid by the executive development sessions and employee action teams developed with the assistance of the KU Capitol program.

Programs across the department have used a number of tools to improve their processes with a goal of quality customer service. Methods utilized have included systems analyses, customer surveys, use of inspections data to plan program initiatives and budget, peer reviews, teams and task forces, and industry panels.

Reorganization under this administration has removed a layer of bureaucracy between programs and the Secretary by making program managers directly accountable to the Secretary or her assistants rather than a separate division director. Fiscal, records, information resources and legal employees have been transferred from separate regulatory programs into centralized service units in the administrative services area.

Secretary Devine repeatedly encourages program managers to stay aware of program events occurring in the field; to generate useful data and analyze them for use in the management and planning of their programs.

Administrative Services

The department's centralized *fiscal services* program has improved operations by standardizing processes and cross training employees to provide depth of coverage without cross training beyond the limits of efficiency. They continually analyze processes for improvement, but are still challenged by double data entry necessary to comply with SHARPS and STARS, which are not compatible with the internal accounting system which provides fiscal reports to managers.

The *records center* processes licenses, permits and certificates as required by law for department programs. Processes in this area have been analyzed, computerization has been improved and employee training and supervision have been a priority. A long-standing backlog has been cut significantly, but improvements and analysis continue under a new manager.

The *information resources and technology program* has improved customer service support through creating a help/trouble reporting desk and instituting a system of trouble tickets; working toward standardized software and systems; utilizing spare equipment and parts; and informing and training users. Four years ago there were more than 20 different software versions in use in the department; these variations have been reduced significantly. Today all computer users have updated computers with compatible software. Computerization of field employees and training to support them continues.

The *legal program* is focusing on improvement of case tracking and teaching its internal customers to prioritize cases which need legal services. Program managers are encouraged to remember the costs of enforcement and to budget for hearing officer services.

Meat and Poultry Inspection Program

In the *meat and poultry inspection program*, numerous meetings of the supervisors' team have assisted management in intensive improvement efforts. Program customers are identified as small meat and poultry processing plants, Kansas consumers, and Kansas livestock growers. Problems identified through process analysis, discussions with industry and supervisory team members have been acted on. When inconsistency in enforcement across the state was identified as a problem, review teams were formed and sent into other areas to perform a total review across Kansas. Deficiencies which were identified were compared, then these data were used to focus efforts for improvement where they were most needed. Education will continue as an important part of customer service improvement measures. Employees and processing plant personnel will continue to receive training to correct deficiencies as they are identified by regular reviews and surveys. Cross-state reviews and correlation reviews will become a permanent part of this program to avoid inconsistency in the future. In-plant sanitation and HACCP reviews will be available to plants to assist them with food safety protection. Special focus is also on employees, including food safety training, individualized remedial training, motivation, and disciplinary measures if training actions fail.

Nutrient Management

The department's newest sub-program, *nutrient management* for confined livestock operations, was assigned to KDA with the passage of SB 2950 in the 1998 legislative session. This new process is being developed with customer service as the underlying tenet. Communications with livestock producers, design of forms and processes and interactions with other state agencies are being planned with efficiency and customer service in mind.

Weights and Measures/Forbes Field Laboratories

The *weights and measures program* analyzes data generated by inspector activities to focus program resources where they are most needed. This program's current processes were streamlined through systems analysis performed in 1995-1996. A statistical testing program was instituted in all sections of the program except for petroleum measurement. Legislative action allowed petroleum quality and quantity testing to be returned to the state. Weights and measures data are used to analyze employee and industry performance and to design training and corrective measures when needed both internally and externally. Complaints are logged, tracked and replied to within a specific time period. Employees follow a specific protocol and code of behavior when they enter a business; they also dress appropriately for the type of job they will be performing.

The *laboratory program* is housed with and managed by the weights and measures program manager. The laboratory provides service to internal customers--the programs which take samples in the field. To improve its processes, it is meeting with other programs for feedback, cross-

training employees and continuing to work to balance efficiency with customer service.

Division of Water Resources

Improvement of customer service in all subprograms is an objective of the *division of water resources*. The addition of an operations manager to administrative staff has given the division an individual who can review program processes on an ongoing basis for continuous improvement. This individual also works to instill the philosophy of customer service into the daily duties of program employees.

DWR utilized a 1997 customer service survey to determine how well their permit/application forms were being utilized by applicants. Although the majority of respondents indicated the forms were easy to understand and clear, 66 percent also said they needed assistance to complete the application. The results of the survey indicate the program still can find ways to improve its permits and applications. Future plans include disseminating a new survey for external customers and continued focus on issues raised by an employee survey.

Personnel in the water appropriations program have repeatedly identified a backlog of certificates as a top priority issue. For that reason, a team was formed to focus on ways to improve the certification process. Another team began development of a compliance enforcement plan, partially as the result of customer feedback from the Western Kansas GMD managers, who encouraged the division to regulate over-pumping.

In response to these customer concerns, DWR has developed a five-year plan to bring certification up-to-date and to reach full compliance enforcement of over-pumping. Program managers also have created weighted difficulty factors for tasks associated with Project Zeroed Out. These factors are used to track employee performance and work output. A new tracking system for water right files also has been adopted.

In the area of water structures, for the first time tracking systems are in place. The water structures inventory database tracks receipt of applications for permits, their processing and condition status and inspections which are performed. The database also is used to assign work projects, quickly determine the status of projects, and evaluate employee performance of assigned reviews. A 1999 priority is an organized complaint tracking and disposition process. Attendance at organizational meetings and informational presentations and workshops also are a priority for customer service from the division of water resources.

Grain Warehousing

The *grain warehousing program* was transferred to the Department of Agriculture in 1997. The program was not computerized. It possessed one Apple computer and only paper records were kept. Since 1997, this program has been brought up to the computerization level of the rest of the department. It currently is analyzing its revenue levels.

Dairy

The *dairy program* licenses the different components of the dairy industry in Kansas. It is utilizing analysis of data to determine the level of consistency across the state and to improve that consistency. Field employees now have computers. The program manager continues to look for ways to stay up-to-date on events in the field, including correlation inspections and surveys. A new enforcement tracking system is in place, as is a program to simplify forms and letters.

Plant Protection/Pesticide Use

The *plant protection program* has just completed a peer review and is looking forward to receiving the peer review team's suggestions for improvement. This program utilizes surveys to determine the satisfaction of its customers. Field employees recently received new computers and are working toward a paperless reporting system.

The *pesticide use program* is seeking customer input through several avenues. These include customer surveys, interaction with complainants, the regulated community, and pesticide applicators attending recertification meetings. Meetings now are beginning with a task force which will identify needed changes in the Kansas Pesticide Law. The major improvement objective for the next six months is to put in place processes which will improve enforcement timeliness.

Commodity Commissions

The program which administers the work of the *Kansas Corn, Grain Sorghum and Soybean Commissions* is focusing in particular on informing the first purchasers of grain of their responsibilities under the check-off law. The program manager utilizes statistical data to determine where cropping patterns have changed and elevator managers may be unaware of the check-off for a new crop.

ACAP Program

The *agricultural commodities assurance program* continues to work to simplify its processes. This includes electronic data transfer from the field and simplification of forms.

Kansas Agricultural Statistics

The *statistical program* (Kansas Agricultural Statistics) is a cooperative federal/state of Kansas endeavor. Farmers are both data users and data providers through their cooperation with surveys. The program manager is utilizing every opportunity to have personal contact with producers encouraging them to cooperate.

Budget Highlights

The Fiscal Year 1996 budget was the first one prepared under this administration and the direction of Secretary Devine.

FY 1995 actual expenditures	\$ 20,243,431
FY 2000 current services request (including state water plan)	\$ 21,935,634

These budget numbers equate to a **total increase of 8.4 percent** since FY 1995; this is an **average increase of 1.7 percent** per year since FY 1995.

The average increase in budget since FY 1995 due to increases in salaries and wages alone has been **1.95 percent**. This means the Department of Agriculture's budget has demonstrated **negative average real growth** during this administration.

Some of the highlights accomplished so far in this administration:

- Agricultural marketing functions were transferred to the Department of Commerce and Housing.
- The Weights and Measures program was restructured; the petroleum measurement enforcement program was transferred to KDA from the Department of Revenue. Under this administration, the accuracy of the state's fuel measuring devices is at 98 percent.
- Grain Warehouse program was transferred to KDA in 1997 and has since been computerized.
- Computerization initiative / PASSPORT continues as a priority.
- Consolidation of fiscal, records, legal and information resources has been accomplished.
- As a result of consolidation, computerization and other efficiency measures, there has been a total reduction of 11 FTEs since FY 1996.
- Evaluation and remedial measures put into place with the state meat and poultry inspection program.
- The organizational chart illustrates a "flattening out" of the organizational pyramid of the Department.

The realigned FY 1999 budget includes the following:

- Four unclassified contractual veterinarians for meat program
- Four regular veterinarian FTEs for meat program
- PASSPORT / computerization issue
- Consolidation of Record Center with Fiscal Office
- Department move to remodeled offices

FY 2000 Current Services request continues routine KDA activities

- Transfer of the four unclassified contractual veterinarians in the meat program to regular unclassified positions

FY 2000 Enhancements

- Six new Agricultural Inspector II positions for meat program. **\$241,028**
(\$120,514 SGF) (Plus related travel / training).
- Pesticide Survey (funded by fertilizer fee fund) **\$100,000**
- Best Management Practices **\$50,000**
- State Water Plan **\$999,977**

Governors' Ethanol Coalition

The Governors' Ethanol Coalition is composed of twenty-two of the nation's governors, and is dedicated to increasing the use of ethanol based fuels, decreasing the nation's dependence on imported energy resources, improving the environment, and stimulating the national economy. As such, the Governors' Ethanol Coalition provides a unique link between the nation's governors, ethanol producers, corn growers, automobile manufacturers, environmental organizations, and federal government officials.

During the 1999 chairmanship of Governor Graves of Kansas, the coalition will hold three national meetings to maintain and reinforce the unique relationships among the above-described organizations. For environmental and health concerns, the nation has decided to clean-up the fuels which have powered America for nearly a century. The federal Clean Air Act identified numerous areas of the country which must reduce or eliminate their pollution levels. Those areas must change the gasoline and diesel fuels used, either year-round or seasonally. The federal Energy Policy Act has required private and public fleets nationwide to begin phase-in of alternative-fuel vehicles in purchase of new vehicles. In the coming years, cleaner and cleaner fuels such as ethanol, natural gas, propane, and electric will be used in cars, trucks, and buses. Today's key issue is to determine which alternatives will replace or be added to gasoline and diesel fuel to reduce pollution.

The national fuel ethanol market has grown in 1998 to nearly 1.7 billion gallons of annual production and usage. Kansas has four ethanol plants which produce approximately 61 million gallons annually from nearly 25 million bushels of Kansas grains - grain sorghum, corn, and wheat. This market provides an outlet for a value-added agricultural product which is typically exported from the state and used throughout the country returning financial rewards to Kansas producers. Significant opportunities currently exist in 1999 for expanding ethanol's usage and acceptance in California (an additional 500 million gallon market) and in the heavily polluted metropolitan areas in Mexico.

CHANGE OF CLASSIFICATION OF PROGRAM MANAGERS

I am proposing that all of the program managers and administrative positions within the Kansas Department of Agriculture be placed in the unclassified service of the Kansas civil service system. These individuals are the direct link between myself and the program staff. These employees are in policy and administrative roles in which they exercise a great deal of autonomy in determining what staff and resource priorities will occur within their respective programs. Because of their role in shaping and developing administrative and enforcement policies I believe that these individuals should be unclassified in the Kansas civil service system. Currently, there are 19 managers and administrative staff that manage the programs in KDA. Of those 19 employees, 4 are currently unclassified. The unclassified managers' salaries range from \$48,903 to \$68,500 with an average salary of \$56,810. The 15 classified managers and administrative staff salary ranges from \$32,864 to \$79,123 with an average salary of \$51,670.

It should be noted that this change in classification would not affect any person who is currently in a management position. However, the proposed bill does have language that would allow a currently classified program manager to voluntarily transfer into the unclassified system by submitting a letter to myself and the director of the division of personnel services.

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AN ACT relating to state officers and employees; concerning placement of certain positions in the unclassified service; amending K.S.A. 2-1315, 2-1316, and 74-506d and K.S.A. 74-569 and repealing existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2-1315 is hereby amended to read as follows: 2-1315. (a) The ~~state board of agriculture~~ secretary is hereby empowered to decide and adopt methods as official for control and eradication of noxious weeds and to publish such methods, and to make and publish such rules and regulations as in its judgment are necessary to carry into effect the provisions of this act, and to alter or suspend such rules and regulations when necessary.

(b) There is hereby created within the ~~state board~~ department of agriculture, a noxious weed ~~division~~ program which ~~shall~~ may consist of a ~~chief administrative officer~~ director, ~~assistant director~~, and other employees, ~~all of whom~~ Any chief administrative officer of the noxious weed program appointed by the secretary shall be in the unclassified service and shall serve at the pleasure of the secretary. Any other employees appointed under the noxious weed program shall be under the classified service of the Kansas civil service act. The state board of agriculture is authorized to appoint a director of the noxious weeds division and fix the director's salary, and such director shall be the executive officer thereof and shall be under the supervision of the secretary of the board. Nothing in this subsection shall affect the classified status of any person employed by the department of agriculture as director of the noxious weed division or program on the day immediately preceding the effective date of this act. The provisions of this subsection shall not be construed to limit the powers of the secretary pursuant to K.S.A. 75-2948 and

amendments thereto.

(c) The ~~state board~~ secretary of agriculture may establish not to exceed five (5) noxious weed control districts within this state and define the boundaries thereof, such districts to be constituted to provide for the efficient control and eradication of noxious weeds and for the most economical supervision thereof by the state.

(d) The ~~director, with the approval of the board shall,~~ secretary may appoint an assistant state weed control director for each district so established, and it shall be the duty of each such assistant to consult, advise, render assistance and direction to county and city weed supervisors as to the best and most practical methods of noxious weed control and eradication and to render every possible assistance and direction to such supervisors for the most effective control and eradication of noxious weeds; to aid in infestation and prosecutions of violations of this act; and to prepare such records and reports and to perform such other services and duties as the state weed control director shall direct. The assistant director shall reside in the district for which he or she is appointed during the time he or she shall serve as such assistant director. The ~~director, with the approval of the board of agriculture,~~ secretary may also appoint such additional assistants and clerical employees as may be deemed necessary to properly conduct the work of the noxious weeds division program. It shall be the duty of the county agricultural agent to cooperate with and assist the county weed supervisors in an intensive educational program on weed control.

(e) The secretary or a designee of the secretary ~~director of the noxious weeds division of the state department of agriculture~~ shall enforce the rules and regulations of the board adopted pursuant to this section and all provisions of this act and acts amendatory and supplemental thereto.

(f) The ~~state board~~ secretary of agriculture is hereby authorized to enter into agreements

with any agencies of the federal government for cooperation in the control and eradication of noxious weeds in Kansas in keeping with the provisions of this act.

Sec. 2. K.S.A. 2-1316 is hereby amended to read as follows: 2-1316. (a) The board of county commissioners of each county shall, and the governing body of any incorporated city or group of counties or cities may, employ for a stated time each year, with the approval of the secretary of the state board of agriculture, a competent person as county, city or district weed supervisor.

(b) The weed supervisor shall consult and cooperate with the ~~state division~~ staff of the noxious weeds program and with the any assistant weed control director appointed for the supervisor's district, make annual surveys of infestations (compile data on areas eradicated and under treatment), and submit an annual report to the county commissioners and to the ~~state division of noxious weeds~~ program staff, to consult and advise upon all matters pertaining to the best and most practical methods for noxious weed control and eradication and to render every possible assistance and direction for the most effective control and eradication within the supervisor's district; investigate or aid in the investigation and prosecution of any violation of this act and report violations of which the supervisor has knowledge to the county attorney.

(c) The salary of the county weed supervisor shall be borne as follows: The ~~state board department~~ of agriculture to pay not more than one-fourth thereof from any funds available, not less than three-fourths thereof to be paid out of the county noxious weed fund, prorated as may be decided at the time of such employment by the governing body or bodies employing such supervisor.

(d) The boards of county commissioners, governing bodies of cities and townships boards, with the aid of their weed supervisors, shall make by February 15th each year an annual weed

eradication progress report to the ~~state board~~ department of agriculture for the preceding calendar year, on a form supplied by the ~~state board~~ department, and such other weed reports as established by rules and regulations of the ~~state board~~ secretary of agriculture.

Sec.3. K.S.A. 74-506d is hereby amended to read as follows: 74-506d. The ~~state board~~ secretary of agriculture is hereby authorized to employ a chief engineer of the division of water resources and such expert assistants, clerical and other help as may be necessary to properly carry out the provisions of this act, and to fix their compensation., ~~all of whom~~ The chief engineer shall be in the unclassified service and shall serve at the pleasure of the secretary. All other personnel shall be under the classified service of the Kansas civil service act. Nothing in this subsection shall affect the classified status of any person employed by the department of agriculture as chief engineer of the division of water resources on the day immediately preceding the effective date of this act.

Sec. 4. K.S.A. 74-569 is hereby amended to read as follows: 74-569. (a) The secretary of agriculture may organize the department of agriculture in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of this act or with the provisions of law, and the secretary may establish policies governing the transaction of business of the department and the administration of each of the ~~divisions~~ programs within the department. Except as provided in K.S.A. 83-205, and amendments thereto, the chief administrative officer of each division program of the department shall be within the ~~classified~~ unclassified service under the Kansas civil service act, shall serve at the pleasure of the secretary, and shall perform such duties and exercise such powers as the secretary of agriculture may prescribe and such duties and powers as are prescribed by law. Such chief administrative officers shall act for and exercise the powers of the secretary of agriculture to the extent authority to do so is delegated by the secretary

of agriculture. Nothing in this subsection shall affect the classified status of any person employed by the department of agriculture as a chief administrative officer of a program on the day immediately preceding the effective date of this act. Each chief administrative officer who is currently in the classified service may voluntarily opt to be immediately transferred to the unclassified service under the Kansas civil service act by submitting a written request to the secretary of agriculture and to the director of the division of personnel services. The provisions of this subsection shall not be construed to limit the powers of the secretary pursuant to K.S.A.75-2948 and amendments thereto.

(b) Except as otherwise provided in this act, and subject to the Kansas civil service act, the chief administrative officer of each division program of the department of agriculture shall appoint all subordinate officers and employees of such officer's division program, subject to the approval of the secretary, and all such subordinate officers and employees shall be within the classified service of the Kansas civil service act. Personnel of each such division program shall perform such duties and exercise such powers as the chief administrative officer of their division program to the extent authority to do so is delegated by such administrative officer.

Sec. 5. K.S.A. 2-1315, 2-1316, 74-506d, and K.S.A. 74-569 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

AN ACT relating to commercial fertilizers; inspection fee, increase or decrease in amount; records and reports; revocation of registration; penalties; disposition of moneys received; fertilizer fee fund; fertilizer research fund; amending K.S.A. 2-1205 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. is hereby amended to read as follows: 2-1205. An inspection fee shall be collected upon all commercial fertilizers sold, offered or exposed for sale, or distributed in Kansas, which shall be at a rate per ton of 2,000 pounds fixed by rules and regulations adopted by the state board of agriculture, except that such rate shall board of agriculture, except that such rate shall not exceed ~~\$1.70~~ 1.67 per ton of 2,000 pounds. The inspection fee rate per ton of 2,000 pounds in effect on the day preceding the effective date of this act shall continue in effect until the state board of agriculture adopts rules and regulations fixing a different inspection fee rate under this section. Each person registering any commercial fertilizer shall pay the inspection fee on such commercial fertilizer sold, offered or exposed for sale, or distributed in Kansas, and shall keep adequate records showing the tonnage of each commercial fertilizer shipped to or sold, offered or exposed for sale, or distributed in Kansas, and the secretary, and duly authorized representatives of the secretary, shall have authority to examine such records and other pertinent records necessary to verify the statement of tonnage.

Each person registering any commercial fertilizer shall file an affidavit semiannually, with

the secretary, within 30 days after each January 1 and each July 1, showing the tonnage of commercial fertilizer sold or distributed in Kansas for the preceding six-month period, and ~~shall~~ may pay to the secretary the inspection fee due thereon for such six-month period, except that the registrant shall not be required to pay the inspection fee or report the tonnage of commercial fertilizers or fertilizer materials sold and shipped directly to fertilizer manufacturers or mixers, but the fertilizer manufacturers or mixers shall keep adequate records of the commercial fertilizers sold or distributed in this state, and report to the secretary the tonnage thereof and pay the inspection fee due thereon. If the affidavit is not filed and the inspection fee is not paid within the thirty-day period, or if the report of tonnage is false, the secretary may revoke the registrations filed by such person; and if the affidavit is not filed and the inspection fee is not paid within the thirty-day period, or any extension thereof granted by the secretary, a penalty of \$5 per day may be assessed against the registrant and the inspection fee and penalty shall constitute a debt and become the basis for a judgment against such person. The secretary may grant a reasonable extension of time.

The Kansas state ~~board~~ department of agriculture is hereby authorized and empowered to reduce the inspection fee by adopting rules and regulations under this section whenever it shall determine that the inspection fee is yielding more than is necessary for the purpose of administering the provisions of this act as listed below, and the ~~board~~ secretary is hereby authorized and empowered to increase the inspection fee by adopting rules and regulations under this section when it finds that such is necessary to produce sufficient revenues for the purposes of administering the provisions of this act, but not in excess of the maximum fee prescribed by this section. The secretary shall remit all moneys received by or for the secretary under article 12 of chapter 2 of Kansas Statutes Annotated and amendments thereto to the state treasurer at least

monthly. Upon receipt of any such remittance the state treasurer shall credit the remittance as follows: (1) An amount equal to \$1.40 per ton shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto; (2) an amount equal to \$.04 per ton shall be credited to the fertilizer research fund; and (3) the remainder shall be credited to the fertilizer fee fund. \$100,000.00 from the fertilizer fee fund shall be authorized for the purpose of conducting a pesticide use survey. All expenditures from the fertilizer fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state ~~board~~ department of agriculture or by a person or persons designated by the secretary.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

JAN 8 1999

Honorable Alice Devine
Secretary
Kansas Department of Agriculture
901 South Kansas Avenue
Topeka, KS 66612

Dear Secretary Devine;

During the month of August 1998, the Food Safety and Inspection Service (FSIS) initiated a comprehensive review of the Kansas Meat and Poultry Inspection Program. As you know, the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) require state administered meat and poultry inspection programs to be at least equal to the Federal program. Federal monitoring of this requirement is performed annually, based on a set of oversight strategies, one of which may be the comprehensive review process. The purpose of the comprehensive review is to determine (1) your state's compliance with the State Performance Plan (SPP) and (2) the adequacy of the various components which in combination represent the overall inspection system. These components are reviewed by specialists in the work areas of compliance, in-plant reviews, resource management, finance, chemistry and civil rights. Comprehensive reviews may include targeted follow-up reviews to measure the success of corrective actions prompted by the initial findings.

At this time, we are providing you with an interim report of the comprehensive review findings for the state for Kansas. There are several reasons for providing an interim report.

- FSIS delayed the civil rights component of the review due to budget related travel restrictions. This activity has been rescheduled for January 1999.
- Some revisions to the State Performance Plan are still in progress and must be assessed for the final report.
- Most importantly, many significant improvements are underway or proposed for implementation over the next 6 months. We believe that a realistic final rating should take these improvements into account.

FSIS specialists from the areas of compliance, in-plant reviews, resource management, and chemistry performed on-site reviews. FSIS specialists in finance prepared a report based upon their independently scheduled review in September 1997. Reports from all of these areas have been provided to Kansas.

FSIS has serious concerns, associated primarily with the August in-plant review findings and related resource management issues. These concerns and the significant improvements

Honorable Alice Devine

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underway are the primary topics of this report. Summaries of the review findings and corrective actions are enclosed at the end of the report.

Slaughter and processing plants were selected at random for the in-plant reviews. Additional plants were targeted based upon past history. The in-plant reviews were performed during the week of August 3, 1998, by a team lead by Dr. Stephen Perraut, the FSIS reviewer. Other review team members included Dr. Joe Beuerlein, State Program Manager at that time and the respective state supervisors. Dr. William Leese, Director, Federal-State Relations Staff (FSRS) from FSIS and Ms. Mary Jane Stattelman, Assistant Secretary, Kansas Department of Agriculture participated as observers. Dr. Perraut and other team members discussed the findings for each plant. Consensus was demonstrated. Ordinarily only serious findings, likely or certain to cause adulteration of product, were recorded on the FSIS report. Dr. Perraut's report of the findings was faxed to the state program in preparation for the exit teleconference.

On August 25, 1998 an exit teleconference covering in-plant reviews was held and included the following individuals:

State Representatives

Ms Alice Devine
Secretary of Agriculture
KS Department of Agriculture

Dr. Glen Riggs
Area Supervisor
Meat and Poultry Inspection

Ms. Mary Jane Stattelman
Assistant Secretary of Agriculture
KS Department of Agriculture

Dr. Lyman Kruckenberg
Area Supervisor
Meat and Poultry Inspection
(Currently Program Manager)

Dr. Joseph Beuerlein
Program Manager
Meat and Poultry Inspection
KS Department of Agriculture
(Not currently with Program)

Mr. Robert Doctor
Compliance Officer
Meat and Poultry Inspection

Federal (FSIS) Representatives

Mr. John McCutcheon
Associate Deputy Administrator
Office of Field Operations

Dr. Stephen Perraut
Reviewer
Technical Service Center

Dr. William Leese
Director
Federal-State Relations Staff

Mr. Richard Benda
Reviewer
Technical Service Center

Honorable Alice Devine

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Mr. Donald Smart
Branch Chief
Domestic Review
Technical Service Center
(Currently Director, Program Review)

Dr. Mohamed Mohanna
Staff Officer
Federal-State Relations Staff

The review team's findings were discussed during the teleconference. Seven of the nine plants reviewed had serious deficiencies. Six of the plants had multiple serious deficiencies. The findings strongly suggested that the inspection system was out of control. You reported that corrective actions were already underway along with a strong proactive plan to upgrade the program.

During the week of September 1, 1998, Dr. Mohamed Mohanna, Staff Officer, FSRS, Ms. Stattelman, and Dr. Kruckenberg visited 6 plants with a history of serious deficiencies during the August review. This FSIS initiative reaffirmed that State-initiated corrective actions were in place. Dr. Mohanna noted that serious deficiencies had been corrected or were under inspection program controls. He commented that staffing shortages were causing difficulties in the state program coverage of processing plants and in covering veterinary assignments.

As part of your corrective strategy, Kansas requested technical support from FSIS. Dr. Perraut was detailed by FSIS to provide this support for a two-month period beginning in mid September. Following this assignment, Dr. Perraut reported that, "It is apparent to me that positive attitudes in the Inspection Program have greatly influenced the standards being currently monitored and enforced... great strides have been made to assure that only safe, wholesome product is being produced".

During the week of November 16, 1998, FSIS conducted follow-up in-plant reviews. The review team was led by Mr. Richard Benda, an FSIS reviewer, and included Dr. Kruckenberg and the respective state supervisors. Dr. Leese, Ms. Stattelman and your assistant, Ms. Carol Jordan were observers. The five plants still operating that had multiple serious deficiencies on the August review were revisited, along with 3 additional plants, for an expanded assessment of the inspection program. Although a few serious deficiencies were found, the overall improvement was remarkable. The Kansas program responded to all deficiencies promptly and in an appropriate manner. **The State inspectors, supervisors, Dr. Kruckenberg and your staff are to be commended for accomplishing so much in three months.**

Ms. Betty Gourley, Management Analyst, Resource Management Staff, FSIS, reviewed the resource management aspect of the Kansas program. She concluded that with the implementation of proposed staffing initiatives, FSIS expectations should be met concerning veterinary assignments and processing plant coverage. Ms. Gourley commented favorably on the dedication of you and your inspection staff to meet resource management challenges. (As you know, FSIS has approved matching funds to cover the increased staffing.)

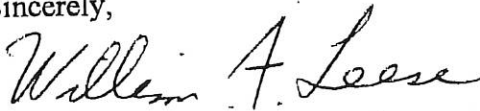
Honorable Alice Devine

4

Mr. Billy stated in his letter of September 2, 1998, that a rating of Category 4, Unacceptable, would be considered if deficiencies consistent with the August 1998 review persisted. However, the transformation recognized during the November 1998 review is a sign of remarkable improvement. With much accomplished but work still in progress, it is unreasonable to give a final rating at this time. A provisional rating of Category 3 – Acceptable with significant variations will be assigned. A final in-plant review, for rating purposes, will be scheduled for the latter half of calendar year 1999. This scheduling will accommodate timeframes for implementation of Kansas program staffing initiatives. If the work in progress proceeds according to plan, the program may have the potential to surpass the provisional rating. However, if the proposed and ongoing program initiatives are suspended for any reason, the concerns expressed in Mr. Billy's letter will be revisited. A copy of Mr. Billy's letter is enclosed.

In closing, we wish to thank you and your staff for the excellent cooperation provided to the members of the FSIS review teams. Furthermore, you and your staff are to be commended for the remarkable transformation underway in the Kansas Meat and Poultry Inspection Program. Dr. Kruckenberg, Program supervisors, inspectors and the establishments deserve much credit for their accomplishments, as demonstrated by the improvements noted during the FSIS follow-up review.

Sincerely,



William F. Leese
Director
Federal-State Relations Staff

Enclosures

FINDINGS REQUIRING CORRECTIVE ACTION
1998 COMPREHENSIVE REVIEW
KANSAS
STATE MEAT AND POULTRY INSPECTION PROGRAM

Reference: FSIS Directive 5720.2 Rev.2, Attachment 2-6

FINDING NO. 1: Regulations (Element No. 2):

A current copy of the State Meat and Poultry Inspection Regulations is not included in the new State Performance Plan (SPP) package.

State Corrective Action:

Ongoing activity with the Federal-State Relations Staff to complete initiatives associated with the SPP.

FSIS Assessment of Corrective Action:

Work in progress.

FINDING NO. 2: Resource Management (Element No. 4):

Staffing is not suitable to cover daily patrols of processing operations and to cover veterinary duties in a manner consistent with FSIS requirements. Results of the August review found some in-plant state inspection personnel ineffective. Training files were not ready for review.

State Corrective Action:

Staffing increases are proposed over the next 6 months to cover inspection of processing operations and veterinary duties, including final dispositions. Secretary Devine, Dr. Kruckenberg and Dr. Perraut held training and informational meetings at central locations. Dr. Kruckenberg, Dr. Perraut and supervisors visited plants to communicate with inspectors and plant representatives. The newly hired training officer is addressing formal training issues and will be scheduled for appropriate FSIS training.

FSIS Assessment of Corrective Action:

FSIS has approved matching funds to cover requested staffing increases to meet FSIS requirements. A profound increase in responsiveness of the inspection force was demonstrated during the November follow-up review that attests to the success of KS program initiatives. FSIS supports assignment of a training officer and proposed training initiatives. These activities represent important work in progress.

FINDING NO. 3: Labels and Standards (Element No. 6):

General labeling failures were identified in two plants on the August review including illegible safe handling statements, missing species identifications and ingredient statements.

State Corrective Action:

Training and informational meetings with inspectors and supervisory plant visits. Technical support from Dr. Perraut.

FSIS Assessment of Corrective Action:

Successful resolution based upon the November follow-up review.

FINDING NO. 4: IN-Plant review/Enforcement (Element No. 7):

On the August review multiple serious deficiencies were identified in 6 of 9 plants visited. One of 9 plants had a single serious deficiency. The enclosed letter of September 2, 1998 from Mr. Billy provides additional details. On the follow-up review, 2 of 8 plants had a single serious deficiency (fecal contamination). One of 8 had multiple serious deficiencies (loose rust and flaking paint above exposed product, rodent droppings, and dead insects in dry storage areas). All operations in this plant were suspended by the State, on the day of the review, due, among other things, to water line problems.

State Corrective Action:

All deficiencies have been reported as corrected or under control pending correction.

FSIS Assessment of Corrective Action:

The November follow-up review demonstrated that State initiatives to address in-plant deficiencies are effective.



United States
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Washington, D.C.
20250

SEP 2 1998

Ms. Alice Devine
Secretary of Agriculture
Kansas Department of Agriculture
901 South Kansas Avenue
Topeka, Kansas 66612

Dear Secretary Devine:

This letter addresses the findings and subsequent actions associated with the in-plant review by the Food Safety and Inspection Service (FSIS) of the Kansas Meat and Poultry Inspection Program. The in-plant review took place from July 31 through August 7, 1998 as part of an overall comprehensive review of the state program. The scheduling was based upon a 3-year review cycle for state programs with a rating of 3 on the previous review. A rating of 3 applies to a program that is acceptable with significant variations.

Nine plants were reviewed in August 1998 by Dr. Stephen Perraut from the FSIS Technical Service Center. A team approach was used in which Dr. Joseph Beuerlein, State Program Manager and the state area supervisor or assistant area supervisor had an opportunity to participate in the classification of deficiencies. The findings were discussed among team members. Findings reported as serious by Dr. Perraut were agreeable to the team as a whole.

The FSIS Deficiency Classification Guide was used to classify deficiencies. Major and critical deficiencies have serious public health significance. Such serious deficiencies are likely or certain to result in adulterated product. Such deficiencies were observed in 7 of the 9 state plants visited. Six of the 7 plants had multiple serious deficiencies including the following potential public health concerns:

- Fecal contamination was observed on multiple beef and or swine carcasses in three plants.
- Dripping and /or heavily beaded condensate was falling on loosely covered product or located on overhead structures above exposed product in three plants.
- Dead flies, particles of foreign materials, dust and dried meat particles were observed on product-contact packaging materials in three plants.
- Live and dead flies were observed at one plant in a dry storage area where exposed packing materials were stored and in the processing department where exposed product was present.
- Residues from previous operations were observed on equipment in processing departments in two plants.

- General labeling failures were identified in two plants.
- A smoke house was located in a room not maintained as a production department in one plant.

Similar deficiencies were identified in the 1995 FSIS comprehensive review. Although improvements were documented in an FSIS follow-up to the 1995 review, recurring deficiencies were associated with one plant that also showed serious deficiencies in the current review.

At the invitation of the Kansas Department of Agriculture, FSIS participated in the peer review of the state's program in August 1997 and provided guidance to Kansas in developing team problem solving action plans and provided training. The peer review of plants conducted as part of this Kansas initiative found a pattern of deficiencies consistent with the 1995 and 1998 FSIS reviews.

Findings from the August 1998 FSIS review showed serious recurring deficiencies in spite of state program initiatives. In general, in-plant state inspection personnel were found to be ineffective and the inspection program appeared to be weak in maintaining regulatory control. Supervisory review records at some locations did not accurately reflect the conditions that were observed during the FSIS review. Documentation on Process Deficiency Records by state inspectors, for the most part, did not adequately describe the conditions observed during the FSIS review.

Although state program control actions were taken to correct observed deficiencies at the time of the FSIS review, concern remains for program effectiveness in enforcing regulations and protecting public health. Therefore, FSIS will perform a follow-up review of plants with serious deficiencies on an accelerated schedule, during the week of September 1, 1998.

FSIS requests that you submit a report to Dr. William Leese, Director, Federal-State Relations Staff, by October 1, 1998, defining immediate and ongoing measures in place to control and correct the deficiencies identified in the review. Also please provide Dr. Leese with a complete report of corrective measures and actions in place for the overall program by November 1, 1998.

FSIS will conduct a more extensive in-plant review process beginning on or about November 16, 1998. This systems review will include plants with a history of serious deficiencies and a sufficient number of additional plants for a thorough assessment. Based upon the overall findings FSIS will determine the program rating. If a pattern of deficiencies consistent with the August 1998 findings persists, a rating of 4 (unacceptable) will be considered along with deliberations that may lead to program designation.

Thank you for the superb cooperation provided by your staff on a day to day basis and during the course of the comprehensive review.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Billy", is written over the typed name. The signature is fluid and cursive.

Thomas J. Billy
Administrator



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

RECEIVED

JAN 04 1999

K.D.A.
Office of Secretary

DEC 23 1998

Honorable Alice Devine
Secretary
Kansas Department of Agriculture
901 South Kansas Avenue, 7th Floor
Topeka, Kansas 66612

Dear Ms. Devine:

This is to notify you of the fiscal year 1999 allocation for the State of Kansas Cooperative Inspection Program. The Agency's fiscal year 1999 appropriation provides \$40,655,000 for the Cooperative Inspection Program, a decrease of \$300,000, related to the State of Florida designation, from the fiscal year 1998 appropriation of \$40,955,000. No increase was allowed for pay raises or inflation.

We have carefully considered each State's budget request to determine the most equitable distribution of the limited available resources. Through analysis of the state budget submission, plant and personnel reports, and additional input from state personnel, we have determined your allocation to be \$1,769,000.00.

We have had a long and fruitful partnership with our Cooperative Meat and Poultry Inspection Program. We fully support the program and want it to continue. We have funded the program at the level of your request. Fund availability will be contingent on fulfilling your proposed staffing plan.

Please keep us advised of any changes in the requirements of your State Agency.

The Agency's fiscal year 1999 appropriation also includes funding for State Cooperative Inspection activities as a part of the President's food safety initiative. This funding is separate and additional to the funds included in your allocation and is available on a 50 percent cost sharing basis. The specific items included in this funding are:

Purchase and installation of computers at the plant level that are compatible to FSIS computer systems	\$3,875,000
Upgrading State laboratory equipment for pathogen testing	856,000
Training State inspectors in HACCP	500,000

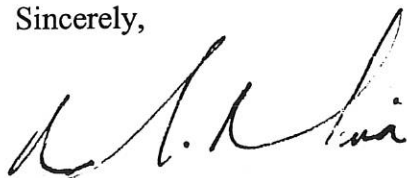
Instructions for requesting funds for the food safety activities will be issued to you separately.

Please forward all communications to:

USDA, FSIS, OM, FMD, FRAB
Room 2136-S
14th and Independence Ave., SW
Washington, DC 20250

Please contact Dr. William F. Leese on (202) 418-8897 or Francisco Apodaca on (202) 690-4260, if you have any questions, comments, or require other assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "M.T. Mina". The signature is fluid and cursive, with a large initial "M" and a distinct "T" and "Mina" following.

Mark T. Mina
Deputy Administrator
Field Operations



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

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OCT -4 1997
FISCAL SERVICES

OCT 29 1997

Alice Devine, Secretary
Kansas Department of Agriculture
901 South Kansas Avenue
Topeka, Kansas 66612

Dear Ms. Devine:

A fiscal review of the Kansas Department of Agriculture (KDA) Cooperative Meat and Poultry Inspection (MPI) program was conducted during the period September 16-24, 1997, by Elsie Evans, Accountant, Financial Reviews and Analysis Branch, Budget and Finance Division.

The review was conducted to determine the sufficiency of the financial systems, records, reports, and procedures employed by the KDA in accounting for the State program.

Our inspection covered Federal Fiscal Years (FY) 1994 through 1996, and indicated those tests deemed appropriate to verify that the State agency is operating in accordance with FSIS Directive 3300.1, Rev. 1, Fiscal Guidelines for Cooperative Meat and Poultry Inspection Programs.

Officials Contacted:

Accounting records, reports and explanations of the accounting system were provided by the following officials:

Joyce Brokaw, Accountant I, Fiscal Operations, KDA
Harold Flickinger, Accountant II, Fiscal Operations, KDA
Cathy Darnall, Public Service Administrator I, MPP, KDA
Max Foster, Fiscal Operations Manager, KDA
Joe Beuerlein, Meat and Poultry Program Director, KDA

As a result of the review, we conclude that the KDA is operating in compliance with provisions of FSIS Directive 3300.1, Rev. 1.

Our review revealed that the KDA should perform the following actions:

REVISE SF-269A, FINANCIAL STATUS REPORTS FOR FY 1994 THROUGH 1996

The final SF-269A reports for FY 1994 through 1996, should be revised to include the adjustments contained on the enclosed schedules. A summary of the adjustments is as follows:

a) FY 1994 - As a yearend closeout process, the KDA transfers costs contained on October reports to the prior year to ensure that costs are charged to the proper Federal fiscal year. The KDA appropriately excluded the transferable costs from the FY 1995 expenditure reports but did not include those costs on the FY 1994 expenditure reports. Additionally, the fourth quarter did not reflect the fixed indirect cost rate. b) FY 1995 - The final report was not revised to reflect the fixed indirect cost rate. c) FY 1996 - The adjustment is due to a transitional error.

The revised SF-269A reports and a letter to Ray Bolyard, Director of the Resource Management Staff, Inspection Operations, requesting additional funds should be sent to the address below. Approval of the additional Federal payment will be based on the availability of funds.

Francisco A. Apodaca, Chief
USDA, FSIS, BFD, Financial Reviews and Analysis Branch
Room 2136, South Building
14th and Independence Avenue, SW
Washington, DC 20250

For future SF-269A reporting, normal reporting procedures should be followed. We have requested that you submit this information to this office so that the reviewer will be able to approve the fiscal review changes. We will forward the documentation to the appropriate offices for processing.

**PROCEDURES FOR REVIEW AND PREPARATION OF
SF-269A EXPENDITURE REPORTS**

Since FY 1994, the KDA has implemented a process of transferring costs between fiscal years and the State's accounting system has been revised. Procedures should include details regarding yearend close out activity; identification and handling of all unallowable operating costs; actions required to compute, allocate and track unallowable inspection costs; and accuracy checks.

Please submit a copy of the procedures to the Financial Reviews and Analysis Branch (address above) by November 30, 1997.

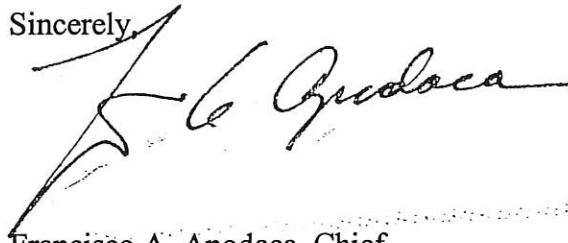
OTHER AREAS OF REVIEW

The following areas were also examined from the standpoint of internal controls and sufficiency of financial records:

1. Personnel
2. Travel
3. Equipment
4. Lab Costs
5. Overtime Reimbursements

The KDA is operating in full compliance in all of these areas.

Sincerely,



Francisco A. Apodaca, Chief
Financial Reviews and Analysis Branch
Budget and Finance Division

Enclosures

cc:

Joe Beuerlein, Director, Meat Inspection Program, KDA
Joyce Brokaw, Accountant I, Fiscal Operations, KDA
Max Foster, Fiscal Operations Manager, KDA
Ray Bolyard, Director, Resource Management Staff, IO
William Leese, Director, Federal State Relations Staff, IO
Stephanie Zagrodniczek, Chief, AOSB, BFD

KANSAS STATE BOARD OF AGRICULTURE
MEAT AND POULTRY INSPECTION PROGRAM
SUMMARY OF AMOUNTS DUE THE FEDERAL AGENCY
OCTOBER 1, 1993 - SEPTEMBER 30, 1996

FY 1994	10/01/93 - 09/30/94	\$94,953.27
FY 1995	10/01/94 - 09/30/95	(9,415.00)
FY 1996	10/01/95 - 09/30/96	<u>(16.99)</u>
TOTAL AMOUNT DUE STATE AGENCY		<u>\$85,521.28</u>

KANSAS STATE BOARD OF AGRICULTURE
MEAT AND POULTRY INSPECTION PROGRAM
SUMMARY OF AMOUNTS DUE THE FEDERAL AGENCY
OCTOBER 1, 1995 - SEPTEMBER 30, 1996

	10/1/95 - 06/30/96	07/1/96 - 09/30/96	TOTAL
A. Direct Costs Per Review			
1. Insp. Personal Serv.	\$1,301,828.28	\$481,407.84	\$1,783,236.12
2. Insp. Other	\$217,081.35	\$92,518.04	\$309,599.39
3. Allow Insp. Dir. Costs	\$1,518,909.63	\$573,925.88	\$2,092,835.51
4. Total Lab Pers. Serv.	\$59,228.67	\$26,667.35	\$85,896.02
5. Lab Other	\$14,500.31	\$25,359.78	\$39,860.09
6. Laboratory Div. Direct Costs	\$73,728.98	\$52,027.13	\$125,756.11
7. Total Direct Costs Per Review	1,592,638.61	625,953.01	\$2,218,591.62
B. Indirect Costs			
1. Sal. & Wage Base per Review			
a. Inspection Division	1,301,828.28	481,407.84	\$1,783,236.12
b. Laboratory Division	59,228.67	26,667.35	\$85,896.02
2. Applicable Rates (%)			
a. Inspection Division	26.49%	25.62%	
b. Laboratory Division	21.38%	52.30%	
3. Indirect Cost Calculations			
(B.1.a X B.2.a)	344,854.31	123,336.69	468,191.00
(B.1.b X B.2.b)	12,663.09	13,947.02	26,610.11
4. Total Indirect Costs	357,517.40	137,283.71	494,801.11
C. Total Revised Cost (A3+B3)	<u>1,950,156.01</u>	<u>763,236.72</u>	2,713,392.73
D. State Entitlement (50% of Line C)			<u>1,356,696.37</u>
E. Federal Payments			
1. LOC Drawdowns		1,356,713.36	
2. Direct Payments		0.00	
3. Total Federal Payments			<u>1,356,713.36</u>
H. Net Amount Due the State Agency FY 1996 (Lines F3-G3)			<u>(\$16.99)</u>

KANSAS STATE BOARD OF AGRICULTURE
MEAT AND POULTRY INSPECTION PROGRAM
SUMMARY OF AMOUNTS DUE THE FEDERAL AGENCY
OCTOBER 1, 1994 - SEPTEMBER 30, 1995

	10/1/94 - 06/30/95	07/1/95 - 09/30/95	TOTAL
A. Direct Costs Per Review			
1. Insp. Personal Serv.	\$1,359,202.06	\$455,126.77	\$1,814,328.83
2. Insp. Other	\$214,564.78	\$79,975.69	\$294,540.47
3. Allow Insp. Dir. Costs	\$1,573,766.84	\$535,102.46	\$2,108,869.30
4. Total Lab Pers. Serv.	\$61,956.24	\$20,400.47	\$82,356.71
5. Lab Other	\$14,532.28	\$3,356.35	\$17,888.63
6. Laboratory Div. Direct Costs	\$76,488.52	\$23,756.82	\$100,245.34
7. Total Direct Costs Per Review	1,650,255.36	558,859.28	\$2,209,114.64
B. Indirect Costs			
1. Sal. & Wage Base per Review			
a. Inspection Division	1,359,202.06	455,126.77	\$1,814,328.83
b. Laboratory Division	61,956.24	20,400.47	\$82,356.71
2. Applicable Rates (%)			
a. Inspection Division	26.68%	26.49%	
b. Laboratory Division	<u>41.05%</u>	<u>21.38%</u>	
3. Indirect Cost Calculations			
(B.1.a X B.2.a)	362,635.11	120,563.08	\$483,198.19
(B.1.b X B.2.b)	<u>25,433.04</u>	<u>4,361.62</u>	\$29,794.66
4. Total Indirect Costs	388,068.15	124,924.70	512,992.85
C. Total Revised Cost (A3+B3)	<u>2,038,323.51</u>	<u>683,783.98</u>	2,722,107.49
D. State Entitlement (50% of Line C)			<u>1,361,053.74</u>
E. Federal Payments			
1. LOC Drawdowns		1,370,468.74	
2. Direct Payments		<u>0.00</u>	
3. Total Federal Payments			<u>1,370,468.74</u>
H. Net Amount Due the State Agency FY 1995 (Lines F3-G3)			<u>(\$9,415.00)</u>

KANSAS STATE BOARD OF AGRICULTURE
MEAT AND POULTRY INSPECTION PROGRAM
SUMMARY OF AMOUNTS DUE THE FEDERAL AGENCY
OCTOBER 1, 1993 - SEPTEMBER 30, 1994

	10/1/93 - 06/30/94	07/1/94 - 09/30/94	TOTAL
A. Direct Costs Per Review			
1. Insp. Personal Serv.	\$1,292,109.25	\$590,002.57	\$1,882,111.82
2. Insp. Other	\$228,057.40	\$58,232.29	\$286,289.69
3. Allow Insp. Dir. Costs	\$1,520,166.65	\$648,234.86	\$2,168,401.51
4. Total Lab Pers. Serv.	\$64,748.82	\$25,481.95	\$90,230.77
5. Lab Other	\$16,934.31	\$3,257.17	\$20,191.48
6. Laboratory Div. Direct Costs	\$81,683.13	\$28,739.12	\$110,422.25
7. Total Direct Costs Per Review	1,601,849.78	676,973.98	\$2,278,823.76
B. Indirect Costs			
1. Sal. & Wage Base per Review			
a. Inspection Division	1,292,109.25	590,002.57	\$1,882,111.82
b. Laboratory Division	64,748.82	25,481.95	\$90,230.77
2. Applicable Rates (%)			
a. Inspection Division	27.59%	26.68%	
b. Laboratory Division	55.69%	41.05%	
3. Indirect Cost Calculations			
(B.1.a X B.2.a)	356,492.94	157,412.69	\$513,905.63
(B.1.b X B.2.b)	36,058.62	10,460.34	\$46,518.96
4. Total Indirect Costs	392,551.56	167,873.03	560,424.59
C. Total Revised Cost (A3+B3)	<u>1,994,401.34</u>	<u>844,847.01</u>	2,839,248.35
D. State Entitlement (50% of Line C)			<u>1,419,624.17</u>
E. Federal Payments			
1. LOC Drawdowns		1,324,670.90	
2. Direct Payments		0.00	
3. Total Federal Payments			<u>1,324,670.90</u>
H. Net Amount Due the State Agency FY 1994 (Lines F3-G3)			<u>\$94,953.27</u>

OCTOBER 9TH REPORT ON STATUS OF KANSAS MEAT AND POULTRY PROGRAM

LAWS AND REGULATIONS

In July 1998 you requested copies of the Kansas law and regulations. Please see Attachment "A." You also inquired as to how frequently state regulations are updated. It is the policy of the department to update regulations as needed. We are required to follow the Kansas Administrative Procedures Act which specifies clearance procedures, and public notice and comment procedures. We can provide you with the specifics of this process if you determine it is necessary. We will also be clarifying this information in the revised state performance plan.

FUNDING AND FINANCIAL ACCOUNTABILITY RESOURCE MANAGEMENT

With regard to funding and financial accountability, the Kansas Department of Agriculture's program was recently audited by USDA for FY 1993-1996. Please see Attachment "B." Please note that USDA found KDA to be operating in full compliance.

There have been a number of more recent issues regarding resource management and funding. As stated in the cover letter these issues are being addressed together in this section because of their close relationship. There are a number of specific personnel issues that we have sought to address.

1. Program Manager. Dr. Lyman Kruckenberg has accepted the position of program manager. He has previously served as an area veterinarian in western Kansas and has experience with USDA, FSIS and private practice. Dr. Kruckenberg has been vital in the review of plants for the past few months and has assisted during USDA's field reviews. His knowledge and leadership skills are very apparent and have worked to energize other staff and subordinates.
2. Field Veterinarians. For a number of years, USDA has expressed concern about inadequate number of veterinarians. In 1981, the meat and poultry program had 4 veterinarians. This number decreased in 1984 to 3 veterinarians and in 1988 to 2 veterinarians. Later in 1993, another veterinarian was hired as the program manager, but this person was not responsible for any plants. This shortage of veterinarians in the field has been cited as a criticism of our program for a number of years. In the past, the need for more veterinarians in the field was covered by contracting with a number of private veterinarians across the state.

In 1998, we have budgeted and are advertising for two additional veterinarians in the field so that in the near future we will have 3 full-time field veterinarians on staff. We have received approval and have shifted funding to hire 4 veterinarians as unclassified temporary full-time employees within the next 60 days. On September 25, 1998 we made a written request of USDA for additional funding to support these efforts. To date we have received no approval. These 4 veterinarians will replace the numerous contract veterinarians that we have previously used for

disposition of animals. We believe the 4 veterinarians will allow us to have a greater full-time presence in the field and assist in other areas than just disposition of animals while also eliminating the appearance of a potential conflict of interest by the contract veterinarians who may be called upon to rule on the disposition of an animal that was previously treated by the same veterinarian.

The hiring of these veterinarians will require training at the training center in Dodge City, Kansas. Furthermore, we will explore the ability to train these individuals about pathology in Wellington, Kansas. The cost for training our veterinarians and supervisors is estimated at \$20,000. However, it is imperative that they receive proper training if we are to have an effective, credible and consistent program.

3. Sufficient number of employees cover all of the slaughter and processing facilities on a daily basis. During the time frame between 1981 to 1995, the meat and poultry program lost 2 field veterinarians, the training officer position, 21 Agriculture Inspector I's. During this same timeframe the number of registered plants decreased by 38. (See attachment "C") We are proposing in our FY 2000 budget adding 6 inspectors so that we are able to inspect each facility that is processing once a day while also being present at inspected facilities on their slaughter days.

Please note this request must be approved by the Governor and the Kansas legislature during the normal state budgeting process. The legislature is in session from January 1999-May 1999. This may delay significantly the hiring of these positions and the completion of the task of inspection during processing on the level required by USDA in your September 4, 1998 letter. It will be imperative that USDA be prepared to testify before the Kansas legislature on the requirements and needs for this inspection.

Attached please find an updated organizational chart reflecting the changes and proposed changes. (See attachment "D")

4. Personnel issues. Dr. Joe Beuerlein has tendered his letter of resignation effective October 9, 1998. We are in the process of advertising for this and Dr. Lyman Kruckenberg's field veterinarian position since he has accepted the position as program manager. We completed interviewing for these positions on October 9th and anticipate having personnel hired shortly thereafter.

Brent Wentz, the northeast area supervisor was placed on administrative leave on September 2, 1998. We have recently dismissed him, however, Mr. Wentz is entitled to various hearings under the civil service provisions in Kansas, therefore this issue may not be final. In the interim, Bob Doctor has agreed to be the northeast area supervisor. He has been with the program for a number of years and has previously functioned as the an area supervisor and has most recently been one of our two compliance officers.

We are in the process of evaluating and counseling Agricultural Inspectors I's that are not adequately performing their duties. We will continue to evaluate and discipline when needed so as to ensure that all inspectors are performing their duties in a professional and meaningful manner.

5. USDA Professional Assistance. Currently, Dr. Steve Perraut, is working with the program to assist us in training and education for plants and staff. Dr. Perraut arrived in September 1998 and is planning on working with us until the early part of November 1998. We would like for this arrangement to be extend for 1-2 years. For the next 6 months Dr. Kruckenberg is planning on being in the field on a continuous basis. We agree with his assessment that he must be in the field the majority of the time if the program is to improve. Both the plants and the field staff need to know that we are serious about enforcing the statutes and regulations. The most effective way of ensuring that this message reaches everyone in a consistent fashion is for Dr. Kruckenberg to have a visible presence in the field. Given this plan, Kansas needs someone to answer questions from either staff or plant owners; oversee the PBIS system; assist the new veterinarians; conduct and advise on training programs for plants; and answer labeling questions. We believe that Dr. Perraut can provide this type of assistance to Dr. Kruckenberg and the program. Dr. Perraut has become a valuable part of our revitalization efforts and we respectfully request approval of his continued service here.

6. Training. Training is critical to the maintenance and quality of the program. The Department recognizes that training is necessary for both departmental personnel and plant operators. The department will be evaluating and assessing the training needs of employees as plant reviews are conducted. In 1983 the training officer position was eliminated and the plan was to send all new employees to College Station, Texas for training by USDA, FSIS personnel. Not all employees received this training. In 1998, the department reallocated resources to add a training officer position. The position has been filled and the new training officer is in the process of becoming a certified trainer. Once certified, the training officer will train new employees, and current employees whose skills need improvement. In addition, the new veterinarians will be sent to USDA training and receive oversight by the current field veterinarians. In time, the department will plan for the evaluation and continuous training of supervisors and field veterinarians to assure compliance with the latest laws and applications of latest scientific advances.

The department has also provided a number of training opportunities for plants. Attached are the letters that were sent to plants informing them of changes to laws and opportunities for training. In 1997, the Department contracted with Kansas State University to provide on-site personal guidance and advice to plant operators to assist the plants in complying with sanitation and HACCP procedures. To date, KSU has worked with plants and conducted or participated in 15 low cost or free HACCP and Sanitation seminars involving 192 participants (See attachment "E"). The state plans to continue this program. The state, through Dr. Perraut, has requested USDA assistance to offer sanitation workshops for plants to be conducted within the next two months. This will provide an opportunity for plants to hear first hand the discussions of sanitation and ask questions in a non-adversarial setting. The department is planning to host four seminars throughout the state. The seminars will be conducted by Dr. Kruckenberg and Dr. Perraut. We have sent letters to each plant and each inspector informing them of these seminars.

The seminars will be held on October 17th in Topeka; October 24th in Salina; November 7th in Garden City; and in Wichita on November 21. (See attachment "F")

The department has also offered to plant operators to conduct informal, scheduled reviews of a plant. Plants were notified of this opportunity by letter. (See attachment "G") To date only 5 plants have requested this assistance.

7. Computers - We have equipped all of the supervisors with computers, printers and modems. We are working with USDA's Technical Center to equip our computers with the federal regulations and a search program that can assist them in finding the relevant regulations. We would like to equip our agricultural inspectors with similar equipment in the future however, the cost to equip an inspector with a computer, printer and modem is approximately \$1800.00 per person. Therefore, this is not an inexpensive measure and may take a few years to equip each person in the program. However, we are hopeful that we can equip the 6 new veterinarians with this package of equipment at a cost of approximately \$10,800.00.

IN PLANT WORK

Inadequate enforcement of the inspection requirements resulted in unacceptable plants. In 1995, the federal review noted that procedures for follow-up and corrective action as described in the state performance plan were not being followed. Fifteen out of the 26 plant records had no follow-up corrective actions on file or were not timely filed. Furthermore, they determined that 2 of the 7 plants reviewed were unacceptable and all 7 plants had deficiencies for a total of 36 major variations and 70 minor variations. It was after this review that the program in the fall of 1995 received a Category 3 rating - acceptable with significant variations. In April of 1997, I discovered that even though we had answered all of USDA's concerns, we had not written to ask that our rating be improved. I thereafter wrote to Dr. Fetzner and requested a higher rating. This request was denied. However, in an attempt to understand how we had gotten to the place where the program received a category three rating, I instructed the staff to undergo a systems analysis and a peer review. Both of these reviews occurred in the summer of 1997.

Since the northeast section of our state seemed to experience the greatest number of problems, Dr. Kruckenberg, Dr. Riggs, Dr. Perraut and the inspection staff have spent a great deal of time reviewing the plants in the northeast. Attachment "K" outlines the work that has been done by the KDA staff and Dr. Perraut in the northeast Kansas plants. Through this process, we have found a higher number of plants with deficiencies than in the other parts of the state. Most of these deficiencies are sanitation violations and can be corrected without structural changes or large outlay of capital. While we believe that most of the plants are making a sincere effort to comply with the regulations and statutes we will need to continue to have a significant presence in this region so as to ensure that the old problems do not reoccur.

During the last two weeks of September 1998, the supervisors and veterinarians have formed teams and are conducting reviews of another supervisors area so as to ensure that we are enforcing the laws and regulations in a consistent and uniform manner. On October 14, 1998, the supervisors will meet in Topeka and discuss their findings. They will list the problems that were

identified and rank these issues in order of food safety risks: they will also identify at risk plants,, and the inspectors that are in need of more training. Work priorities will be based upon these ranking.

The managers and supervisors intend to meet regularly to assess and reprioritize work. This process will likely continue for the next few months. At various points we will begin to plan for long range program management. The revised state performance plan will further define the long term program.

To date, the following plants have decided to close their plants permanently: Goering Locker in Moundridge, Valley Vista in Topeka, and the Beattie Locker in Beattie.

Attachments

- "A" KDA laws and regs
- "B" Financial Audit by USDA
- "C" Budget/Personnel overview of 1981-1998
- "D" 1998 M&P proposed organizational chart
- "E" KSU training program Aug. 1997-Sept. 1998
- "F" Sanitation Letter
- "G" September 1998 letter to KDA plants
- "H" Six month review of the number of times an inspector was at each facility
- "I" Six month schedule of territory outlining slaughter and inspector schedule
- "J" Newspaper articles regarding the meat and poultry program
- "K" September review of the NE Kansas plants

STATE OF KANSAS



BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1280
(913) 296-3558
FAX: (913) 296-8389

KANSAS DEPARTMENT OF AGRICULTURE

October 9, 1998

Mr. Thomas Billy, Administrator
Food Safety and Inspection Service
United States Department of Agriculture
Washington, DC 20250

William F. Leese, D.V.M., Director
Federal-State Relations Staff
Food Safety and Inspection Service
United States Department of Agriculture
Washington, DC 20250

Dear Mr. Billy and Dr. Leese:

This letter is in response to your September 2, 1998 letter requesting that the state of Kansas provide you with a report defining immediate and ongoing measures in place to control and correct deficiencies identified in the review. I believe that this will also serve as the comprehensive report requested prior to November 1, 1998. After reviewing this document, if you believe additional reporting is necessary, please do not hesitate to contact me.

The report generally follows the outline of the State Performance Plan Checklist. However, we are presenting a picture in time to define what has taken place and what our immediate future plans are. We have combined the funding and financial accounting and resource management issues because they are directly linked under the current circumstances. We are also providing you a very brief overview of our training plans. We have identified the problems but have not worked through the logistics issues of training. The majority of this report will focus on program operations especially in plant reviews. We have outlined our actions the past two months and have our plans for the next few months. The long range plan for action will be articulated in a revised state performance plan. The revision of the state performance plan will occur within the next few months and is a priority for Dr. Kruckenberg.

I have included a copies of communications with plants. I believe it is important that we offer them as much information as possible so as to avoid confusion or misinformation. I have not included discussions of speciality programs or laboratories. These issues will be further addressed in our revised state performance plan.

Mr. Thomas Billy
Dr. William Leese
Page Two
October 9, 1998

We have tried to address many of the issues that you have raised in your previous reviews of our program. Where possible, we have taken immediate action to resolve long standing issues. The management team consisting of Dr. Kruckenberg, Dr. Riggs, the Agricultural Inspection III (supervisors), Departmental Budget Director Max Foster, Assistant Secretary Mary Jane Stattelman, and Personnel Director Angela Castardo have given long hours of service to revitalize the program. They are committed to its success and so am I. Further, we have seen renewed energy in many of the field inspectors which I believe is one of the most encouraging signs that change and improvement are occurring.

If you need any additional information, please do not hesitate to contact me.

Sincerely,

Alice A. Devine
ms

Alice A. Devine
Secretary

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1280
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KANSAS DEPARTMENT OF AGRICULTURE

October 7, 1998

The Honorable Dan Glickman
Secretary of the United States
Department of Agriculture
14th St. & Independence Ave., SW
Washington, DC 20250

Dear Secretary Glickman:

As you know the meat program in Kansas is under considerable scrutiny. I want to thank you, Administrator Bill, Dr. Leese, and the people at the Omaha Technical Center for your support to dates. Dr. Perraut, with the Omaha Technical Center has been here working with us and has been very helpful.

The review of the meat program will likely continue into the 1999 Kansas legislative session. People will be questioning whether Kansas should return the program to USDA. Obviously decisions should not be made without a clear understanding of the consequences. Therefore, I am requesting that USDA provide us, in writing, answers to the following questions.

1. What would be the step by step process USDA would follow to withdraw designation? Tom Billy, Dr. Leese and I have discussed this to some degree and Dr. Leese provided me a copy of "The Designation Process" (1983) and a discussion of the steps taken in Florida. These documents are helpful but I would like a Kansas specific plan. It would be extremely important that time frames be provided in the plan.
2. What effect would federal inspection have on plants now inspected by the state? There are a number of questions and perceptions pending. Please provide USDA's response to these items.
 - a. Federal inspection would be "easier." Some people have expressed opinions that if USDA would inspect plants that inspection would be less frequent and more relaxed.
 - b. USDA inspection would be more consistent because USDA would be the "only" inspectors in the plants and therefore, there would be no discrepancies between inspectors.

The Honorable Dan Glickman

Page Two

October 7, 1998

3. Would all plants now inspected Kansas be eligible for and accepted by USDA for designation?
4. What would a typical state plant need to do under federal inspection they do not need to do under state inspection? There have been a number of discussions in this area. For example, some Kansas plants have no separate office space for inspectors or the heights of the rails in the facility do not meet federal requirements. Would these structural issues preclude the plant from qualifying for federal inspection? Please do not limit the answer to this example. If you or your staff suspect other items that would preclude a plant from qualification, please include such items in your response.
5. What would be the potential costs of compliance under federal inspection for small plants now inspected by the state.
6. Please provide a discussion of the effects on plants where the state program was returned to USDA.
7. In the opinion of USDA, what would be the benefits and detriments of federal inspection to plants, the USDA, and the state?
8. Kansas has made a request for additional financial assistance, if Kansas maintains the state program will USDA provide the additional assistance?
9. If the program is shifted to USDA, what opportunities for employment would current state inspectors have with USDA?

Tom Billy and I discussed the possibility of USDA reviewing all of Kansas plants to determine eligibility for federal inspection. I also discussed with Dr. Leese and the Tech Center a modified review. I believe that decision makers in Kansas will need to know exactly what will happen if the program is returned to USDA. Decision makers and plant owners will want to know what plants will continue to operate and which plants likely will not. This is not a time for speculation or conjecture. We need hard facts. I am requesting that USDA take all steps possible to provide comprehensive data as to the status of Kansas plants and possibility for acceptance in the federal system if that becomes necessary. This "acceptance" review needs to be conducted as quickly as possible, so that the results are known prior to budget discussions within the state.

Finally, I am also requesting that USDA have someone prepared to fully and completely discuss all of these issues when the legislature convenes in January 1999. I would hope that USDA will be prepared to have a representative physically present when discussions of the program take place.

The Honorable Dan Glickman
Page Two
October 7, 1998

My staff and I remain committed to providing a quality inspection program. We sincerely appreciate the working relationship between USDA and the state. We will continue to work to assure that the November sanitation review is positive. Again, thank you for your assistance and I look forward to your response.

Sincerely,



Alice A. Devine
Secretary

c: Mr. Tom Billy
Dr. William Leese
Omaha Tech Center

USDA officials say Kansas meat inspections improved

■ Agency had threatened to take over state program because of meat inspection problems.

By Scott Rothschild

Eagle Topeka bureau

TOPEKA — Follow-up inspections of several Kansas meat processing plants found "marked improvement" over unsanitary conditions found last summer, officials said Wednesday.

In August and September, USDA officials blasted the state's meat-safety enforcement after finding potential health hazards at several meat plants.

Inspectors had found beef and swine carcasses contaminated with fecal matter among other "major and serious deficiencies," according to a report from the USDA's Food Safety Inspection Service.

After the report, Kansas Secretary of Agriculture Alice Devine made

staffing and procedural changes in the state's inspection program.

Last month, federal officials returned to Kansas and conducted several re-inspections, in addition to checkups at randomly chosen plants.

"We noted a marked improvement both in the plants and in the inspection process," said William Leese, director of the FSIS Federal-State Relations Office.

Of the plants previously inspected, most had cleaned up problems that had been noted before, according to a preliminary report. Some plants continued to have a few problems, but they were identified and corrected by plant staff, the report said.

The problems in Kansas plants found last summer prompted federal officials to threaten to take over Kansas' inspection program.

The meat-inspection program currently costs \$2.4 million annually, with the cost shared equally by the state and federal government. There are

approximately 130 meat processing plants in Kansas.

The question has arisen whether it would be better for the federal government to take over the responsibility. Kansas is one of 26 states which maintain a state meat and poultry inspection program. USDA staff conduct periodic reviews to determine whether state programs are equal to federal oversight.

Devine says she would rather the inspection program continue under the state.

"This department supports the state program and believes it is in the best interest of the state of Kansas," Devine said.

Devine has said earlier that she would request an additional \$241,000 to hire six new inspectors. Currently, there are 40 inspectors.

Meat Inspection Update

Federal law preempts state law in the area of meat inspection. States operate "equal to" federal programs. USDA conducts reviews every three years of the states' program.

In the spring of 1995, USDA conducted its triennial review of the state program. USDA outlined a number of deficiencies with the program and gave Kansas a category 3 rating. Ratings fall from 1 to 4. At level 4, USDA notes the program unacceptable and takes federal action to regain control in the plants.

I learned of the Category 3 rating in the spring of 1996 and began corrective measures. Those included the following list:

- Made sure that all vacancies are filled immediately, so as to maintain a presence in the field.
- Shifted to full time inspectors where once we had part-time staff to assure consistency in the field staff.
- Recently increased by one the number of veterinarians in the field. We now have three, which is the maximum the program has ever had.
- Closed plants partially or totally when violations were serious. Plants can reopen after corrective measures are taken.
- Conducted a peer review with personnel from other state programs and USDA.
- Conducted a systems analysis of the program process and formed action teams.
- Funded training for plants.
- Hired a consultant to travel to plants to teach them how to comply with the new requirements of the federal law.
- Recently, hired a new training officer to do nothing but train our inspectors.
- I have toured plants and talked with the meat processors' association to send the message that the state has to clean up the situation in order to maintain our credibility.

During the first week of August 1998, USDA was here for the triennial review. USDA randomly selected 9 plants most of them were located in northeast Kansas and also Beloit, and Kensington. The violations were not minor and focused on basic sanitation. Apparently, all of the efforts from the top were not getting the basic job done in the plants.

On August 25, 1998, USDA contacted KDA to discuss the August review. The message was clear that KDA needed to take immediate corrective action in order to maintain the program. USDA notified us that they would be reviewing the program again in November 1998 to ascertain whether the program had improved. KDA requested technical assistance to improve the program.

On Wednesday, August 26, Dr. Joe Beuerlein, our program manager became ill (apparently stress related) and went on medical leave. Dr. Beuerlein has since resigned. Dr. Lyman (Butch) Kruckenberg has been named program manager.

On Thursday, August 27, I called a meeting with the remaining two veterinarians to plan a strategy for immediate action to respond to USDA. USDA Assistant to the Administrator Mark Mina telephoned again, to reinforce the seriousness of the violations and the need for immediate action. He also informed me that USDA would be making follow up visits to those plants in question the week of September 1. His message was clear, if the state wanted to continue to maintain its equal to status, then the state must take action in these trouble areas immediately. This moved our time frames for correction up significantly. Our strategy was simple. "Let's get to the plants first, and assure that they are in compliance."

We formed teams from across the state to review facilities in northeast Kansas where USDA found significant problems. The teams found serious violations and closed either completely or partially a number of facilities. The types of violations included paint peeling from the ceiling over work areas where product was being processed; mold, dust, rust, or fecal matter on carcasses; contaminated work surfaces where raw product was exposed; improper seals around the facility wherein rodents could access the product; poor hygiene of plant workers; glass in product; pesticides and cleaners stored with product for sale; and other basic sanitation violations. Apparently training and the supervisory chain of command had been broken, which allowed plant conditions to deteriorate. The closing of plants generated considerable media attention. We responded to numerous press calls and I wrote to the *Capitol Journal* explaining the situation.

During the September review USDA found plant conditions much improved and KDA staff doing the job correctly. The Department's challenge is to continue the process. The Department continues to take steps to assess and improve the program. Teams of supervisors have reviewed every plant. The teams have assessed what plants need immediate attention and which inspectors need immediate training. The needs are now being met.

Dr. Perraut from USDA has been here assisting in reviewing plants. Further KDA has hosted four weekend sanitation training seminars across the state for inspectors and plant employees. These seminars were free and open to all plants. In addition, KDA has sent letters to plants explaining the current sanitation standards.

It has been suggested that Kansas should return the program to USDA. This would save the state \$1.2 million and reduce the number of employees by 60. It is uncertain what impact such a move would have on small plants. I have written to Secretary Glickman requesting information. (See attached.) I have not received a response. However, because I believe we have turned the program around and are headed in the right direction, it is my opinion that it is in the best interest of Kansas consumers and plant operators for the program to remain as a state run program. In November of 1998, USDA reviewers reinspected Kansas meat plants and determined the Kansas program had improved significantly and that we were doing our job in the field.

There are a number of staffing issues that need addressed. Field Veterinarians. For a number of years, USDA has expressed concern about inadequate number of veterinarians. In 1981, the meat

and poultry program had 4 veterinarians. This number decreased in 1984 to 3 veterinarians and in 1988 to 2 veterinarians. Later in 1993, another veterinarian was hired as the program manager, but this person was not responsible for any plants. This shortage of veterinarians in the field has been cited as a criticism of our program for a number of years. In the past, the need for more veterinarians in the field was covered by contracting with a number of private veterinarians across the state.

In 1998, we budgeted and have filled two field veterinary positions, so that in the future we will have 3 full-time veterinarians on staff. We have received approval and have shifted funding to hire 4 veterinarians as unclassified temporary full-time employees. To date, two of these positions have been offered and have been accepted by Kansas licensed veterinarians. These two individuals will start their training at the end of January. These two individuals should complete their training by the last of March and begin field duties. The other two positions will be filled toward the end of February 1999, with their training lasting approximately 6 to 7 weeks. These 4 veterinarians will replace the numerous contract veterinarians that we have previously used for the disposition of animals. We believe the 4 veterinarians will allow us to have a greater full-time presence in the field and assist in other areas than just disposition of animals, while also eliminating the appearance of a potential conflict of interest by the contract veterinarians who may be called upon to rule on the disposition of an animal that was previously treated by the same veterinarian.

The hiring of these veterinarians will require training. The majority of the training can be done in-house by Dr. Kruckenberg. However, some of the training will require the veterinarians to travel out of state to USDA approved training centers. The two Veterinary Area Supervisors have completed the technical portion of the in-house training, and are completing their training at the USDA training center in San Antonio, TX. We have budgeted \$25,000 to allow us to begin training during FY 99. We have also budgeted \$50,000 for FY 2000 to train the veterinarians and the supervisors. It is imperative that they receive proper training if we are to have an effective, credible and consistent program.

Sufficient number of employees to cover all of the slaughter and processing facilities on a daily basis. During the time frame between 1981 and 1995, the meat and poultry program lost 2 field veterinarians, the training officer position, and 21 Agriculture Inspector I's. During this time frame the number of registered plants decreased by 38. On the average day there are 25 state inspected plants that are conducting slaughter operations and require full time coverage by inspection personnel. This leaves only 16 inspectors to cover the operation of approximately 101 facilities that are processing meat products on off slaughter days. With the average coverage of 3 plants per inspector per day on processing patrol, there are 53 plants without inspection coverage each day. If you allot each Assistant Area Supervisor 2 patrol plants per day in addition to their supervisory duties and each Area Veterinary Supervisor 1 patrol plant, you still have 38 plants per day that are not covered. This figure does not take into account that 16.3% of the work force is on leave at any given time. There are also 18 custom facilities in the state that also need inspection oversight.

We are proposing in our FY 2000 budget adding 6 Agriculture Inspector II's so that we are able to inspect each facility that is processing once a day while also being present at inspected

facilities on their slaughter days. With the addition of the 6 new inspectors and the 4 SPO Veterinarians we should have coverage in each plant at least 9 out of every 10 days of operation. The total budget request is approximately \$240,000 for salaries, training and travel for the additional 6 inspectors. USDA would pay one-half. Kansas would pay one-half. On January 4, 1999, we received a letter from USDA informing us that they had agreed to pay for half of the increased budget requests that we made to them.

YEAR 2000

The year 2000 will bring many changes in the Meat and Poultry Inspection Program. On January 27, 2000 all inspected plants, both state and federal will be required to implement the HACCP (Hazard Analysis Critical Control Point) system. This new system will increase the demand on the Compliance section of the Meat & Poultry Program. The USDA during the August review of our program recommended that it may be necessary to add one additional field compliance officer.

The year 2000 also brings with it the interstate shipment of state inspected meat and poultry products. It is felt that with the introduction of interstate shipment, many of the small federally inspected facilities will apply for state inspection services. With the implementation of the proposed changes in the staffing of the Meat & Poultry Program, we should have a strong program for these new facilities to join.

KANSAS CUSTOM PLANT GUIDELINES

The following information is intended only as a guideline outlining some of the most commonly asked questions concerning the operation of a Custom Plant in the state of Kansas.

1. Animals that may be slaughtered by an establishment operating with a custom registration.
 - A. Animals delivered by the owner or his representative for slaughter and/or processing for the owner of the animal, members of the owners immediate household, and nonpaying employees and guest.
 - B. Only healthy animals may be slaughtered by a Custom establishment. Animals cannot be disabled, diseased, dying, or down. A diseased animal is any animal showing signs of a Central Nervous System disorder, has an abnormal temperature (high or low), has difficulty breathing, has any abnormal swellings, shows lack of muscular coordination, is unable to walk or stand normally. Any animal which shows any condition which would warrant condemnation on antemortem inspection.
 - C. Animals that may be slaughtered include cattle, sheep, swine, goats or poultry.
2. Animals or products must be properly labeled "NOT FOR SALE" and cannot be sold into commerce.
 - A. If a retail exemption is granted, a custom operator may buy inspected and passed product to further process and sell to the household consumer only, provided the retail product is prepared separately and maintained separate from "NOT FOR SALE" product. Labeling requirements on the product offered for sales are different from custom "NOT FOR SALE" product.
3. Sanitation of Custom establishments.
 - A. The requirements for a custom establishment and an inspected establishment are basically the same. The main difference is that a custom establishment is not required to have a written Standard Sanitary Operation Procedure (SSOP). All requirements for the cleaning and sanitizing of equipment are enforced in a custom establishment.
 - B. An adequate source of 180 degree water with an in line thermometer must be available to clean and sanitize in the case of contamination on the kill floor (Reg 308.8, 308.3 (d)(4)).
4. A water potability certificate must be on hand and renewed yearly.
5. A current sewage certificate must be on hand.
6. All inedible material must be properly denatured before removal from the establishment.
7. All equipment used in a custom plant must meet the same approval guidelines as an inspected establishment (Reg 308.5).
8. There are only minor differences in the facilities required for a custom operation and inspected facility.
9. Sanitary dressing requirements for custom plants are the same as for inspected plants. There is ZERO tolerance for fecal contamination of carcasses in the coolers.
10. The custom plant is exempt from most sampling and testing requirements of the inspected establishment.
11. Animals presented for slaughter at a Custom establishment are exempt from antemortem and post mortem inspection.

NON- AMENABLE SLAUGHTER POLICY MEAT & POULTRY INSPECTIONS

The principle non- amenable species processed in Kansas slaughter establishments are wild deer, elk and antelope. Non- amenable means that these animal species are not subject to the typical methods of inspection as cattle and swine.

The policy enforced by the Meat & Poultry Inspection Program takes into consideration the following points.

1. How will cross-contamination between the deer and inspected products be prevented in the coolers, processing room, and freezers?
2. What is the plan for storage and separation of deer carcasses during the season?
3. How is the wholesomeness of the meat products being assured?
4. What labeling practices and materials will be used to ensure identification of the deer products.

The possibility of cross-contamination is especially high in those plants with limited processing and storage facilities. Lowering of standards of sanitation is not permitted to accommodate an overabundance of deer.

Even though the hunter may present the deer carcass in almost any condition, once that carcass enters the plant it is subject to the same standards of sanitation during processing and storage as any beef or hog carcass. A contaminated deer can cause food borne illnesses just as easily as a contaminated hog or beef. Because of the possibility of cross-contamination the following conditions are enforced on deer carcasses before they enter the cooler:

1. Contamination from the intestinal tract must be removed
2. Any hide and excessive hair must be trimmed.
3. Grossly damaged and contaminated wounds should be trimmed.
4. Feet and heads need to be removed.

The hunter that took care to deliver a clean carcass to the processing plant should not be penalized, and put in a health risk, by having his deer stored and processed with unsanitary carcasses.

Once in the cooler and during processing and freezing the non- amenable product must be kept separate from inspected and passed products.

The product must be labeled and each package marked as "Not for Sale."

Meat & Poultry Program History

Veterinary Staffing:

Program was originally staffed with 4 field Veterinarian II positions and 1 Veterinarian I position. In addition, there was a veterinarian in the office on loan from USDA FSIS. The veterinarian I position was eliminated and not refilled because of plant closure. The USDA FSIS position was vacated by the death of the veterinarian and never refilled. The Board of Agriculture did not see a need to staff this position with a State position. Therefore, there was no veterinarian in the office until the program manager position was filled with a veterinarian in March 1993. The field veterinarian positions were decreased from 4 to 3 in the fall of 1982 and from 3 to 2 in 1987. This field staff was increased to 3 veterinarians November 30, 1998.

Ag II Assistant Supervisors:

In 1981 there were 8 Ag II assistant supervisors. This number was decreased to 6 in 1982. The Ag II positions were reclassified to Ag III positions in about 1985-86? The Ag III positions were decreased to 4 in 1987. After a hard fought battle, Ag III numbers were increased to 6 in 1989.

Ag I Inspectors:

In 1981 there were approximately 70 Ag I inspectors. This number was gradually decreased with retirements and transfers. About 1984-85? Ag I positions in other programs were reclassified to Ag II positions, but remained Ag I's in the MPI program. The Ag I numbers shrunk to 37 full time and 11 part time positions in 1987. In the fall of 1987 the decision was made to combine part time positions into full time positions. This created 41 full time positions and 1 permanent part time position.

Plant Numbers:

Official establishment numbers have declined from approximately 250 (Fully Inspected and Custom Exempt) to approximately 135-140.

Program Category Rating:

Until 1995 Kansas maintained a category II rating. In 1995 after a correlation review by FSIS Kansas received a category III rating which translated to an equal to status with major variations. In 1991 the correlation review revealed a rating of category II which was equal to with minor variations. However, this rating was achieved only because aggressive corrective action was taken by State supervisors during the correlation review.

In 1987 equal to certification was delegated to state programs. This was to be achieved by implementing approved state performance programs. Kansas' State Performance Program was

implemented at this time. However, it was felt by the field staff that the plan was not working as intended, but these concerns were ignored by administrative personnel in Topeka.

Kansas Meat Inspection Summary

The Kansas Meat Inspection program has faced many problems in recent years. However, it should not be terminated. The KDA program is beneficial to both the state and the meat industry of Kansas compared to a full federal program.

The two programs must be considered as parts of a whole. They each have separate functions in the meat industry. The FSIS program is designed for the benefit of the large plants. They enjoy inspecting the large plants and assist on interstate shipment. The KDA program is designed for the small and custom exempt plants. Many small plants have a close and productive relationship with their State Meat Inspection programs.

The State Inspection program is more accessible to the small plants. If they have a question or problem, they are able to call a local agency and get an answer by a person that day. This is an enormous cut in the layers of bureaucracy that is seen at the federal level. The KDA program also has a vested interest in promoting the interests of the small and custom plants. KDA is accountable to ensuring that the plants do not close down in order to keep small businesses in Kansas.

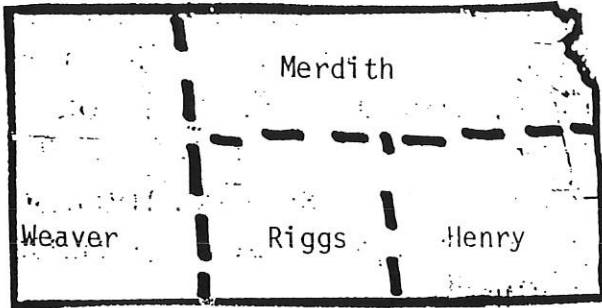
The KDA program is also more economical. Plants that would have to go under federal inspection would suffer additional expenses such as, new brands, printed boxes, overtime, and holiday pay. Many of the plants would have to close their doors. Older plants, grandfathered many years ago, would not meet the current requirements. The cost of their upgrading would in many cases force them to close doors forever too. Other plants would have to go to a custom exempt status that would limit their retail severely.

The grave concern to a switch to Federal Meat Inspection has to do with the quality of inspection that the custom exempt plants will get by FSIS. The federal government does not have the time or staff to inspect custom exempt plants. This leads to those plants getting inspected only once a year. If this is to happen, Kansas could face some serious health problems.

Dropping State Meat and Poultry Inspection may appear as a quick method of saving money in the Kansas budget. However, the long-term detrimental impact on the Kansas economy and local agricultural communities outweighs illusory immediate savings.

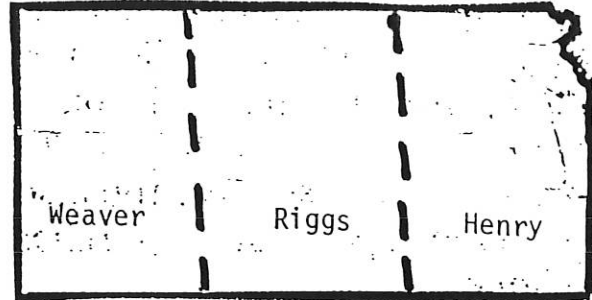
Meat Program Overview

FY 1969-1983



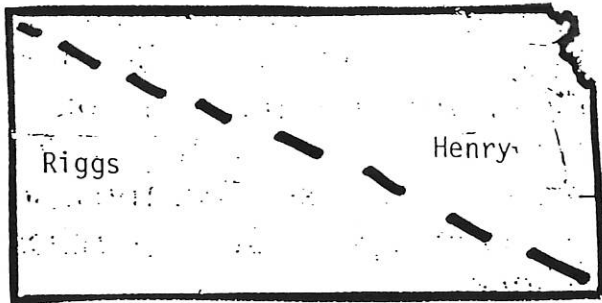
Each Veterinarian-----2 Ag II's
Training Officer in Topeka

FY 1984



6 Ag II's
Training Officer in Topeka
1 Compliance Officer

FY 1988



5 Ag III's
1 Admin. Officer (Including Training Officer)
1 Compliance Officer

FY 1990

6 Ag III's
2 Compliance Officers
1 Admin. Officer III

FY 1993

3 Veterinarians
6 Ag III's
2 Compliance Officers
0 Training Officers

FY 1998

4 Veterinarians
6 Ag III's
2 Compliance Officer
1 Training Officer

MEAT & POULTRY PROGRAM — History

	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988	FY 1989	FY 1990
Salaries	1,454,149	1,600,671	1,631,223	1,668,864	1,638,227	1,700,752	1,668,446	1,509,293	1,620,599	1,703,419
Total Amount Budgeted	1,706,674	1,900,505	1,918,871	1,915,408	1,917,820	1,975,378	1,926,312	1,755,907	1,878,289	1,990,832
Total FTE	81	81	81	77	72.5	72	67	60	60	58
Classification										
Veterinarian II	4	4	4	3	3	3	3	2	2	2
Training Officer	1	1	1	1	1	1	1	1	1	1
Admin Officer III								1	1	1
Ag Inspector II	7*	7	7	7	6	6	6	5	5	6
Ag Inspector III								5	5	6
Compliance Officer	1	1	1		1	1	1	1	1	2
Ag Inspector I	60	60	60	58	58	57	52	47	47	43
Ag Lab Tech I	2	2	2	2						
Part-Time Int. Total Spent	39,839	37,993	37,021	39,973	30,775	25,561	44,698	53,210	69,615	72,694
Seasonal & Temp. Total Spent		1,294	991	3,230	430	1,643		660		

* One Ag Inspector II position was eliminated 1/26/81, reducing # positions to 7

Fed 3013 Funding

Salaries		849,685				850,174	834,292	752,177	807,408	849,881
Other Operating		126,836				138,299	194,996	123,704	127,530	142,560
Total 3013 Funding	842,874	976,521	956,174	1,371,934	957,749	988,473	1,029,288	875,881	934,938	992,441

State Funding

Salaries		750,986				850,578	834,154	757,116	813,191	853,538
Other Operating		172,998				136,327	62,870	122,910	130,160	144,853
Total State Funding	863,800	923,984	923,984	579,474	960,071	986,905	897,026	880,026	943,351	998,391

Plant Hours/ Insp. Hours				3.3	3.4	4	4.3	4.5	4.1	4.4
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(Per standard 40 hour work week including travel time)

160

Kansas Meat Plants

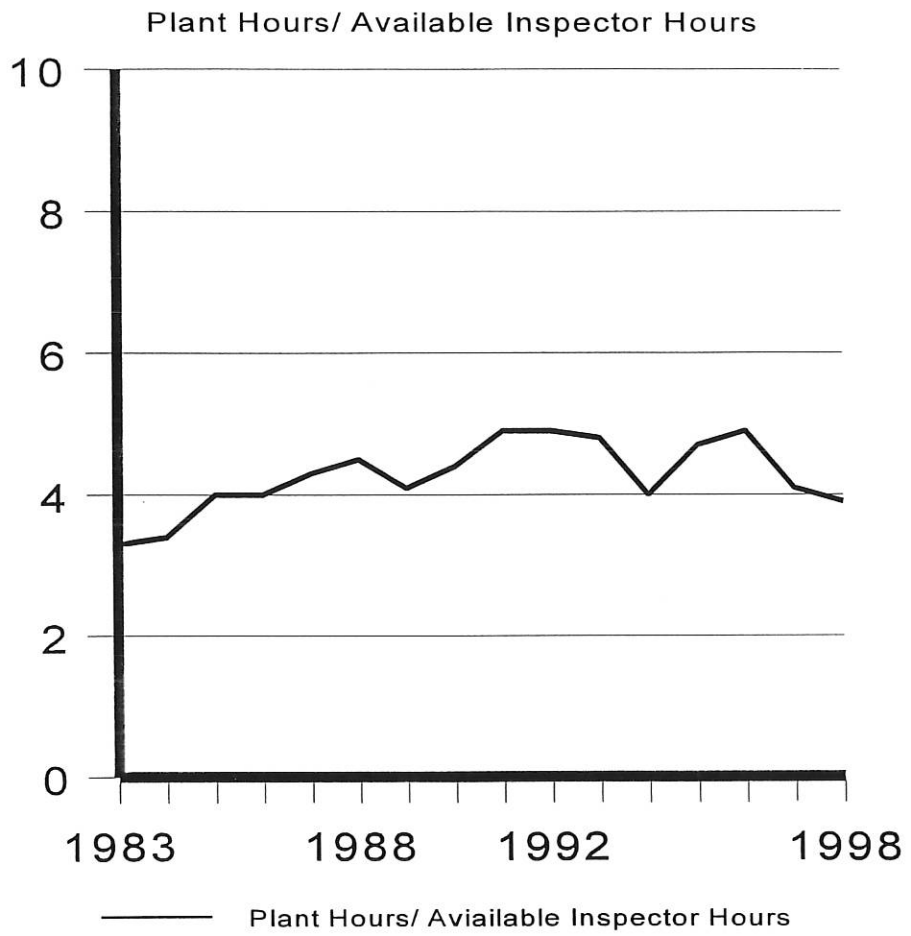
Year	Custom	Inspected
1981	49	189
1982	47	192
1983	44	200
1984	39	199
1985	36	202
1986	30	193
1987	27	185
1988	24	184
1989	23	177
1990	18	170
1991	17	163
1992	16	162
1993	16	158
1994	15	152
1995	14	151
1996	13	152
1997	13	147
1998	18	137
Currently	18	134

Plant Hours / Available Inspector Hours

1983 3.3
1984 3.4
1985 4
1987 4.3
1988 4.5
1989 4.1
1990 4.4
1991 4.9
1992 4.9
1993 4.8
1994 4.0
1995 4.7
1996 4.9
1997 4.1
1998 3.9

MEAT & POULTRY
INPLANT INSPECTIONS
HOURS PER INSPECTOR
FOR THE MONTH OF:
JUNE 1998

INSPECTOR	TRAVE TIME	HOURS INPLANT	HOURS LEAVE	TOTAL HOURS	PERCENT TRAVEL	PERCENT INPLANT	PERCENT LEAVE
BUNNY, AUSTIN	35.50	131.50	9.00	176	20.17%	74.72%	5.11%
BOKELMAN, DENNIS	0.00	0.00	176.00	176	0.00%	0.00%	100.00%
BRADY, BRUCE	24.00	128.00	24.00	176	13.64%	72.73%	13.64%
CALVIN, MAX	27.00	69.00	80.00	176	15.34%	39.20%	45.45%
DAVIS, RODNEY	24.00	152.00	0.00	176	13.64%	86.36%	0.00%
DEINES, STANLEY	47.50	128.50	0.00	176	26.99%	73.01%	0.00%
DICKMAN, BECKY	20.50	123.50	32.00	176	11.65%	70.17%	18.18%
DOCKTER, TERRANCE	42.00	134.00	0.00	176	23.86%	76.14%	0.00%
DUPREE, ANDREW	0.00	80.00	0.00	80	0.00%	100.00%	0.00%
ECHER, DANNY	43.00	107.00	26.00	176	24.43%	60.80%	14.77%
FLERLAGE, MICHAEL	27.00	133.50	15.50	176	15.34%	75.85%	8.81%
GABEL, STEVEN	17.00	97.00	62.00	176	9.66%	55.11%	35.23%
HUNSAKER, WILLIAM	43.00	125.00	8.00	176	24.43%	71.02%	4.55%
HARDING, KRISTIAN	4.00	36.00	0.00	40	10.00%	90.00%	0.00%
JOHANNSSSEN, TAWNY	11.00	165.00	0.00	176	6.25%	93.75%	0.00%
JOHNSTON, JOHN	18.00	78.00	80.00	176	10.23%	44.32%	45.45%
KIRKHAM, HARRY	19.50	108.50	48.00	176	11.08%	61.65%	27.27%
KATIMER, SREPHEN	28.00	148.00	0.00	176	15.91%	84.09%	0.00%
LEDDY, ANDREW	17.00	87.00	72.00	176	9.66%	49.43%	40.91%
LEDDY, KEITH	27.50	128.50	20.00	176	15.63%	73.01%	11.36%
LIND, DALE	38.50	127.50	10.00	176	21.88%	72.44%	5.68%
LITTLE, BILLY	0.00	0.00	176.00	176	0.00%	0.00%	100.00%
McADAMS, JOSEPH	31.50	126.50	18.00	176	17.90%	71.88%	10.23%
McGEE, IVAN	20.00	60.00	0.00	80	25.00%	75.00%	0.00%
MITCHELL, DALE	46.00	130.00	0.00	176	26.14%	73.86%	0.00%
MITZNER, DAVID	7.00	33.00	0.00	40	17.50%	82.50%	0.00%
OGLE, WILLARD	29.00	99.50	47.50	176	16.48%	56.53%	26.99%
POWELL, LEE	21.00	139.00	0.00	160	13.13%	86.88%	0.00%
REED, JERRY	29.50	146.50	0.00	176	16.76%	83.24%	0.00%
RINKES, LYNN	23.50	151.50	0.00	175	13.43%	86.57%	0.00%
ROBERTS, ERROLL	34.50	120.50	21.00	176	19.60%	68.47%	11.93%
ROGGE, MICHAEL	42.50	127.50	6.00	176	24.15%	72.44%	3.41%
SINGULAR, LEE	21.50	148.00	6.50	176	12.22%	84.09%	3.69%
SPIELBUSCH, STEVEN	31.00	145.00	0.00	176	17.61%	82.39%	0.00%
STUHLSATZ, DAVID	26.50	99.50	50.00	176	15.06%	56.53%	28.41%
TOWNS, SEAN	34.50	137.50	4.00	176	19.60%	78.13%	2.27%
TURNER, REX	27.50	127.00	21.50	176	15.63%	72.16%	12.22%
VANMETER, TONI	25.50	150.50	0.00	176	14.49%	85.51%	0.00%
GRAND TOTAL	965.00	4,229.00	1,013.00	6,207.00	15.55%	68.13%	16.32%



WATER QUALITY STANDARDS

The federal Clean Water Act requires the state to establish and review surface water quality standards every three years. Following adoption of the water quality standards in 1994, a number of questions were raised concerning the standards and the process used for setting those standards. During the 1997 session, the Legislature enacted H.B. 2368 which, among other things, created a Special Commission on Surface Water Quality Standards. It charged the Commission with conducting a review of Kansas surface water quality standards and the standard-setting process. Dr. Jim Triplett of Pittsburg State University was subsequently appointed by Governor Graves to serve as Committee Chair. The Special Commission did a great deal of study, held numerous meetings to obtain public input and issued its final report on June 30, 1998.

The Special Commission made a number of recommendations designed to improve the Kansas water quality standards setting process and increase public participation in the process. In brief, their recommendations were as follows:

- that a permanent body be established to advise the Governor and the Legislature on water quality issues;
- provisions be added to Kansas statute:
 - 1) requiring and establishing procedures to enhance stakeholder participation in all aspects of the water quality standards setting process;
 - 2) outlining policy considerations that must be addressed by KDHE when establishing designated uses of stream reaches and other water bodies;
 - 3) requiring KDHE to review existing use designations
- that KDHE develop and utilize a scientifically based, objective process to conduct use attainability analysis and that the agency consider allowing analyses to be done by independent entities;
- that Kansas surface water quality regulations be revised to:
 - 1) provide for alternative winter ammonia limits on a site-specific basis;
 - 2) set the atrazine chronic aquatic life standard at 3 ppb until further research has been done;
 - 3) recognize the impact of natural mineral intrusion on stream quality and permits by establishing regional or segment specific chlorides criteria;
 - 4) utilize seasonal variations in establishing criteria;
 - 5) add a provision to clarify that narrative criteria alone should not be used as basis to list streams as impaired;
 - 6) ensure that when data are available, actual effects take precedence over models or mathematical calculations in determining mixing zones;
 - 7) fully incorporate implementation procedures into regulation so as to assure adequate peer review, stakeholder participation and consistent application of water quality standards.
- Kansas should establish a dedicated funding base to support water quality monitoring and use attainability analysis;
- water quality standards which are more stringent than EPA requirements should be

justified with risk assessment and cost-benefit analysis;
- that the Legislature and the Governor place a high priority on funding the components necessary to have an effective and efficient water quality standards setting process.

Under HB 2368, KDHE was also to develop and publish proposed revised water quality regulations by December 31, 1998. KDHE has prepared new draft water quality standards. The timeline they have established calls for publication of the draft administrative regulations in the Kansas Register on February 17. The public hearing on the new standards regulations would be held on April 19. Under this schedule, the newly revised Kansas Water Quality Standards regulations would become final on June 25, 1999, prior to the June 30 deadline established by H.B. 2368.

A review of the proposed draft regulations indicates that KDHE has attempted to incorporate some of the suggestions made by the Special Commission. They also have advised KDA privately of an intent to adjust the atrazine chronic life criteria to 3 ppb, which was the level first established by HB2368, then recommended by the Special Commission.

TMDLs

The Federal Clean Water Act calls for each state to identify those surface waters within its boundaries which do not meet water quality standards. For identified streams and lakes, the state is to establish the total maximum daily load (TMDL) requirements for those pollutants causing the non-attainment of the water quality standards. Kansas is under a court consent agreement to develop TMDLs for each water quality limited stream segment and lake in each of its 12 river basins over the next 8 year period. The first set of TMDLs which must be done are for the Kansas-Lower Republican Basin. These must be completed and submitted by June 30, 1999. As a consequence, several agencies, agricultural associations and others are working to assist KDHE in developing the draft TMDL documents which will be taken out for public review and comment.

Tom Stiles, KDHE, is overseeing the TMDL effort. A work group has been formed to develop the TMDL program for Tuttle Creek Reservoir and the Big Blue River Basin of Kansas. Four subcommittees have been formed to draft the various parts of the TMDL program plan. The subcommittees and persons serving as chair are:

<u>Subcommittee</u>	<u>Chair</u>
Biological Impacts	Chris Mammoliti, KDWP
Municipal Impacts	Cathy Tucker-Vogel, KWO
Data Analysis	Tom Stiles
Implementation Program	Dale Lambley, KDA

KDA then is coordinating the effort to develop the draft approach to getting water quality improvement programs actually put on the ground.

GOVERNOR'S WATER QUALITY INITIATIVE

The Kansas-Lower Republican Basin in northeast Kansas has been the pilot basin for the Governor's Water Quality Initiative. However, we are now in the process of determining which of the remaining 11 Kansas river basins should be emphasized for voluntary initiatives and cost share programs. Right now it would appear that the Lower Ark is a prime candidate. We are also determining what baseline monitoring and other programs need to be maintained in the KLR to support the programs that have already been started there.

CAFOs & NUTRIENT UTILIZATION PLANNING

During last session, the Kansas Legislature enacted Sub. H.B. 2950 - generally known as the swine bill. The bill strengthened permitting requirements for confined swine operations and also put into place restrictions on the amount of swine waste which can be applied to farm fields. The permitting of facility sites is overseen by KDHE; however, the Department of Agriculture was assigned the responsibility of overseeing field fertility testing and application of manure as fertilizer.

Both KDHE and KDA have developed the regulations necessary for implementation. Kansas State University, the KDHE swine advisory committee, the Kansas Pork Producers Association and several consultants assisted KDA in the development of the nutrient utilization regulations which went into effect on January 1, 1999. Swine producers having more than 1,000 Animal Units of hogs will be entering into a 5-year field fertility planning and manure application schedule. Annual soil testing of fields for nitrogen, phosphorus, chlorides, copper and zinc levels is required. Phosphorus testing is a key to protecting both surface water and groundwater from nutrient enrichment. When phosphorus runoff is limited, losses of nitrogen, zinc, copper and chlorides to either groundwater or surface water are minimal. The swine operations also will be conducting soil profile testing for nitrates.

KDHE employed a consultant to assist in development of a computerized program to be used in maintaining information and issuing CAFO permits. KDA, KSU Cooperative Extension and the Kansas Pork producers will be holding workshops for pork producers in late February and early March in Linn, Garden City, Newton and Seneca. The purpose of these workshops is to help producers learn how to prepare the required nutrient utilization plans. The nutrient plan is a part of the application which will then be submitted to KDHE.

The system KDA will use in processing applications for swine CAFO permits is as follows: 1) producers will submit all information to KDHE District Offices; 2) KDHE will scan in the application and electronically transmit the nutrient utilization plan to KDA for review; 3) following review, KDA will signify approval/denial to KDHE. Electronic handling should reduce errors in handling and speed up the response process.

PESTICIDE MANAGEMENT PLANS

Since 1990, the US Environmental Protection Agency has been developing a new initiative designed to prevent pesticide contamination of the nation's groundwater resources. The EPA's Pesticides and Groundwater Strategy calls for their review of the various pesticides and identification of those that may offer a potential for leaching into groundwater. States would then develop management plans for the pesticides identified by EPA as posing a threat to groundwater. The Pesticide Management Planning (PMP) process would provide each state the opportunity to tailor their pesticide use and groundwater protection measures to fit local conditions.

The first step in the pesticide management program is state development of a generic management plan. The generic plan is the basic framework of the program that would be put into place. It outlines the processes and procedures under which future plans for designated pesticides would be developed. The Kansas Department of Agriculture, as state pesticide lead agency, is charged with development of the generic and any future pesticide specific plans. These state plans require the involvement, assistance and coordination with other entities having water related responsibilities or interests.

The Kansas generic plan has been drafted and submitted it to EPA for review. It strongly emphasizes prevention of water contamination, rather than after-the-fact remediation. EPA comments and general approval of the Kansas generic plan are expected by Feb. 1, 1999. Once that is received, KDA will begin a wider process of education and outreach on this program and ask for advice and suggestions. The Kansas generic plan is a living document. This allows the state to know what EPA is going to require and still incorporate the "better ideas" people may come up with during public review of the plan. Planners expect to learn a great deal as they develop and implement the first pesticide specific plan, and these experiences can be added.

EPA has indicated that the first group of pesticides for which they might require development of plans are alachlor, atrazine, metolachlor, simazine and cyanazine. Following formal federal notice that a plan was required for use of a pesticide, the state would have 2 years for plan development and implementation.

Pesticide Issues

Food Quality Protection Act (FQPA)

The Food Quality Protection Act (P.L. 104-170) received unanimous approval by Congress and was signed into law by President Clinton in August of 1996. The law was an attempt to resolve inconsistencies in the country's two main pesticide statutes - the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act. Prior to passage, much of the congressional debate was focused on one principal issue--how to deal with the pre-existing Delaney Clause in light of scientific advances concerning tolerance to potential carcinogens in food.

Under FIFRA, EPA registers and regulates pesticides to prevent unreasonable adverse effects on human health or the environment. FQPA directs the agency to reassess all of the nation's pesticides using more data and taking more factors into account. When approving a "food use" for a pesticide, EPA under FIFRA must first establish a "tolerance"-- the acceptable amount of exposure to pesticide residue on food. The tolerance is the level of residue a person could be exposed to every day for 70 years without showing adverse effects. The acceptable exposure level is termed the "risk cup."

Before 1996, the risk cup was filled only with pesticide residues from food. Under FQPA, EPA must also include non-dietary exposure in the risk cup. Some examples would be potential exposures from water by drinking or taking a shower, exposures from working on the lawn or taking a walk in the park, or exposures within the household. In addition, prior to 1996, the risk cup was filled only with residues of a single pesticide. Under FQPA, pesticides having a common "mechanism of toxicity" must be included in a single risk cup. FQPA also mandates that EPA complete reassessment of tolerances within 10 years. This means that EPA has 10 years to reassess approximately 10,000 chemicals. EPA has decided to start by looking at the organic phosphate (OP) and carbamate classes of insecticides. One-third of all pesticides are in these two groups.

There is at present a very intense controversy ongoing over the approach EPA is taking with the reassessment process, especially in regards to the use of default assumptions. The Environmental Working Group, the Natural Resources Defense Council and some other environmental advocacy groups are saying that EPA already has more information than it needs to ban the pesticides and the agency is protecting corporations and industries to the detriment of vulnerable children. Farm organizations, grower associations and chemical manufacturers, on the other hand, are saying the EPA is in such a rush to do assessments that the agency is misusing default assumptions (worst case scenarios) rather than hard data. By doing so, they say, EPA will end up outlawing many, if not most, pesticides. For example, if Tilt Fungicide is registered for use on wheat on Kansas, can EPA legitimately presume that all wheat acreage in Kansas is treated annually at the maximum rate?

On April 8, 1998, Vice-President Al Gore issued a directive to EPA and USDA to involve

interested parties in FQPA implementation. To that end, in May EPA created a 50-member EPA-USDA Tolerance Reassessment Advisory Committee (TRAC). U.S. Department of Agriculture Secretary Dan Glickman appointed Secretary Devine to serve as one of the members.

Whether EPA can gather all the data it needs and to what extent it can rely on default assumptions remains to be seen. However, it is a near-certainty that EPA will eventually outlaw some of the OPs. It has also become quite apparent that serious efforts need to be made by states to conduct surveys or otherwise collect detailed information on actual pesticide use in the state

Structural Pest Control Peer Review

Working with the Kansas Pest Control Association, KDA will be conducting a peer review during the first half of calendar year 1999 of the structural pest control procedures within the KDA Pesticide Program. As has occurred in peer reviews of other departmental programs, peer officials from several other states' pesticide programs will be invited to spend approximately a week visiting and analyzing the current Kansas program procedures with customers, staff and the regulated community (i.e. KPCA). The peer review team subsequently makes recommendations to the Secretary concerning improvements and possible changes for the quality of the program's service delivery. Additionally, KPCA has offered to assist staff with training opportunities on the rapidly changing product and service strategies affecting this portion of the industry.

Pesticide Certification and Training Working Group

The department will be reconvening a public/private sector working group during 1999. This group met two years ago to discuss possible changes in the methods and delivery for recertification and training opportunities in the commercial and private applicator pesticide certification procedures. The increased availability of training methods other than classroom events, such as computer based training, videos, and hands-on equipment use, is expanding the number of teaching and learning events and the possible use of continuing education credits.

While current law allows significant flexibility for the type of training programs that can be approved, this discussion may lead the working group to recommendations for potential revisions in the Pesticide Law and Agricultural Chemical Act to be presented in a subsequent session of the Legislature.

Fertilizer Fee Fund

K.S.A. 2-1205 requires the secretary of agriculture to reduce the fertilizer fee fund whenever the fee fund generates more money than is necessary for the administration of the fertilizer program. The \$1.70 per ton fee is split between the state water plan (\$1.40), the KSU fertilizer research fund (\$.04) and KDA (\$.26). Currently, the tonnage fee generates approximately \$500,000 each year for KDA, while our normal expenses are approximately \$400,000 per year. Because we have been generating more money than is needed to fund the program, we have carried over approximately \$300,000 in the fertilizer fee fund. Therefore, we are proposing that the fertilizer fee fund be reduced by \$.03/ton, which represents approximately a 10% reduction in KDA's share of the fertilizer fee fund. Therefore, we are estimating this \$.03/ton reduction would represent a reduction in fee income by \$56,000.

There is also the proposed one time usage of \$100,000 from the fertilizer fee reserve fund to be utilized for the funding of a pesticide use survey. The fertilizer fee fund is paid by fertilizer dealers, then the fee is normally passed along to the farmer. The pesticide use survey will be used to collect data regarding the usage of pesticides in Kansas so as to be able to defend the reasonable use of pesticides in the upcoming implementation of Food Quality Protection Act (FQPA).

Pesticide Use Survey

Historically, pesticides have been an effective and available means of controlling insects, plant diseases, bacteria and other pests of agricultural or public health concern. A critical need has now developed for determining the types and amounts of pesticides used in the state. This need is driven by requirements of the federal Food Quality Protection Act (FQPA), US-EPA implementation of Pesticide Management Plan (PMP) regulations and Kansas' efforts to improve water quality of the state's streams and reservoirs. KDA has requested these funds to conduct a basic survey of agricultural, urban and suburban pesticide use in Kansas. KDA is chairing a work group comprised of KSU Extension and Kansas Ag Statistics personnel to develop the survey protocol.

Water Issues

During the past several years there has been some issues that have surfaced that warrant further discussion. The issues that need discussion at this point in time are 1) certification of water rights, 2) enforcement against blatant overpumpers, 3) abandonment of water rights and 4) unsafe dams.

Certification of water rights - The water resource staff has focused on certifying water rights during the past year. The staff has made good strides in eliminating this backlog. This is necessary so that a person's water right is legally established at a certain quantity. Because of the legal significance of certifying water rights, KDA decided this should be a priority project and we will continue with this project until all of the backlog is resolved.

Enforcement against Blatant Reoccurring Overpumpers - As certain areas of the state are closed to further appropriations, the issue of blatant overpumpers has begun to be a reoccurring complaint by the ground water management districts to the department. Last fall, the water resources staff developed a plan to begin enforcement action against blatant reoccurring overpumpers. The plan calls for a screening of files that show the reporting of water use that is significantly in excess of the authorized quantity. The plan then calls for staff to visit with the individual and assess whether such overpumping is actually occurring or whether the person merely miscalculated the usage amount. If the person is actually overpumping then the person and the department enter into a compliance agreement stating that the person will agree to stay within the appropriated quantity. If the person violates this agreement then the department may pursue legal avenues to permanently reduce or remove the water right. Since the process involves various meetings with the person and monitoring of compliance with the agreement, no actual enforcement is expected to occur for several years.

Abandonment of Water Rights - The law provides for the abandonment of water rights if there has been non-use of the water right for three or more years and the non-use does not constitute beneficial use of the water. The department has held abandonment hearings in the past 18 months. Some of these hearings were at the request of the water right holder so that their water right issue would be decided and they could sell the property. Other files were submitted by the area water commissioners and water resource staff. While this issue is a difficult topic, the law is on the books, and the department is committed to carrying out our duties until the law is changed.

Dams - This program has been difficult to get a handle on due to the fact that for approximately 18 months we were unable to find a person to head up the program. Approximately 1 year ago, we were able to hire an engineer to manage this program. We have established a tracking system of dams, the status of dams and complaints received about dams. During the past year we have entered into agreements with dam owners to give them time to address the problems while monitoring the status of the dam to ensure the safety of the public and the surrounding property. A number of our dams are aging and are in need of maintenance. Unfortunately, the maintenance of a dam is not always an inexpensive item and in some instances has been put off for a number of years. We are attempting to be reasonable while also fulfilling our obligation to ensure safe and

sound structures. By April 1, 1999, we plan to have visited each of the 34 unsafe dams and begin the process of assessing what options are available to the dam owners and KDA.

One of the themes that we hear from dam owners is that it is not fair to raise the scrutiny level of their dam because someone built a home below them. They are of the opinion that if the dam was there first, then the homeowner should have known the potential risk of building a house below the dam. If the legislature agrees with this philosophy then a bill should be introduced to change the law to reflect this idea.

January 11, 1999

According to the Water Structures Inventory Database:

Hazard Class "c" structures:

Hazard Class "b" structures:

Blatant and Recurring Over pumping Project

The Kansas Department of Agriculture's division of water resources (DWR) has developed what it believes will be an effective enforcement plan to curb use of ground or surface water in excess of appropriated amounts. Groundwater Management Districts will be invited to join in this compliance enforcement strategy on over-pumping which will become a part of the normal course of administration of water rights. The division has data which allows it to identify and rank water right owners by the degree to which they have in the past used more water than they are authorized under their water right.

The plan has these fundamental parts—

Compile information on water use and verify facts by field inspection (97 and 98 irrig. seasons)

Technical assistance to the owner in deciding on a plan to stop over-pumping (99 irrig. season)

Owner implements plan and compliance monitoring in place (99 irrig. season)

Enforcement:

Is owner successfully implementing plan and pumping within authorized quantity?

Yes- no further action needed No- enforcement process begins

(Based on '99 monthly water use reports)

Enforcement actions span several more seasons and follows draft admin. process:

<u>Season</u>	<u>Action if exceeds maximum authorized quantity</u>
3 rd ('99)	Cease pumping for remainder of season
4 th ('00)	Cease pumping for remainder of season and the following season
5 th (01)	Pumping suspended since 4 th season
6 th ('02)	Lift suspension on pumping
7 th ('03)	Dismiss water right

Status of project activities

o GMDs 1, 3, 4, and 5 have voted to participate in this project

o the top candidate water rights have been selected for GMD 3, 4, and 5

- o Candidate water right information compilation and field verification is complete for GMD 3
- o Candidate water rights information compiled for GMD 4, DWR field staff have met in early January with GMD 4 staff and selected over-pumper candidates and discussed follow up strategy
- o Candidate water right owners being compiled for GMD 5 and GMD 1
- o Coordination meeting held with KWO to ensure the KWO/GMD 3 contract terms are compatible with the Blatant Recurring Over-pumping Project
- o Meeting with KSU irrigation engineers scheduled for Jan. 19th to discuss their participation in the Advisory Panel
- o Attending GMD 3 Board meeting Jan. 13th, KWO contract for Technical Assistance is on the agenda and to discuss strategy with the GMD 3 staff
- o DWR staff will meet week of Jan. 18th to finalize notification documents and other initial actions prior to the Advisory Panel meetings that will be held in February
- o Final plans negotiated with the owners and on site visits scheduled for completion in March prior to irrigation
- o Meters installed and tests conducted by DWR before first irrigation. Monthly meter readings and water use required during irrigation season by each owner

STRATEGY FOR ADDRESSING BLATANT AND RECURRING OVER PUMPING

PROBLEM: Increasing awareness of the consequences of long term water depletions in western Kansas has motivated strong interest in a more aggressive approach to stop water right owners who pump more water than they are authorized to pump under their water right. Groundwater Management Districts have reinforced that interest through their policies on over pumping and through contractual agreements with the Kansas Water Office that fund conservation and technical consultation activities. The Division of Water Resources is expected to support these efforts through their enforcement authorities. In response to this, The Kansas Department of Agriculture has developed a compliance enforcement strategy specifically focused on the over pumping issue. This strategy is intended to be a preliminary effort leading to a more comprehensive long term plan that addresses all aspects of water-right compliance enforcement.

PURPOSE: Implement an aggressive plan to stop water right owners from pumping substantially more water than their water right has authorized. The plan includes essential aspects that are critical to the success of the effort and the future credibility of the Division of Water Resources: 1) focuses initial enforcement efforts on an achievable number of the most blatant and recurring over pumping cases 2) the strategy is a coordinated effort between the Division of Water Resources (DWR), Groundwater Management Districts (GMD), and the Kansas Water Office (KWO) 3) the Department of Agriculture will provide reasonable opportunity for water right owners to adapt and comply but is prepared to carry out the enforcement process to the full extent of Division of Water Resources authority when necessary.

APPROACH: The planned strategy is unprecedented in its focus and its determination to come to a final solution for these over pumping cases. Therefore the process has an objective design that identifies the most blatant and recurring problems and clearly defines solution requirements and consequences for the water right owners. The water users identified are, by design, the most blatant and consistent over pumpers who have been given numerous notices in the past and have been provided several years of reprieve before reaching this point. There is no doubt that a retrospective analysis of facts for these abusers shows extensive disregard for water rights and the excessive quantities of water involved are the most among all users. The initial effort will be in GMD 3 with similar plans for the other GMDs in the future as procedures are refined.

An advisory panel of representatives from DWR, the GMD, KWO, and KSU Extension will develop realistic recommendations for each of the water right owners to remedy their over pumping problem. Then the GMD, and KWO will provide consultation to owners to design and agree upon conservation plans that include a specific remedy for overpumping. The owner signs an agreement to implement remedial actions and stay within the quantities of water specified on the water right. It is also made clear that DWR has the authority to dismiss a water right for overpumping which is a violation of the terms, conditions, and limitations of the permit.

These specific owners have a record of water right abuse and manipulation. The Division of Water Resources must be prepared to approach this enforcement effort in the most professional and objective manner in anticipation of a lack of cooperation from some owners. Therefore the number of these cases undertaken and staff assigned to them should be determined with care.

Strategy for Addressing Blatant Recurring Overpumping

1. Identification of blatant and recurring overpumpers and compilation of facts from 1997 and 98 irrigation seasons.

DWR selects a given number of files whose water use reports reflect the most blatant exceedence of authorized quantities as determined from the 1997 water use reports.
DWR and GMD field personnel conduct field observations and read meters for 1998 irrigation season.
DWR and GMD staff compile available information and discuss water use with water right owners to verify water use reports for 1997 and 98 irrigation seasons.
DWR sends legal notice to overpumpers explaining requirements of compliance and enforcement.

2. Consultation and compliance planning during November 98-January 99.

Advisory panel (DWR, GMD, KWO, KSU Ext.) recommends a compliance strategy for each owner.
DWR, KWO and GMD provide consultation with water right owners to design and agree on a conservation plan that includes specific solutions for overpumping.
Owner signs an agreement to implement the conservation plan and its overpumping solutions.

3. Implementation of conservation plan and compliance process for 1999 irrigation season.

Require meter inspection and test by DWR before irrigation season starts
Require monthly water use reports by owner
GMD and DWR conduct unannounced compliance checks as needed

3a. Owner complies with authorized quantity and successfully implements compliance actions.

3b. Owner exceeds authorized quantity-- required to cease pumping immediately or immediate administrative action is taken for blatant and recurring overpumping which is a violation of the terms, conditions, and limitations of the permit

4. Compliance enforcement process during 2000 irrigation season.

4a. Owner continues to successfully implement compliance plans, monthly water use reports no longer required. Owner required to stay within authorized quantity.

4b. Require monthly water use reports by owner. If owner exceeds authorized quantity— required to cease pumping immediately or administrative action is taken for blatant and recurring overpumping which is a violation of the terms, conditions and limitations of the permit. Suspension of water right for the following season or other appropriate enforcement action will be considered.

5. Enforcement follow-up during 2001 irrigation season.

5a. No enforcement required if previous seasons use is in compliance.

5b. If water right is suspended no use is allowed.

5c. If not suspended, enforcement follow up as consequence of other appropriate enforcement actions required. Monthly water use report required by owner.

REPORT OF THE WATER BANKING TASK FORCE
October 1998

INTRODUCTION

Water banking and its potential use in Kansas was identified in the 1995 State Water Plan as a concept to be studied. The Water Plan described water banking as a tool for meeting the goals of the State Water Resource Planning Act pertaining to the efficient, economic distribution of the water supplies of the state, and the protection of the public interest by conserving the water resources of the state in a technologically and economically feasible manner.

The Water Plan identified the Department of Agriculture, Division of Water Resources (DWR) as the appropriate agency to initiate work on water banking. As a result, DWR formed a task force composed of members who represent agricultural interests, municipalities, Water Assurance Districts, Groundwater Management Districts, and the Kansas Water Office. Staff from the Division of Water Resources provided support and coordination. This task force was formed in early 1996 to investigate, define and evaluate the concept of water banking in Kansas, and was comprised of the following members:

<u>Name</u>	<u>Representing</u>
Jerry Blain	City of Wichita, Lower Arkansas Basin Advisory Committee
Wayne Bossert	Groundwater Management Districts, Upper Republican Basin Advisory Committee
Roger Mohr	Walnut Creek Basin Association
Bill Roenbaugh	Water Protection Association of Central Kansas
Tom Stiles	Representing the Kansas Water Office
Kent Weatherby	Assurance Districts and the Kansas Lower Republican Basin Advisory Committee

Since the formation of the task force, the group has met on a regular basis. During that time, a great deal of information was reviewed, including materials from other states that have attempted water banking, both successfully and unsuccessfully. After great deliberation, the Task Force submits the following recommendation and report concerning water banking in Kansas.

RECOMMENDATION

It was found that water banking can be a viable water management tool which would allow water users several options not currently available. The Task Force also believes that water banking will create an incentive for conservation and will result in water being put to its most economic and beneficial use. Therefore, the Task Force recommends that up to five pilot water banks be chartered in the State of Kansas, with at least one of them being a surface water bank. These pilot banks will operate for five to seven years, at which time they will be evaluated for meeting the purpose of water banking as described below.

PURPOSE OF WATER BANKING

The purpose of water banking is to provide water users, particularly those located in areas of the state which are over appropriated or closed to new appropriation, the opportunity to utilize functions of a water bank to obtain the right to use water, while at the same time creating an incentive for and achieving conservation by reducing the amount of net consumptive use of water.

DEFINITIONS:

“Bank Board” means the governing body of a water bank.

“Bank Boundary” means the exclusive geographic area in which a water bank operates and conducts its water banking functions. A bank boundary may encompass one or more hydrologic units

“Bank Charter” means a document approved by the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, creating a water bank as a private non-profit corporation, and which sets forth the principal functions and organization of the water bank.

“Bankable Portion of a Water Right” means a part of a water right that is eligible for deposit in a water bank because of its past water use.

“Bankable Water Right” means a water right that has been determined to be in good standing based primarily upon past water usage, is past its perfection period, and is eligible for deposit in a water bank.

“Bulletin Board” means a service or function of a water bank where the bank acts as a

facilitator to buyers and sellers of water rights and water allocations.

“Conservation Element” means the portion of a deposited bankable water right, or bankable portion of a water right, that is not allowed to be withdrawn and used by subsequent users, but instead is taken out of use for the duration of the deposit contract to achieve conservation of water in the area.

“Deposit” means to enroll a bankable water right, or portion of a water right, in a water bank under the terms and conditions agreed to by the depositor and the water bank.

“Hydrologic Unit” means the defined area of hydraulically connected sources of water supply.

“Negative Interest” means the rate of decline of the amount of water that remains in a safe deposit box account each year after it is deposited.

“Net Consumptive Use” means the portion of the authorized quantity of the water right which is actually used or consumed by the use made of the water and does not return to the local source of supply.

“Pilot Bank” means one of up to five originally chartered water banks that is allowed to operate in one or more hydrologic units which do not overlap with any other bank’s boundary for five to seven years, and that is subsequently reviewed to determine if it is achieving the goals of water banking, as defined in the 1995 Kansas Water Plan.

“Safe Deposit Box” means a personal account held by an individual in a water bank where unused water from a water right owned by the individual can be deposited, a portion of which may be used in subsequent years, as authorized by the terms and conditions of a term permit issued by the Division of Water Resources.

“Term Permit” means a permit to appropriate water for beneficial use issued by the Chief Engineer, as defined in K.A.R. 5-1-1(jj), for a term equal to the length of a coinciding lease agreement.

“Water Bank” means a local, private, non-profit corporation with a charter approved by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that leases or sells water from water rights which have been deposited, and facilitates sales of water rights through a bulletin board function.

“Withdrawal” means a potential water user enters in a lease agreement with a water bank

to use water under the terms and for the duration of the lease.

ENABLING LEGISLATION

From the beginning, the Task Force agreed that in order to implement water banking in Kansas, a new and separate piece of legislation would be needed. The Task Force believes that enacting a Water Banking Act will help to keep the laws governing water rights in Kansas clear and non-conflicting. A draft of the water banking Act legislation will be presented separately from this report. The Water Banking Act will describe the method for incorporation, chartering and establishing the governing body of water banks in Kansas. The Act shall provide that the governing body of a water bank must reasonably represent important local interests in water, both public and private. Local water management entities, including groundwater management districts, assurance districts and basin advisory committees, must have the opportunity to be represented on the Board. It is anticipated that a proposed Water Banking Act will be presented to the 2000 Legislature.

EVALUATION OF WATER RIGHT BANKING

The Task Force recommends that up to five pilot water banks, with at least one of them being a surface water bank, be chartered in Kansas, as provided by the Water Banking Act. These banks will be allowed to operate for a period of five to seven years. After that time, they will be reviewed to determine if they are achieving the goals of water banking, as described in the 1995 State Water Plan, and are subsequently re-chartered. Goals of particular importance include:

1. The operations of a pilot water bank will not result in an increase in consumptive water use within its boundary. (Surface water banking transactions involving stored assurance water may result in temporary increases in consumptive use)
2. The aggregate amount of water rights deposited in Water Bank and the length of those deposits must be equal to, or exceed, the total amount of water leased, the length of those lease agreements and the water conservation element, so that the bank is not leasing water that has not been deposited.
3. The operation of a pilot water bank cannot result in impairment of existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream courses.
4. A pilot water bank's policies and operations should result in a 10 percent, or greater, savings

in the total amount of water which is consumed, based on the amount of bankable water deposited in the bank.

5. A pilot water bank should have enough participation from water right holders and water users to make it practically and financially feasible.

The five to seven year review of the operations of pilot water banks to determine if they are achieving the goals and objectives of water banking shall be conducted by a team comprised of, but not limited to, the following:

1. The Kansas Water Office
2. The Division of Water Resources, Kansas Department of Agriculture
3. The governing body or board of the pilot water bank
4. Representatives from any Groundwater Management Districts that are located within the pilot bank's boundaries
5. Representatives from any Assurance Districts which are located within the pilot bank's boundaries
6. A representative group of water right holders and users who have been clientele to the pilot bank
7. A representative from the Water Banking Task Force most familiar with the operations of the pilot bank to be reviewed.

SPECIFIC BANK FUNCTIONS

Water Banking will provide three main bank functions for water users. **First**, water banking will allow for deposits of water rights and leases of water. Water right holders can deposit all or a portion of their water right in a water bank in exchange for financial compensation. Other individuals who wish to use water, who may not have a water right, or may not have a sufficient right, can lease water from a water bank. **Second**, water banks will have a function that allows individuals to place an unused portion of a water right in a safe deposit box for subsequent use. **Third**, a water bank will act as a clearing house to facilitate the sale and purchase of water rights under existing policies and procedures.

Deposits: An individual may deposit a bankable water right, or a portion of a bankable water right, in a water bank for a term ranging from one to five years for groundwater, and a longer, yet reasonable, time for surface water. Longer term surface water deposits will be reviewed periodically to insure that there is no negative impact upon the hydrologic unit(s) from which it was deposited. In return, the depositor will receive from the bank payment for the water deposited. The bank will establish the price which is given to depositors of water. Factors influencing the price depositors will receive include:

- current climatic conditions
- length of time of the deposit
- time of year when the deposit is made
- location of the authorized point of diversion of the water right which is deposited
- priority of a surface water right
- any other consideration made by the bank or the depositor

Before a water right, or a portion of a water right, is accepted for deposit, several steps and determinations must be made. These include:

- A determination of the validity of the water right will be made by the bank with the assistance of the Division of Water Resources based upon past water use. Each potential depositor must submit to the water bank an affidavit which includes: the file number of the water right to be deposited, the portion of the water right to be deposited, the proposed duration of the deposit, and the actual approved water usage under the authority of that right for the past five years.
- Any prospective depositor of water in a water bank will be required to sign an agreement drafted by the bank which details any additional limitations that will be placed upon the depositor's use of the water right(s) proposed for deposit.
- The governing body of the bank, with a solicited opinion from the Division of Water Resources, will then make a decision on the proposed deposit. The bank, in a timely manner, may deny the proposed deposit, accept the proposal, or make a counter offer to the depositor of less than the proposed amount.
- Deposits which are accepted will be financially compensated through a contract between the

bank and the depositor. Single-year deposits will likely be given a one-time payment, while multiple-year deposits may involve periodic payments.

- Depositing a water right in a bank will be considered due and sufficient cause to prevent the water right from being abandoned during the time the water right is deposited in the bank.

Leases: Water rights which have been deposited in a water bank will be put in a holding account, from which quantities of water may then be leased. There are several steps and determinations which need to be made before the water can be leased.

- Prospective lessors must propose to use leased water within the boundaries of the water bank.
- An applicant to lease water will complete an application which will include: where the water is to be used, what the use of water will be, the amount of water desired, the location and method for the diversion of water, the rate at which water is diverted, and the proposed duration of the lease.
- The bank will then inventory its available water reserves to determine if water is available to lease to the applicant from that hydrologic unit. If it is determined that the bank has water available to lease it will then notify the Division of Water Resources of the proposed lease agreement and indicate the amount of deposited water right(s) that are to be leased, and will forward a copy of the application for lease and the application for a term permit.
- The Division of Water Resources will review the proposed lease and the term permit application and make a decision of approval or denial. The bank will be notified by the Division of Water Resources if the proposed term permit could only be approved for an amount less than that requested. The term permit will be issued in the name of the applicant for the appropriate source of supply, quantity of water, rate of diversion, location of the point of diversion, place of use, and duration of the term permit authorizing the lease of water. Consideration of the duration of the term permit and the lease agreement will be as described for deposits.
- The Division of Water Resources requires an annual water use report for all term permits. Lease holders will report their use on the annual water use report form for their term permit.

Safe Deposit Box: A safe deposit box is a water bank function that allows an individual to hold a personal account which is separate from the general accounting of deposited bankable water rights held in the bank. A water right holder can elect to place an unused bankable portion of his or her water right in their safe deposit box account and then use a portion of that water at a subsequent time when it is presumably more needed. Only water rights which are past their perfection period can be considered for this bank function. Before a water right holder may deposit water in, or use water from, a safe deposit box, several steps and determinations must be made:

- Only unused water from one water right may be deposited in each safe deposit box. Water cannot be accumulated in a single deposit box account from several water rights. Water that is authorized for use under a lease contract and a term permit cannot be deposited in a safe deposit box. Only water which was not used from the previous calendar year may be placed in a safe deposit box.
- Someone who wishes to place some of their unused water in a safe deposit box will complete an application with the water bank which will indicate how much water is to be put in the account and from which water right the deposit is being made. Each bank will establish in its charter the percentage of unused water from the previous year which may be placed into a safe deposit box. The amount of water that can be placed into a safe deposit box shall always be less than the unused portion from the previous year and cannot cause the net consumptive use under authority of that water right to increase.
- The application to deposit water will then be forwarded to the Division of Water Resources, where it will be either approved as proposed, denied, or an amount less than the amount requested may be recommended for deposit in the account.
- Water deposited in a safe deposit box will be subject to a negative interest rate of at least 10% for each calendar year it remains in the safe deposit box. Each bank's charter shall define this interest rate.
- When the holder of a safe deposit account wishes to use water from the account, an application for a term permit will be submitted to the bank. The bank will determine if the safe deposit box has sufficient water to satisfy the proposed term permit, and if the same point(s) of diversion and place of use are proposed as authorized by the water right from which the water was deposited into the safe deposit box, and, if so, will forward the

application to the Division of Water Resources, who may issue a term permit that automatically terminates at the end of the calendar year.

- The water user will be responsible for indicating on the annual water use report the amount of any water used from the water right's safe deposit account. Water Banks will track the water balances in individual safe deposit box accounts.
- A safe deposit account cannot accumulate a total amount of water which exceeds the maximum annual quantity authorized to be diverted under the water right.
- Each water bank shall be responsible for demonstrating that their safe deposit box function will not result in an increase in the amount of net consumptive use in each hydrologic unit.

Bulletin Board: The third function of a water bank is that of a bulletin board by facilitating the purchase and sale of water rights. People who do not wish to deposit water rights, or lease water, or put water in a personal safe deposit account, can use the bank to locate a seller or a buyer of a water right. Customers who use this bank service will be subject to all bank policies, including a conservation element.

WATER BANKING OPERATION POLICIES

In order to provide the banking services described above, and to ensure the state water plan goals of water banking are achieved, water banks, the Division of Water Resources, and the Kansas Water Office will recognize several established operation procedures and regulations. The policies of a water bank must be consistent and compatible with all existing Groundwater Management District Policies, any Intensive Groundwater Use Area's Orders, Assurance District Operations Plans or any other such Findings, Orders or Policies of the Chief Engineer, applicable within the bank's boundaries.

Conservation Element: Water Banks outside of IGUCAs or assurance water storage transactions will have a minimum conservation element of 10 percent imposed on all water that is accepted for deposit, or which is leased or sold. Individual banks may establish conservation requirements that are greater than the minimum. For example, for a deposit of 100 acre-feet of bankable water rights, the water bank will only be able to lease 90 acre-feet of water. The banks will decide whether the

depositor, the lessee, or both, incurs the 10 percent reduction in water available because of the conservation element and the corresponding economic implication.

Bank Balance: Water banks will maintain a balance between the amount of water right deposits and water leases both in terms of amount and length of deposits. For example, a bank could have one deposit of 500 acre-feet for one year. At the same time, it could have one two-year lease for 100 acre-feet and one three-year lease for 100 acre-feet. Banks will be given some degree of leeway, but their account balances should reside within 10 percent debts versus assets during the calendar year and balance, or be positive, at the end of each calendar year.

Dissolving Banks: A Pilot Bank which is not re-chartered cannot receive additional deposits and will have a sunset period to allow all its current deposits and leases to run the course of their contracts, prior to final dissolution. This will keep depositors and lessees from incurring injury.

Tracking Water and Water Rights: Water Banks will be responsible for maintaining accurate accounting of the amount of water rights deposited and the water leased and the water deposited in a safe deposit. A yearly ledger will be submitted to the Division of Water Resources by each bank by March 1st of the following calendar year.

THE DIVISION OF WATER RESOURCES

Review of Proposed Deposits and Leases: The Division of Water Resources will make timely decisions concerning the approval of deposits and leases, and the issuance of term permits. A decision concerning the deposit or the withdrawal of water from a safe deposit box account will be made within 15 working days.

Enforcement: A consistent, fair and equitable water use enforcement program on the part of the Division of Water Resources needs to be developed along with the water rights banking concept. Together, enforcement and banking can improve accountability and water resources management in Kansas.

Audit: DWR will annually audit each bank. This audit will include a review of adherence with the

bank's procedures, the Water Banking Act, and any rules and regulations. The audit shall also include a comparison of water deposited and water leased to insure that the goals of water banking are being pursued and that the Water Banking Act is complied with.

THE KANSAS WATER OFFICE

Technical Assistance: The Kansas Water Office may provide assistance to DWR to review proposed pilot banks to determine if a charter should be granted, will also assist in the ongoing review of pilot banks, and will assist with the final review of pilot banks to determine if they should be re-chartered.

Financial Assistance: The Kansas Water Office may provide financial backing for beginning pilot water banks through the State Water Fund.

Draft

The Year in Agriculture

Record Crops

- The runner-up to the record wheat crop in 1998 follows a record in 1997. Added together, the two years' harvests total approximately *one billion* bushels.
- Records or near records in grain sorghum and corn: 1998 corn forecast is at 410.4 million bushels; 386.1 million bushels were harvested in 1997. The grain sorghum crop forecast is at 254 million bushels in 1998 and totaled 273 million bushels in 1997.
- Soybeans are forecast at a record high 2.76 billion bushels in 1998, above last year's record of 2.70 billion bushels.
- A lesser crop, dry edible beans, will reach a new record yield of 2,000 pounds per acre and a total 380,000 hundredweight in 1998.

Prices Nosedive

Overall, the prices received for the major Kansas commodities and beef and pork fell to 25-30 - year lows during the summer of 1998. Income on the farm and revenues to agribusinesses and government directly reflected a lack of export markets and other factors.

	1996 Averages	Fall 1998 Approximate Prices
Corn	\$2.85	\$1.70-\$1.80
Sorghum	\$4.00	\$2.70-\$2.80
Wheat	\$4.70	\$2.50/\$2.60
Soybeans	\$6.65	\$5.80
Cattle	\$65.50	Under \$60
Hogs	\$50.70	\$9-12

A Very Bad Year for Exports

The Asian Crisis and problems in Russia contributed to a drop in agricultural exports. Kansas, as a leading producer of bulk commodities, is directly dependent on exports. USDA says the Kansas reliance on exports has risen from 26 percent to 29 percent since 1991. Exports support about 34,500 jobs--not all of them are on the farm--in agriculture and agribusiness.

Transportation and Storage Challenges

Kansans were concerned when railroad car and power shortages combined with a lack of storage space to put 31 million bushels of grain on the ground in the fall of 1997. In 1998, a lack of export markets led to nearly twice that amount (about 61 million bushels) in excess of available storage. Most believed a lack of markets, rather than a lack of rail transportation, was the major cause of grain on the ground last year.

At the end of the calendar year, the Kansas grain warehousing program reported that approximately 9.8 million bushels of sorghum and corn remained on the ground at 42 state-licensed facilities. To date 27.6 million bushels which had been stored on the ground had been moved into regular storage facilities.

With export demand projected to remain sluggish during 1999, the possibility of continued storage space shortfall continues even if grain production results in average or above yields. Coupled with the highly interrelated nature of the market transportation system and its needs, the Graves Administration transportation proposal includes several items to help address these storage and transport issues.

1. Proposed creation of a five-year sales tax exemption on the purchase of materials and labor for the creation of new or the revitalization of existing commercial grain storage facilities.
2. Proposed creation of a sales tax exemption on the purchase of materials and labor for the revitalization of short-line railroad segments which help transport grain to Class I railways.
3. Creation of an eight-year revolving loan fund at \$4 million/year to assist short-line railroads revitalize and maintain lines for transport of agricultural and other goods.
4. Funding of a minimum of \$3 million per county for substantial maintenance, system enhancements, or major modification and bridge maintenance to allow for improvements on roads which will experience increased traffic such as from grain transportation in this system

Central Hearing Officer Bill

For a number of years the idea of a central hearing officer pool has been debated by the legislature. KDA has in the past raised the following concerns regarding this issue:

1. KDA has already contracted with outside hearing officers at a rate of \$55.00/hour which is approximately \$10.00/hour less than the Department of Administration charges.

2. KDA can set time frames for the contractual hearing officer to hold a hearing or render a decision. This type of performance expectations cannot be required of a hearing officer in the current bill.

While we understand the desire by the drafters of the bill to ensure a fair and impartial hearing, we believe that we have accomplished this through our own contractual arrangements at a lesser cost and in a more time responsive manner.

Move Update:

The final lease agreement has been signed by all parties and remodeling has started. There was a delay by another state agency in vacating the building so the project was late in starting. The bid for the new carpet has been awarded and we are coordinating all interior design activities through Design Business Interiors. Conference room furnishings, private offices, new chairs, and re-upholstery of existing chairs will be contracted with either Kansas Correctional Industries or Design Business Interiors.

The first floor to be remodeled is the fourth floor of the Mills building. It is scheduled to be completed around the first of March. Upon completion of the construction, new carpeting will be laid and the new modular work stations will be installed. The physical move of the staff will take place around the 15th of March. From there, the remodeling of the third floor will start - followed by the second floor and the first floor. It is anticipated that it will take about two to three months to complete the renovation and move for each floor of the building.

After the remodeling is complete the following detail lists the occupancy of each floor:

Fourth Floor

Office of the Secretary
Legal
Personnel
Information Resources

Third Floor

Fiscal Office
Record Center
Program Managers in Meat Inspection, Grain Warehouse, Dairy,
Pesticides, Plant Protection, Agricultural Commodities.

Second Floor

Water Resources

First Floor

Water Resources
Kansas Water Office

Information Technology and Automation

Computer Hardware

Significant efforts have been expended in the past several fiscal years to upgrade the hardware systems that the department uses. Managed year-end savings are matched with program automation priorities. More efficient use of resources have also occurred due to KDA information technology staff's ability to upgrade existing computers for significantly less expense than purchasing totally new units. The chart below reflects the number of new computers and upgrades which have been acquired.

Fiscal Year	New Computers	Upgrades	Costs
FY 95	54		
FY 96	40		\$ 55,834.00
FY 97	48	27	\$ 97,567.00*
FY 98	23	22	\$113,736.00*
FY 99		20	\$ 10,000.00

*includes server and server upgrades

Currently the department has 321 personal computer, 75% of which are Pentium or above. The vast majority (93%) operate on Windows 95 or Windows NT operating systems. The remaining units will be replaced over the next 2 years and are not mission critical as it relates to Y2K issues. In FY 98 additional upgrades for Windows 95, NT 4.0, ShaRPS upgrades to Microsoft Word 97, and other miscellaneous software upgrades will be made for a total cost of \$ 9,078.00.

Networked printers and server capabilities for e-mail and other functions have also been enhanced with year-end savings. FY '97 and '98 enhancements of the E-mail system gave KDA with worldwide messaging capability. Additionally, slower and older servers were replaced and/or upgraded.

Applications Software Systems

KDA's Integrated Information Systems (KDAIIS) continues to bring the department's many separate licensing and inspections systems from their DOS-based databases to a unified licensing and inspections system. Utilizing Passport applications software and the Oracle database, five pesticide licensing functions (Private Applicators, Commercial Applicators, Pesticide Business Licenses, Registered Technicians, and Government Agency Registration) were migrated to the new system and have been effective for fall, 1998 and its renewals period. Three other program areas are currently under development for FY 99 including Grain Warehouse, Dairy, and Meat and Poultry.

The Water Rights Information System (WRIS), which was migrated from the DISC mainframe computer in FY 97, continues to be maintained with the basic migration completed but several applications required to be improved to meet customer needs.

With the increasing use of both these applications and other enhancement demands, KDA has maintained a 98% network availability and in October 1998 added an additional fiber cable link to DISC. This 100 megabyte link provides increased data throughput and speed for the two major systems described above.

Year 2000

KDA's Y2K verification process is currently ongoing with over 98% of all potential assets to be tested identified and 70% which are tested and known to be capable of operating through the year 2035. Of the remaining 30%, over half do not use the date time stamp and would not require any modifications. The remaining items are either pending test results or have yet to be tested. A third party audit should occur prior to May 1999 and all Y2K issues resolved by June 30, 1999. KDA mission critical systems are Year 2000 compliant and the third party audit will confirm this.

KDA conducted a Y2K test on December 28-29, 1998. Mission critical areas 1, 2, and 3 passed. While some minor problems were encountered, they were corrected on the spot. Non-mission critical areas will be repaired or replaced through attrition and upgrades by June 30, 1999.

Web Site

The KDA web home page continues to receive good reviews from users including kudos from Links2Go.com as a Key Resource Award in the Kansas Government topic. KDA personnel continue to provide the most needed information, in time and format that is meaningful and usable. In the next several months, WRIS will be browser-enabled to make forms and applications more user friendly to KDA, field offices, GMD's, and eventually the public through web services.