

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 5, 2003, in Room 423-S of the Capitol.

All members were present except: Representative James Miller - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Woody Moses, Kansas Aggregate Producers Association
Laurel Murdie, Legislative Division of Post Audit
Greg Foley, Assistant Secretary, Kansas Department of Agriculture

Others attending: See attached list

Ron Klataske, Audubon of Kansas, provided additional information in regard to **HB 2027** concerning the management and control of prairie dogs. (Attachment 1)

Woody Moses, Kansas Aggregate Producers Association, requested introduction of a committee bill to extend the compliance exemption period for aggregate product scales from the standards of the national conference on weights and measures until August 31, 2005. (Attachment 2) Representative Larkin moved to introduce this bill. Seconded by Representative Freeborn, the motion carried.

Discussion and action on HB 2038 - Creating the Kansas propane education and research council.

After briefing by staff, Chairman Johnson opened the floor for discussion.

Representative Freeborn moved to amend **HB 2038** in Section 3 (a), page 2, lines 30-38, to change the number of council members from nine to ten. The tenth, non-voting member would be the State Fire Marshall or his/her designee. Seconded by Representative Thimesch, the motion passed.

Representative Freeborn moved to amend **HB 2038** in Section 3 (i), page 3, line 42, by striking the period after the word "another" and adding "or provide for the purchase of equipment by a private business or corporation." The motion was seconded by Representative Powell. Discussion ensued concerning whether or not this would include nonprofit businesses and corporations. Representative Freeborn, with Representative Powell's consent, withdrew her amendment.

Representative Gatewood offered conceptual language to amend **HB 2038** in Section 3 (i), page 3, line 42, by striking the period after the word "another" and adding "or provide for the purchase of equipment by a private, for-profit business or corporation." Seconded by Representative Freeborn, the motion carried.

Representative Powell moved to amend **HB 2038** in Section 3, page 4, after line 3, by adding paragraph "(j) The council shall report annually to the house and senate agriculture committees. Such report shall include details of council programs, projects and activities as provided pursuant to this act." and in Section 4 (a), page 4, lines 9 and 10, by changing the "½ cent per gallon" assessment to "3/10 of one cent per gallon" and striking the words, "unless approved by the council." (Attachment 3) Seconded by Representative Thimesch, the motion passed.

Representative Larkin moved to recommend **HB 2038**, as amended, favorable for passage. The motion was seconded by Representative Powell. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on February 5, 2003, in Room 423-S of the Capitol.

Discussion and Action on HB 2055 - Interest rate on agricultural production loan deposit agreements.

Following briefing by staff, Chairman Johnson opened the floor for discussion.

Representative Larkin moved to recommend HB 2055 favorable for passage and, because the bill is of a noncontroversial nature, be placed on the consent calendar. Seconded by Representative Schwartz, the motion carried.

Laurel Murdie, Legislative Division of Post Audit, presented the Performance Audit Report, *Meat Processing Plants: Determining What Factors May Have Contributed to a Decline in the Number of Small Plants and What Impact That Has Had on the State's Economy*, dated November 2002. A copy of the report can be obtained from the Legislative Division of Post Audit.

The performance audit addressed two questions:

1. What factors may have contributed to a decline in the number of small meat-processing plants in the State and what impact has the decline had on the State's economy?
2. Does Kansas have a sufficient number of inspectors, and are they properly trained and managed to ensure that standards are applied uniformly to all plants in Kansas?

In response to the first question, the performance audit shows that, like most states, Kansas has seen a drop in its number of small meat processing plants. Reasons most often cited for this include the age or lack of profitability of these plants, the declining rural economy, and the expense of bringing them up to standards. The number one thing current plant owners cited that could help them stay in business was being allowed to sell their products across state lines. The audit found that the decline in the number of state-inspected meat processing plants in Kansas likely had little impact on the State's economy.

The Division of Post Audit made two recommendations in response to the first question.

- As the Legislature considers ways to address the State's current budget crisis, the House Appropriations and Senate Ways and Means Committees may wish to weigh the costs and benefits of having a state-operated meat and poultry inspection program.
- The House and Senate Agriculture Committees should consider sending a concurrent resolution to Congress to help ensure that state-inspected meat processing plants in Kansas have the same opportunities to sell their meat products across state lines as federally inspected plants have.

In regard to the second question, survey results from owners of meat processing plants and the Department's inspection staff indicate there may be problems in several areas of the inspection program. Concerns were raised about staffing levels, training inspectors to deal with plant owners, and consistency of inspection and enforcement efforts.

The Division of Post Audit made four recommendations in response to the second question.

- When the results of the USDA Comprehensive Review of Kansas and eight other states are available next Spring, the Department of Agriculture should provide a copy to the Legislative Post Audit Committee and to other interested legislators and committees.
- The Department of Agriculture should review its inspection staffing levels to ensure they are appropriate.
- The Department of Agriculture should complete the new inspector's handbook in a timely manner to help ensure that inspection staff and plant owners have the same understanding of inspection regulations and guidelines.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on February 5, 2003, in Room 423-S of the Capitol.

- The Department of Agriculture should provide additional training to help ensure that inspection staff has the interpersonal skills necessary to interact with plant owners in difficult situations.

Greg Foley, Acting Secretary, Kansas Department of Agriculture, discussed the results of the Performance Audit Report. He noted that the audit showed that Kansas was in line with other states regarding changes in the meat processing industry. The Department supports interstate shipment of Kansas meat and poultry products and continues to work on issues of consistency in inspection across the state. He provided a comparison of state and federal meat and poultry inspection programs with his testimony. (Attachment 4)

Dr. Evan Sumner, Manager, Meat and Poultry Inspection Program, Kansas Department of Agriculture, reported that the new inspector's handbook has been completed and distributed to inspection staff and plant owners. He noted that there will always be changes and updates. He discussed new federal mandates in regard to E-coli issued this week.

Representative Thimesch shared a letter he had written to Dr. Gary McKee, U. S. Department of Agriculture, asking him to come to Kansas to explain the process of changing from a state-inspected program to a federal program, also requesting information on how a cross utilization meat inspection agreement would work. The Representative distributed other background information concerning meat and poultry inspection. The performance audit had been requested by Representative Thimesch. (Attachment 5)

The meeting adjourned at 5:23 p.m. The next meeting is scheduled for February 10, 2003.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 5, 2003

NAME	REPRESENTING
Wendy Matthews	KRMCA
Don Kizer	NCA
Shelley King	KS Atty. Gen.'s Ofc.
Dan Hobbs	KEC
Woody Moore	Ks. Agg. Prod. Assn.
Ben Hopper	KS Dairy Assoc.
Justin Wolshin	Propane Marketers Assn of KS
Gina Bowman-Morrill	FARMLAND
Deane Linn	KS Co-op Council
Mary Jane Stattelman	KGFA/KARA
Ron Duns	KMPA
Joe S. Tinson	Kansas Meat Proc.
Rae Anne Davis	KDOCH
Don Teske	KS Farmers Union
Mike Heim	KMPA
Paul Johnson	PACK
Darryl Galbraith	Intern Rep. Schwartz
GREG A. FOLEY	KDA
Evan M. Sumner	KDA

THE RESPONSIBILITY OF KEEPING THE BLACK-TAILED PRAIRIE DOG FROM BECOMING A FEDERALLY LISTED SPECIES SHOULD NOT BE SHIFTED FROM THE STATE OF KANSAS TO A FEW LANDOWNERS.

As you will note in the statement presented on January 29, 2003 on behalf of Audubon of Kansas, I am concerned that House Bill 2027 may actually accelerate the decline of prairie dog colonies in Kansas by imposing new requirements on landowners that have prairie dogs on their land. I am concerned that H.B.2027 would undermine one of the shared objectives of all parties in the Kansas Prairie Dog Conservation Workgroup--as well as those who participated in drafting the legislation. That objective is to keep the black-tailed prairie dog from being listed as a federally threatened species. If H.B.2027 leads to accelerated eradication, it would compel the parties who filed the original petition to go back to court and ask that the USFWS make that determination.

There are landowners who for a variety of reasons enjoy having prairie dogs on their land. Some like seeing them around to remind them of our prairie heritage or perhaps because of their charming qualities. Others recognize them as an integral part of the prairie ecosystem. Their presence attracts burrowing owls, ferruginous hawks, golden eagles and mountain plovers, just to name a few. However, at present most prairie dog colonies occur on lands where the landowners simply have some degree of "tolerance" and accommodate these native animals as long as the population does not get out of hand. In some cases, eradication may not seem to be worth the cost and time needed to poison a large prairie dog colony, and/or they may want to let predators control the colony in good years when the grass is high. Others do not like using poison, and some have friends who appreciate the opportunity to "keep them under control" with sport hunting.

All of this could change if H.B. 2027 is enacted and implemented. It would impose new bureaucratic and regulatory burdens, and financial liabilities, on landowners who have prairie dogs on their land for any reason. The bill would give landowners compelling reasons to get rid of any prairie dogs that now exist. The idea of having prairie dogs on one's land may become unacceptable to most landowners who now tolerate their presence.

Most people, including ranchers and farmers, do not seek to have more obligations to prepare and file more applications, plans and reports on their private land management practices.

USDA has worked to reduce this burden, however operators are still obligated to fill out forms and make appointments at the FSA and/or NRCS office to fulfill requirements of participation in price support and cost share programs, and to be eligible for disaster payments and crop insurance. The financial benefits are worth the time and effort. There are no major downsides to the procedure. They do not have to go before a potentially hostile panel and seek public approval because their motivation is not questioned.

In contrast to this, HB 2027 if passed and implemented would require a landowner wanting to retain a prairie dog colony to:

House Agriculture Committee
February 5, 2003
Attachment 1

(1) Develop a "Prairie Dog Management and Control Plan" and pledge to implement and keep it current under any conditions that may arise.

The task of preparing a plan will not be easy for many. There are no template plans available from KDWP, the County Extension Service or county officials, and the agencies have indicated that they do not have the manpower to give any priority to help landowners prepare plans. Landowners will in effect have to become "ecologists" in order to develop a prairie dog management plan. In the shortgrass prairies of western Kansas, aggressive management and periodic control practices may be needed on some sites to keep colonies from expanding and from colonizing other areas. By contrast, in the eastern part of their range in Kansas a landowner may have to intensively graze or mow the immediate vicinity of the colony to keep coyotes, bobcats, badgers, foxes, hawks and owls from totally eliminating the colony! Sites that they can occupy may be very limited to "hard pan" hilltops where the soil is less productive and the grass is short. They will not readily move into areas with vigorous midgrass and tallgrass prairie rangelands.

(2) Take the newly prepared management and control plan to the county commission (and public) for approval.

Approval may not be easy. The landowner's motives may be questioned in the public meetings, in the cafe, and in the local newspaper. Only a few landowners dedicated to wildlife conservation, and or to the concept of helping to keep the species from becoming threatened (and thereby off the endangered species list) would be willing to make their case in the public forum and media.

Although the landowner will (appropriately) be required to base his plan on sound science and wildlife management practices, and in the case of prairie dogs on appropriate range management practices, opponents to the landowner will not have to meet the same standards. Opponents could even find a less than qualified individual to declare that the landowner is threatening his neighbors with plague and financial ruin.

A landowner who develops a formal plan to accommodate prairie dogs may be cast into a different light than those who now simply imply that they "tolerate" prairie dogs, even if they prefer having a few around over the option of eradication.

Some counties take the same "tolerant" approach. Wildlife enthusiasts or sportsmen may regard that as a "progressive" approach. However, an ardent noxious weed and animal control agent for a county with a history of aggressive eradication may regard the tolerance of any prairie dogs as "negligence" on the part of the landowner and the county.

Most people, including most ranch and farm families, prefer to avoid controversy. Requiring landowners to subject their wildlife and range management (especially prairie dog management and control plans) to county and public scrutiny is a concept that should be considered

cautiously. Such a mandatory requirement would erode private property rights, especially considering that the species is native, naturally occurs throughout the western two-thirds of the state, and is currently a candidate for federal listing.

(3) Assume financial and legal responsibility for prairie dogs that relocate onto the property of others.

The state appropriately owns the wildlife in public trust, but this bill would effectively make the landowner financially liable for prairie dogs that leave his/her land unless the landowner conforms to a series of regulatory requirements. If the ranch or farm landowner is the only person in the neighborhood who has "declared" the presence of prairie dogs on his/her land, the liability could extend for miles, regardless of whether or not the colony is actually the "source" population for new colonies. When prairie dogs disperse, they often repopulate sites that were previously inhabited, or establish sites that are more suitable. The neighbor's land across the road may be intensively grazed and therefore the best prospective habitat for a new colony, but animals that colonize it may be from three or four miles away. Travel of individual prairie dogs up to six miles has been recorded.

As an acquaintance suggested, *tongue in cheek*: "Landowners will just have to brand 'em all to know where they came from and go"!

LANDOWNERS, COMMUNITIES AND THE STATE SHOULD WORK TOGETHER TO FIND WAYS TO TRANSFORM THE PRAIRIE DOG "PROBLEM" INTO AN ECONOMIC RESOURCE.

(1) Example of an Innovative Meade Rancher Who Sells Prairie Dogs.

If it can be documented that one's prairie dogs originated from Texas, New Mexico, South Dakota or North Dakota a landowner can raise and sell pups on the pet market. That adds a new twist on the "get along little doggies" western song, but the market price of \$20 per pup could help to justify a management plan. Kansas has one innovative rancher, J.W. Vanderpoil, who raises prairie dogs (with a paper trail) for this purpose to help support his southwestern Kansas ranching livelihood. He sold 9,000 to the wholesale export pet industry in 1999. That is comparable to taking 400 spring calves off in the fall and selling them for \$450 each!

Statutes relating to prairie dogs present several unique dilemmas. They can be poisoned or killed at will and counties or township boards in Kansas can compel landowners to eradicate them from their own land, but wild prairie dogs cannot be captured in Kansas and sold.

The market might become saturated in a hurry if a lot of ranchers followed J.W. Vanderpoil's lead, but prairie dogs represent a natural resource that can be sustainable and of economic value in some situations. Prairie dog colonies are not going to replace cow herds, but it is appropriate for landowners, county officials, KDWP and the Legislature to look at all dimensions of the resource and all perspectives of landowners. The prospect of marketing a prairie dog "crop" isn't any more of a threat to the species than the husbandry of bison ranching.

(2) Sportsmen are Willing to Pay Landowners for the Privilege of Controlling Prairie Dog Populations, Potentially Bringing Significant Economic Benefits to Local Communities and Landowners.

Landowners can secure as much as \$100 a day from sportsmen who enjoy shooting prairie dogs. This is a common enterprise in South Dakota. Sportsmen travel to rural communities in South Dakota from several states to participate--probably from Denver to Chicago. I personally know hunters who go up from Omaha.

At least one county in western Kansas is currently considering implementation of an eradication program. The area has suffered severe drought during the past few years. Rangelands are in dire shape, livestock forage is at a premium (when available), and prairie dog colonies are expanding in acreage to sustain themselves. Would it not be better to address management and control in ways that would bring in economic resources, rather than burden landowners with a mandatory eradication program? Someone like former Kansas House Speaker Robin Jennison could greatly help to organize and develop such an alternative.

It is better to harvest some prairie dogs on a sustainable basis than to poison them all. It is better to control and manage prairie dogs in partnership with landowners than to force landowners to eradicate the species in an entire county.

(3) There Are Places Where Prairie Dogs Can Contribute to Nature-Based Tourism.

The state parks that maintain small prairie dog colonies to greatest advantage as added attractions include Kanopolis State Park and Prairie Dog State Park. Lovewell State Park also has a small colony and an adjacent parking area that is available for "wildlife watching".

Prairie dogs on property owned by The Nature Conservancy at Cheyenne Bottoms contribute to visitation of the area by providing not only viewing opportunities for prairie dogs but also for burrowing owls and other prairie wildlife dependent upon prairie dogs.

On a personal note, my family is pursuing the reestablishment of a small prairie dog colony on pastureland we own in Washington County, three miles from one of the last prairie dog colonies eradicated from the county in the 1950s. If we are successful we will make the area a "Walk-In-Wildlife-Watching Area" and include it on the **Kansas Birding and Prairie Flora Trails** system being developed by Audubon of Kansas in partnership with many other public and private entities in the state. This trail system will draw attention to at least 200-300 sites that offer opportunities for birding, wildlife watching, nature photography, viewing of wildflowers and scenic vistas. This type of outdoor recreation and tourism is growing throughout country.

(4) Landowners Who Keep Prairie Dogs in Sufficient Numbers are Helping to Keep the Species From Becoming Federally Listed.

By preventing the prairie dog from becoming a Federally threatened species, regulations will not be imposed on other landowners who do not want prairie dogs. This is in their best interest--and is an objective of the Kansas Legislature.

THE STATE OF KANSAS SHOULD RETAIN STATUTORY RESPONSIBILITY FOR NATIVE WILDLIFE.

We can certainly argue that commercialized marketing of wildlife can be problematic when painted with a wide brush to include other species. However, it is an even more slippery slope to require landowners to prepare, submit and implement management and control plans for native wildlife that they may want to retain (as naturally occurring wildlife) on their land. Should a sportsman-landowner who has a wetland be required to have a county approved management and control plan, and assume financial liability for the depredation or control of blackbirds that roost in the cattails by night and flock to neighboring milo or sunflower fields, and feedlots, during the day?

There are better ways to deal with problems of this nature. Most landowners strive to be good neighbors without statutory requirements, and state agencies have responsibility for wildlife management programs. In addition, the K-State Extension Wildlife Damage Control Program is available to assist landowners. And, if we all work together we can come up with creative solutions.

Wildlife conservation is compatible with private property rights, and the status of wildlife as a trust of the state, but this balance could unravel if the mandatory provisions of H.B. 2027 are enacted at the beginning of this century. It would give renewed "legitimacy" to a slight variation on the antiquated laws enacted exactly a hundred years ago when views toward wildlife were much different. If we cannot come up with a more enlightened and progressive approach, it would be far better to simply repeal the prairie dog, gopher and mole eradication statutes enacted in 1903. The Nebraska Unicameral accomplished that statutory reform in 1995.

Kansas counties have authority to implement reasonable control programs under "Home Rule". There are no compelling reasons to keep the antiquated statutes or to diminish the property rights of ranch and farm landowners in other ways by enacting H.B. 2027 as it is currently written.

--Ron Klataske
February 4, 2003

From: Carol/Hoogy Hoogheem <Hoogy@kansas.net>
Date: Tue Feb 04, 2003 05:53:28 PM US/Central
To: Ron Klataske <ron_klataske@audubonofkansas.org>
Subject: [Fwd: Prairie Dogs]

Ron,

This was in the editorial section of Sunday's Times....thought it was rather poignant. Hoogy

February 2, 2003

In the Shadow of Extinction

By TERRY TEMPEST WILLIAMS

CASTLE VALLEY, Utah — Will the groundhog see his shadow this morning and retreat into his burrow for the next six weeks of winter, or will a cloudy day portend an early spring? A derivative of Candlemas, Groundhog Day reminds us that in the heart of winter, rebirth is possible, even in a frozen world.

We await the prognostication of the hibernating ones to signal our future, be it a groundhog, woodchuck, badger or hedgehog. In the American West, we look to the prairie dog: clay-colored sentinels that stand on their mounds watching the horizon for clues; a quick bark warns danger is near. A fair prediction could be made that on this day, the shadow they see is not of a prolonged winter, but of a prolonged history of abuse.

There are five species of prairie dogs in North America: black-tailed, white-tailed, Gunnison, Mexican and Utah. All of them are social creatures. All of them are in jeopardy. The causes: cruelty and a loss of habitat.

It was estimated that this little wild dog of the prairie numbered an astonishing five billion in North America in the early 1900's. The largest colony on record, in Texas, was 100 miles wide, 250 miles long and contained an estimated 400 million prairie dogs.

Prairie dogs create habitat, not only for themselves, but for other grassland inhabitants. With their

mounds and extensive burrowing systems, their home is home to myriad other creatures. One study of black-tailed prairie dogs identified more than 140 species of wildlife associated with prairie dog towns, including bison, pronghorn antelope and burrowing owls, as well as carnivores like rattlesnakes, coyotes and black-footed ferrets.

Prairie dogs create community. Destroy them and you destroy a varied world. Barre Toelken, a folklorist in the American studies department at Utah State University, tells the following story: In 1950, government officials proposed getting rid of prairie dogs on parts of the Navajo Reservation to protect the roots of the sparse desert grasses and thereby maintain some grazing for sheep. The Navajo elders objected, insisting that "if you kill all the prairie dogs, there will be no one to cry for the rain."

The officials carried out their plan, and the desert near Chilchinbito, Ariz., became a virtual wasteland. Without the ground-turning process of the burrowing animals, the soil became solidly packed, impervious to rain. The result: fierce runoff creating devastating erosion.

In 2003, the Utah prairie dog, in particular, is imperiled. After years of poisoning campaigns, indiscriminate shooting, disease and loss of habitat, the Utah prairie dog was listed as an endangered species in 1973. In 1984, pressures by ranchers, farmers and developers on the State of Utah and the federal government resulted in the prairie dog being reclassified as threatened, which allowed for the animal to be killed once again. Almost 20 years later, its population is believed to number only 4,217, according to the Utah Division of Wildlife Resources.

This week, a coalition of environmental groups are petitioning the United States Fish and Wildlife Service to reclassify the Utah prairie dog as endangered, to stay the hand of extinction.

As we find ourselves on the eve of war, why should we care about the fate of an invisible animal in remote Western grasslands that spends half of its life underground? Because the story of the Utah prairie dog is the story of the range of our compassion. If we can extend our idea of community to include the lowliest of creatures, we will be closer to finding a pathway to empathy and tolerance. If we cannot accommodate them, the shadow we will see on our own home ground will be a forecast of our extended winter of the soul.

Terry Tempest Williams is author of "Red: Passion and Patience in the Desert."

83-202

Chapter 83.--WEIGHTS AND MEASURES
Article 2.--STANDARDS AND ENFORCEMENT

83-202. Recognized system of weights and measures. (a) Except as provided further:

(1) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state.

(2) The following standards and requirements shall apply to commercial weighing and measuring devices:

(A) "The standards of the national conference on weights and measures" published in the national institute of standards and technology handbook 44 entitled specifications, tolerances, and other technical requirements for weighing and measuring devices as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary, except those vehicle scales installed prior to the effective date of this act and used solely for the purpose of weighing aggregate products shall be exempt from the provisions contained in section 2.20 scales, table 6 of such handbook. Such aggregate product scales shall have a minimum tolerance of +/- 100 pounds. ~~Such exception shall be in effect for a period of two years from the effective date of this act; Such exception shall be in effect for a period of two years from the effective date of this act.~~ *until August 31, 2005.*

(B) "the uniform laws and regulations of the national conference on weights and measures" published in the national institute of standards and technology handbook 130 regarding packaging and labeling, the method of sale of commodities, national type evaluation regulation, motor fuel inspection and motor fuel regulation, as published on December, 1994 or later versions as established in rules and regulations adopted by the secretary;

(C) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, as published on September, 1988 or later versions as established in rules and regulations adopted by the secretary;

(D) "checking the net contents of packaged goods" published in the national institute of standards and technology handbook 133, third edition, supplement 4, as published on October, 1994 or later versions as established in rules and regulations adopted by the secretary; and

(E) any other handbooks or sections thereof as adopted by the secretary by rules and regulations.

(b) Whenever there exists an inconsistency between the provisions of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, and any of the handbooks adopted by reference, the requirements of chapter 83 of the Kansas Statutes Annotated, and amendments thereto, shall control.

History: L. 1985, ch. 345, § 2; L. 1992, ch. 164, § 1; L. 1996, ch. 146, § 12; L. 2001, ch. 175, § 4; July 1.

(j) The council shall report annually to the house and senate agriculture committees. Such report shall include details of council programs, projects and activities as provided pursuant to this act.

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1 amendments thereto, and shall coordinate the council's activities with
2 qualified industry organizations to provide efficient delivery of services
3 and to avoid unnecessary costs of duplication of activities.

4 Sec. 4. (a) Except as otherwise provided by law, there shall be an
5 assessment as provided in this section on odorized propane. The council
6 shall set the initial assessment at no greater than 3/10 of one cent per gallon
7 of odorized propane. Thereafter, annual assessments shall be sufficient
8 to cover the costs of plans and programs developed by the council. The
9 assessment shall not be greater than 2 cent per gallon of odorized propane,
10 unless approved by the council. In no case may the assessment be
11 raised by more than 1/10 of one cent per gallon of odorized propane
12 annually.

13 (b) The owner of propane at the time of odorization, or the time of
14 import of odorized propane, shall make the assessment based on the
15 volume of odorized propane sold and placed into commerce. The assess-
16 ment, when made, shall be listed as a separate line item on the bill labeled
17 "Kansas propane education and research assessment" or "KanPERC."
18 Assessments collected from purchasers of propane are payable to the
19 council on a monthly basis by the 25th of the month following the month
20 of collection. If payment is not made to the council by the due date under
21 this subsection, an interest penalty of 1% of any amount unpaid shall be
22 added for each month or fraction of a month after the due date, until
23 final payment is made.

24 (c) The council may establish an alternative means of collecting the
25 assessment if another means is found to be more efficient and effective.
26 The council may establish a late payment charge and rate of interest to
27 be imposed on any person who fails to remit or pay to the council any
28 amount due under this act.

29 (d) Pending disbursement pursuant to a program, plan or project, the
30 council shall invest funds collected through assessments, and any other
31 funds received by the council, only in obligations of the United States or
32 any agency thereof, in general obligations of any state or political subdivi-
33 sion thereof, in any interest-bearing account or certificate of deposit of
34 a bank that is a member of the federal reserve system, or in obligations
35 fully guaranteed as to principal and interest by the United States.

36 (e) The price of propane shall be determined by market forces con-
37 sistent with antitrust laws and no provision of this act shall be interpreted
38 as allowing a pass through to consumers of the assessment determined
39 by the council pursuant to subsection (a).

40 (f) Any rebate funds received from the national propane education
41 and research council from assessments collected on odorized propane
42 distributed from Kansas shall be the property of the Kansas propane ed-
43 ucation and research council and the use of such funds shall be deter-

House Agriculture Committee
February 5, 2003
Attachment 3



KANSAS

DEPARTMENT OF AGRICULTURE
GREG A. FOLEY, ACTING SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

House Agriculture Committee

February 5, 2003

Testimony Regarding Kansas Meat Processing Plants Performance Audit

Greg Foley
Acting Secretary of Agriculture

Chairman Johnson and members of the committee, I am Acting Secretary of Agriculture Greg Foley. I am here to discuss the results of the performance audit completed last fall, "Meat Processing Plants: Determining What Factors May Have Contributed to a Decline in the Number of Small Plants and What Impact That Has Had on the State's Economy."

In brief, I will address the objective results of the audit. It showed that Kansas was in line with other states regarding changes in the meat processing industry. Kansas has had a drop of 42 percent in state-inspected plants since 1996. During that time, 44 plants closed, mostly because of retirement, death of an owner, or lack of profitability. Twenty-four plants remained in business but changed their status: nine to federal inspection, 12 to custom status and three became part of a grocery store.

The audit tells us that these industry conditions are not unique to Kansas, noting that 18 of 22 states with state meat inspection programs in 1996 had a drop in numbers of plants in 2002. Four of the five states with programs most similar to Kansas had declines ranging from 25 to 56 percent.

The audit also tells us that resources are available to help the small plants. Kansas continues to lobby for the ability for its small processors to ship products across state lines, but federal action to change this rule still has not come to pass. Some processors said they need low cost loans to make needed improvements. The audit reminds us that low-cost loans are available from the Department of Commerce and Housing, and between 1996 and 2001 owners of six plants received loans worth \$340,000. Those loans are available to help plants stay under state inspection or to make facility improvements needed to move to federal inspection.

Again, objective data from the audit showed Kansas to be in line with other states regarding changes in the industry, education and resources offered to very small state- inspected meat plants.

Other Survey Information

However, as we stated in the agency response, survey data gathered from plant owners regarding inspection consistency suffers from bias and conflict of interest. Nowhere is this more readily apparent than when comparing two similar plant owner survey questions from a March 1998 audit and the November 2002 audit.

I also want to take this opportunity to assure the committee that the department, its employees and the meat processing industry in Kansas have worked hard to maintain food safety and consumer confidence in products from Kansas plants. This program works, and it is proven by history, review and analysis. In the last five years, the state meat inspection program has had four federal program reviews, two legislative post audits, one peer review, one internal systems analysis, and five correlation reviews to provide consistent, equitable inspection across the state. Together, the industry and the inspection program have responded and adapted to major changes mandated by the federal government and the adoption of the HACCP food safety systems.

The audit notes that:

June 1997	Peer review found: (1) sanitation was a major problem; (2) general feeling that enforcement may not be consistent across the state; (3) appears to be a cultural problem in which some employees do not understand they are part of the KDA team and mission, and not the plant's team.
March 1998	66% of plant owners said inspections are fair and consistent. 33% of plant owners said inspections are not fair and consistent.
August 1998	FSIS finds state program to be nearly "out of control." If rated at that time, a Category 4-Unacceptable rating would have been issued.
November 1999	FSIS finds the overall condition of plant sanitation and general housekeeping consistently and remarkably improved with each follow-up review. Program rated Category 2-Acceptable.
November 2002	23% of plant owners said inspections are fair and consistent. 77% of plant owners said inspections are not fair and consistent.
November 2002	FSIS conducts federal review. Absolutely no indication that the Category 2 rating will not be retained. We continue to await official results of that review.

Clearly, allowing plant owner survey data to be the primary driver for changes to the Meat and Poultry Inspection program is inconsistent with the mission of safe and wholesome inspected products. Had the state relied solely on plant owner observations in 1998, the severe sanitation problems found in the 1997 peer review and the August 1998 federal review would never have been addressed. While obtaining the opinion of the regulated community is important, it is equally important to remember the potential conflict between their business goals and the food safety inspection program's mission to protect public health.

Hazard Analysis Critical Control Point (HACCP) Plans. As the foundation of the HACCP system, plants are required to meet sanitation performance standards to prevent direct product contamination, and to develop and implement HACCP food safety systems. The landmark Pathogen Reduction/Hazard Analysis Critical Control Point rule required all meat and poultry slaughter and processing plants to adopt a system of process controls, based on sound

scientific data, to prevent food safety hazards. As the audit highlights, KDA and K-State have helped plant owners develop HACCP plans for their products and have provided much of the necessary scientific basis to support the plants' HACCP plan development.

It also is important to remember that a HACCP plan is a living document that will change as a plant's processes and environment change, or when FSIS determines a new pathogen must be factored into a HACCP plan. This process, which is the responsibility of the plant, is very different from the time prior to 2000 when establishments were regulated in a "command and control" manner. We are committed to working with plant owners on HACCP plans as new directives from FSIS are issued, keeping in mind that the design and content of the HACCP plan are the responsibility of the establishment.

Staffing Levels. As the audit points out, plants that slaughter require staff to be present on slaughter day. Further, custom-only plants require less staff time because the product does not enter retail channels. Following is a comparison of New Mexico, Kansas and Oklahoma, with slaughter plants, processing plants and custom-only plant numbers listed.

Importance of Slaughter-to-Staffing Differences			
	New Mexico	Kansas	Oklahoma
Slaughter	8 (11%)	66 (60.5%)	20 (18%)
Processing	34 (46.5%)	22 (20%)	32 (29%)
Custom-Only	31	21	58
Staffing Ratio	1 to 4.3	1 to 1.9	1 to 2.0

Clearly, while New Mexico is close to the sample average with regard to staffing ratios, there are significant differences that account for the staffing differences between it and Kansas. Further, even when Kansas is compared to Oklahoma with a similar staffing ratio, the differences in the number of plants that require slaughter inspection are significant. This example illustrates

the complex nature of staffing ratios and the pitfalls of making simple comparisons between state programs. In the final analysis, program performance and the safety of the product produced at state plants should drive staffing decisions.

In regard to recommendations from the audit, we support interstate shipment of Kansas meat and poultry products and efforts by the Kansas Legislature to influence federal action on this issue. We continue to work on issues of consistency in inspection across the state and we consider that an ongoing task. We await the results of our most recent federal review with confidence that the Kansas industry and inspection program are working well to maintain safe food for our residents.

Some have questioned whether Kansas should have a state-operated meat and poultry inspection program. I would like to share the following benefits of the current program with members of the committee:

- The program provides a first-line of detection and defense against natural or introduced animal diseases. Our staff is trained to identify and report suspicious symptoms in animals presented for slaughter. Our nine state veterinarians are a vital component of the state's animal health response team in case of foreign animal disease outbreak.
- It is a proven program that provides assurance of food safety for Kansans. This in turn leads to consumer confidence in the products from our small processing plants.
- It provides an important benefit for the economies of rural communities and small farmers. Although their number may be small, these family owned businesses, their employees and the KDA inspectors who live in these communities contributed spending and tax dollars. In these tough economic times we should not endanger those businesses.
- Data from other states that have dropped state inspection programs tell us we are likely to lose at least 25 percent, if not half, of our fully inspected plants. Not all plants will be accepted for federal inspection.
- The state program is more economical for processing plants and for the farmers whose animals are processed there. USDA labor costs are 25 percent higher than the state's. USDA charges overtime rates to slaughter animals such as buffalo, captive elk and

deer, which are considered amenable under Kansas law and processed at the same rate as cattle and hogs. Under federal rules, buffalo would be processed at an overtime rate, no matter what time of day the work takes place. Buffalo hunting and processing is a growing market for Kansas producers and processors.

- The state program is more flexible than federal inspection, whether it is in response time to a plant with a question, in helping with special needs, such as 4-H Fair slaughter or holiday hours, or determining the health of a low-weight or injured animal presented for processing.

Thank you for your attention. I will now answer any questions you might have.

Comparing State and Federal Meat and Poultry Inspection Programs

Benefits under State Inspection Program	Benefits under Federal Inspection Program
Increased flexibility for plant operators—hours, overtime and access to program administration, services on weekends, holidays or for 4-H Fair slaughter	Extra slaughter days must be requested two weeks in advance, but it may not be granted.
Will inspect injured animals and assure only safe product goes into commerce. Many of these animals come from feedlots or dairies. It is very important to note that these animals can be processed under full inspection and thus approved product can be offered for sale.	Custom plants can process “downers” without inspection but the meat cannot be offered for sale. It can only be consumed by the animal’s owner, family, employees or guests.
Custom exempt plants can process non-amenable species.	Under federal inspection, custom exempt plants can process non-amenable species such as captive cervidae.
Bison can be inspected as amenable species in Kansas without additional charges (they are non-amendable in the federal inspection system). This state inspected product can be sold in interstate commerce. Buffalo inspected under the federal system are subject to inspection fees of \$38/hr.	Allows interstate shipment for amenable species.
Buffalo can be sold across state lines if state-inspected because federal law does not define buffalo as amenable. This also applies to captive cervidae and rabbits as well.	If required to leave inspected status and become custom, plants could take advantage of an exemption limiting them to yearly HRI* sales of \$47,000 (red meat) & \$41,600 (poultry)
Inspection is provided at lower rates for overtime work. (State is \$25/hr.; federal is \$41/hr.)	Custom plants also could purchase federally inspected products and sell it retail to the household consumer only.
The state program provides businesses with assistance in developing usable and legal labels for their products.	Going to federal inspection would save the state \$1.45 million in state general fund monies; at the same time, however, it subtracts some \$1.7 million in direct and indirect federal funds.
Program provides a first line of defense against foreign animal diseases, both through in-plant inspectors and nine veterinarians in the field.	
KDA receives \$268,000 in indirect federal payments for operations of the Kansas Department of Agriculture.	
Gains the state direct federal funds of \$1,437,322. This is in addition to the indirect dollars.	
Enforcement activities generate state general fund. In fiscal year 2002 that totaled \$92,124.	
State compliance officers investigate and build consumer protection cases which are prosecuted by the Attorney General. Penalty dollars are deposited into funds for further consumer protection activities. From 1999-2001, \$1,030,434 was collected in civil penalties as a result of the state’s M&P compliance investigations.	NOTE: The federal system does not have civil penalty authority and many times relies on the state for help in investigating and enforcing M&P violations.

Neither inspection program provides marketing assistance; however the state program has worked with the Department of Commerce to conduct direct meat marketing seminars. The state program also has worked to provide HACCP and sanitation training to the plants, as well as help them access low interest loans to make plant improvements.

*HRI - Hotel, Restaurant and Institution

washingtonpost.com

Bush's Dept. of Agriculture Budget

The Associated Press
Monday, February 3, 2003; 6:12 PM

Agency: Department of Agriculture

Spending: \$19.5 billion

Percentage change from 2003: -0.2 percent

Highlights:

-Includes \$678 million for the USDA's Food Safety and Inspection Service, which checks meat and poultry at packing plants for bacteria that can cause food poisoning, such as E. coli. It would be a 10 percent cut from 2003. Also, the administration wants Congress to approve "user fees" to recover the cost of paying inspectors in plants if they work overtime.

Agriculture Secretary Ann Veneman said the fees would bring in \$122 million. Food processors and meat packers say those charges amount to a food tax. Consumer groups argue the fees would jeopardize food safety because meat packers would be paying for inspectors to work overtime.

The Bush administration recommended the fees even though Congress traditionally has opposed them.

"If the Congress elected to do something less in user fees, then we'll work with the Congress to try to find other ways to fund the amount that we believe is necessary for our food safety budget," Veneman said.

-The federal crop insurance program would see an 18 percent increase in spending over 2003. The \$3.4 billion for the program would help farmers protect themselves from crop losses caused by bad weather. The budget proposes to cap reimbursements of delivery expenses to insurance companies at 20 percent of the premium to help the government save \$68 million.

-Spending on farmland, wetlands and wildlife conservation programs would be \$2.6 billion. The programs are required by the farm bill. The Forest Service would be given \$4.7 billion to reduce the risk of wildfires through the president's plan to thin forests.

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4-8

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 (DURING SESSION)



TOPEKA

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 GULF WAR ADVISORY BOARD

January 21, 2003

Dr. Gary McKee
 USDA Agency Administrator

Attention: Shannon McMurty
 USDA Food Safety Inspection Services

Dear Dr. McKee:

We respectfully are asking for your presence at our informational hearing at our Kansas State Capitol. We are hoping that you will share with us, and explain how changes from a state inspection program to a federal program could happen. We also desire to know more about how a cross utilization meat inspection agreement would work. We much desire clarification, so as to make an informed decision on what program Kansas will end up with.

Later, we may have multiple hearings. Both Agriculture Committees and House and Senate Budget Committees.

It is very important to have the facts prior to our regular hearing.

If we could encourage you to come to Kansas on a Friday, January 31 - February 7, we should be able to have all four committees and other legislators present. We know this is short notice, and we apologize for that.

Thank you for considering our request.

House Agriculture Committee, Senate Agriculture Committee, Legislative Post Audit, House Agriculture Budget Committee, Senate Agriculture Budget Committee

Sincerely,

Dan Thimesch
 93rd District Representative
 DT:aj

House Agriculture Committee
 February 5, 2003
 Attachment 5

**Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107
(651) 297-1629**

News Release

FOR IMMEDIATE RELEASE: Friday, October 25, 2002

Contact: Michael Schommer, Communications Director, 651-297-1629

Study shows MDA meat program generating jobs, economic activity for small towns

ST. PAUL, Minn. - It's not every government program that creates 446 jobs and nearly \$100 million in economic activity for greater Minnesota in just four years, but a recent study shows that's exactly the contribution made by the Minnesota Department of Agriculture's State Meat Inspection Program.

The state inspection program began in 1999 as an attempt to boost food safety and give farmers a way to market pork, beef and poultry directly to consumers. The program provides inspection services to small to medium-sized meat processors, while the U.S. Department of Agriculture continues to focus on larger processors. In the past, federal regulations stipulated that only meat processed at USDA-inspected facilities could be sold at retail, while the smaller facilities without federal inspection could only provide custom-processing services to farmers. Now, with state inspection available, farmers and smaller processors can sell locally grown meat to consumers. This has opened up new business opportunities for Main Street businesses in small towns across the state.

In January 1999, only one meat processor had volunteered to register with the MDA program, and the state was inspecting just 100 pounds of meat per month. Today, the program has jumped to 65 plants, representing an annual processing volume of more than 8.8 million pounds of meat. The 65 state-inspected facilities employ 116 workers, and turn out more than \$40 million in meat products every year. MDA's study found that when transportation, retail and other indirect business activities are factored in, the state-inspected facilities can be credited with helping to generate 446 jobs with \$16 million in payroll and proprietary income and nearly \$100 million in economic activity.

MDA Commissioner Gene Hugoson said this economic activity is a welcome addition to the many small towns and cities where these facilities are located.

"We knew this program would help improve food safety and give farmers an attractive marketing alternative, but we're pleasantly surprised to see how this program has helped small-town economies," Commissioner Hugoson said.

Farmers say they love the marketing flexibility the program offers, and meat processors are attracted to the program because state inspectors can help them update their food handling

procedures and technologies. According to Program Director Kevin Elfering, the state inspection program fits nicely with two dominant themes in today's agricultural sector: improving food safety and expanding farmers' marketing options.

"With low commodity prices, it's important for farmers to capture more of the consumer dollar, and we see the State Meat Inspection Program as a tool that can help them do that," Elfering said. "This is also an opportunity for small-town businesses to expand. The economic potential for farmers and rural communities is encouraging."

-30-

In accordance with the Americans With Disabilities Act, an alternative form of communication is available upon request. TTY 1-800-627-3529

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture

109 SW 9th Street

Topeka, Kansas 66612-1280

(785) 296-3556

FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

MEMORANDUM

TO: State Legislative Agriculture Committees
KDA Budget Committees

FROM: Jamie Clover Adams, Secretary *Jamie*

RE: Elimination of the State Meat Inspection Program

DATE: January 10, 2003

As you may know, Governor-Elect Sebelius' Budget Efficiency Savings Team recommended she consider elimination of the state Meat and Poultry Inspection program. While I am keenly aware of the difficult decisions that you must make this legislative session, I felt it was important for you to be aware of all facets of this issue to aid in your decision making.

The FY 2003 budget for the state Meat and Poultry Inspection program is \$2.97 million. It is financed by \$1.45 million of state general funds, \$1.52 million of federal funds and \$68,000 in state fees. There are 88 fully-inspected state plants¹ and 21 custom-exempt plants.² The state program operates as an "equal to" program under federal law and must meet the requirements of the USDA, Food Safety Inspection Service (FSIS). To meet these federal inspection requirements, KDA employs 58 staff which include veterinarians, field inspectors, a technical assistant and a training officer. Further, KDA receives approximately \$260,000 each year in federal indirect money for this program. This indirect money is used to support administrative functions of the Meat and Poultry Inspection program and it also subsidizes administrative costs for other KDA programs.

From a strict state general fund budget perspective, elimination of the state Meat and Poultry Inspection program looks like an easy cut to trim state general fund spending. However, it is also important to consider other ramifications.

¹A plant must be fully-inspected to sell meat into retail channels.

²State custom-exempt plants cannot sell meat at retail. They can only slaughter for the owner of the animal.

Federal designation

There are two primary benefits from elimination of the state Meat and Poultry Inspection program. First, Kansas saves \$1.45 million of SGF and eliminates 66 KDA employees.³ Also, those plants who are granted full federal inspection⁴ will be able to sell their product in interstate commerce.⁵ Unfortunately, for those plants not granted full federal inspection custom-exempt status or closure are the only options.

Currently, USDA is spending approximately \$1.6 million in Kansas to support the state Meat and Poultry Inspection program. An analysis of their pay scale indicates that USDA labor costs alone are 25 percent higher than state labor costs. Therefore, if USDA does not receive additional federal funds, they will only have the resources to bring about 44 of the 88 fully inspected state plants under full federal inspection. Clearly, even implementing a state program to assist state-inspected facilities to meet federal inspection requirements will not overcome USDA's lack of resources in this situation. Since federal fiscal year 2000, the FSIS budget has only grown to meet inflation. Information available on the federal budget indicates increased funding for food safety programs is not on the radar. Federal dollars are focused on the war on terrorism and homeland security.

Many state inspected plants are located in rural areas. These will likely be the first to feel the brunt of federal inspection on their current business. If a facility is not granted full inspection, their options are only custom-exempt or closure.

Benefits of State Inspection

The state Meat and Poultry Inspection program provides a **first line of defense in foreign animal disease surveillance**. Only trained inspectors and experienced veterinarians work at slaughter establishments. They routinely are on the lookout for potentially devastating diseases such as Foot and Mouth Disease, Anthrax and BSE. Further, KDA currently has more veterinarians on staff than both the Kansas Department of Animal Health and USDA in Kansas combined.

The state Meat and Poultry Inspection **program works with small family-owned businesses**. These businesses further support many small restaurants and small distributors. Most of these inspected establishments are in rural areas where the population relies on independent meat marketers and grocers for their food. USDA's track record clearly indicates they focus on the large meat processing establishments and see little value in the small family-owned operations.

The state Meat and Poultry Inspection program **ensures the viability of cull slaughter operations and reduces production losses for the livestock industry**. The very small slaughter plants under KDA inspection provide a market for many animals that would otherwise

³Nine of these employees are based in Topeka. The remaining 57 are scattered throughout the state.

⁴Federal regulations give the circuit supervisor discretion about which plants are accepted for full federal inspection. Those that are not accepted will become federal custom-exempt.

⁵Under current federal law, fully-inspected state plants can only sell their product within Kansas.

be ineligible for slaughter because of the quality and economic feasibility standards applied by the large federal slaughter establishments.

In 1998 when hog prices hit rock bottom, the number of hogs slaughtered by state-inspected plants jumped 40 percent. The primary reason that drove hog prices so low was limited slaughter capacity in the large packing plants. Without this outlet, the financial impact on Kansas pork producers would have been even greater.

The state Meat and Poultry Inspection program is **readily assessable to small meat plants.** Questions, appeals, complaints, changes in red tag status and explanations of regulations are all more easily and quickly accessed under the state system. Small plants in states with federal inspection can find themselves waiting long periods of time to get action or answers as requests move through the federal bureaucracy. Plant owners know all the players and have met program management. They know they will get a return call in a reasonable period of time, even if they do not always get the answer they want. In the federal system, the decision-making process is considerably slower and their chances of meeting the head of FSIS are minuscule.

The state-inspected plants are a primary outlet for light-weight cattle, animals suffering from chronic conditions and lower quality cattle and swine. Since slaughtering and inspecting these animals while assuring food safety can require more time, the large federal plants do not like to accept them. Losing the services of the small plants could adversely affect the ability of the livestock producer to market this type of animal. According to a survey of many states conducted in 1998, designation of a state for federal inspection will lead to a decrease in the number of plants operating under inspection.

The state Meat and Poultry Inspection **program works hard to be responsive to the special needs of plants and our rural communities.** Under the federal system, slaughter schedules tend to be quite rigid. The federal system charges overtime (\$40 per hour) for non-amenable species such as emu, deer, buffalo and ostrich – even if they are slaughtered during normal plant hours. The state program does not charge overtime for these animals, which can legally be shipped across state lines even under the current law. Further, the state program is sensitive to special needs, like county fairs and holidays.

The state Meat and Poultry Inspection **program can assist in increasing niche markets for Kansas meat producers.** In many areas, small meat processing facilities have found new markets in consumers who wish to purchase organic products or regional or ethnic speciality products. State programs traditionally work with business owners who wish to open new facilities. **Conversation with other programs indicate that states with federal inspection are less likely to have these new small businesses begin.**

The quality of inspection in federal custom-exempt plants is inferior to state inspection. In 1987 when Montana reestablished its state program, the federal inspection program gave the state a list of approximately 90 custom-exempt plants. The state discovered these plants were only inspected once every two years. To make matters worse, the state licensed another 80 plants that the federal inspectors did not even know existed. KDA currently inspects state custom-exempt plants at least four times per year.

Conclusion

Dropping the state Meat and Poultry Inspection program may seem like a quick method to save state general fund dollars. However, the long-term detrimental impact on the rural economy, food safety, animal disease surveillance and local agricultural communities outweighs illusory immediate savings.

ROBERTS
KANSAS

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COMMITTEE
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LABOR, AND PENSIONS
CHAIRMAN:
ETHICS

United States Senate

WASHINGTON, DC 20510-1605

January 9, 2003

The Honorable Ann M. Veneman
Secretary, USDA
14th Street and Independence Ave, SW
Washington, DC 20250

Dear Secretary Veneman:

We write in strong support of the request by the State of Kansas to establish a cross utilization meat inspection agreement between the Kansas state inspected meat program and the USDA's Food Safety Inspection Service (FSIS). This agreement is necessary to guarantee the continuation of the state inspection program in Kansas.

Information provided to us by Kansas state government officials indicates that our state inspection program will not be operable this year without such an agreement, due to the current state budget situation.

Kansas has 88 fully inspected state plants. Many of these plants are small businesses that service rural areas and individual producers. We fear that without a shared agreement, FSIS will be unable to take over inspection duties in many of these plants causing them to close if the state program is terminated. At a time when many producers and small towns in Kansas are suffering from the continuing affects of drought, the loss of these plants is a hit they can not afford to take.

The establishment of a cross utilization agreement will allow the Kansas inspection program to continue, provide a continued safe meat supply, and ensure that many small businesses, and the producers they serve, will remain in business.

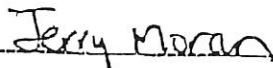
We thank you for your attention to this issue and look forward to your prompt response.


Sincerely,

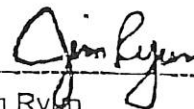
Pat Roberts
U.S. Senator



Sam Brownback
U.S. Senator



Jerry Moran
U.S. Representative

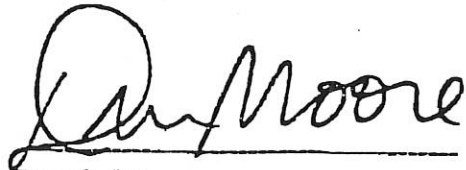


Jim Ryan
U.S. Representative

The Honorable Ann Veneman
January 9, 2003
Page 2



Todd Tiahrt
U.S. Representative



Dennis Moore
U.S. Representative

SUBCHAPTER E—REGULATORY REQUIREMENTS UNDER THE FEDERAL MEAT INSPECTION ACT AND THE POULTRY PRODUCTS INSPECTION ACT

PART 416—SANITATION

- Sec.
- 416.1 General rules.
 - 416.2 Establishment grounds and facilities.
 - 416.3 Equipment and utensils.
 - 416.4 Sanitary operations.
 - 416.5 Employee hygiene.
 - 416.6 Tagging insanitary equipment, utensils, rooms or compartments.
 - 416.11 General rules.
 - 416.12 Development of sanitation SOP's.
 - 416.13 Implementation of SOP's.
 - 416.14 Maintenance of Sanitation SOP's.
 - 416.15 Corrective Actions.
 - 416.16 Recordkeeping requirements.
 - 416.17 Agency verification.

AUTHORITY: 21 U.S.C. 451-470, 601-695; 7 U.S.C. 450, 1901-1906; 7 CFR 2.18, 2.53.

SOURCE: 61 FR 38868, July 25, 1996, unless otherwise noted.

§ 416.1 General rules.

Each official establishment must be operated and maintained in a manner sufficient to prevent the creation of insanitary conditions and to ensure that product is not adulterated.

[64 FR 56417, Oct. 20, 1999]

§ 416.2 Establishment grounds and facilities.

(a) *Grounds and pest control.* The grounds about an establishment must be maintained to prevent conditions that could lead to insanitary conditions, adulteration of product, or interfere with inspection by FSIS program employees. Establishments must have in place a pest management program to prevent the harborage and breeding of pests on the grounds and within establishment facilities. Pest control substances used must be safe and effective under the conditions of use and not be applied or stored in a manner that will result in the adulteration of product or the creation of insanitary conditions.

(b) *Construction.* (1) Establishment buildings, including their structures, rooms, and compartments must be of sound construction, be kept in good repair, and be of sufficient size to allow for processing, handling, and storage of

product in a manner that does not result in product adulteration or the creation of insanitary conditions.

(2) Walls, floors, and ceilings within establishments must be built of durable materials impervious to moisture and be cleaned and sanitized as necessary to prevent adulteration of product or the creation of insanitary conditions.

(3) Walls, floors, ceilings, doors, windows, and other outside openings must be constructed and maintained to prevent the entrance of vermin, such as flies, rats, and mice.

(4) Rooms or compartments in which edible product is processed, handled, or stored must be separate and distinct from rooms or compartments in which inedible product is processed, handled, or stored, to the extent necessary to prevent product adulteration and the creation of insanitary conditions.

(c) *Light.* Lighting of good quality and sufficient intensity to ensure that sanitary conditions are maintained and that product is not adulterated must be provided in areas where food is processed, handled, stored, or examined; where equipment and utensils are cleaned; and in hand-washing areas, dressing and locker rooms, and toilets.

(d) *Ventilation.* Ventilation adequate to control odors, vapors, and condensation to the extent necessary to prevent adulteration of product and the creation of insanitary conditions must be provided.

(e) *Plumbing.* Plumbing systems must be installed and maintained to:

(1) Carry sufficient quantities of water to required locations throughout the establishment;

(2) Properly convey sewage and liquid disposable waste from the establishment;

(3) Prevent adulteration of product, water supplies, equipment, and utensils and prevent the creation of insanitary conditions throughout the establishment;

(4) Provide adequate floor drainage in all areas where floors are subject to

Food Safety and Inspection Service, USDA

flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor;

(5) Prevent back-flow conditions in and cross-connection between piping systems that discharge waste water or sewage and piping systems that carry water for product manufacturing; and

(6) Prevent the backup of sewer gases.

(f) *Sewage disposal.* Sewage must be disposed into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. When the sewage disposal system is a private system requiring approval by a State or local health authority, the establishment must furnish FSIS with the letter of approval from that authority upon request.

(g) *Water supply and water, ice, and solution reuse.* (1) A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR part 141), at a suitable temperature and under pressure as needed, must be provided in all areas where required (for processing product, for cleaning rooms and equipment, utensils, and packaging materials, for employee sanitary facilities, etc.). If an establishment uses a municipal water supply, it must make available to FSIS, upon request, a water report, issued under the authority of the State or local health agency, certifying or attesting to the potability of the water supply. If an establishment uses a private well for its water supply, it must make available to FSIS, upon request, documentation certifying the potability of the water supply that has been renewed at least semi-annually.

(2) Water, ice, and solutions (such as brine, liquid smoke, or propylene glycol) used to chill or cook ready-to-eat product may be reused for the same purpose, provided that they are maintained free of pathogenic organisms and fecal coliform organisms and that other physical, chemical, and microbiological contamination have been reduced to prevent adulteration of product.

(3) Water, ice, and solutions used to chill or wash raw product may be re-

used for the same purpose provided that measures are taken to reduce physical, chemical, and microbiological contamination so as to prevent contamination or adulteration of product. Reuse that which has come into contact with raw product may not be used on ready-to-eat product.

(4) Reconditioned water that has never contained human waste and that has been treated by an onsite advanced wastewater treatment facility may be used on raw product, except in product formulation, and throughout the facility in edible and inedible production areas, provided that measures are taken to ensure that this water meets the criteria prescribed in paragraph (g)(1) of this section. Product, facilities, equipment, and utensils coming in contact with this water must undergo a separate final rinse with non-reconditioned water that meets the criteria prescribed in paragraph (g)(1) of this section.

(5) Any water that has never contained human waste and that is free of pathogenic organisms may be used in edible and inedible product areas, provided it does not contact edible product. For example, such reuse water may be used to move heavy solids, to flush the bottom of open evisceration troughs, or to wash antemortem areas, livestock pens, trucks, poultry cages, picker aprons, picking room floors, and similar areas within the establishment.

(6) Water that does not meet the use conditions of paragraphs (g)(1) through (g)(5) of this section may not be used in areas where edible product is handled or prepared or in any manner that would allow it to adulterate edible product or create insanitary conditions.

(h) *Dressing rooms, lavatories, and toilets.* (1) Dressing rooms, toilet rooms, and urinals must be sufficient in number, ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. They must be separate from the rooms and compartments in which products are processed, stored, or handled.

(2) Lavatories with running hot and cold water, soap, and towels, must be placed in or near toilet and urinal

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rooms and at such other places in the establishment as necessary to ensure cleanliness of all persons handling any product.

(3) Refuse receptacles must be constructed and maintained in a manner that protects against the creation of insanitary conditions and the adulteration of product.

[64 FR 56417, Oct. 20, 1999]

§416.3 Equipment and utensils.

(a) Equipment and utensils used for processing or otherwise handling edible product or ingredients must be of such material and construction to facilitate thorough cleaning and to ensure that their use will not cause the adulteration of product during processing, handling, or storage. Equipment and utensils must be maintained in sanitary condition so as not to adulterate product.

(b) Equipment and utensils must not be constructed, located, or operated in a manner that prevents FSIS inspection program employees from inspecting the equipment or utensils to determine whether they are in sanitary condition.

(c) Receptacles used for storing inedible material must be of such material and construction that their use will not result in the adulteration of any edible product or in the creation of insanitary conditions. Such receptacles must not be used for storing any edible product and must bear conspicuous and distinctive marking to identify permitted uses.

[64 FR 56417, Oct. 20, 1999]

§416.4 Sanitary operations.

(a) All food-contact surfaces, including food-contact surfaces of utensils and equipment, must be cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product.

(b) Non-food-contact surfaces of facilities, equipment, and utensils used in the operation of the establishment must be cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product.

(c) Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an establishment must be safe and effective under the conditions of use. Such chemicals must be used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment must be available to FSIS inspection program employees for review.

(d) Product must be protected from adulteration during processing, handling, storage, loading, and unloading at and during transportation from official establishments.

[64 FR 56417, Oct. 20, 1999]

§416.5 Employee hygiene.

(a) *Cleanliness.* All persons working in contact with product, food-contact surfaces, and product-packaging materials must adhere to hygienic practices while on duty to prevent adulteration of product and the creation of insanitary conditions.

(b) *Clothing.* Aprons, frocks, and other outer clothing worn by persons who handle product must be of material that is disposable or readily cleaned. Clean garments must be worn at the start of each working day and garments must be changed during the day as often as necessary to prevent adulteration of product and the creation of insanitary conditions.

(c) *Disease control.* Any person who has or appears to have an infectious disease, open lesion, including boils, sores, or infected wounds, or any other abnormal source of microbial contamination, must be excluded from any operations which could result in product adulteration and the creation of insanitary conditions until the condition is corrected.

[64 FR 56417, Oct. 20, 1999]

§416.6 Tagging insanitary equipment, utensils, rooms or compartments.

When an FSIS program employee finds that any equipment, utensil, room, or compartment at an official establishment is insanitary or that its use could cause the adulteration of product, he will attach to it a "U.S.

Rejected" tag. Equipment, utensils, rooms, or compartments so tagged cannot be used until made acceptable. Only an FSIS program employee may remove a "U.S. Rejected" tag.

[64 FR 56417, Oct. 20, 1999]

§416.11 General rules.

Each official establishment shall develop, implement, and maintain written standard operating procedures for sanitation (Sanitation SOP's) in accordance with the requirements of this part.

§416.12 Development of Sanitation SOP's.

(a) The Sanitation SOP's shall describe all procedures an official establishment will conduct daily, before and during operations, sufficient to prevent direct contamination or adulteration of product(s).

(b) The Sanitation SOP's shall be signed and dated by the individual with overall authority on-site or a higher level official of the establishment. This signature shall signify that the establishment will implement the Sanitation SOP's as specified and will maintain the Sanitation SOP's in accordance with the requirements of this part. The Sanitation SOP's shall be signed and dated upon initially implementing the Sanitation SOP's and upon any modification to the Sanitation SOP's.

(c) Procedures in the Sanitation SOP's that are to be conducted prior to operations shall be identified as such, and shall address, at a minimum, the cleaning of food contact surfaces of facilities, equipment, and utensils.

(d) The Sanitation SOP's shall specify the frequency with which each procedure in the Sanitation SOP's is to be conducted and identify the establishment employee(s) responsible for the implementation and maintenance of such procedure(s).

§416.13 Implementation of SOP's.

(a) Each official establishment shall conduct the pre-operational procedures in the Sanitation SOP's before the start of operations.

(b) Each official establishment shall conduct all other procedures in the

Sanitation SOP's at the frequency specified.

(c) Each official establishment shall monitor daily the implementation of the procedures in the Sanitation SOP's.

§416.14 Maintenance of Sanitation SOP's.

Each official establishment shall routinely evaluate the effectiveness of its Sanitation SOP's and the procedures therein in preventing direct contamination or adulteration of product and shall revise both as necessary to keep them effective and current with respect to changes in facilities, equipment, utensils, operations, or personnel.

§416.15 Corrective Actions.

(a) Each official establishment shall take appropriate corrective action when either the establishment or FSIS determines that the establishment Sanitation SOP's or the procedures specified therein, or the implementation or maintenance of the Sanitation SOP's, may have failed to prevent direct contamination or adulteration of product(s).

(b) Corrective actions include procedures to ensure appropriate disposition of product(s) that may be contaminated, restore sanitary conditions, and prevent the recurrence of direct contamination or adulteration of product(s), including appropriate reevaluation and modification of the Sanitation SOP's and the procedures specified therein or appropriate improvement in the execution of the Sanitation SOP's or the procedures specified therein.

[61 FR 38868, July 25, 1996, as amended at 6 FR 26219, May 13, 1997]

§416.16 Recordkeeping requirements.

(a) Each official establishment shall maintain daily records sufficient to document the implementation and monitoring of the Sanitation SOP's and any corrective actions taken. The establishment employee(s) specified in the Sanitation SOP's as being responsible for the implementation and monitoring of the procedure(s) specified in

the Sanitation SOP's shall authenticate these records with his or her initials and the date.

(b) Records required by this part may be maintained on computers provided the establishment implements appropriate controls to ensure the integrity of the electronic data.

(c) Records required by this part shall be maintained for at least 6 months and made accessible available to FSIS. All such records shall be maintained at the official establishment for 48 hours following completion, after which they may be maintained off-site provided such records can be made available to FSIS within 24 hours of request.

§ 416.17 Agency verification.

FSIS shall verify the adequacy and effectiveness of the Sanitation SOP's and the procedures specified therein by determining that they meet the requirements of this part. Such verification may include:

- (a) Reviewing the Sanitation SOP's;
- (b) Reviewing the daily records documenting the implementation of the Sanitation SOP's and the procedures specified therein and any corrective actions taken or required to be taken;
- (c) Direct observation of the implementation of the Sanitation SOP's and the procedures specified therein and any corrective actions taken or required to be taken; and
- (d) Direct observation or testing to assess the sanitary conditions in the establishment.

PART 417—HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) SYSTEMS

Sec.

- 417.1 Definitions.
 417.2 Hazard Analysis and HACCP plan.
 417.3 Corrective actions.
 417.4 Validation, Verification, Reassessment.
 417.5 Records.
 417.6 Inadequate HACCP Systems.
 417.7 Training.
 417.8 Agency verification.

AUTHORITY: 7 U.S.C. 450; 21 U.S.C. 451-470, 401-695; 7 U.S.C. 1901-1906; 7 CFR 2.18, 2.53.

SOURCE: 61 FR 38868, July 25, 1996, unless otherwise noted.

§ 417.1 Definitions.

For purposes of this part, the following definitions shall apply:

Corrective action. Procedures to be followed when a deviation occurs.

Critical control point. A point, step, or procedure in a food process at which control can be applied and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels.

Critical limit. The maximum or minimum value to which a physical, biological, or chemical hazard must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food safety hazard.

Food safety hazard. Any biological, chemical, or physical property that may cause a food to be unsafe for human consumption.

HACCP System. The HACCP plan in operation, including the HACCP plan itself.

Hazard. SEE *Food Safety Hazard*.

Preventive measure. Physical, chemical, or other means that can be used to control an identified food safety hazard.

Process-monitoring instrument. An instrument or device used to indicate conditions during processing at a critical control point.

Responsible establishment official. The individual with overall authority on-site or a higher level official of the establishment.

§ 417.2 Hazard Analysis and HACCP Plan.

(a) *Hazard analysis.* (1) Every official establishment shall conduct, or have conducted for it, a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures the establishment can apply to control those hazards. The hazard analysis shall include food safety hazards that can occur before, during, and after entry into the establishment. A food safety hazard that is reasonably likely to occur is one for which a prudent establishment would establish controls because it historically has occurred, or because there is a reasonable possibility that it will occur in the

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particular type of product being processed, in the absence of those controls.

(2) A flow chart describing the steps of each process and product flow in the establishment shall be prepared, and the intended use or consumers of the finished product shall be identified.

(3) Food safety hazards might be expected to arise from the following:

- (i) Natural toxins;
- (ii) Microbiological contamination;
- (iii) Chemical contamination;
- (iv) Pesticides;
- (v) Drug residues;
- (vi) Zoonotic diseases;
- (vii) Decomposition;
- (viii) Parasites;
- (ix) Unapproved use of direct or indirect food or color additives; and
- (x) Physical hazards.

(b) *The HACCP plan.* (1) Every establishment shall develop and implement a written HACCP plan covering each product produced by that establishment whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur, based on the hazard analysis conducted in accordance with paragraph (a) of this section, including products in the following processing categories:

- (i) Slaughter—all species.
- (ii) Raw product—ground.
- (iii) Raw product—not ground.
- (iv) Thermally processed—commercially sterile.
- (v) Not heat treated—shelf stable.
- (vi) Heat treated—shelf stable.
- (vii) Fully cooked—not shelf stable.
- (viii) Heat treated but not fully cooked—not shelf stable.
- (ix) Product with secondary inhibitors—not shelf stable.

(2) A single HACCP plan may encompass multiple products within a single processing category identified in this paragraph, if the food safety hazards, critical control points, critical limits, and procedures required to be identified and performed in paragraph (c) of this section are essentially the same, provided that any required features of the plan that are unique to a specific product are clearly delineated in the plan and are observed in practice.

(3) HACCP plans for thermally processed/commercially sterile products do not have to address the food safety hazards associated with microbiological

contamination if the product is produced in accordance with the requirements of part 318, subpart G, or part 381, subpart X, of this chapter.

(c) *The contents of the HACCP plan.* The HACCP plan shall, at a minimum:

(1) List the food safety hazards identified in accordance with paragraph (a) of this section, which must be controlled for each process.

(2) List the critical control points for each of the identified food safety hazards, including, as appropriate:

(i) Critical control points designed to control food safety hazards that could be introduced in the establishment, and

(ii) Critical control points designed to control food safety hazards introduced outside the establishment, including food safety hazards that occur before, during, and after entry into the establishment;

(3) List the critical limits that must be met at each of the critical control points. Critical limits shall, at a minimum, be designed to ensure that applicable targets or performance standards established by FSIS, and any other requirement set forth in this chapter pertaining to the specific process or product, are met;

(4) List the procedures, and the frequency with which those procedures will be performed, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

(5) Include all corrective actions that have been developed in accordance with § 417.3(a) of this part, to be followed in response to any deviation from a critical limit at a critical control point; and

(6) Provide for a recordkeeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

(7) List the verification procedures, and the frequency with which those procedures will be performed, that the establishment will use in accordance with § 417.4 of this part.

(d) *Signing and dating the HACCP plan.* (1) The HACCP plan shall be signed and dated by the responsible establishment individual. This signature

shall signify that the establishment accepts and will implement the HACCP plan.

(2) The HACCP plan shall be dated and signed:

- (i) Upon initial acceptance;
- (ii) Upon any modification; and
- (iii) At least annually, upon reassessment, as required under § 417.4(a)(3) of this part.

(e) Pursuant to 21 U.S.C. 456, 463, 608, and 621, the failure of an establishment to develop and implement a HACCP plan that complies with this section, or to operate in accordance with the requirements of this part, may render the products produced under those conditions adulterated.

[61 FR 38868, July 25, 1996, as amended at 62 FR 61009, Nov. 14, 1997]

§ 417.3 Corrective actions.

(a) The written HACCP plan shall identify the corrective action to be followed in response to a deviation from a critical limit. The HACCP plan shall describe the corrective action to be taken, and assign responsibility for taking corrective action, to ensure:

- (1) The cause of the deviation is identified and eliminated;
- (2) The CCP will be under control after the corrective action is taken;
- (3) Measures to prevent recurrence are established; and
- (4) No product that is injurious to health or otherwise adulterated as a result of the deviation enters commerce.

(b) If a deviation not covered by a specified corrective action occurs, or if another unforeseen hazard arises, the establishment shall:

(1) Segregate and hold the affected product, at least until the requirements of paragraphs (b)(2) and (b)(3) of this section are met;

(2) Perform a review to determine the acceptability of the affected product for distribution;

(3) Take action, when necessary, with respect to the affected product to ensure that no product that is injurious to health or otherwise adulterated, as a result of the deviation, enters commerce;

(4) Perform or obtain reassessment by an individual trained in accordance with § 417.7 of this part, to determine whether the newly identified deviation

or other unforeseen hazard should be incorporated into the HACCP plan.

(c) All corrective actions taken in accordance with this section shall be documented in records that are subject to verification in accordance with § 417.4(a)(2)(iii) and the recordkeeping requirements of § 417.5 of this part.

§ 417.4 Validation, Verification, Reassessment.

(a) Every establishment shall validate the HACCP plan's adequacy in controlling the food safety hazards identified during the hazard analysis, and shall verify that the plan is being effectively implemented.

(1) *Initial validation.* Upon completion of the hazard analysis and development of the HACCP plan, the establishment shall conduct activities designed to determine that the HACCP plan is functioning as intended. During this HACCP plan validation period, the establishment shall repeatedly test the adequacy of the CCP's, critical limits, monitoring and recordkeeping procedures, and corrective actions set forth in the HACCP plan. Validation also encompasses reviews of the records themselves, routinely generated by the HACCP system, in the context of other validation activities.

(2) *Ongoing verification activities.* Ongoing verification activities include, but are not limited to:

- (i) The calibration of process-monitoring instruments;
- (ii) Direct observations of monitoring activities and corrective actions; and
- (iii) The review of records generated and maintained in accordance with § 417.5(a)(3) of this part.

(3) *Reassessment of the HACCP plan.* Every establishment shall reassess the adequacy of the HACCP plan at least annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan. Such changes may include, but are not limited to, changes in: raw materials or source of raw materials; product formulation; slaughter or processing methods or systems; production volume; personnel; packaging; finished product distribution systems; or, the intended use or consumers of the finished product. The reassessment shall be performed by an individual trained

in accordance with § 417.7 of this part. The HACCP plan shall be modified immediately whenever a reassessment reveals that the plan no longer meets the requirements of § 417.2(c) of this part.

(b) *Reassessment of the hazard analysis.* Any establishment that does not have a HACCP plan because a hazard analysis has revealed no food safety hazards that are reasonably likely to occur shall reassess the adequacy of the hazard analysis whenever a change occurs that could reasonably affect whether a food safety hazard exists. Such changes may include, but are not limited to, changes in: raw materials or source of raw materials; product formulation; slaughter or processing methods or systems; production volume; packaging; finished product distribution systems; or, the intended use or consumers of the finished product.

§ 417.5 Records.

(a) The establishment shall maintain the following records documenting the establishment's HACCP plan:

(1) The written hazard analysis prescribed in § 417.2(a) of this part, including all supporting documentation;

(2) The written HACCP plan, including decisionmaking documents associated with the selection and development of CCP's and critical limits, and documents supporting both the monitoring and verification procedures selected and the frequency of those procedures.

(3) Records documenting the monitoring of CCP's and their critical limits, including the recording of actual times, temperatures, or other quantifiable values, as prescribed in the establishment's HACCP plan; the calibration of process-monitoring instruments; corrective actions, including all actions taken in response to a deviation; verification procedures and results; product code(s), product name or identity, or slaughter production lot. Each of these records shall include the date the record was made.

(b) Each entry on a record maintained under the HACCP plan shall be made at the time the specific event occurs and include the date and time recorded, and shall be signed or initialed by the establishment employee making the entry.

(c) Prior to shipping product, the establishment shall review the record associated with the production of the product, documented in accordance with this section, to ensure completeness, including the determination that all critical limits were met and, if appropriate, corrective actions were taken, including the proper disposition of product. Where practicable, this review shall be conducted, dated, and signed by an individual who did not produce the record(s), preferably by someone trained in accordance with § 417.7 of this part, or the responsible establishment official.

(d) *Records maintained on computers.* The use of records maintained on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and signatures.

(e) *Record retention.* (1) Establishments shall retain all records required by paragraph (a)(3) of this section as follows: for slaughter activities for at least one year; for refrigerated product for at least one year; for frozen, preserved, or shelf-stable products, for at least two years.

(2) Off-site storage of records required by paragraph (a)(3) of this section is permitted after six months, if such records can be retrieved and provided, on-site, within 24 hours of an FSIS employee's request.

(f) *Official review.* All records required by this part and all plans and procedures required by this part shall be available for official review and copying.

§ 417.6 Inadequate HACCP Systems.

A HACCP system may be found to be inadequate if:

(a) The HACCP plan in operation does not meet the requirements set forth in this part;

(b) Establishment personnel are not performing tasks specified in the HACCP plan;

(c) The establishment fails to take corrective actions, as required by § 417.3 of this part;

(d) HACCP records are not being maintained as required in § 417.5 of this part; or

(e) Adulterated product is produced or shipped.

§ 417.7 Training.

(a) Only an individual who has met the requirements of paragraph (b) of this section, but who need not be an employee of the establishment, shall be permitted to perform the following functions:

(1) Development of the HACCP plan, in accordance with § 417.2(b) of this part, which could include adapting a generic model that is appropriate for the specific product; and

(2) Reassessment and modification of the HACCP plan, in accordance with § 417.3 of this part.

(b) The individual performing the functions listed in paragraph (a) of this section shall have successfully completed a course of instruction in the application of the seven HACCP principles to meat or poultry product processing, including a segment on the development of a HACCP plan for a specific product and on record review.

§ 417.8 Agency verification.

FSIS will verify the adequacy of the HACCP plan(s) by determining that each HACCP plan meets the requirements of this part and all other applicable regulations. Such verification may include:

- (a) Reviewing the HACCP plan;
- (b) Reviewing the CCP records;
- (c) Reviewing and determining the adequacy of corrective actions taken when a deviation occurs;
- (d) Reviewing the critical limits;
- (e) Reviewing other records pertaining to the HACCP plan or system;
- (f) Direct observation or measurement at a CCP;
- (g) Sample collection and analysis to determine the product meets all safety standards; and
- (h) On-site observations and record review.

PART 424—PREPARATION AND PROCESSING OPERATIONS**Subpart A—General**

Sec.

424.1 Purpose and scope.

Subpart C—Food Ingredients and Sources of Radiation

424.21 Use of food ingredients and sources of radiation.

424.22 Certain other permitted uses.

424.23 Prohibited uses.

AUTHORITY: 7 U.S.C. 450, 1901-1906; 21 U.S.C. 451-470, 601-695; 7 CFR 2.18, 2.53.

SOURCE: 64 FR 72175, Dec. 23, 1999, unless otherwise noted.

Subpart A—General**§ 424.1 Purpose and scope.**

This part of the regulations prescribes rules for the preparation of meat and the processing of poultry products. The rules in this part further the purposes of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) by, among other things, preventing the adulteration or misbranding of meat and poultry products at official establishments. 9 CFR Chapter III, Subchapter A, Parts 318 and 319, Subpart C of this part, and 21 CFR Chapter I, Subchapter A or Subchapter B, specify rules for the use of certain food ingredients (e.g., food additives and color additives) and sources of radiation that may render meat or poultry products adulterated or misbranded.

Subpart C—Food Ingredients and Sources of Radiation**§ 424.21 Use of food ingredients and sources of radiation.**

(a)(1) *General.* No meat or poultry product shall bear or contain any food ingredient that would render it adulterated or misbranded, or which is not approved in this part, part 318 or part 319 of this chapter, or by the Administrator in specific cases.

(2)(i) Poultry products and poultry broth used in the processing of poultry products shall have been processed in the United States only in an official establishment or imported from a foreign country listed in § 381.196(b), and have been inspected and passed in accordance with the regulations. Detached ova and offal shall not be used in the processing of any poultry products, except that poultry feet may be processed

for use as human food in a manner approved by the Administrator in specific cases and detached ova may be used in the processing of poultry products if the processor demonstrates that such ova comply with the requirements of the Federal Food, Drug, and Cosmetic Act.

(ii) Liquid, frozen, and dried egg products used in the processing of any poultry product shall have been prepared under inspection and be so marked in accordance with the Egg Products Inspection Act.

(3)(i) Carcasses, parts thereof, and products of cattle, sheep, swine, goats, or equines may be used in the processing of poultry products only if they were prepared in the United States in an official meat packing establishment or imported from a foreign country listed in § 327.2(b), were inspected and passed in accordance with the Federal Meat Inspection Act and the regulations under such Act (subchapter A of this chapter), and are so marked.

(ii) Pork from carcasses or carcass parts used as an ingredient in poultry products that has been found free of trichinae, as described under § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)), is not required to be treated for the destruction of trichinae.

(iii) Poultry products containing pork muscle tissue which the Administrator determines at the time the labeling for the product is submitted for approval in accordance with part 381 of the regulations in subchapter A or upon subsequent reevaluation of the product would be prepared in such a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be effectively heated, refrigerated, or cured to destroy any possible live trichinae, as prescribed in § 318.10(c) of this chapter, at the official establishment where such products are prepared. In lieu of such treatment of poultry products containing pork, the pork ingredient may be so treated.

(b)(1) *Food ingredients and sources of radiation.* Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry

products in 21 CFR chapter I, subchapter A or subchapter B, shall be listed for such use under this chapter, subject to declaration requirements in parts 316 and 317, or subparts M and N, of part 381 of this chapter, unless precluded from such use or further restricted in parts 318 or 319, or subparts O and P, of part 381 of this chapter, or unless such use otherwise results in the adulteration or misbranding of meat or poultry products. Food ingredients and sources of radiation listed or approved for use in the production of meat or poultry products in 21 CFR Chapter I, subchapter A or subchapter B, may be listed or approved for such use under this chapter by the Administrator in § 424.21, subject to declaration requirements in parts 316 and 317, or subparts M and N, of part 381 of this chapter.

(2) No food ingredients or sources of radiation may be used in the preparation of any meat or poultry product, for any purpose, unless the use is listed or approved in 21 CFR chapter I as a direct food additive (21 CFR part 172), a secondary direct food additive (21 CFR part 173), indirect food additive (21 CFR parts 174-178), radiation source (21 CFR part 179), an interim-listed direct food additive (21 CFR part 180), a prior-sanctioned substance (21 CFR part 181), a Generally Recognized As Safe (GRAS) substance (21 CFR parts 182 or 184), or by a regulation in this chapter. Part 319 of this chapter also specifies other food ingredients that are acceptable in preparing specified products.

(3) No food ingredient, the intended use of which is to impart color in any meat or poultry product, shall be used unless such use is approved in 21 CFR Chapter I as a color additive (21 CFR Parts 73, 74, 81, and 82) or in a regulation in this chapter.

(4) Petitions to amend 21 CFR chapter I to provide for uses of food additives, or other substances or sources of radiation necessary in the preparation of meat or poultry products, or food ingredients used to impart color to product, should be sent to the Food and Drug Administration, in accordance with the provisions of 21 CFR parts 71 or 171, as appropriate.

(5) Inquiries concerning the regulatory status under the Federal Food, Drug, and Cosmetic Act of any articles



KANSAS DEPARTMENT OF AGRICULTURE

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Jamie Clover Adams
Secretary

Dr. E. M. Sumner
Program Manager

MEMORANDUM

TO: All KDA-MPI Supervisors

FROM: Dr. E.M. Sumner

DATE: August 26, 2002

SUBJECT: 2002 Federal Review

The Kansas Department of Agriculture Meat & Poultry Inspection Program has been scheduled to receive a comprehensive review by USDA-FSIS in November of 2002. Because of the state's current fiscal condition and the attention this program received during the past legislative session, we can expect to be looked at by the legislature again this year. And since we have been selected not only for a State Performance Audit but also chosen for this Federal review (both of which are to be conducted this fall), we will undoubtedly be in the "spotlight".

I want to be as candid as possible. We all know that most state budgets, including Kansas', are far from healthy. Legislators are looking to make cuts in an effort to balance these budgets and programs which consume state general funds will be evaluated very close. Since Federal Law mandates USDA-FSIS to assume any state meat inspection program which is designated by either FSIS or the State Legislature, we likely will be looked upon as a program which can be eliminated without any affect on the taxpayers of the State of Kansas.

This program still has the support of many legislators and of course the support of Secretary Clover Adams. The Secretary and I both believe that we can come through this as an intact program, but **our future is in our own hands**. If we receive a "good" review, the legislature will be likely to view us as a necessary consumer protection program. **But make no mistake, if the upcoming review rates this program poorer than the rating received from the previous review in 1998, our support will be gone and along with it the program.** The days of being a state employee equating to life-long job security are gone.

Now, what are we going to do? I have critiqued the 1997 comprehensive review, the 1998 follow-up review and have had several telephone conversations with Dr. Leese and Dr. Chaudry about their expectations of us. Even though it may not be necessary to list the deficiencies, the major problems identified from the 1997 review were:

- Stains and deep scores on product contact surfaces
- Rust on equipment and on overhead structures
- Condensation (either dripping on or heavily beaded above product)
- Fecal contamination on carcasses
- Labeling issues (hand written or blurred and illegible labels)

- Rodent evidence (including no follow-up procedures to eliminate their entry)
- Flaking paint
- Live insects in plant
- Dead insects in dry storage or on food contact surfaces
- Floor storage (usually in freezers)
- Dust on storage shelves above product work area
- Product contact items (packaging bags) stored in open boxes
- Ineffective in-plant inspection personnel
- Plant review records not accurately reflecting the true plant conditions
- Documentation (NR's, PDR's) not adequately describing the observed conditions
- Street clothes not adequately covered to prevent contamination
- Hand sanitizers or hand covering not used when handling RTE product
- Hoist chain touching carcasses
- Unsafe storage/handling of rifles in slaughter departments
- No antemortem records
- Lymph nodes not adequately incised (one cut through)
- Inspectors doing plant work (washing of inspected beef heads for example)

We must answer these questions as a program BEFORE this review. Do we have plants with consistent food safety risks? Do we have plants which are in need of increased inspection efforts? Do we have Ag I's which are in need of additional training? If so, how will we supply this training? Are the HACCP plans in our plants adequate food safety systems? Is there justification for the CCP's in these plans? Is the frequency of monitoring addressed, i.e., if a plant uses room temperature as a CCP, is it monitored EVERY day of the year that product is in the room? If not, why not? Is verification frequency addressed? Are Corrective Actions taken when a deviation is found (by either the plant or inspection) and are these actions appropriate. Have we addressed facility issues such as doors opening from the outside directly into processing rooms? When we find rodent evidence, do we address the actions necessary to eliminate their entry?

If there are inspected plants in your area which down-grade to "Not for Sale" at the time of processing, but yet do inspected processing under HACCP at certain times, we must know what time of day and day of the week this inspected processing will occur and it MUST be addressed in the HACCP plan. The Fed's will not look kindly on plants applying the marks of inspection at their discretion without us knowing when this will occur.

The following is a list of other items that the reviewers are looking for:

- Water in the ante mortem pens
- Is an ante mortem inspection verification available to inspection personnel and supplied to the plant?
- Are the caps worn by plant employees clean and do they remain in the plant when not in use?
- Duct tape usage for minor repairs
- Carcasses too close to cooler floors
- Loose unidentified product
- Saw dust used on floors - is there a letter of guarantee?
- Unidentified containers (white oil in can not identified)
- Uncovered wood
- Exposed insulation
- Separation of product (beef and pork; raw and RTE)
- Inedible product handling (must be covered, decharacterized or denatured and not stored outside)
- Are handwash facilities adequate and working?
- Is there ice buildup in the freezer?
- Is there residue or buildup on equipment?

SSOP procedures must be followed as written:

- Frequencies of procedures must be followed and documented
- Mid-shift clean-up must be recorded on the SSOP check list (who performed the procedure and at what time)
- Only one week should be on each check list sheet
- Is inspection reviewing SSOP's regularly (daily)?
- Corrective Action must address: 1) appropriate product disposition, 2) restoration of sanitary conditions, 3) prevention of recurrence

HACCP procedures:

- Supporting documentation for procedures, etc. must be included in the plan
- A flow chart must be in the plan which accurately represents the order of operations
- If room temperature is included as a CCP, it MUST be documented every day of the year that product is in that room.

FSIS reviewers will concentrate on:

- Any food safety issues found
- Review of HACCP plans
- Review of CCP records
- Review the adequacy of Corrective Actions when a deviation occurs
- Review of the Critical Limits
- Review other records associated with the HACCP system
- Direct observation or measurement at a CCP
- Sample collection and analysis
- On-site observation and records review

Dr. Chaudry of Dr. Bill Leese's staff has faxed copies of the four worksheets that will be used during this Federal review. They are included with this memo for your use (the worksheet on the SPP Documentation is included, but I will address this in the Topeka office).

I truly believe that if we work as a team and address all issues in an organized fashion, we can be prepared for this review.

From: Laurel Murdie
To: Daniel Thimesch
Date: Wed, Jan 15, 2003 1:52 PM
Subject: USDA Lawrence Regional Office District Manager

Here's the information you requested. Good luck to you, Representative.

William M. Walker, DVM
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