

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on January 14, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Alan Conroy, Legislative Research  
Amy VanHouse, Legislative Research  
Lisa Montgomery, Office of the Revisor of Statutes  
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Adrian Polansky, Secretary of Agriculture - Kansas Department of Agriculture  
Roderick L. Bremby, Secretary - Kansas Department of Health and Environment

Others attending:

See Attached List.

Secretary Polansky presented to the committee about food safety activities as found within the Kansas Department of Agriculture (Attachment 1). He described these activities as being divided into four principle categories:

- 1) dairy inspection
- 2) meat and poultry inspection
- 3) agricultural commodities assurance
- 4) weights and measures

Secretary Polansky, on behalf of KDA, expressed support for the Legislative Post Audit and its recommendation for coordination with KDHE. Furthermore, he expressed the willingness of the department to comply with the Executive Reorganization Order announced that morning by Governor Sebelius.

Secretary Bremby presented to the committee about food safety activities as found within the Kansas Department of Health and Environment (Attachment 2).

Secretary Bremby discussed the effects of cooperation between KDHE and KDA under the Governor's ERO, highlighting the following two aspects:

- 1) The realignment of responsibility for inspecting retail food stores and processing plants with KDA.
- 2) The continued responsibility of KDHE to oversee food service establishments.

Senator Downey requested a list of the greatest concerns from KDHE and KDA with regard to the need for federal funds in implementing new food safety responsibilities. She suggested the use of this list in a letter of concern on behalf of the committee to the federal government.

The meeting was adjourned at 9:26 a.m.

The next meeting is scheduled for Tuesday, January 20, 2004.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 01/14/04

NAME	REPRESENTING
Carole Jordan	Dept of Ag
KEN RANJES	KS DAIRY ASSOCIATION
Jerry Dudley	Ks Dept. of Commerce - Ag Mkt.
BRAD HARRELSON	KFB
Megan Dunn	Hein Law Firm
Ron Hein	" " "
Tom Palace	PMCA OF KANSAS
Gert Kuhnhold	Lumme Journal - World
Doug Wareham	KGFA / KARA
Leslie Kaufman	Ks Coop Council
Sally Finney	Ks. Public Health Assn.
Cynthia Blalock	Dept. of Health & Envir.



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Presentation to the Senate Agriculture Committee

January 14, 2004

### Food Safety Activities of the Kansas Department of Agriculture

#### Secretary of Agriculture Adrian Polansky

Good morning, Chairman Schmidt and members of the committee. I appreciate the opportunity to be here, and I thank you for focusing attention on food safety.

Food safety and consumer protection programs are at the core of the mission of the Kansas Department of Agriculture. Programs which we administer guarantee public safety and consumer protection by regulating the production and sale of meat, poultry, dairy products, eggs, agricultural seeds and feeding stuffs. We strive to provide this consumer protection as efficiently and effectively as possible.

Today this department's most direct food safety protection efforts are in the areas of meat, milk and eggs.

#### Dairy Inspection Program

Our dairy inspection program reaches from the farm to the grocery store shelf. Its employees conduct inspections, collect samples for analysis, and issue permits and licenses to ensure that milk and dairy products are produced, processed and distributed to consumers in a safe, wholesome and unadulterated form.

Inspectors who are experts in FDA regulations and techniques visit the family farm or the large dairy to make note of sanitary conditions, records, temperatures and storage of medications. Grade A farms are inspected at least four times a year—and more when follow-ups are called for—to see that the milking barn, tank room and milking equipment are clean and sanitary. Milking is observed. And each farm bulk milk supply is sampled monthly for temperature, bacteria, drug residue, somatic cell limits and the presence of added water.

Because conditions regarding dairy animals and dairy facilities are so dynamic, and because effects on consumers could be dramatic, we have a strong presence in this area.

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*Senate Agriculture  
January 14, 2004  
Attachment 1*

Dairy inspection staff train and check the individuals who pick up the milk at the farm and haul it to the processor. They inspect processing plants for sanitation, temperatures, handling and procedures. At every step they take controlled samples to test for substances or conditions which could affect the safety or quality of the milk or processed dairy food.

These food safety professionals protect consumers in a number of states besides Kansas. Grade A milk produced in the Sunflower State is exported to states all around the region. Based on per-capita consumption, approximately 40 percent of Kansas milk is consumed here; 60 percent is exported. Our activities to comply with regulations of the Food and Drug Administration ensure that it is legal to sell milk outside our borders.

Our inspectors check products from the shelves of grocery stores, and they investigate when consumer complaints are received.

### **Meat and Poultry Inspection Program**

The meat and poultry inspection program is the largest KDA food safety program. Cooperatively funded by USDA and state general funds, we work with the state's small meat and poultry processors, mostly in our rural communities, to ensure food safety for consumers and to serve our farmers and ranchers.

This program has worked side-by-side with industry and Kansas State University to meet tough new federal food safety requirements, and we will continue to do so as new requirements arise. We have a history of building partnerships to help the industry meet new demands. We have worked with KSU to provide no-cost HACCP and sanitation training, and explain regulations about E. coli 0157:H7. We also worked with FSIS to educate industry about new ready-to-eat regulations.

When we help our plants meet requirements and maintain sanitary conditions, it is positive for rural economies. Some have questioned the economic benefit of these small, rural businesses. We do not. We believe they provide employment and tax dollars to our small towns, as do our inspectors who live in the same small communities, and provide valuable services for farmers and agribusinesses. State inspection is more reasonable financially for the small plants, and guidance and advice are more easily accessible than they are for federally inspected plants.

Staff of this program inspect and license commercial and custom slaughterhouses (those are the plants which process animals for an individual and his or her family's personal use, not for retail sale) and processing facilities located in Kansas.

At those fully inspected facilities, we inspect every animal while it is still alive and then again, after slaughter, to ensure no sign of disease is missed. Only healthy carcasses will be marked with the Kansas Department of Agriculture inspection legend before they enter the food supply. We retain the carcasses of animals suspected of disease until the results of tests are returned giving them a clean bill of health.

*interest from wild policy*

Our inspectors assure that all areas and equipment in the plants are clean, sanitary and properly maintained when the daily work begins. All ingredients and steps in the preparation of meat and poultry products are inspected for quality, freshness and compliance with national standards. Samples of finished products are analyzed.

Program inspectors also are a first-line of detection and defense against natural or introduced animal diseases. Field staff learn to detect signs of dangerous animal diseases and to put immediate precautionary measures in place. In case of a major animal disease emergency, the program's nine veterinarians would join the Department of Animal Health's three vets to contain and correct the situation.

Because conditions with live animals and processing facilities are so dynamic, and because effects on consumers could be dramatic, we maintain a strong presence in the small meat and poultry processing industry.

### **Agricultural Commodities Assurance Program**

The agricultural commodities assurance program in the Department of Agriculture regulates the quality of eggs, feed, pet food and seed. These inspectors routinely visit supermarkets, feed mills, pet stores and other retail and wholesale outlets to verify that products are properly labeled and to collect samples which are tested in our agricultural laboratory.

These food safety professionals inspect more than 50,000 eggs each year to verify that they are stored at a temperature that retards the growth of salmonella, and to ensure they are clean and free of cracks. We also make sure that eggs cartons bear a packaging date and that eggs are properly graded.

Our work to ensure the quality of seeds and feeds is important to the agricultural industry and to consumers. We help the federal government investigate tissue residue cases when antibiotics and other drugs are detected in animals destined for the human food supply. We investigate the source of the problem, which often can be traced to a dairy producer or rancher who medicated a sick animal and did not wait long enough for the drugs to be expelled by the animal's body before marketing it. Often, we are responsible for communicating to the animal's owner the importance of following label instructions and federal rules, and the possible consequences of improperly medicating animals.

Again, these are food safety activities which protect human and animal health and ensure consumer confidence in Kansas agriculture and food production.

At any given time, Kansas has more cattle than people. And, our state has a reputation of providing safe, wholesome beef products. ACAP inspectors maintain the integrity of Kansas beef by inspecting facilities that contribute to the production of cattle feed to ensure that they produce feed that is safe and complies with state and federal rules. We test feed products to ensure prohibited materials are not found in ruminant feed.

## Weights and Measures

Trained in a different discipline and requiring a different set of skills and equipment, our weights and measures inspectors nevertheless contribute to consumer protection and enter some of the same facilities where food safety inspectors work.

Weights and measures inspectors test all kinds of commercial weighing and measuring devices. They test scales used in grocery stores, grain elevators, livestock sale barns, pawn shops and other locations. They test gas pumps and meters used to sell chemicals or to sell propane to home owners. They check packages containing edible and inedible products to ensure the consumers receive the quantity stated on the label. They even verify that in-store scanners scan the correct price. Essentially, all consumer goods are subject, in one way or another, to the weights and measures law.

This has been a brief tour of our department's food safety and consumer protection activities, presented as a foundation to a discussion of the post audit.

## Response to Legislative Post Audit

KDA supports policy changes which will protect food safety and increase the efficiency and effectiveness of food safety programs. Protection of the consumer must remain the over-all goal as we look at program changes. The post audit report is a good starting place for new and improved food safety efforts in Kansas. Further food inspections could fit well into our department's mission, as well as appropriately broaden our oversight to all parts of our complex food system, from farm to plate.

The release of the post audit report led me to direct my staff to work with the Kansas Department of Health and Environment to make immediate changes when possible and to begin looking at longer-term program improvements designed to provide food safety effectively and efficiently.

Many of the recommendations are well taken and can be accomplished easily in the short term. Others, including some estimated dollar savings that we still question, will take longer analysis and discussion by experts. With the federal government now involved in design of a more science and risk-based food safety system, and with terrorism a possibility which could affect our safe and reliable food supply, the timing is right now to analyze and improve these programs.

We have begun a series of interagency meetings on the logistics of making our programs more seamless. We have identified some 70 facilities which had dropped off the inspection radar in 2002. Staff have begun implementing these inspections.

The LPA report suggests KDA may over-inspect some types of meat and poultry businesses as well as dairies. However, that conclusion is based primarily on the frequency of legally required inspections. The audit seems to claim that there were too many inspections because there were more inspections than the minimum required by statute. The Department of

Agriculture upholds a clear mission of safe and wholesome products for all Kansans. Merely determining that the department met the minimum number of inspections does not guarantee food safety.

In conclusion, KDA is committed to implement and operate efficient and effective programs. KDA is open to recommendations and opportunities that could lead to operational improvements. We and the Kansas Department of Health and Environment are on the same team and embrace opportunities to enhance food safety and coordination. With that in mind we look forward to working together to implement the Executive Reorganization Order announced just this morning by the governor.

### **Executive Reorganization Order**

This morning, Governor Sebelius ordered the transfer of several program responsibilities from the Kansas Department of Health and Environment to the Department of Agriculture.

Under this order, as food is produced, processed and transported to consumers, the Kansas Department of Agriculture will be the key authority for safety. This is an appropriate function for KDA and will provide businesses in this state with a single point of contact for food safety regulation. This shift in duties complements our existing authority for dairy, meat, and egg compliance checks in grocery stores.

KDHE will continue to regulate businesses that prepare food for immediate consumption. The state public health agency has the capacity for detecting food-borne illness and conducting appropriate follow up in order to diminish any future risks.

The specific types of establishments that will transfer to the Department of Agriculture include retail grocery stores, food service in retail grocery stores, mobile ice cream vendors, vending machines, convenience stores, retail meat stores and meat processors, specialty shops, variety stores, food wholesalers and warehouses, food manufacturers, bakeries, mills and elevators, bottling plants, wineries, breweries, food re-packers, bottled water businesses, pet food manufacturers, food salvagers, ice plants, cider mills, seed sprouting businesses, and fruit and vegetable markets.

We have copies of the reorganization order for the committee.

Thank you for your attention. I will stand for questions at the direction of the chairman.



# KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

**Governor's Message**  
**Executive Reorganization Order No. 32**  
**By Governor Kathleen Sebelius**  
**January 14, 2004**

As part of my continuing search in government to better serve Kansas and streamline government, I am transferring several program responsibilities from the Kansas Department of Health and Environment to the Kansas Department of Agriculture. This reorganization is part of my administration's continuing search for changes in government to better serve Kansans. The creation of single points of contact for Kansas businesses increases responsiveness on the part of state government, while continuing to strengthen the safety of food in Kansas.

In today's environment, managing food safety is of paramount importance. With a heightened concern for terrorism, there have been changes in national food safety and security measures. The regulation of food safety from "Farm to Fork" is best accomplished through a strategic realignment of food safety duties between these two agencies responsible for consumer protection.

As food is produced, processed and transported to consumers, the Kansas Department of Agriculture will be the key authority for safety. This is an appropriate function for KDA and will provide businesses in this state with a single point of contact for food safety regulation. This shift in duties complements the existing authority of KDA, which already has a presence in grocery stores in its dairy, meat and egg compliance checks.

The Kansas Department of Health and Environment will focus on the food safety arena, which has historically posed the greatest direct risk of illness—businesses that prepare food for immediate consumption. The state public health agency has the capacity for detecting food borne illness and conducting appropriate follow up in order to diminish any future risks. This realignment of duties supports the concept of focusing public health on issues posing greatest risk.

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## Executive Reorganization Order No. 32

By Governor Kathleen Sebelius

Transmitted January 14, 2004

Section 1. Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;

(b) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687 that relate to the powers, duties, and functions transferred under paragraphs (a), (b), and (c) above.

Sec. 2. (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to section 1. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

Sec. 3. (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

Sec. 4. (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The department of agriculture shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions transferred to the department of agriculture. Any conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

Sec. 5. (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

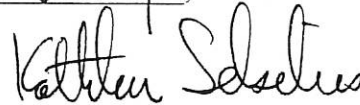
(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

Sec. 6. (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of health and environment transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

Sec. 9. Except as otherwise provided by this order, all of the provisions of this order shall take effect and have the force of general law on October 1, 2004, unless disapproved by either house of the Kansas legislature as provided by subsection (c) of section 6 of article 1 of the constitution of Kansas, and unless so disapproved, this order is to be published as and with the acts of the legislature and the statutes of this state.

DONE AT The Capitol in Topeka  
Under the Great Seal of the  
State of Kansas this 19th day  
of January, 2004.



BY THE GOVERNOR  
KATHLEEN SEBELIUS

RON E. THORNBURGH  
*Secretary of State*

JANET A. CHUBB  
*Assistant Secretary of State*



# K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on Food Protection and Consumer Safety Program  
to  
The Senate Committee on Agriculture**

**by Roderick L. Bremby  
Secretary  
Kansas Department of Health and Environment**

**January 14, 2004**

Chairman Schmidt and members of Committee on Agriculture, I am pleased to appear before you today to discuss the operations of the **Food Protection and Consumer Safety Program** at the Kansas Department of Health and Environment.

The department's Division of Health administers the Bureau of Consumer Health. Within the bureau, the Food Program is administered to prevent foodborne illnesses and injury. The authority for this program is found in the Kansas Food and Lodging Act (K.S.A. 36-501 et seq.) and the Kansas Food, Drugs and Cosmetics Act (K.S.A. 65-665 et seq.). The Kansas Food Code (regulations under the Food & Lodging Act) is based upon the U.S. Health and Human Services' Food and Drug Administration's (FDA) Model Food Code.

The Food program inspects and regulates food service establishments, retail food stores, food processing plants and lodging facilities. **The primary goal of the Food Protection program is to prevent food-borne illnesses associated with these locations where food is being manufactured, prepared, served, or stored while promoting industry understanding of disease prevention.**

The program consists of inspectors, managers, administrative and clerical staff. There are about 12,000 restaurants, 3,000 retail food stores and 750 food processing plants licensed. On average, inspectors are responsible for 500 inspections a year. The program contracts with eight county health departments<sup>1</sup> to perform inspections of restaurants in 14 counties, primarily counties of dense population. This constitutes about 42 percent of all food service establishments in the state. Inspectors, including those working for county health departments, are trained under a standardized training plan with specific competencies required before they are allowed to inspect alone.

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<sup>1</sup>Butler, Geary (Rural Lakes Region—Clay, Cloud, Geary, Marshall, Morris, Pottawatomie and Washington), Johnson, Lyon, Reno, Riley, Saline, Wichita (Wichita/Sedgwick county),

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*Senate Agriculture  
January 14, 2004  
Attachment 2*

At the request of the Secretary, the program was audited by the Division of Post Audit and a performance report was completed in April 2002. Subsequently, the program restructured management levels and responsibilities to intensify resources on food service establishments performing high risk preparation and storage. Step-by-step licensing, inspection and compliance guidelines were established which limited the tolerance level of noncompliance with regulations. This included a structured enforcement process for repeat or egregious offenders. The program completed an FDA Self Assessment<sup>2</sup> and Kansas is now listed on the FDA's National Registry of jurisdictions that have satisfied the requirements for this element of the FDA National Regulatory Program Standards.

Inspectors and managers respond to many kinds of food emergencies, in addition to the routine regulatory work. Food and food safety can be significantly affected by acts of nature such as tornados and ice storms where electricity is interrupted to the facilities as well as the other catastrophes such as fire. Tornados often bring on widespread risk by disruption of electricity, communication, destruction to buildings and the contents, plumbing and water supply failures. The inspectors respond to tornados, truck wrecks involving food products, power outages, fires, water supply issues ("boil water" advisories), to name a few.

Together with KDA, the department has taken steps to correct the issue of multiple food processing plants that are licensed under KDA authority and were no longer inspected by KDHE after the passage of Senate Bill 437 in the 2002 legislative session. KDHE and KDA have established a cooperative training and inspection procedure for these facilities that is being implemented this week. As program duties and resources are transferred under the Governor's Reorganization Order, this type of cooperation will most certainly continue.

The Executive Reorganization Order will realign the responsibility for inspecting retail food stores and processing plants with the Department of Agriculture. This realignment fits appropriately with the Department's current structure and responsibilities. Since KDA currently inspects retail food stores, this realignment will create efficiencies for Kansas retail food stores that are currently inspected by both the Department of Agriculture and the Department of Health & Environment.

Food service establishments will remain the responsibility of the Department of Health and Environment. This alignment fits most appropriately with the agency's role as the state's public health authority. Given that food service establishments are considered to be the highest risk in terms of food borne illness, it is essential to maintain the connection between this function and KDHE's epidemiological capabilities.

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<sup>2</sup>FDA Program Standards were formulated by FDA from ideas and input from federal, state, and local regulatory officials, industry, trade, tribal and professional associations, academia and consumers as part of the federal food safety initiative's five-year operational plan. The goals are to promote active managerial control of the Centers for Disease Control and Prevention's identified risk factors known to cause foodborne illness, and to establish a program framework within which the active managerial control of risk factors can be achieved.

In order to fully enact the ERO, the department is currently assessing the resources and statutory changes necessary to complete a smooth transfer of these inspection functions. The most important focus is the assurance of a safe food resource for Kansas citizens, whether from the processor, grocer, or restaurateur. Taking the time to provide comprehensive attention to detail will ensure a seamless transition of responsibilities and the continuity of superb food safety in Kansas.

I appreciate the Committee's continued attention to this critical issue, and will be happy to stand for questions.