

An Evaluation:

Food and Dairy
Safety Program

**Department of Agriculture,
Trade and Consumer Protection**

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Report Highlights ■

We found significant differences in the timeliness of food establishment inspections and dairy establishment inspections.

The Department of Agriculture, Trade and Consumer Protection (DATCP) has primary responsibility for ensuring the safety of food and dairy products produced and sold by approximately 29,400 food and dairy establishments in Wisconsin, including dairy farms, dairy plants, food processors, food warehouses, grocery stores, delicatessens, and other retail food establishments. DATCP also regulates certain professionals involved in the production of food and dairy products and oversees contracts with local health departments that regulate approximately 5,000 retail food establishments. However, its responsibilities do not include restaurants, which are regulated by the Department of Health and Family Services (DHFS).

DATCP's compliance with food and dairy testing requirements is generally adequate.

DATCP's food and dairy program is funded primarily with license fees paid by food and dairy establishments and professionals and with general purpose revenue (GPR). In fiscal year (FY) 2006-07, its expenditures totaled \$8.4 million and funded 97.6 full-time equivalent (FTE) staff positions. To determine the program's effectiveness, we reviewed DATCP's efforts to:

DATCP did not take sufficient and timely enforcement action in some cases.

- conduct timely routine food and dairy safety inspections;
- collect and test food and dairy product samples and environmental samples from food preparation areas in order to monitor compliance with food safety procedures;
- ensure permanent and continuous compliance with state food and dairy safety regulations by all regulated entities;
- oversee local health departments' regulation of retail food establishments; and
- respond to food emergencies.

DATCP's oversight of local retail food regulatory activities needs improvement.

In responding to food emergencies, DATCP

Inspection Timeliness

appears to have taken appropriate action.

Approximately one-half of the food and dairy licenses issued by DATCP in FY 2006-07 were for dairy farms, and 84.2 percent of these farms had Grade A permits to produce milk that can be sold as fluid milk for human consumption. The remaining farms were classified as Grade B and produce milk for use in manufactured products, such as cheese.

To help ensure the safety of food and dairy products, DATCP regularly inspects food and dairy establishments to determine compliance with food and dairy safety standards. Inspection frequency is based on state law or informal DATCP guidelines and ranges from every three months to every two years, based on establishment type and the potential risk of foodborne illness.

From FY 2004-05 through FY 2006-07, DATCP completed 66,874 inspections of dairy establishments and 12,869 food inspections. We found that 98.7 percent of the dairy inspections were conducted when scheduled, compared to 68.3 percent of food inspections.

Of the 4,929 inspections completed after they were scheduled, 29.3 percent were completed within 30 days, but 8.3 percent were overdue by more than one year.

| Timeliness of Completed Routine Food and Dairy Inspections FY 2004-5 through FY 2006-07 | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|---------------|
| | Dairy | | Food | | Total | |
| | Number | Percentage | Number | Percentage | Number | Percentage |
| Completed by Date Scheduled | 66,025 | 98.7% | 8,789 | 68.3% | 74,814 | 93.8% |
| Completed after Date Scheduled | 849 | 1.3 | 4,080 | 31.7 | 4,929 | 6.2 |
| Total | 66,874 | 100.0% | 12,869 | 100.0% | 79,743 | 100.0% |

DATCP inspections were more timely for establishments whose inspection frequency is specified in state law. For example, inspections of dairy farms and Grade A dairy plants almost always adhered to the frequencies specified in state law.

State law does not specify inspection frequencies for Grade B dairy plants or retail food establishments. We found that 30.1 percent of inspections of Grade B dairy plants and 31.7 percent of food establishment inspections were not completed when scheduled.

Key Facts and Findings

Regulation of food and dairy products in Wisconsin is heavily influenced by two model ordinances.

Of 4,929 inspections that were completed after the date scheduled, 8.3 percent were more than one year overdue.

DATCP's regulatory philosophy emphasizes both voluntary compliance and

Sampling and Testing

DATCP routinely collects and analyzes samples of products from all Grade A dairy plants to fulfill mandatory national and state testing requirements intended to ensure that the milk has been pasteurized and is free of drug residue and harmful bacteria.

In most instances, DATCP's sampling efforts met the requirements. Only 1.2 percent of the results of 29,454 tests conducted from FY 2002-03 through FY 2006-07 exceeded specified limits for temperature or bacteria. However, in 26 of the 54 instances in which test results showed high levels of bacteria in sampled products, DATCP responded an average of 22 days past the required time frame.

In addition, DATCP tested 12,459 samples of food and food preparation environments for the presence of pathogens that can cause foodborne illnesses. The collection and testing of these samples, which are taken from food processors, dairy plants, and retail food establishments, is not required by state

progressive enforcement.

Most violations of food and dairy safety regulations are identified during routine inspections.

DATCP does not routinely use its statutory authority to ensure full compliance with food and dairy safety regulations.

In June 2007, 34 local health departments had responsibility for regulating 51.7 percent of Wisconsin's licensed retail food establishments.

DATCP identified 41 food emergencies from FY 2002-03 through FY 2006-07.

law but is guided by a plan developed annually by DATCP.

We found that while the number of environmental samples collected increased 40.0 percent from FY 2002-03 through FY 2006-07, DATCP collected substantially fewer environmental samples than it had planned in each of these years. This is a concern because DATCP is performing fewer tests on food and is increasing its reliance on environmental sampling to monitor food safety.

Enforcement Practices

DATCP seeks voluntary compliance from all regulated entities, and this approach appears to be effective for the vast majority of regulated establishments. In 94.4 percent of routine inspections, no need for follow-up regulatory action was identified. When additional action is needed, DATCP's policy is to use progressively more stringent enforcement action to gain "permanent and continuous" compliance with food and dairy regulations.

To evaluate the effectiveness of DATCP's compliance and enforcement efforts in instances requiring additional action, we reviewed 50 cases that suggested significant noncompliance with food and dairy safety regulations. We believe DATCP did not take timely and sufficient enforcement action in 13 of these cases.

For example, in September 2004 DATCP placed a Grade A dairy farm under a conditional license, but only after having identified 130 violations during 29 inspections over a period of more than seven years. DATCP temporarily suspended the farm's conditional license for four days in May 2006 but issued a regular license four months later, even though the farm had not achieved permanent and continuous compliance with dairy regulations.

DATCP's difficulties in effectively gaining compliance with establishments that do not willingly cooperate are longstanding and were noted in our December 1983 and November 1985 audits of its food and dairy safety program.

Local Oversight

DATCP has entered into agreements with 34 local health departments to regulate 51.7 percent of grocery stores, delicatessens, and other retail food establishments in Wisconsin.

The local health departments license and inspect retail food establishments, establish and collect fees, and annually pay DATCP 10.0 percent of the license fee revenue it would otherwise have received for licensing the retail food establishments. To ensure consistency in conducting inspections, DATCP provides regular training and support for local health departments that appears to be sufficient and relevant.

Administrative rules require DATCP to annually review and evaluate the retail food safety efforts of each participating local health department. However, since 2004 DATCP has not conducted any of the required local evaluations.

Instead, for the past two years it has relied on self-reporting by local health departments. This strategy has been ineffective, largely because only 21 of the 34 local health departments submitted data to DATCP for FY 2006-07, and not all of the reports submitted contained complete information.

Food Emergencies

DATCP is the lead state agency responsible for responding to foodborne illnesses, disease outbreaks, and other emergencies in which the food supply is threatened. It has developed response plans based on the type and scale of food emergency. DATCP identified 41 food emergencies from FY 2002-03 through FY 2006-07. Six of these involved human illnesses and affected between 1 and 61 people.

We reviewed the files for the 41 food emergencies and found that DATCP took appropriate action in responding to 40 cases. However, a lack of documentation prevented us from determining whether appropriate action had been taken in response to one case involving listeria, a foodborne pathogen, and DATCP was unable to provide additional information on this incident.

In addition, we found that staff were not following all procedures in DATCP's food emergency response manual, including keeping a log of events and contacts during a food emergency, critiquing the process, and preparing a written report after each case is closed. For example, only 1 of the 41 food emergency case files contained a final written report.

Recommendations

We include recommendations for DATCP to report to the Joint Legislative Audit Committee by January 5, 2009, on:

- its efforts to develop formal inspection frequency standards for Grade B dairy plants and food establishments and to measure compliance of all regulated establishments with inspection frequency standards ([p. 22](#));
- its efforts to increase the percentage of planned environmental samples that are collected and tested annually ([p. 31](#));
- its efforts to enhance the timeliness and effectiveness of food and dairy enforcement actions, including requiring establishments with conditional licenses to achieve full regulatory compliance before a regular license is issued ([p. 40](#));
- its plans to improve the review of local health departments' retail food safety activities ([p. 46](#)); and
- its efforts to ensure compliance with internal food emergency safety response procedures ([p. 52](#)).

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