



PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law



MINNESOTA FOOD SAFETY

Preventing Foodborne Illness in Minnesota

Role of Local, State, and Federal Laws and Agencies

Increasing access to healthy and safe food is a key focus of public health efforts to reduce chronic diseases associated with poor diets. This effort has largely focused on improving the availability and affordability of healthy food such as fruits, vegetables, low-fat dairy, and lean protein sources.¹ At the same time, efforts to promote access to healthy food

FOODBORNE ILLNESS

(also referred to as foodborne disease, foodborne infection, or food poisoning)

Illness caused by ingestion of food contaminated with disease-causing microbes, pathogens, poisonous chemicals, or other harmful substances.²

FOODBORNE ILLNESS OUTBREAK

An occurrence of two or more people (called "cases") being sickened by ingesting a certain food,³ resulting in vomiting, diarrhea, or other symptoms.⁴ In Minnesota, a single case of illness from botulism or chemical poisoning is considered to constitute a foodborne illness outbreak.⁵



Part of a series on foodborne illness in Minnesota

Please consult the other resources accompanying this guide for additional information on:

- Determining legal responsibility for foodborne illness
- Government response to foodborne illness

can be complicated by safety concerns surrounding how food is grown, handled, and prepared.⁶ Fresh fruits and vegetables and other nutritious foods are vulnerable to contamination that cause foodborne illness. By understanding the legal framework and government authority to prevent foodborne illness, food producers, those selling and serving food, public health officials, and community members will have the tools they need to support efforts to increase consumption of safe and healthy food.

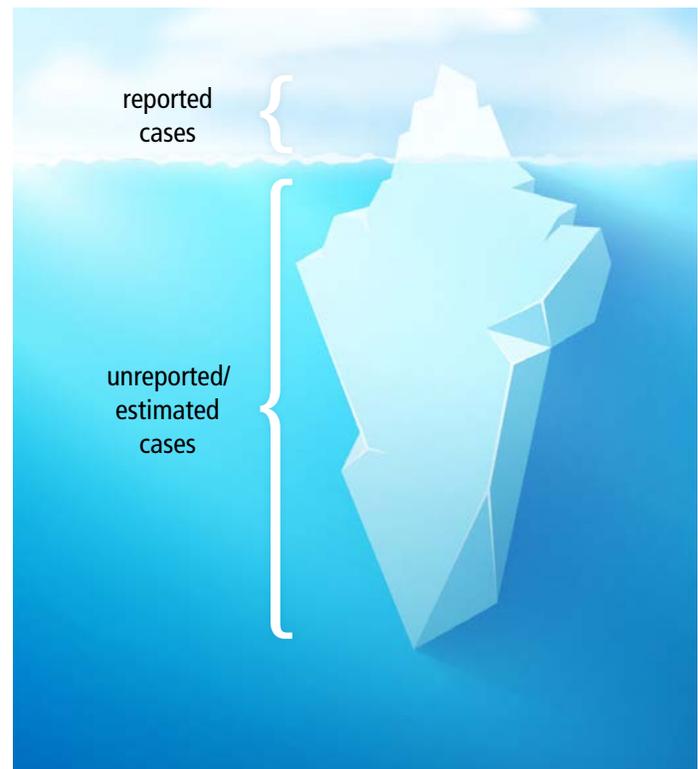
Protecting the public from foodborne illness is a fundamental function of government.⁷ This resource identifies and discusses the system of laws created to prevent foodborne illness, the role of different government bodies that enforce these laws, and why these legal requirements exist. This discussion primarily focuses on Minnesota state and local laws that provide authority to government agencies to create regulations and licensing schemes to protect the public and reduce the likelihood of foodborne illness. Some federal statutes and regulations are referenced when relevant.

Please note that this discussion is intended to provide a general overview of the legal structure and government involvement in preventing foodborne illness, but does not provide an exhaustive discussion of these issues. References are provided to resources and relevant contact information for those seeking additional information.

Q: How prevalent is foodborne illness in the United States and Minnesota?

A: While the food system in the United States is regarded as one of the safest in the world, foodborne illness remains a significant problem in the country.⁸ There were nearly 50 million cases of food-related illnesses and hospitalizations, approximately 3,000 of which resulted in death in the United States in 2011.⁹ The United States

Reported foodborne illness outbreaks: the tip of the iceberg



Department of Agriculture (USDA) estimates that foodborne illnesses costs the U.S. economy \$15.6 billion in lost productivity each year.¹⁰ During 2010-2014, the Minnesota Department of Health (MDH) identified an average of 56 foodborne illness outbreaks per year summing up to a total of 291 outbreaks, with roughly 60% of those outbreaks from the norovirus.¹¹ Minnesota has one of the highest rates of foodborne illness reporting in the country, with nine cases reported per million people annually, which reflects a strong reporting system.¹² However, there is still a large discrepancy between epidemiological disease expert estimates of foodborne illness and reported cases.¹³

Q: How do laws and regulations help to prevent foodborne illness?

A: As the food supply in the United States has grown in scale and become more diverse, laws created to

prevent and respond to foodborne illness have evolved as well. Historically, the prevention of foodborne illness was primarily considered to be the duty of the consumers, as people consumed food that they produced themselves or was produced nearby.¹⁴ Today, government agencies oversee many parts of the food system through the enactment and enforcement of laws and regulations governing how food is grown, processed, distributed, prepared, stored, and served.

Q: Where do problems with foodborne illness originate?

A: Food safety issues can become a problem at any point in the food system; however, the types of food safety issues leading to foodborne illness may differ depending on where in the food chain the problem originates. For example, problems leading to foodborne illness can arise when produce is grown, if the irrigation source is infected. Likewise, food safety issues can develop if equipment in a processing or distribution center is contaminated. Foodborne illness can also spread during the preparation of food if a cook or server is sick and contaminates food.

The impact of foodborne illness depends on the point at which the contamination happened. Food safety issues that are introduced in the fields or during processing can impact many more people than food that is contaminated during preparation in a home kitchen.

Q: Are certain types of food more commonly responsible for outbreaks of foodborne illness?

A: While any food can cause foodborne illness, the most common types of food involved in outbreaks of foodborne illness are readily perishable foods, perishable foods, and frozen foods. At the same time, any food that is contaminated or not stored or prepared properly can cause a foodborne illness.¹⁵

Minnesota legal definitions of food

FOOD

"[E]very ingredient used for, entering into the consumption of, or used or intended for use in the preparation of food, drink, confectionery, or condiment for humans or other animals, whether simple, mixed, or compound; and articles used as components of these ingredients."¹⁶

READILY PERISHABLE FOOD†

"[F]ood or a food ingredient consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food or food ingredient that is capable of supporting growth of infectious or toxigenic microorganisms. Readily perishable food requires time and temperature control to limit pathogenic microorganism growth or toxin formation."¹⁷

PERISHABLE FOOD†

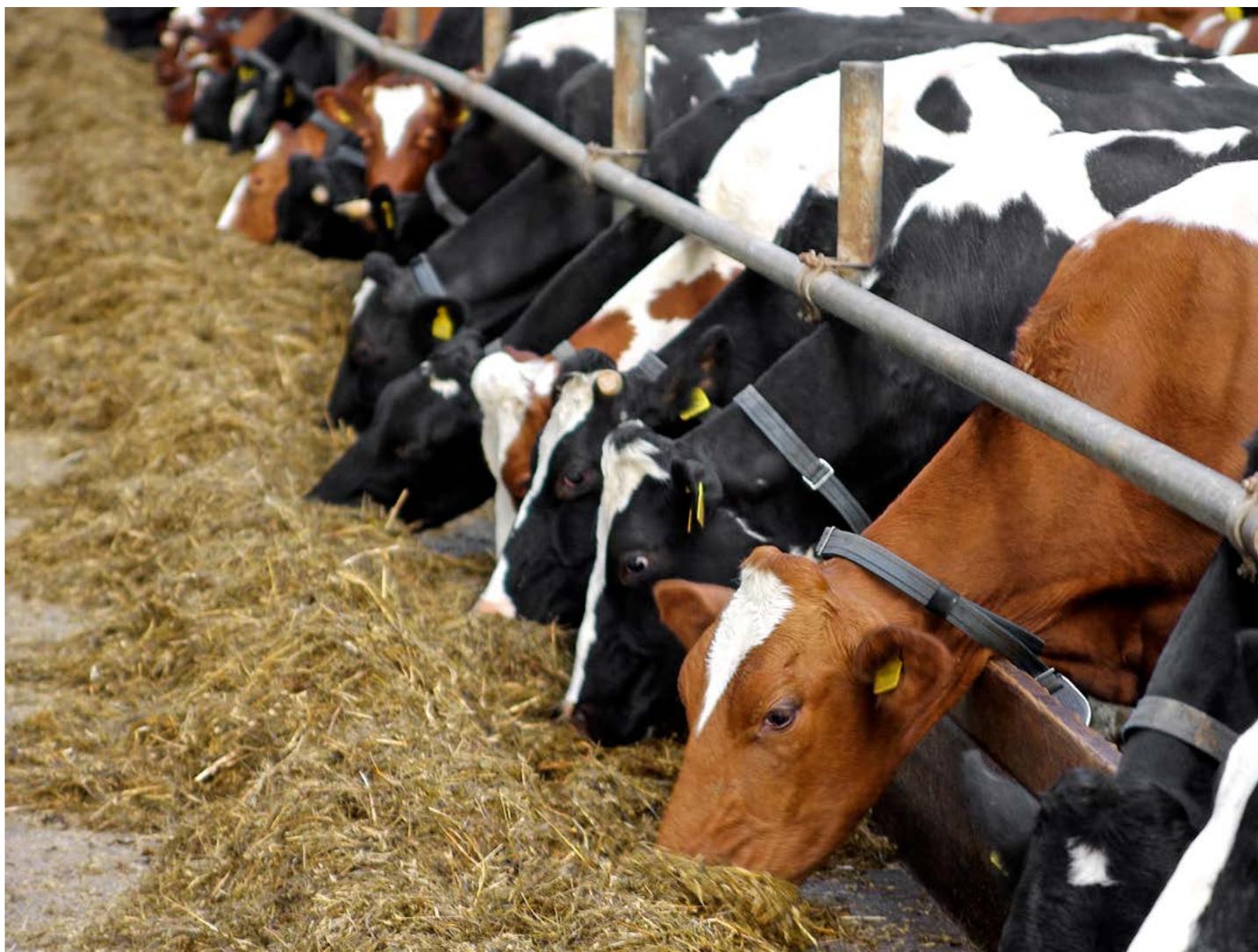
"[F]ood including, but not limited to, fresh fruits, fresh vegetables, and other products that need protection from extremes of temperatures in order to avoid decomposition by microbial growth or otherwise."¹⁸

FROZEN FOOD†

"[F]ood that is processed and preserved by freezing and which is intended to be sold in the frozen state."¹⁹

† Perishable food, readily perishable food, and frozen food do not include:

1. packaged pickles;
2. jellies, jams, and condiments in sealed containers;
3. bakery products such as bread, rolls, buns, donuts, fruit-filled pies, and pastries;
4. dehydrated packaged food;
5. dry or packaged food with a water activity that precludes development of microorganisms; and
6. food in unopened hermetically sealed containers that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution.²⁰



Q: How are the laws created to prevent foodborne illness?

A: The legislatures at both the state and federal level enact laws to prevent and respond to foodborne illnesses. These laws direct specific federal and state agencies to develop regulations and to create food safety standards governing Minnesota’s food supply. These laws include both statutes and regulations and impact all stages of the food supply, including laws governing the production, processing, preparation, and labeling of food. The executive branch at both the state and federal level can also pass executive orders to direct federal and state government agencies to take certain actions to prevent foodborne illness.

Amending old laws and drafting new laws is a collaborative and living process, and involves studying prior outbreaks, assessing new risks and hazards, and engaging with stakeholders. Additionally, it is common for the state of Minnesota to adopt laws enacted at the federal level and for local governments to adopt laws enacted at the state level. For example, the Minnesota Food Code uses the Food and Drug Administration (FDA) Model Food Code as a guide for state laws governing food safety practices. “The demand for food safety, whether regulatory or market-driven, will change how the food system — from farms to packinghouses to processing plants — identify, implement and prioritize food safety measures.”²¹

Legal authority governing food safety

Legal authority refers to legally enforceable laws, including the federal and Minnesota constitutions, federal statutes and regulations, and Minnesota statutes and rules.

Statutes

Statutes are written laws passed by a legislature. Statutes address specific situations and can cover many different topics; typically they command or prohibit something, or declare policy.²² Some statutes, called enabling statutes, grant authority to executive agencies to regulate a particular setting or take certain actions. In other words, the legislature will pass generalized laws on a topic, and then will use an enabling statute to delegate power to executive agencies to implement regulations to fill in the gaps.²³ For example, Minnesota statutes give the Minnesota Department of Agriculture (MDA) and MDH the authority to develop food safety regulations.

Rules and regulations

Rules and regulations are statements of law enacted by an agency to implement or interpret statutes enforced or administered by the agency.²⁴ The power to create regulations is given to the agency by the legislative body through statute. An administrative rule is a general statement adopted by an agency to make the law it enforces or administers more specific or to govern the agency's organization or procedure.²⁵

State and federal statutes are often implemented, or carried out, through regulations or rules. Rules and regulations are intended to further define and clarify the corresponding statute that the regulation or rule implements. Minnesota uses the terms regulations and rules interchangeably. Minnesota Rules, also referred to as regulations, implement Minnesota statutes. Minnesota rules have the full force and effect of law but must be consistent with the statute that the rule implements. Administrative agencies, such as MDH and MDA, draft rules implementing different statutes as directed by the legislature.²⁶

Executive orders

Executive orders are directives from the governor that have the force of law. The Minnesota Constitution vests supreme executive power in the governor, therefore the governor is the head of the executive branch.²⁷ That power, coupled with the authority granted to the executive branch through enabling statutes, allows the governor to issue executive orders.* Executive orders only impact the actions of executive agencies and areas over which executive agencies have power authorized by the legislature.

* In the past, governors in Minnesota have issued executive orders to create commissions and coalitions to collect information about food safety and foodborne illness, as well as have issued orders calling for various state departments to work together to develop quality and licensing standards to prevent foodborne illness in Minnesota.



Evolving legal framework

The laws governing the food system are continually revised and updated.

Minnesota's 2014 Farmers' Market Bill²⁸

In 2014, the Minnesota Legislature passed the "Farmers' Market Bill." The Farmers' Market Bill requires any person conducting food product sampling at a farmers' market in Minnesota to provide information on the source of the food (i.e., whether food was produced at the person's farm and type of equipment used) if the regulatory authority requests such information.²⁹

Cottage Food Law

In the 2015 Legislative Session, the Minnesota Legislature enacted a new law governing the sale of "not potentially hazardous food." Under certain circumstances, an individual selling "not potentially hazardous food" is exempt from obtaining a food handlers license under state law (this exemption from formal food handling licensing is often referred to as a "cottage food law"). However, the new law requires individuals selling exempt food to register if that individual has total sales with gross receipts of between \$5,000 and \$18,000. Additionally, all individuals governed by this law are required to complete some form of training.³⁰

Q: How does the Minnesota Legislature regulate foodborne illness?

A: The Minnesota Legislature has enacted a series of statutes regulating food safety. These statutes establish a licensing structure for food establishments;³¹ help prevent fraud in the manufacture, transportation, sale and use of food;³² and delegate broad authority to the MDH and MDA to implement these laws and enact regulations governing Minnesota's food supply. These statutes and corresponding regulations were created to protect the public from foodborne illness and respond to foodborne illness when outbreaks occur.³³

Q: Where are Minnesota's laws preventing foodborne illness located?

A: Several chapters of Minnesota statutes and rules are focused on regulating food and preventing foodborne illness.

FOOD ESTABLISHMENTS

Food establishments include restaurants, caterers, markets, grocery stores, food stands, schools, childcare centers, vending machines, retail bakeries, delivery services, food trucks, commissaries, or other operations, unless exempt or excluded by law, that store, prepare, package, serve, vend, or otherwise provide food for human consumption.³⁴

Minnesota has several statutes created to prevent outbreaks of foodborne illness including the licensing of food handlers,³⁵ regulations surrounding the handling and sale of food,³⁶ and the enforcement of such requirements.³⁷ These statutes set the expectation that foods in Minnesota will be safe and unadulterated, establishes the powers that state agencies have to ensure a safe food supply,



and defines when a license is needed to legally produce, package, handle, and sell food. Additional statutes govern the safety of specific food items like meat,³⁸ poultry,³⁹ eggs,⁴⁰ and dairy products.⁴¹

Minnesota's Food Code is a consolidation of regulations establishing food safety requirements that govern food establishments licensed and inspected by MDA, MDH, and local authorities.⁴² The Food Code, which was jointly drafted by MDH and MDA, is based on the federal model food code, and emphasizes food sanitation and safety measures that are intended to prevent foodborne illnesses.⁴³ The Minnesota Food Code is incorporated into Minnesota Rules, and is available online at <https://www.revisor.mn.gov/rules>.⁴⁴

Minnesota's Food Code addresses a wide range of food safety considerations, including food handler health habits⁴⁵ and hygiene,⁴⁶ as well as food quality,⁴⁷ protection against contamination,⁴⁸ proper cooking techniques, cooling practices and temperatures,⁴⁹ the use and quality of water,⁵⁰ storage practices,⁵¹ equipment requirements,⁵² and inspection policies.⁵³

Food safety laws do not just apply to food handlers, but also regulate the growing and processing of food. These laws govern many aspects of the food system including: the storage and cleaning of eggs,⁵⁴ pest and disease control,⁵⁵ the dairy industry,⁵⁶ and the meat, fish and poultry industry.⁵⁷

Q: How do Minnesota laws respond to emerging approaches to food distribution?

A: With increased attention to healthy food access and healthy food choices, local communities are exploring new approaches to food production, processing, distribution, and preparation that do not easily fit within the current food safety regulatory system. The lack of clear regulatory guidance can

Minnesota Food Code Revisions⁵⁸

The Minnesota Departments of Health and Agriculture periodically revise Minnesota's Food Code to incorporate new information, regulatory approaches, and evolving technological advances. MDH and MDA are revising Minnesota's Food Code in 2016, with final revisions anticipated to go into effect in 2017. Food safety and sanitation subject matter to be included in this rulemaking, but not limited to, the following areas:

- Management and Personnel
- Food Characteristics, Protection from Contamination, Destroying Organisms, Food Identity, and Contaminated Food
- Equipment, Utensils, and Linens
- Water, Plumbing, and Waste
- Physical Facilities
- Poisonous or Toxic Materials
- Compliance and Enforcement
- Temporary and Portable Food Establishments
- Food Manager Certification
- Other related items that may surface during the rulemaking process as time permits

Public participation adds validity and value to the rule making process. The food code revision effort has provided a variety of opportunities for citizen involvement, including those impacted by the rule revisions. For more information on the basics on the rule making process in Minnesota please visit: <http://www.health.state.mn.us/divs/eh/food/code/2009revision/rulebasics.html>.

Additional information about the current status of revisions to Minnesota's Food Code is available at: <http://www.health.state.mn.us/divs/eh/food/code/2009revision/index.html>.

Minnesota state entities involved in preventing foodborne illness†		
Entity	Oversight	Regulatory tools and other food safety oversight
Minnesota Department of Health (MDH)	Food sold as ready-to-eat. ⁵⁹ Restaurants, chains, cafes, stand-alone establishments (delis, pizza, ice cream, subs, concessions, etc.), food trucks, cafeterias, and vendors serving prepared foods at farmers markets, fairs, and festivals are examples of establishments selling food that is “ready-to-eat,” or intended to be eaten exactly as it is sold to the consumer. ⁶⁰	Enforces the Food Code, provides food safety information to the food industry and the public, and works with local governments to oversee a food-handling licensing system for food, beverage, and lodging establishments. Depending on the city or county, either a local agency or MDH issues and enforces licenses. ⁶¹ Licenses and inspects food service entities, such as restaurants and bars, in addition to hotels, resorts, youth camps, coffee shops, and caterers. ⁶² Provides food safety information to the public and industry via its website, an interactive education program, and professional development courses. Coordinates the Minnesota Food Safety Partnership (FSP). FSP is a consortium of environmental health professionals, industry partners, and other stakeholders working together to protect the public health in the area of food safety to create a unified program for food safety in the State of Minnesota. ⁶³ Responds to foodborne illness outbreaks, by tracking and monitoring illnesses through disease outbreak detection activities, including active lab surveillance for reportable diseases, utilization of the Minnesota Foodborne Illness Hotline, and inspection of identified facilities to ensure safe food handling. ⁶⁴
Minnesota Department of Agriculture (MDA)	All food in Minnesota other than food sold in or by the types of establishments under MDH regulation. ⁶⁵ Examples include grocery and convenience stores, food and beverage processors and manufacturers, vending machines, warehouses, farmers’ markets, bakeries, meat processors, dairy farms and dairy plants, and food transportation vehicles.	Licenses and inspects food manufacturers, wholesalers, transporters, and retailers. Inspectors enforce state standards relating to food quality, condition, labeling, and advertising, as well as the sanitation of premises, equipment, and vehicles used in the sale, storage, or distribution of foods and beverages. ⁶⁶ Inspects dairy farms, dairy plants, and cooperatives; animal feed manufacturers; and meat and poultry processing facilities whose meat products are sold within Minnesota state lines (facilities who sell their products elsewhere are inspected by the USDA FSIS); ⁶⁷ and conducts voluntary food safety audits of fruit and vegetable growers and packers. ⁶⁸ Investigates complaints regarding questionable food products or sales practices, participates in foodborne illness investigations involving MDA-regulated facilities, and educates regulated entities and citizens about safe food-handling practices. ⁶⁹
Minnesota’s Food Safety and Defense Task Force⁷⁰	No specific oversight. Acts in an advisory role to MDA and the Legislature on food issues and food safety. ⁷¹	The task force consists of representatives from local health departments, MDA, MDH, FDA, USDA, the Agricultural Utilization Research Institute, the Minnesota Grocers Association, the University of Minnesota, and several other constituents that are interested and knowledgeable in food and food safety. The task force also sponsors food safety training and outreach events.

† Other state entities are also involved in preventing foodborne illness, including the Board of Animal Health, the University of Minnesota Extension Services Center for Animal Health and Food Safety, and other state entities and organizations involved in different parts of the food system. This overview is meant to highlight the key state agencies involved. Also, please see pages 12–13 for an overview of the federal entities that are involved in preventing foodborne illness.

Emerging food distribution models: food swaps

There is a growing interest in emerging food distribution models such as food swaps. A food swap is “a recurring event where members of a community share homemade, homegrown, or foraged foods with each other. Swaps allow direct trades to take place between attendees, e.g., a loaf of bread for a jar of pickles or a half-dozen backyard eggs.”⁷² For example, the Chicago Food Swap “brings together passionate home cooks, bakers, and gardeners to trade and swap their homemade and homegrown foods. No money changes hands and all exchanges are by barter only. All the participants are individuals trading items that they made, grew or raised themselves.”⁷³ The law does not always have a clear answer or response to emerging and innovative approaches as these.

create challenges and confusion amongst both regulators and community members. It is important to recognize that the food safety regulatory system has evolved over time in response to innovation and experimentation. Navigating the regulatory uncertainties in food safety approaches with new and emerging community practices in partnership with local and state inspectors will support the growth and development of the food safety regulatory system and ensure that this system supports community access to both healthy and safe food.

Q: Which Minnesota state agencies are involved in preventing foodborne illness outbreaks in Minnesota?

A: Several Minnesota state agencies are involved with regulating the safety of Minnesota’s food supply. The most well-known include the MDH and MDA. These agencies have the power to create, implement, and enforce rules governing food safety through authority granted by the Minnesota legislature.



For more information about local health departments and delegated authority, please visit the Minnesota Department of Health, <http://www.health.state.mn.us/divs/opi/gov/find>, or the Minnesota Department of Agriculture, <http://www.mda.state.mn.us/about/divisions/mnitservices/gis/territories.aspx>.

Q: How do state agencies pay for food safety activities?

A: MDA and MDH activities related to preventing and responding to foodborne illness, such as licensing, inspections, and surveillance are funded by “a combination of fees paid by regulatory entities, federal funds, and state general fund appropriations. The relative importance of each source varies significantly by program.”⁷⁴

Role of Minnesota local government bodies with delegated authority in preventing foodborne illness

Entity	Oversight and regulatory tools
Local Health Departments	<ul style="list-style-type: none"> ■ Communicate with local health care professionals. ■ Regulate and inspect food-service operations. ■ Inform the public. ■ Collaborate with state agencies in receiving, investigating, and responding to potential incidents of foodborne illness.

Examples of local food regulations in Minneapolis

Regulatory tool	Regulation
The City of Minneapolis via a licensing application	To receive a food license for a restaurant, coffee shop, or dining room in Minneapolis, an applicant must submit a license application to the Minneapolis Development Review Office, as well as meet with a License Inspector. ⁷⁵
The City of Minneapolis via municipal code⁷⁶	Food grown at a community garden may not be sold to the public.

Q: How are Minnesota local governments involved in preventing foodborne illness?

A: In Minnesota, there are two main avenues through which a local government may regulate food safety in an effort to prevent foodborne illness: (1) directly as a delegated authority or (2) indirectly through zoning or licensing provisions under the municipal code.

Using Delegated Authority to Prevent Foodborne Illness

Several local governments in Minnesota have delegated authority from MDH and MDA. Delegated authority provides municipalities with a more direct role in preventing foodborne illness through local laws and licensing schemes. MDH and MDA have separately entered into delegation agreements with several local health agencies to provide licenses for food establishments, and retail establishments, and to conduct food safety inspections.⁷⁷ These delegation agreements allow the local government with delegated authority to issue licenses to food establishments in its jurisdiction and

conduct its own inspections of these establishments. For the most part, smaller cities and counties in Minnesota do not have delegated authority and the state agencies are responsible for regulating food establishments and other retail businesses in those jurisdictions.

Can municipal zoning and licensing be used to prevent foodborne illness?

Cities and counties in Minnesota may also regulate food indirectly, such as through local health and zoning codes, ordinances, or rules.* For example, a city may enforce hours of operation within the city, limit the size and location of advertisement, or require permits to build or expand buildings and structures. Lastly, it is important to note that the prevention of foodborne illness is also tied to several other regulatory systems that can be closely related to food safety, but also have other public protection or regulatory functions. Some examples are licensing,

* For more information regarding local regulations, please see the municipal code or local government website.

Preventing foodborne illness on tribal lands

The Indian Health Service (IHS) is responsible for oversight of foodborne illness prevention for over 560 tribes, which includes over 4,000 food service facilities.⁷⁸ IHS is housed within the U.S. Department of Health and Human Services. Depending on the tribe’s relationship with the federal, state, or local government, there may be some overlap or sharing of regulatory duties.

Food licensing and food regulations on tribal lands in Minnesota are managed by each Nation (Leech Lake, Red Lake, Grand Portage, White Earth, Bois Forte, Mille Lacs, Fond Du Luc, Shakopee Mdewakanton, Lower Sioux, Upper Sioux, Prairie Island).⁷⁹

permitting, zoning, planning, building, public works, fire, environmental protection, and community development agencies.

Q: How is the federal government involved in preventing foodborne illness in Minnesota?

A: Several federal bodies are involved with ensuring the safety of the U.S. food supply. The most well-known include: the FDA, which is housed within the U.S. Department of Health and Human Services (HHS), and the USDA. These agencies have the

power to implement and enforce rules and regulations within their granted authority. Additionally, Congress can enact laws that provide direction to these agencies. Recently there have been many changes in federal regulation of food safety — primarily through the Food Safety Modernization Act (FSMA).

Q: How is the U.S. Congress involved in preventing foodborne illness?

A: Congress can enact laws to prevent foodborne illnesses, such as by requiring federal agencies to

Federal agencies involved in preventing foodborne illness outbreaks

Agency	Oversight	Regulatory tools
DEPARTMENT OF HEALTH AND HUMAN SERVICES (HSS)		
Food and Drug Administration (FDA) ⁸⁰	All domestic and imported food (except processed eggs and most livestock meat and poultry products).† Main food regulator, with authority from farm to table; responsible for the safety oversight of 80% of the U.S. food supply.†	Inspects production facilities and warehouses engaged in interstate commerce, reviews import records, oversees animal feeds and drugs, sets microbial standards and production standards, sets and enforces labeling requirements, oversees food additives and substances used in foods, and educates consumers.‡ Partners with USDA and other agencies at all levels, on the implementation of FSMA, as the lead agency. ⁸¹
Centers for Disease Control and Prevention (CDC) ⁸²	Epidemiology of foodborne diseases.†	Monitors and investigates disease occurrences in conjunction with other federal, state, and local agencies. Develops laboratory and epidemiological methods.†

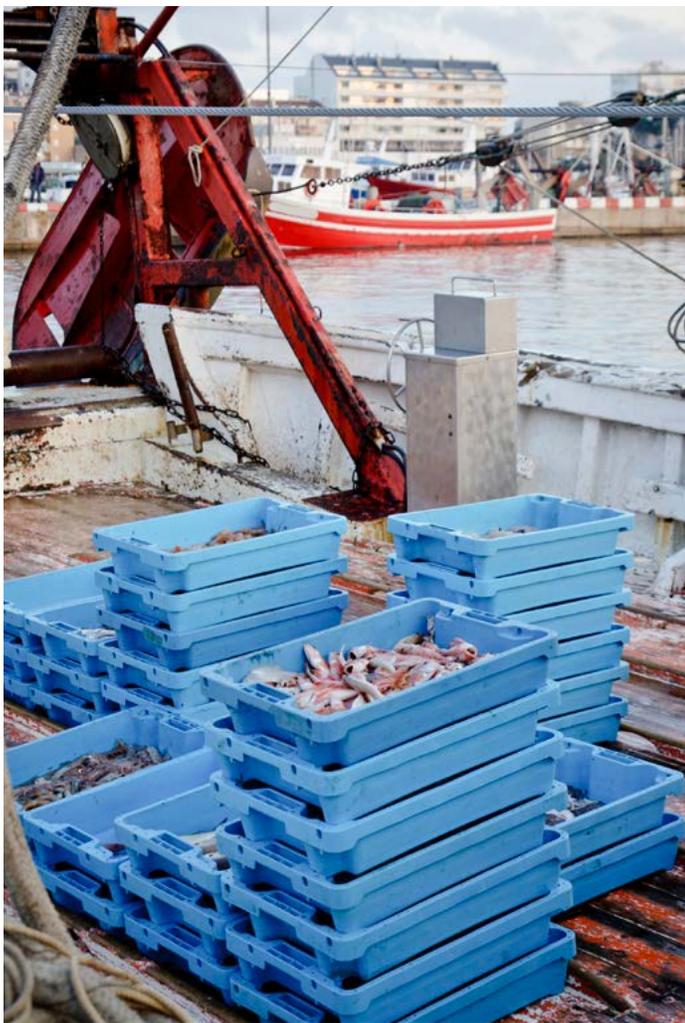
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Federal agencies involved in preventing foodborne illness outbreaks (continued)		
Agency	Oversight	Regulatory tools
DEPARTMENT OF AGRICULTURE (USDA)		
Food Safety Inspection Services (FSIS) ⁸³	Most domestic and imported meat and poultry products, processed egg products, and catfish.† Second most significant regulator behind the FDA. ⁸⁴	Enforces food safety laws, regulates substances added to meat and poultry, educates consumers, develops labeling requirements, approves safety plans for and inspects slaughtering and processing plants, and approves foreign facility safety systems for importation purposes.†
Animal & Plant Health Inspection Service ⁸⁵	Animal and plant health.†	Sets and enforces standards for the care and treatment of animals. Protects against spread of animal diseases, pests and noxious weeds. ⁸⁶
Agricultural Marketing Service (AMS) ⁸⁷	Dairy, produce, livestock, meat, poultry, seafood, and unprocessed eggs.†	Sets quality and marketing standards, certifies quality programs, and conducts grading services.†
Food and Nutrition Service (FNS) ⁸⁸	Domestic nutrition programs such as national school meal programs.‡	Coordinates efforts to ensure safety of food in school lunch and other domestic programs.†
Grain Inspection, Packers, and Stockyards Administration (GIPSA) ⁸⁹	Grains.†	Sets quality standards, tests grains.†
DEPARTMENT OF COMMERCE (DOC)		
National Oceanic and Atmospheric Administration (NOAA) ⁹⁰	Seafood.†	Provides voluntary seafood quality and safety inspections.‡
DEPARTMENT OF HOMELAND SECURITY (DHS)		
U.S. Customs and Border Protection (CBP) ⁹¹	Food security.†	Inspects food, plant, and animal imports at the national border.†
INDEPENDENT AGENCIES		
U.S. Environmental Protection Agency (EPA) ⁹²	Potentially harmful chemicals and substances such as pesticides and pollutants.†	Sets drinking water standards in cooperation with the FDA, regulates pesticides, and sets residue limits.‡
NONE (INDEPENDENT OF DEPARTMENTS)		
Federal Trade Commission (FTC) ⁹³	Business trade practices, including advertising claims.‡	Enforces federal consumer protection and fair trade practices laws.†

Information taken in part from:

† Renee Johnson, *The Federal Food Safety System: A Primer* 8-11 (2012), available at <http://www.nationalaglawcenter.org/assets/crs/RS22600.pdf>.

‡ International Food Information Council, *Ensuring a Safe Food Supply: A Concise Guide to the U.S. Food Regulatory System*, available at http://www.foodinsight.org/Content/6/FINAL_Guide%20to%20Food%20Regulatory%20System.pdf.



develop food safety regulations. For example, in 2011 Congress passed the Food Safety Modernization Act (also called FSMA), which gives the FDA expanded authority over food safety.⁹⁴ FSMA was passed in response to a number of outbreaks of foodborne illness.⁹⁵ It grants the FDA greater authority to perform inspections and order recalls, requires food producers to have detailed food safety plans, and establishes a food tracing system so episodes of foodborne illness can be better tracked if they occur.⁹⁶

The regulatory infrastructure impacting food protection is changing in response to the increasing complexity of the entire food system. As Michael R. Taylor, former FDA Deputy Commissioner for Foods and Veterinary Medicine, stated, “[FSMA’s] mandate to apply a common set of prevention principles cross [sic] the entire food production system confronts us with the reality of the food system’s enormous scale and diversity.”⁹⁷ The deputy commissioner also made the assertion that FSMA “embraces food safety as the food system challenge it is — a challenge that must engage the efforts of actors all across the food system.”⁹⁸ This perspective balances food safety and food access considerations.

Foodborne illness continues to affect millions of people. In an effort to prevent and respond to foodborne illness, government bodies continue to learn from previous outbreaks and scientific research in order to inform new laws and regulations. As the food system continues to change and evolve, so must the laws and regulations. For more information on how government bodies respond to foodborne illnesses and the legal consequences associated with foodborne illness, please see the accompanying resources in this series.

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The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

Endnotes

- ¹ PUBLIC HEALTH LAW CENTER, *Access to Healthy Food: Challenges and Opportunities* 6, (2012), <http://www.publichealthlawcenter.org/sites/default/files/resources/PHLC%20Access%20to%20Healthy%20Food%20-%20Challenges%20and%20Opportunities%202012.pdf> [hereinafter *Access to Healthy Food*].
- ² *Foodborne Illness, Foodborne Disease*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (last visited Oct. 26, 2015, 11:06 AM), <http://www.cdc.gov/foodsafety/foodborne-germs.html>.
- ³ Food Safety Modernization Act, 21 U.S.C. § 2224 (a) (2011).
- ⁴ See FOOD AND DRUG ADMIN., *Foodborne Illness-causing Organisms in the U.S.: What You Need to Know*, <http://www.fda.gov/downloads/Food/ResourcesForYou/Consumers/UCM187482.pdf> (last visited June 2, 2016 9:27 a.m.); William Schafer, *Food Safety—Sanitation and Illness, Is It Food Poisoning?*, UNIVERSITY OF MINNESOTA EXTENSION, <http://www1.extension.umn.edu/food/food-safety/sanitation/is-it-food-poisoning> (last visited June 2, 2016 9:29 a.m.).
- ⁵ MINN. R. 4626.0020 (Subp. 31)(B).
- ⁶ *Access to Healthy Food*, *supra* note 1, at 11-18.
- ⁷ See generally, *What You Should Know About Government Response to Foodborne Illness Outbreaks*, U.S. FOOD AND DRUG ADMIN., <http://www.fda.gov/Food/ResourcesForYou/Consumers/ucm180323.htm> (last visited Oct, 26, 2015 11:38 AM); see also, *About FDA — What We Do*, U.S. FOOD AND DRUG ADMIN., <http://www.fda.gov/AboutFDA/WhatWeDo> (last visited Oct. 26, 2015 11:26 AM); *Mission*, Ctrs. for Disease Control and Prevention, <http://www.cdc.gov/about/organization/mission.htm> (last visited Oct. 26, 2015 11:40 AM); *Mission Statement*, U.S. DEP'T OF AGRIC., <http://www.gipsa.usda.gov/About/mission.aspx#mis> (last visited Oct. 26, 2015 11:41 AM).
- ⁸ RENEE JOHNSON, CONG. RESEARCH SERV., R4I629 FOOD SAFETY ISSUES FOR THE 112TH CONGRESS (2011), available at <http://www.nationalaglawcenter.org/assets/crs/RS22600.pdf>.
- ⁹ CTRS. FOR DISEASE CONTROL & PREVENTION, *CDC Estimates of Foodborne Illness in the U.S.* http://www.cdc.gov/foodborneburden/PDFs/FACTSHEET_A_FINDINGS_updated4-13.pdf (last visited Oct. 26, 2015 11:47 AM).
- ¹⁰ *Cost Estimates of Foodborne Illnesses*, U.S. DEP'T OF AGRIC., http://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses.aspx#.VDaS-_ldWb (last updated November 12, 2014); see also Dan Flynn, *USDA: U.S. Foodborne Illnesses Cost More Than \$15.6 Billion Annually*, Food Safety News (Oct. 09, 2014), http://www.foodsafetynews.com/2014/10/foodborne-illnesses-cost-usa-15-6-billion-annually/#.VDaoc_ldWb9.
- ¹¹ Associated Press, *Winona County health officials report norovirus outbreak; restaurant closes temporarily*, WINONA DAILY NEWS (Oct. 9, 2014), http://www.winonadailynews.com/news/local/norovirus-outbreak-reported-in-winona-county/article_0d3cabb6-85a6-5d8e-a389-0c5792ab59a9.html (quoting Minnesota Department of Health spokesman Doug Schultz) (last visited Oct. 26, 2015 3:12 PM); *Foodborne Outbreak Online Database*. C.NTRS. FOR DISEASE CONTROL & PREVENTION. <http://wwwn.cdc.gov/foodborneoutbreaks> (last visited Oct. 29, 2015).

- ¹² *Surveillance for Foodborne Disease Outbreaks United States, 2013: Annual Report*. CNTRS. FOR DISEASE CONTROL & PREVENTION. <http://www.cdc.gov/foodsafety/pdfs/foodborne-disease-outbreaks-annual-report-2013-508c.pdf>.
- ¹³ CDC Estimates of Foodborne Illness in the United States. CNTRS. FOR DISEASE CONTROL & PREVENTION. <http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html> (last visited Oct. 29, 2014).
- ¹⁴ James Harvey Young, *The Long Struggle for the Law*, Minn. Dep't of Health, <http://www.fda.gov/AboutFDA/WhatWeDo/History/CentennialofFDA/TheLongStrugglefortheLaw> (last visited Oct. 26, 2015 11:53 AM).
- ¹⁵ *Annual Summaries of Foodborne Outbreaks*, CNTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/foodsafety/fdoss/data/annual-summaries/index.html> (Last updated August 20, 2015).
- ¹⁶ MINN. STAT. § 34A.01, (subd. 4).
- ¹⁷ MINN. STAT. § 34A.01, (subd. 11).
- ¹⁸ MINN. STAT. § 34A.01, (subd.9).
- ¹⁹ MINN. STAT. §34A.01, (subd.5).
- ²⁰ MINN. STAT. § 34A.012.
- ²¹ Timothy J. Jenkins et al., *Food Safety or Food Availability: Do We Have to Choose?*, 36 Food Protection Trends 72, 74 (2016).
- ²² BLACK'S LAW DICTIONARY (9th ed. 2009).
- ²³ TOBACCO CONTROL LEGAL CONSORTIUM, *Laws, Policies and Regulations: Key Terms & Concepts* (2013), <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-laws-policies-regs-commonterms-2015.pdf>.
- ²⁴ MINN. STAT. § 14.02 (subd. 4).
- ²⁵ *Minnesota Administrative Rules*, THE OFFICE OF THE REVISOR OF STATUTES, available at <https://www.revisor.mn.gov/rules?view=info> (last visited October 14, 2016).
- ²⁶ *Minnesota Statutes*, THE OFFICE OF THE REVISOR OF STATUTES, available at <https://www.revisor.leg.state.mn.us/statutes/?view=info> (last visited Oct. 27, 2015 12:58 PM).
- ²⁷ MINN. CONST. art. V, § 3 (powers and duties of the governor).
- ²⁸ MINN. STAT. 28A.151 (2014) ("Farmers' Market Bill").
- ²⁹ MINN. STAT. § 28A.151 (subd. 4).
- ³⁰ A copy of the bill is available online at https://www.revisor.mn.gov/bills/text.php?session=ls88&number=SF2060&session_number=0&session_year=2013&version=list (last visited Oct. 27, 2015 1:02 PM).
- ³¹ MINN. STAT. § 144.12.
- ³² MINN. STAT. § 31.11.
- ³³ MINN. STAT. § 31.11; MINN. STAT. § 144.05.
- ³⁴ MINN. R. 4626.0020 (subp. 35).
- ³⁵ MINN. STAT. Ch. 28A.
- ³⁶ MINN. STAT. Ch. 31.
- ³⁷ MINN. STAT. Ch. 34A.
- ³⁸ MINN. STAT. Ch. 31A.
- ³⁹ MINN. STAT. Ch. 29; *see also* MINN. STAT. Ch. 31A.
- ⁴⁰ MINN. STAT. Ch. 29.
- ⁴¹ MINN. STAT. Ch. 32.
- ⁴² MINN. R. 4626.0017.
- ⁴³ MINN. DEP'T OF HEALTH & MINN. DEP'T OF AGRICULTURE, *Statement of Need and Reasonableness: Proposed Rules Governing the Minnesota Food Code, Minnesota Rules, Chapter 4626* (1998), <http://www.health.state.mn.us/divs/eh/food/code/sonar1998.pdf> (last visited November 2, 2016).
- ⁴⁴ MINN. R. 4626.0010 – 4626.1870.
- ⁴⁵ MINN. R. 4626.0065 – 4626.0100.
- ⁴⁶ MINN. R. 4626.0105 – 4626.0120.
- ⁴⁷ MINN. R. 4626.0125 – 4626.0220.

- 48 MINN. R. 4626.0025 3-301.11 – 4626.0030 3-301.12.
- 49 MINN. R. 4626.0340 3-401.11 – 4626.0420 3-502.12.
- 50 MINN. R. 4626.0980 5-101.11 *et. sec.*
- 51 MINN. R. 4626.1225 5-501.10 *et. sec.*
- 52 MINN. R. 4626.0840 4-601.11 *et. sec.*
- 53 MINN. R. 4626.1785 8-401.10 *et. sec.*
- 54 MINN. R. 1520.0400 – 1520.0500.
- 55 MINN. R. 1505 *et. sec.*
- 56 MINN. R. 1525 *et. sec.*
- 57 MINN. R. 1545 *et. sec.*
- 58 MINN. DEP'T OF HEALTH, *Minn. Food Code Rule Revision*, (October 2016), <http://www.health.state.mn.us/divs/eh/food/code/2009revision/index.html> (last visited October 5, 2016).
- 59 MINN. R. 4626.0020.
- 60 MINN. HOUSE RES. DEP'T, *Food Safety System: An Overview*, <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssfood-safety.pdf> (last visited Oct. 26, 2015 1:30 PM) [hereinafter *Food Safety System*].
- 61 *Food Safety System*, *supra* note 60. Minn. Dep't of Health, *Licensing: Food, Beverage, and Lodging (FPLS)*, <http://www.health.state.mn.us/divs/eh/food/license/index.html> (last visited Oct. 26, 2015 1:33 PM) [hereinafter *Licensing*]; MINN. STAT. § 157.16 (2015).
- 62 MINN. R. 4626.00171, 4626.1785.8 (2015); MINN. STAT. § 157.16 (2014); *Food Safety System*, *supra* note 60; *Licensing*, *supra* note 61.
- 63 MINN. DEP'T OF HEALTH, *Food Safety Partnership of Minnesota*, <http://www.health.state.mn.us/divs/eh/food/pwdu/fsp> (last visited October 11, 2016).
- 64 *Food Safety System*, *supra* note 60.
- 65 *Food Safety System*, *supra* note 60.
- 66 MINN. STAT. § 17.01 *et seq.*
- 67 UNIV. OF MINN. EXTENSION, APPROVED SOURCES OF MEAT AND POULTRY FOR FOOD FACILITIES (2011), http://www1.extension.umn.edu/food-safety/food-service-industry/regulations/approved-sources-of-meat-and-poultry-for-food-facilities/meat_poultry1.pdf; MINN. DEP'T OF AGRIC., SALE OF MEAT AND POULTRY PRODUCTS TO GROCERY STORES AND RESTAURANTS, <http://www.mda.state.mn.us/en/food/safety/meat-sale.aspx> (last visited Oct. 26, 2015 1:35 PM).
- 68 *Food Safety System*, *supra* note 60.
- 69 MINN. HOUSE RES. DEP'T, FOOD SAFETY SYSTEM: AN OVERVIEW, *available at* <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssfoodsafety.pdf> (last visited Oct. 26, 2015 1:40 PM).
- 70 MINN. STAT. § 28A.21.
- 71 MINN. STAT. § 28A.21.
- 72 FOOD SWAP NETWORK, *What is a Food Swap?*, <http://foodswapnetwork.com/what-is-a-food-swap> (last visited October 14, 2016).
- 73 CHICAGO FOOD SWAP, *About*, <http://www.chicagofoodswap.com/p/contact-us.html> (last visited October 14, 2016).
- 74 MINN. HOUSE RES. DEP'T, *Food Safety System: An Overview*, <http://www.house.leg.state.mn.us/hrd/pubs/ss/ssfood-safety.pdf> (last visited October 11, 2016).
- 75 License Application, City of Minneapolis (last visited Oct. 27, 1:11 PM), http://www.minneapolismn.gov/www/groups/public/@regservices/documents/webcontent/convert_271865.pdf.
- 76 Minneapolis Code §520.160.
- 77 *See* MINN. STAT. § 28A.075; MINN. STAT. § 14A.07 (subd. 1) (providing an example of a delegation agreement between the Minnesota Department of Health and a local health agency).
- 78 *See generally*, INDIAN HEALTH SERV., *Food Safety*, https://www.ihs.gov/dehs/includes/themes/newihstheme/display_objects/documents/priorities/FoodSafety.pdf (last visited Oct. 26, 2015 1:54 PM).

- ⁷⁹ See *Minnesota State and Local Environmental Health Contacts*, at 9, <http://www.health.state.mn.us/divs/eh/food/license/locals.pdf> (providing the licensing authorities and contact information for all state and local licensors) (last visited Oct. 26, 2015 1:43 PM); see also INDIAN HEALTH SERV., DIV. OF ENVTL. HEALTH SERV., Food Safety, available at https://www.ihs.gov/dehs/includes/themes/newihstheme/display_objects/documents/priorities/FoodSafety.pdf (last visited Oct. 26, 2015 1:50 PM). See additionally, Scott Daly, *Food Code Adoption and Food Safety Training within the Bemidji Area Indian Health Service*, International Food Protection Training Institute 3, available at <http://www.afdo.org/Resources/Documents/4-news-and-events/past-presentations/2013/Presentation-130609-1400-General-Daly.pdf> (last visited Oct. 26, 2015 1:52PM).
- ⁸⁰ Pure Food and Drug Act of 1906, Pub. L. No. 59-384, 34 Stat. 768 (repealed 1938); Federal Food, Drug, and Cosmetic Act as amended by the Food Safety Modernization Act, 21 U.S.C. §§ 301-399; Egg Products Inspection Act, 21 U.S.C. §§ 1031-56, Federal Import Milk Act, 21 U.S.C. §§ 141-49; Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451-61; Federal Anti-Tampering Act, 18 U.S.C. § 1365; Pesticide Monitoring Act of 1988, 21 U.S.C. §§ 1401-03.
- ⁸¹ U.S. FOOD AND DRUG ADMIN., *Operational Strategy for Implementing the FDA Food Safety Modernization Act (FSMA)*, <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm395105.htm> (last visited October 11, 2016).
- ⁸² Public Health Service Act, Pub.L. 99-660, Title III, § 311 (a) (1994) (codified at 42 U.S.C. §§ 201-39).
- ⁸³ Pure Food and Drug Act of 1906, Pub. L. No. 59-384, 34 Stat. 768 (repealed 1938); Federal Meat Inspection Act of 1906, 21 U.S.C. §§ 601-695; Poultry Products Inspection Act of 1957, 21 U.S.C. §§ 451-47; Egg Products Inspection Act of 1970, 21 U.S.C. §§ 1031-1056; Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1902, 1904, and 21 U.S.C. §§ 603, 610, 620; Federal Anti-Tampering Act of 1983, 18 U.S.C. § 1365; Agricultural Marketing Act of 1946, 7 U.S.C. §§ 1621-1638 (d); Richard B. Russell National School Lunch Act of 1946, 42 U.S.C. §§ 1751-1770 (as amended by Child Nutrition and WIC Reauthorization Acts (42 U.S.C. § 1762 (a)(h))).
- ⁸⁴ See generally, *Protecting Public Health and Preventing Foodborne Illness*, FOOD SAFETY AND INSPECTION SERV., <http://www.fsis.usda.gov/wps/wcm/connect/7a35776b-4717-43b5-b0ce-aeec64489fbd/mission-book.pdf?MOD=AJPERES> (last visited Oct. 26, 2015 1:57 PM); see also, *Memorandum of Understanding Regarding Foodborne Health Hazards Assessments Associated with FSIS-Regulated Product*, FOOD SAFETY AND INSPECTION SERV. 2-3, (Jan. 24, 2014), <http://www.fsis.usda.gov/wps/wcm/connect/f09a7013-bb5b-4a2f-bb67-2a61928f77c9/MOU-FSIS-CDC-ATSDR.pdf?MOD=AJPERES>.
- ⁸⁵ Animal Health Protection Act of 2002, 7 U.S.C. §§ 8301-8322 (2012); Plant Health Protection Act of 2000, 7 U.S.C. §§ 7701-7721 (2012); Agricultural Bioterrorism Act of 2002, 7 U.S.C. § 8401 (2012).
- ⁸⁶ CYNTHIA BROUGH, CONG. RESEARCH SERV., R40577, USDA AUTHORITY TO REGULATE ON-FARM ACTIVITY (2009).
- ⁸⁷ Agricultural Marketing Act of 1946, 7 U.S.C. §§ 1621-1638 (d); Perishable Agricultural Commodities Act of 1930, 7 U.S.C. §§ 499 (a)-499 (s); Federal Seed Act of 1939, 7 U.S.C. §§ 1551-1611.
- ⁸⁸ FOOD AND NUTRITION SERVICE, <http://www.fns.usda.gov>.
- ⁸⁹ U.S. Grains Standards Act of 1916, 7 U.S.C. §§ 71-87 (k); Agricultural Marketing Act of 1946, 7 U.S.C. §§ 1622, 1624.
- ⁹⁰ NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, <http://www.noaa.gov/index.html>.
- ⁹¹ Homeland Security Act of 2002, 6 U.S.C. § 101; Tariff Act of 1930, 19 U.S.C. §§ 1202-1654.
- ⁹² Federal Food, Drug, and Cosmetic Act of 1938, 21 U.S.C. §§ 301-399a; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136 (y), as amended by the Food Quality Protection Act of 1996 (21 U.S.C. § 346a); Clean Water Act, 33 U.S.C. 1251-1387; Safe Drinking Water Act of 1974, 21 U.S.C. § 349 and 42 U.S.C. §§ 300f-300j-26; Toxic Substance Control Act, 15 U.S.C. §§ 2601-2697.
- ⁹³ Federal Trade Commission Act of 1914, 15 U.S.C. §§ 41-58.
- ⁹⁴ Food Safety Modernization Act of 2010, Pub. L. No. 111-353, 124 Stat. 3885 (2011).
- ⁹⁵ Elizabeth Weise, *Obama Signs Legislation to Improve Food Safety*, USA Today (Jan. 5, 2011), http://usatoday30.usatoday.com/news/nation/2011-01-04-food-safety_N.htm (last visited Oct. 27, 2015 1:14 PM).
- ⁹⁶ FOOD AND DRUG ADMIN., *Background on the FDA Food Safety Modernization Act*, available at <http://www.fda.gov/downloads/Food/FoodSafety/FSMA/UCM263773.pdf> (last visited Oct. 26, 2015 2:06 PM).
- ⁹⁷ Michael R. Taylor, *Influencing Outcomes in the Global Food System: FDA's Evolving and Expanding Food Safety Role*, The Food and Drug Administration Alumni Association's 2015 Harvey Wiley Award Recipient Lecture Food and Drug Law Institute (FDLI) Annual Conference, April 20, 2015, U.S. FOOD AND DRUG ADMINISTRATION, 21 Apr. 2015. <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm443731.htm> (last visited Oct. 26, 2015 2:08 PM).
- ⁹⁸ Taylor, *supra* note 97.