



## **PARTNERSHIP *for*** **PUBLIC HEALTH LAW** *Advancing Public Health Through Law*

### **Overview of Food Safety**

State and local public health authorities work with the federal government and the private sector to protect the public from disease spread through food consumption. Estimates indicate that every year 48 million Americans experience foodborne illness, which results in 128,000 hospitalizations and 3,000 deaths.<sup>1</sup> Foodborne illness also has a considerable economic impact. A 2010 study revealed that foodborne illness costs the United States approximately \$152 billion annually.<sup>2</sup>

At the federal level, the United States Department of Agriculture (USDA) is responsible for ensuring the safety of the nation's supply of meat, poultry and egg products while the Food and Drug Administration (FDA) is responsible for the safety of the remainder of our food supply. The Centers for Disease Control (CDC) is another important federal agency; it helps monitor and investigate foodborne illness outbreaks that cross state lines. These federal agencies work closely with state and local authorities to help address food safety.

This resource will discuss how state and local public health authorities address foodborne illness through disease surveillance, outbreak investigation and food safety control measures.

#### **Disease Surveillance**

Foodborne illness surveillance is the routine monitoring of diseases potentially spread through food. Surveillance is vital in detecting disease clusters and problems in the food supply chain. There are three basic forms of surveillance: (1) pathogen-specific surveillance; (2) complaint-based systems; and (3) syndromic surveillance.

- With **pathogen-specific surveillance**, healthcare providers and laboratories must report certain diseases to the public health authority. The list of reportable diseases, defined by state law, may vary by jurisdiction.
- **Complaint-based surveillance** relies on the public reporting possible food borne illnesses directly to the public health department. Some jurisdictions, like Chicago, are taking advantage of social media to find and investigate food poisoning complaints.<sup>3</sup>
- **Syndromic surveillance** uses individual and population health indicators to identify foodborne illness outbreaks before laboratory confirmation. Examples of these indicators include school absenteeism, sale of over-the-counter drugs, calls to poison control and emergency department chief complaints. This type of surveillance is usually automated.<sup>4</sup>

#### **Outbreak Investigation**

Once food safety officials detect a foodborne outbreak, they initiate an investigation. The general goals of an investigation are to identify the (1) disease agent, (2) people at risk, (3) mode of transmission, (4) source of contamination, (5) potential for further transmission, and (5) disease control measures. These investigations will often include interviews of people affected, environmental health assessments of implicated facilities and informational tracebacks of food items through the distribution chain to determine the source of contamination.<sup>5</sup> While conducting these investigative steps, food safety officials must consistently and accurately communicate with the public and other government agencies to help ensure the public's safety.

## Food Safety Control Measures

This section discusses the various control measures used to prevent a foodborne illness.

### TRAINING

One way to help prevent outbreaks is to require all food service employees to undergo certified food safety training. For example, in Oregon, any person involved in the preparation or service of food in a restaurant or food service facility must complete a food handler training program.<sup>6</sup>

In addition, state and local authorities provide technical support and guidance documents to help food establishments and facilities comply with food safety protocols. For example, the Maryland Department of Health and Mental Hygiene provides guidance documents to help facilities create their Hazard Analysis Critical Control Point Plan (HACCP).<sup>7</sup>

### LICENSING

State and local authorities can require licenses in order to operate food establishments. In applying for a license, a food establishment agrees to comply with the food safety regulations of the jurisdiction, allow inspection of its facility and pay any licensing fee. When licensing authority overlaps there is often reciprocity between the state and local government in their licensing requirements. For example, if a restaurant receives a license from the county health department, the state will recognize the license if local licensing requirements meet the state's food safety standards.

### INSPECTIONS

To help ensure food facilities are complying with food safety standards, state and local food safety officials have the authority to inspect these businesses. Officials have the authority to inspect several types of facilities e.g., food processing plants, grocery stores, hospital kitchens, food trucks, bakeries and restaurants.

Inspections must be conducted at a reasonable time. During the inspection, the inspector may examine and take samples of food, examine equipment and review records pertaining to the food and supplies used at the establishment. The inspector records observations and any violations of the jurisdiction's food safety regulations. The inspector must provide a copy to the facility and also provide a timeline to remediate these violations. In some jurisdictions, violations may result in financial penalties that the establishment has to pay. Other jurisdictions issue letter grades based on inspection results for the public to use when making dining choices.

### REVOKING LICENSE

A powerful tool available to a food safety authority is the ability to suspend or revoke a license to operate a food production facility or food service establishment because of food safety violation. Generally in such a case, an inspector must

provide a written notice outlining the violations, an opportunity to remedy them and information about the right to a hearing to challenge the revocation. The due process required may vary depending on the seriousness of the violation and the jurisdiction. If a license is suspended or revoked, the party can apply to reinstate the license or apply for a new one. However, the violations that resulted in the loss of the license must be remedied.

### DETENTION AND DESTRUCTION OF FOOD

Food safety authorities have the ability to detain food they reasonably believe is adulterated. Generally, the food must be marked as potentially unfit for consumption and include a warning that no one may remove or sell that food until given permission to do so. With detainment, an entity has a set period of time to bring an administrative or legal action to resolve the issue. However, if food presents an immediate threat to human health, the food safety authority may have the power to destroy it immediately. For example, in Maryland, the health department considers food that "contains any filthy, decomposed, or putrid substance; is poisonous or otherwise would be injurious to health if consumed; or is otherwise unsafe" an immediate threat.<sup>8</sup>

### EXCLUSION OF INFECTED EMPLOYEES

State and local authorities can help prevent the spread of foodborne illness by restricting the employment of food service workers suspected of carrying contagious diseases that can be spread in the course of their work. For example, if a waiter at a Portland, Oregon, restaurant has salmonella, the local health officer for Multnomah County, where Portland is located, has the authority to restrict the waiter's employment in food service until the threat of spreading the disease has passed.<sup>9</sup>

To learn more about your food safety authority, contact your local counsel. The Council to Improve Foodborne Outbreak Response (CIFOR) also has useful food safety resources.<sup>10</sup>



*The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.*

*This document was developed by Kathleen Hoke, JD, Director of the Network for Public Health Law – Eastern Region and Mathew R. Swinburne, Staff Attorney, Network for Public Health Law – Eastern Region, University of Maryland Francis King Carey School of Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.*

## Endnotes

- <sup>1</sup> CDC Estimates of Foodborne Illness in the United States (available at <http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html>)
- <sup>2</sup> Health-Related Costs from Foodborne Illness in the United States, Robert L. Scharff, 1 (March 3, 2010). (available at [http://www.pewhealth.org/uploadedFiles/PHG/Content\\_Level\\_Pages/Reports/PSP-Scharff%20v9.pdf](http://www.pewhealth.org/uploadedFiles/PHG/Content_Level_Pages/Reports/PSP-Scharff%20v9.pdf)).
- <sup>3</sup> Monica Eng, Food-poisoning tweets get city follow-up: Health authorities seek out sickened Chicagoans, ask them to report restaurants, Chicago Tribune, (Aug 13, 2013) [http://articles.chicagotribune.com/2013-08-13/health/ct-met-twitter-food-poisoning-20130809\\_1\\_food-poisoning-smart-chicago-collaborative-health-department](http://articles.chicagotribune.com/2013-08-13/health/ct-met-twitter-food-poisoning-20130809_1_food-poisoning-smart-chicago-collaborative-health-department).
- <sup>4</sup> ), Guidelines for Foodborne Disease Outbreak Response. Atlanta: Council of State and Territorial Epidemiologists, 81-102 (2009)(available at <http://www.cifor.us/documents/CIFORGuidelinesforFoodborneDiseaseOutbreakResponse.pdf>).
- <sup>5</sup> Id. at 103-126.
- <sup>6</sup> Or. Rev. Stat. § 624.570 (2013).
- <sup>7</sup> Guidelines for Submitting a Hazard Analysis Critical Control Point Plan, Maryland Department of Health and Mental Hygiene (November 2008) (available at [http://phpa.dhmh.maryland.gov/OEHFP/OFPCHS/Shared%20Documents/plan-review/guidelines/HACCP%20Guidelines\\_Nov2008ver.pdf](http://phpa.dhmh.maryland.gov/OEHFP/OFPCHS/Shared%20Documents/plan-review/guidelines/HACCP%20Guidelines_Nov2008ver.pdf)).
- <sup>8</sup> MD. Code, Health - General, § 21-254 (2013).
- <sup>9</sup> Multnomah County Code §§ 21.601- 21.607 (available at <http://web.multco.us/sites/default/files/county-attorney/documents/ch21.pdf>).
- <sup>10</sup> Council to Improve Foodborne Outbreak Response, <http://www.cifor.us/index.cfm>.