

Colorado's Food Safety Net

**Ensuring Safe Food from
Production to Consumption**



April 2006

CoPIRG
Foundation

Colorado's Food Safety Net:

Ensuring Safe Food from Production to Consumption



April 2006

Acknowledgements

Written by Alison Cassady, Research Director with CoPIRG Foundation.

© 2006, CoPIRG Foundation

Photo credits: Lori Carpenter/FOTOLIA (photo of boy); Robert Lerich/FOTOLIA (photo of fruit); Steve Degenhardt/FOTOLIA (photo of milk and cookies); and Terry Poche/FOTOLIA (photo of crawfish).

The author would like to thank Benjamin Cohen, Senior Staff Attorney with the Center for Science in the Public Interest, for offering editorial review and compiling the list of state food safety laws that forms the foundation of this report. Additional thanks to Meghan Purvis, Environmental Health Advocate with Environment Colorado, for her contributions.

Special thanks to the Beldon Fund and Bauman Foundation for supporting the state PIRGs' work on toxics and right-to-know issues.

For more information, contact:

CoPIRG Foundation
1536 Wynkoop St., Suite 100
Denver, CO 80202
(303) 573-7474
www.copirg.org

Overview

Protecting the safety and integrity of the food supply is one of the oldest functions of government, one that the American people expect their government to perform and perform well.

The current food safety regulatory system in the United States is the shared responsibility of local, state and federal partners. In some cases, the federal government has delegated the responsibility for ensuring food safety to states and municipalities, which are often more nimble and able to respond quickly to localized public health problems. Approximately 80% of food safety inspections in the nation, for example, are completed at state and local levels. All 50 states hold the primary responsibility for ensuring the safety of milk and the sanitary operation of restaurants. In other areas, states have passed unique food safety standards that address local concerns or fill important gaps in food safety regulation left open by the U.S. Food and Drug Administration (FDA) and other regulatory agencies. As federal agencies become increasingly under-funded and influenced by powerful corporate interests, the states' role in maintaining the food safety net grows ever-more important.

The following are just a few examples of how the state of Colorado has enacted standards to ensure the safety of the food supply in Colorado and protect the health of its residents.

Milk and Other Dairy Products

In the early 20th century, adulterated and spoiled milk caused a range of diseases and illness, including tuberculosis and diphtheria. States and municipalities responded to this problem by passing standards for how the dairy industry gathered, processed, distributed and sold milk in the United States. To this day, the states hold the primary responsibility for milk safety. FDA provides guidance to the states in the form of model codes,¹ and the states may adopt these codes voluntarily. But the federal government has not established any mandatory national safety standards for Grade A milk; no national law even regulates the sale of raw unpasteurized milk. That has been left up to states and localities, which are best equipped to regulate, monitor and inspect the local dairy industry and respond to local reports of adulterated milk.

Colorado's milk safety standards² lay out the guidelines for classifying milk products as "unsanitary" and therefore prohibited from sale. All dairy products (food products manufactured from milk or cream and combinations of other ingredients) are subject to detailed sanitary requirements and specific standards. The sanitary requirements apply not only to the dairies where the milk is produced, but to milk plants, equipment and utensils, containers and means of transport. Licenses are required of testers of milk, cream or any other dairy product, and for all persons engaged in receiving, buying, selling or otherwise handling milk or cream, with a few exceptions. Colorado's milk standards protect the state's residents from the outbreaks of milk-borne diseases that were common in the early 20th century.

A key component of state milk safety standards, including Colorado’s standards, is the provision empowering the state to prevent the sale of contaminated or adulterated milk.³ Whether milk becomes contaminated or adulterated by accident or intent, the state’s authority to remove these products from the marketplace is critical for public health.

Food Safety in Restaurants and Other Food Establishments

Almost everyone experiences a food-borne illness or food “poisoning” at least once in their lifetimes after eating out at a restaurant or other food service establishment. These food-borne illnesses, caused most often by inadequate cooking, improper holding temperatures, poor personal hygiene, contaminated equipment and food from unsafe sources,⁴ can cause symptoms ranging from the uncomfortable to the life-threatening, particularly for the elderly and those with compromised immune systems. The Centers for Disease Control estimates that food-borne disease causes 325,000 hospitalizations and 5,000 deaths each year.⁵

The federal government has promulgated no mandatory requirements for the safety of restaurant and food service establishment food, devolving this responsibility to the states. All 50 states—generally through their health, small business or agriculture departments—regulate and inspect restaurants, schools, nursing homes, and other food service establishments to ensure the safety of food served. State and local agencies are the primary line of defense against food-borne disease.

Colorado has established statutes to protect the public from food contaminated by food service establishments or retail food stores during storage, preparation, service, or display, and to ensure that food service establishments and retail food stores have adequate facilities for the storage, preparation, service, or display of food.⁶ The Consumer Protection Division of Colorado’s Department of Public Health and Environment regulates food preparation environments in the state’s restaurants, schools, correctional facilities, and other food service establishments.

Food and Color Additives

Most packaged foods on grocery store shelves contain numerous food or color additives. A food additive is “any substance the intended use of which results or may reasonably be expected to result—directly or indirectly—in its becoming a component or otherwise affecting the characteristics of any food.”⁷ A color additive is any dye, pigment or substance that can impart color when added or applied to a food.⁸

FDA has the primary legal responsibility for determining the safe use of food and color additives and setting standards for what constitutes a “safe” level of an additive. Several states, including Colorado,⁹ have enacted laws in effect reserving the right to go above and beyond federal standards to protect public health. Although no states have used this authority to date, states may need to resort to enacting more protective health standards for certain additives if FDA fails to do so in the

future. Debate is currently brewing over the use of carbon monoxide in meat, for example.¹⁰ Without a formal review process, FDA allowed the meat industry to start spiking packaged meat with carbon monoxide to keep it looking pink and fresh for weeks. Consumer advocates argue that this could make spoiled meat look fresh, endangering public health. Since FDA has no plans to set standards or labeling guidelines for meat treated with carbon monoxide, states may step in to fill this gap.

Shellfish Safety

Shellfish are filter feeders; they get food and oxygen by pumping large quantities of water across their gills. During feeding, shellfish take in bacteria, viruses and chemical contaminants, which can bioaccumulate in their bodies. As a result, some shellfish harvested from polluted areas may pose a health hazard if consumed, causing diseases such as typhoid, hepatitis and salmonellosis.

No federal laws exist to regulate shellfish harvesters and processors to ensure that shellfish are safe; as such, states are responsible for adopting laws and regulations to ensure that shellfish are grown, harvested and processed in a safe and sanitary manner. FDA's National Shellfish Sanitation Program has created a model ordinance for states, but this serves only as guidance and is not mandatory.¹¹

Approximately 16 states have adopted shellfish safety standards, including Colorado.¹² Colorado's law establishes a certification program for shellfish dealers administered by the Department of Public Health and Environment in accordance with FDA's model National Shellfish Sanitation Program. The department certifies businesses involved in shipping, shucking, packing, repacking, processing, and storing shellfish and regulates premises or places wherein shellfish are handled, stored, and processed for distribution. The federal government has not established a similar mandatory standard; FDA regulations merely prohibit the interstate transport of shellfish that are likely to contribute to the spread of communicable disease from one state to another.¹³

Conclusion

The Colorado food safety standards discussed here and others are important for several reasons:

- They help protect public health from food-borne illnesses and other risks by filling gaps left in federal law;
- They give consumers the power to make informed choices about the food and beverages they purchase for themselves and their families; and
- They help protect local industries by ensuring the safety and purity of their products.

The FDA and other federal agencies do not have the resources—and often do not have the political will—to monitor all aspects of food safety. In fact, the number of full-time FDA employees dealing with food safety has fallen steadily from 3,167 in FY 2003 to 2,843 in FY 2006; the president’s proposed FY 2007 budget for FDA would further reduce that number to 2,757.¹⁴ As such, states will continue to play a pivotal role in ensuring that America’s food supply remains among the safest in the world.

End Notes

¹ See U.S. FDA, Center for Food Safety and Applied Nutrition, National Conference on Interstate Milk Shipments (NCIMS) Model Documents, accessed March 21, 2006 at <http://www.cfsan.fda.gov/~ear/p-nci.html>.

² Colorado Revised Statutes, Title 25, Article 5.5, Part 1, §§25-5-101-25-5-117.

³ Colorado Revised Statutes, 25-5.5-103.

⁴ U.S. FDA, *FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types*, 2004.

⁵ Centers for Disease Control, Division of Bacterial and Mycotic Diseases, “Foodborne Illness” fact sheet, accessed March 22, 2006 at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/files/foodborne_illness_FAQ.pdf.

⁶ Colorado Revised Statutes, Title 25, Article 4, Part 16, §§25-4-1601-25-4-1612.

⁷ U.S. FDA, Center for Food Safety and Applied Nutrition, “Food Ingredients & Colors,” brochure, accessed March 21, 2006 at <http://www.cfsan.fda.gov/~acrobat/foodic.pdf>.

⁸ U.S. FDA, Center for Food Safety and Applied Nutrition, “Food Ingredients & Colors,” brochure, accessed March 21, 2006 at <http://www.cfsan.fda.gov/~acrobat/foodic.pdf>.

⁹ Colorado Food and Drug Act, § 25-5-413(2).

¹⁰ Rick Weiss, “FDA Is Urged to Ban Carbon-Monoxide-Treated Meat,” *Washington Post*, February 20, 2006.

¹¹ FDA, Center for Food Safety and Applied Nutrition, National Shellfish Sanitation Program Model Ordinance, accessed March 30, 2006 at <http://www.cfsan.fda.gov/~ear/nsspotoc.html>.

¹² Colorado Revised Statutes, Title 25, Article 4, Part 18, §§25-4-1801-25-4-1813.

¹³ See U.S. FDA, 21 CFR 1240.60.

¹⁴ FDA, Office of Management Budget Formulation and Presentation, “Foods,” accessed March 30, 2006 at <http://origin.www.fda.gov/oc/oms/ofm/budget/2007/HTML/1Foods.htm>.