

New Hampshire's Food Safety Net

**Ensuring Safe Food from
Production to Consumption**



April 2006

NHPIRG Education
Fund

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Acknowledgements

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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 New Hampshire has enacted standards to ensure the safety of the food supply in New Hampshire 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.

New Hampshire's milk safety standards, enforced by the state Dairy Sanitation Inspection & Licensing Program, regulate the sale of milk, milk products, raw milk and raw milk products; the production, processing, labeling, storing, handling and transportation of milk and milk products; and the sanitary conditions at any dairy or other facility and in any truck or other vehicle in which milk or milk products are produced, processed, handled or transported.² New Hampshire'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 New Hampshire's standards, is the provision empowering the state to prevent the sale of contaminated or adulterated milk. 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,³ 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.⁴

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 main line of defense against food-borne disease.

New Hampshire has established statutes to “ensure that the health of the public is protected from the consumption of 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.”⁵ The Food Protection Unit of the state Department of Health & Human Services licenses and inspects establishments in New Hampshire where food is produced, manufactured, stored or sold. The unit also investigates complaints from consumers and reports of food-borne disease outbreaks.⁶

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 New Hampshire,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.

Cider Vinegar

The Federal Food, Drug, and Cosmetic Act does not establish standards of identity for vinegar; the FDA instead has created guidelines for the labeling of vinegars.

In 1924, the U.S. Supreme Court considered the case of *United States v. Ninety-Five Barrels Alleged Apple Cider Vinegar*, in which the Supreme Court held that vinegar made from dried apples was not the same as that which would have been produced from the apples without dehydration, and that the name “Apple Cider Vinegar” did not represent the article to be what it really was.¹¹ A few years after that court case, New Hampshire passed a law prohibiting the sale of cider vinegar unless it is made solely from apple cider and has acidity equal to the presence of not less than 4 percent, by weight, of absolute acetic acid.¹² This statute helps ensure a quality product for consumers in New Hampshire and protects producers of cider vinegar from competitors making imitation products.

Maple Syrup

Maple products are made almost exclusively in the northeastern United States and southeastern Canada, where the climate is ideal for sugar maple trees. New Hampshire’s maple industry is part of the local culture, with maple sugar houses offering tourists the opportunity to see how maple products are made and purchase fresh maple syrup and candy. In 2004, New Hampshire’s maple industry produced 83,000 gallons of maple syrup, valued at more than \$2.9 million.¹³

FDA allows products labeled as “maple syrup” to contain ingredients other than sap from a maple tree, including salt, chemical preservatives, and de-foaming agents. Some states, including New Hampshire, have enacted a more stringent definition of “maple syrup” in order to protect local businesses that make maple syrup and ensure that consumers who want to consume only pure maple syrup can do so.

New Hampshire prohibits the sale of maple sugar, maple candy or maple syrup unless it is made solely from the sap of the maple tree. Maple syrup is syrup made by the evaporation of maple sap or by the solution of maple concrete (sugar), and contains not more than 35 percent of water and weighs not less than 11 pounds to the gallon (231 cubic inches).¹⁴

Apples

In 2004, New Hampshire farmers cultivated 667,000 bushels of apples, valued at \$8.4 million.¹⁵ New Hampshire's apple orchards also contribute to the state's New England flavor and tourist economy, offering visitors the opportunity to pick their own apples while admiring the fall foliage.

Ensuring that apples in grocery store produce sections are ripe but not too ripe requires careful timing from the point of harvest to storage to delivery. To control the ripening process, apple growers often place harvested apples in "controlled atmosphere" storage, where the growers carefully control temperature, oxygen, carbon dioxide and humidity. Apples take in oxygen and give off carbon dioxide as starches in the flesh change to sugar. "Controlled atmosphere" rooms limit the available oxygen and thereby slow the ripening process. This allows growers and others selling the apples the flexibility of an extended marketing period, and consumers can enjoy apples beyond the traditional growing season.

To ensure that New Hampshire residents are receiving the highest quality produce, New Hampshire prohibits anyone from selling apples represented or labeled as having been exposed to a "controlled atmosphere" or "modified atmosphere" unless such apples have been kept in a certified controlled atmosphere room. A controlled atmosphere room cannot have more than 5% oxygen for a minimum of 60 days.¹⁶

Alcohol Consumption

Fetal Alcohol Spectrum Disorders, a range of health effects caused by alcohol use during pregnancy, affects an estimated 40,000 infants each year—more than Spina Bifida, Down Syndrome and Muscular Dystrophy combined.¹⁷ These effects can include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. As a result, the U.S. Surgeon General has issued public health advisories urging women who are pregnant or who may become pregnant to abstain from alcohol.

FDA shares jurisdiction over alcohol labeling and advertising issues with the Alcohol and Tobacco Tax and Trade Bureau, which requires labels on alcoholic beverage containers warning consumers of the health effects of drinking during pregnancy.¹⁸ Some states have done more to prevent alcohol consumption during pregnancy by requiring warnings where pregnant women may be tempted to drink—at bars, liquor stores and other establishments that sell alcohol.

In New Hampshire, bars, liquor stores and other establishments must post one or more signs on the premises that clearly warn pregnant women of the dangers of consuming alcohol during pregnancy. The sign must contain the following language: "According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects." The statement must be located in a conspicuous and prominent place within the establishment and appear on a contrasting background.¹⁹

Conclusion

The New Hampshire 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 2,757.²⁰ 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 New Hampshire Revised Statutes, Title XIV, Chapter 184, §§184:30-a-184:30-h.
- ³ 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.
- ⁴ 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.
- ⁵ New Hampshire Revised Statutes, Title X, Chapter 143A, §§143.A:1- 143.A:11.
- ⁶ New Hampshire Department of Health & Human Services, Food Protection Unit, accessed March 22, 2006 at <http://www.dhhs.state.nh.us/DHHS/FOODPROTECTION/default.htm>.
- 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 New Hampshire Revised Statutes, Title X, §146:21-II.
- ¹⁰ Rick Weiss, “FDA Is Urged to Ban Carbon-Monoxide-Treated Meat,” *Washington Post*, February 20, 2006.
- ¹¹ 265 U.S. 438, 1924.
- ¹² New Hampshire Revised Statutes, Title X, §146:14.
- ¹³ USDA, National Agricultural Statistics Service, New England Agricultural Statistics, “Maple Syrup 2005,” June 2005, accessed March 28, 2006 at http://www.nass.usda.gov/Statistics_by_State/New_England_includes/Publications/0605mpl.pdf.
- ¹⁴ New Hampshire Revised Statutes, Title X, §146:13.
- ¹⁵ USDA, National Agricultural Statistics Service, New England Agricultural Statistics, “New England Fruits and Vegetables 2005 Crop,” February 2006, accessed March 28, 2006 at http://www.nass.usda.gov/Statistics_by_State/New_England_includes/Publications/06ftrveg.pdf.
- ¹⁶ New Hampshire Revised Statutes, Title XL, Chapter 434, §434:26.
- ¹⁷ National Organization on Fetal Alcohol Syndrome, “FASD: What Everyone Should Know,” fact sheet, accessed March 23, 2006 at <http://www.nofas.org/MediaFiles/PDFs/factsheets/everyone.pdf>.
- ¹⁸ 27 CFR 16.
- ¹⁹ New Hampshire Revised Statutes, Title XIII, Chapter 175, §175:4.IV.
- ²⁰ 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>.