

ANALYSIS OF STATE LEGAL AUTHORITIES

FOR FOODBORNE DISEASE DETECTION AND OUTBREAK RESPONSE

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Association of Public Health Laboratories (APHL)
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NOTICE

This report was researched and compiled during June 2011–August 2012, unless otherwise indicated, and reflect the laws and regulations current at the time. This report may reflect only selected portions of laws and regulations and is not intended to be exhaustive of all relevant legal authorities and theories. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice.

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EXECUTIVE SUMMARY

The CIFOR Analysis of State Legal Authorities for Foodborne Disease Detection and Outbreak Response describes and analyzes the types of state legal authorities currently available to conduct foodborne disease surveillance and outbreak response activities in 12 states: Alabama, Colorado, Idaho, Indiana, Massachusetts, Michigan, Minnesota, Mississippi, Oregon, Rhode Island, South Carolina, and Texas. The purpose of the project is to identify and analyze where the profiled states have clear legal authorities, where authorities might be less clear, and where authorities are lacking. The CIFOR work group chose the 12 states profiled in this project to represent a variety of factors, including population, geographic location, structure of state–local health system, and health agency structure.

State legal authorities to conduct foodborne disease detection and outbreak response activities are distributed across a number of statutes and regulations; it is not possible to review just one title or chapter in a statute or regulation to effectively capture the authorities used by states to accomplish their foodborne disease–related activities. A range of issues were researched for this report, including general state and local government authorities to protect public health, communicable disease laws, food and food safety laws, and open records and privacy laws. A review of agency websites was used to develop profiles of the operational responsibilities of various state and local agencies in foodborne disease detection and outbreak response activities.

In its publication, *Guidelines for Foodborne Disease Outbreak Response*, CIFOR identified key foodborne disease surveillance and outbreak response functions for which every jurisdiction should have either the internal capacity to undertake or access to personnel and resources to accomplish these functions. These functions were adapted for this project as outbreak detection, outbreak investigation, outbreak control, and outbreak documentation.

The key findings of the report are as follows:

- The report provides insight into the variety of legal authorities that are or possibly could be used to conduct foodborne disease surveillance and response activities. The patchwork of general government and general public health authorities, communicable disease laws, and food product and food safety laws can be used to fashion responses to foodborne disease events.
- Foodborne disease surveillance and response are among the fundamental government duties to protect the public's health. The legal authority permitting action in these areas primarily comprises general public health and communicable disease laws.
- Laws governing the safety of food products and food establishments also provide important authorities that allow for the detection and control of conditions causing foodborne disease; however, many of the inspection and investigative authorities exist in statutes and regulations intended for licensing and ongoing inspections of food production operations or food establishments. This fact may limit the circumstances in which, and the extent to which, the authority to inspect or investigate is allowed.

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- None of the 12 states reviewed have comprehensive statutes or regulations that explicitly address foodborne disease surveillance or outbreak response authorities in the same way that states have developed pathogen-specific or disease-specific statutory schemes, as they have for such issues as tuberculosis or HIV/AIDS.
- The “patchwork approach” also results in powers and duties for foodborne disease surveillance and response that are distributed across multiple agencies, actors, and levels of government. These circumstances permit governments to approach foodborne disease detection and response from a variety of perspectives, thereby increasing the tools and mechanisms available to identify and control outbreaks. However, this approach also necessitates great coordination and collaboration among agencies and personnel.
- The patchwork approach also can lead to uncertainties about the extent of public health practitioners’ legal authorities under a particular statute or regulation and hinder their response to an outbreak. Public health practitioners involved in foodborne disease surveillance and response activities need to understand the broad range of legal authorities that possibly can support their activities and examine how the authorities discussed in this report are defined in their states.

INTRODUCTION

This section provides information about CIFOR and the genesis of the state foodborne disease outbreak detection and response legal authorities project.

Council to Improve Foodborne Outbreak Response

The Council of State and Territorial Epidemiologists (CSTE) and the Centers for Disease Control and Prevention (CDC) convened the Council to Improve Foodborne Outbreak Response (CIFOR) in 2005. CIFOR is a multidisciplinary collaboration of eight national associations and three federal agencies whose goal is to improve methods at the local, state, and federal levels to detect, investigate, control, and prevent foodborne disease outbreaks. CIFOR identifies barriers to rapid detection and response to foodborne disease outbreaks and develops projects that address these barriers.

CIFOR is co-chaired by CSTE and the National Association of County and City Health Officials. The CIFOR member organizations represent epidemiology programs, environmental health programs, public health laboratories, and regulatory agencies involved in foodborne disease outbreak surveillance and response. A complete list of the member organizations appears in the Acknowledgements section of this document.

State Legal Analysis Project Background

A key objective for CIFOR and its member organizations is to examine the legal authority needed to conduct ongoing foodborne disease surveillance and respond to foodborne disease outbreaks and the capacity to implement those legal authorities effectively. This report uses the term “legal authority” to mean a grant of power or the imposition of a duty by a statute, regulation, or other document, such as an executive or administrative order.

Agencies and jurisdictions may lack sufficient legal authorities or encounter legal barriers to conducting foodborne disease surveillance and outbreak response activities. A state may lack clear authority to collect all the data necessary to conduct effective foodborne disease surveillance and investigation activities. State and local public health personnel may be limited by law regarding the types of information and persons with whom they can share it during an outbreak investigation.

Agencies and jurisdictions also may lack the capacity to implement the legal authorities they do have. Implementation challenges can result from such factors as lack of experienced staff who understand the scope of the health agency’s legal authorities or are confident in using the authorities available to them.

The CIFOR state legal analysis project is designed to analyze the types and scope of legal authorities available to conduct foodborne disease surveillance and outbreak response activities in a sampling of 12 states. The purpose of the project is to identify and analyze where the profiled states have clear legal authorities, where authorities may be less clear, and where authorities are lacking.

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Components of the CIFOR Law Project

The state legal analysis project and this report are part of a larger CIFOR project aimed at creating tools that agencies and jurisdictions can use to improve their legal preparedness to conduct surveillance for foodborne diseases and respond to outbreaks both within their jurisdictions and across multiple states and other jurisdictional boundaries. CIFOR has identified the following three components to the CIFOR law project. Each is designed to address a discrete but related research need and audience.

- **Analysis of State Legal Authorities.** This document describes and analyzes the types of state legal authorities currently available to conduct foodborne disease surveillance and outbreak response activities. It demonstrates the “patchwork” of state laws (i.e., statutes and regulations, collectively) across an array of topic areas—public health, communicable disease, food safety, food regulation, agriculture, environment, and general government authority—on which public health professionals and their legal counsel must rely to conduct foodborne disease outbreak surveillance and response activities. The Analysis of State Legal Authorities is the foundation for the handbook and menu of legal provisions activities described below.
- **Practitioners’ Handbook on Legal Authorities.** This document is a practical guide for public health professionals who perform key roles in foodborne disease surveillance and outbreak response. The handbook presents information and resources for practitioners charged with implementing their jurisdictions’ legal authorities related to foodborne disease events. The handbook is a primer on the array of statutes and regulations (e.g., communicable disease laws, food safety laws) that may be used to undertake foodborne disease surveillance and other outbreak response activities. It provides practitioners with checklists to help them identify relevant agency actors and laws within their jurisdictions.
- **Menu of Legal Options.** This document provides a menu of legal options for state public health officials and policy makers to consider when reviewing their jurisdiction’s legal authorities to conduct foodborne disease surveillance and outbreak response actions. The menu includes legal provisions relevant to effective performance of each of the principal functions of foodborne disease surveillance and outbreak response: outbreak detection, outbreak investigation, outbreak control, and outbreak documentation. This is intended to be a resource for states to use in filling gaps and in clarifying or enhancing their legal authorities.

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This section identifies and discusses the sources and methods for collecting and analyzing the state legal authority information. The section also contains important notices about the sources and methods used.

Identification of Project States

The CIFOR work group chose the 12 states to represent a variety of factors, including population, geographic location, structure of state–local health system (i.e., centralized, decentralized, mixed), and health agency structure (i.e., stand-alone, under an umbrella agency, joint health–environment). The goal was to achieve a broad a mix of state experiences, perspectives, and resources within the 12-state sample. The states are

- Alabama
- Colorado
- Idaho
- Indiana
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Oregon
- Rhode Island
- South Carolina
- Texas

Sources and Methods

Research and Analysis Protocol

To guide the review, a research and analysis protocol was developed for the state legal analysis project in cooperation with the CIFOR work group. The protocol identified the specific foodborne disease surveillance and response functions to be analyzed in the report. (See discussion of Analysis Methods below.) The protocol was used to ensure that research was consistently conducted across the 12 states.

Scope of Issues Reviewed

State legal authorities to conduct foodborne disease surveillance and outbreak response activities are distributed across a number of statutes and regulations; it is not possible to review just one title or chapter in a statute or regulation to effectively capture the authorities used by states to conduct their foodborne disease–related activities. To fully understand the types of authorities used by states, the following issues were researched in each of the 12 states:

- General state and local government authorities to protect public health.
- General governmental authorities granted to state and local agencies or agency officials (e.g., health, agriculture, environment, animal health, and others as indicated by the state).
- Foodborne disease surveillance, investigation, control, and reporting.
- Communicable disease case reporting, investigation, and postinvestigation reporting.
- Animal communicable disease case reporting, investigation, and postinvestigation reporting.
- Food and food safety authorities regarding food items and food establishments.
- Public records and confidentiality.
- Interjurisdictional cooperation and agreements.

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For the purposes of grouping the collected data, the above legal authorities were grouped into four primary categories: (1) general government authorities, (2) general public health authorities, (3) communicable diseases and conditions, and (4) food and food safety. These categories are further defined and discussed below in Part 1, Legal Authorities.

Issues NOT Included in the Review

Despite the broad scope of issues listed above, some facets of food and food safety were not included in the research for this project. The following topics were excluded because their inclusion was beyond the scope of the focus on foodborne disease surveillance and response or would have produced an unmanageable amount of data given the time and resource constraints of the project:

- Ongoing licensing and routine inspection requirements for food operations and food establishments (e.g., licensing and inspection of retail food establishments).
- Ongoing education and training requirements (e.g., food manager certification).
- General government or agency emergency powers and authorities (i.e., powers that become effective upon a gubernatorial or presidential declaration of emergency).
- Laws specific to intentional contamination of food.
- Civil and criminal penalties for violating statutes and regulations discussed in the document.
- Drinking water, waterborne diseases, and source water protection.
- Commodity- or food product-specific statutes and regulations (e.g., eggs, dairy products, grains, sheep, poultry).
- Specific animal disease identification and control programs (e.g., brucellosis, scrapie).
- Plant diseases.
- Pesticides and other chemical contaminants to food.
- Fish consumption advisories.

Although the scope of this project does not include the above topics, the topics nonetheless are relevant and important legal authorities to the conduct of foodborne disease outbreak and response and of ongoing food safety regulation, education, and training activities.

Information Sources

A variety of sources were used to identify and review relevant state statutes and regulations and programmatic information for this project. Publically available online sources reviewed included state agency websites and online state databases of statutes, regulations and legislation. Propriety legal databases (e.g., LexisNexis, Westlaw) were used to access current text of specific provisions as needed.

Index and Contents Review

Once the appropriate sources were identified for each state, relevant legal and programmatic materials were located in several ways. The table of contents/index and contents of each state's statutory and

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regulatory materials were reviewed to identify the body of controlling and relevant laws. The general statutory and regulatory titles reviewed for each state included the following:

- Public health or health
- Agriculture
- Environment
- Animal health
- Organization of state and local governments
- Public records and privacy
- Regulation of businesses
- Interstate/interjurisdictional compacts and agreements

Key Term Searches

In addition to the index and contents review, electronic searches of each state's statutes and regulations were conducted for specified terms to confirm that all relevant laws had been identified through the contents review and to identify relevant authorities outside of the primary statutory and regulatory titles reviewed. The following search terms, and their variants, were used:

- Cluster
- Communicable
- Condemn
- Contagious
- Embargo
- Epidemiology, epidemiologist
- Foodborne
- Food safety
- Interagency, interjurisdictional, interstate
- Isolates
- Laboratory
- Morbidity, mortality
- Notifiable
- Outbreak
- Privacy
- Public records, freedom of information
- Quarantine, isolation
- Recall
- Reportable
- Sentinel
- Specimens
- Surveillance
- Syndromic
- Zoonosis

Agency Information and Structures

State agency websites were reviewed to identify basic operational structures and division of programmatic responsibilities for foodborne disease surveillance and outbreak response activities. State agency websites reviewed included public health/health, agriculture, environment, and animal health agencies. These websites also were used to identify the types of information provided to the public and other nongovernment parties involved in foodborne disease surveillance (e.g., physicians, clinical laboratories) and outbreak response (e.g., food establishments). The information provided by state agency websites included guidance documents, forms, and fact sheets.

Analysis Methods

The research and analysis protocol developed with the CIFOR work group identified key foodborne disease outbreak functions as adapted from the CIFOR Guidelines for Foodborne Disease Outbreak Response publication (CIFOR Guidelines). The key functions analyzed in this project are as follows

- **Outbreak Detection.** Identifying individual cases or clusters of foodborne disease through disease surveillance systems and activities.
- **Outbreak Investigation.** Determining the specific foodborne disease agent, the contaminated food, the number and distribution of ill persons, and the process by which the contamination occurred.

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- **Outbreak Control.** Identifying and implementing measures to mitigate or stop the foodborne disease event.
- **Outbreak Documentation.** Creating a report or other documentation of the foodborne disease event to record information about the specifics of the outbreak, identify lessons learned, and take enforcement action as needed.

Again, in keeping with the scope of this project, the functions analyzed in this report relate only to foodborne disease outbreak detection, investigation, and control and postevent documentation. This project does not cover ongoing inspections, licensing and regulation, or ongoing food safety education and communication functions, which also are discussed in the CIFOR Guidelines. These functions are all vital components in a state's overall food safety system, and each has relevant legal authorities and requirements associated with it.

Because a state may rely on a specific type of legal authority (e.g., general authority of the state health board to identify and mitigate public health hazards) to sustain its activities in more than one functional area (e.g., outbreak detection, outbreak control), a specific statute or regulation may support more than one outbreak function. Part 2 of the report features summary charts for each of the 12 states that identify the four primary types of legal authorities: (1) general government authorities, (2) general public health authorities, (3) communicable diseases and conditions, and (3) food and food safety, which are available to support the outbreak functions in that state. Detailed information about each state is contained in a corresponding supplemental document.

Limitations

Several limitations to the research and analysis methods for this project should be noted:

This review focuses on 12 states and therefore might not reflect the legal authorities or approaches in the other states.

This review does not necessarily identify all statutory and regulatory authorities available in a state to address foodborne disease surveillance and response activities. Although the research and analysis attempted to include the most important and broadest authorities available in the states profiled, other authorities exist that were not reviewed in this project but that govern, or could be used to address, foodborne disease surveillance and response needs. Thus, for example, a state's egg or dairy laws might contain provisions that would apply to foodborne disease surveillance and response activities for those specific commodities but that are not reflected in this report.

The research and analysis focus on a state's legal authorities regarding foodborne disease surveillance and response as embodied in text of its statutes and regulations. This scope does not permit in-depth examination of the ways in which state and local public health officials use these legal authorities in practice. Furthermore, programmatic activities and good public health practice norms (e.g., engaging in regular communications during an outbreak or establishing an outbreak investigation team) that might not be required by law but are regularly used by a state or locality in its foodborne disease surveillance and outbreak response activities are not addressed in this report.

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Important Notices

The information presented may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases, and government agency authority, among others, and is not intended to be exhaustive of all relevant legal authorities governing foodborne disease outbreak surveillance and response.

Where possible, the data in the state tables in Part 2 have been reviewed by one or more state agency personnel in that state to confirm overall completeness and general accuracy of the information. However, their review does not represent an official interpretation of the state's law or necessarily agree with the analysis of the state's authorities presented here or the overall conclusions in the report.

Finally, the information and conclusions presented in this document are not to be considered legal advice and are intended for informational purposes only.

PART 1 | DISCUSSION AND ANALYSIS OF STATE LEGAL AUTHORITIES

Part 1 of this document discusses and analyzes the data collected on 12 states' legal authorities and programs relating to food safety and foodborne disease surveillance and response.

State Profiles

The CIFOR state legal analysis project focused on the legal authorities for foodborne surveillance and outbreak response activities in 12 states:

- Alabama
- Colorado
- Idaho
- Indiana
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Oregon
- Rhode Island
- South Carolina
- Texas

The CIFOR work group chose the project states on the basis of the following factors to achieve a mix of characteristics:

- **State Population.** Population sizes range from just over 1 million (two states) to 25 million (one state); the bulk of the sampled states range from 2 million to nearly 10 million (nine states).
- **Geographic Location.** The project attempted to review states from all U.S. regions. The geographic distribution of the 12 states generally is as follows: West (two states), Southwest (two states), Southeast (three states), Midwest (three states), and Northeast (two states).
- **State-Local Health Agency Structure.** This factor describes the organizational and operational links between state and local public health agencies:
 - **Centralized.** State health agency provides local public health services (three states).
 - **Decentralized.** Local health departments often collaborate with the state health agency but are organizationally independent of the state agency (five states).
 - **Shared/Mixed.** Local public health services are subject to the shared authority of the state agency and the local government. Local boards of health or local public health services are provided through agencies organized and operated by units of local governments in parts of the states and by the state in other parts (four states).
- **State Agency Structure.** This factor describes the type of agency structure in which the state public health agency resides:
 - **Independent.** State public health agency exists as an independent state agency (five states).



- **Part of Larger Agency.** State public health agency is a component of a larger umbrella agency (seven states).
- **Governed by a State Board of Health.** This factor describes whether the state health agency is directed by a state board of health (five states) or other executive body.
- **Joint Agencies.** Two of the 12 states (Colorado and South Carolina) have joint health and environment agencies.

Other factors, such as participation in federal FoodNet program, also were noted about each state to identify other resources that could affect a state’s foodborne disease outbreak surveillance and response capacity. Table 1 summarizes the profile elements of the 12 project states.

Table 1: Summary of States Profiled in State Legal Analysis						
State	Population ^a	State-Local Health Agency Structure ^b	State Agency Structure ^b	State Board of Health ^b	Local Health Units ^b	Regional Health Units ^b
Alabama	4,779,736	Shared/Mixed	Independent	Yes	67	0
Colorado	5,029,196	Shared/Mixed	Independent	Yes	54	0
Idaho	1,567,582	Shared/Mixed	Part of Larger	Yes	0	7
Indiana	6,483,802	Decentralized	Independent	No	95	0
Massachusetts	6,547,629	Decentralized	Part of Larger	No	351	8
Michigan	9,883,640	Decentralized	Part of Larger	No	45	0
Minnesota	5,303,925	Shared/Mixed	Independent	No	53	0
Mississippi	2,967,297	Centralized	Part of Larger	Yes	81	9
Oregon	3,831,074	Decentralized	Part of Larger	No	34	1
Rhode Island	1,052,567	Centralized	Part of Larger	No	0	0
South Carolina	4,625,364	Centralized	Independent	Yes	91	8
Texas	25,145,561	Shared/Mixed	Part of Larger	No	64	8

^a U.S. Census Bureau, U.S. Dept. of Commerce. *Resident Population of the 50 States: 2010 Census* (April 1, 2010).
^b Association of State and Territorial Health Officials. *Profile of State Public Health, Volume 1* (2009), pp. 29; 50-100. Note: A state’s designation may have changed since this report was released.
^c U.S. Centers for Disease Control and Prevention. *PulseNet* (www.cdc.gov/pulsenet).
^d U.S. Centers for Disease Control and Prevention. *FoodNet—Foodborne Diseases Active Surveillance Network*. (www.cdc.gov/foodnet).

State Program Information

For state and local programs charged with implementing and enforcing laws governing foodborne disease surveillance and response, organization varies. Programmatic responsibility for conducting key foodborne disease surveillance and response functions is divided within agencies, among different agencies, and between state and local governments.

Division of Agency and Program Responsibilities

State health departments and agriculture departments are the two state agencies primarily involved in food safety and foodborne disease outbreak detection and response activities.

In all 12 profiled states, surveillance for and investigation of foodborne disease outbreaks is conducted by epidemiology units within health agencies and in state laboratories, which are primarily located in health agencies, but also within agriculture agencies and laboratories. Environmental health or retail food safety units within health agencies also have prominent roles in detecting and investigating outbreaks of foodborne

disease by responding to public complaints of foodborne disease, conducting environmental assessments during formal outbreak investigations, and imposing control measures during outbreak response.

Agriculture agencies profiled primarily have responsibilities for promoting and regulating the production of food commodities—plant and animal. They are tasked with inspecting and grading food commodities. In six of the states profiled, separate animal health agencies are responsible for monitoring and reporting diseases in livestock and other animals.

State and Local Responsibilities

In five of the profiled states, local public health agencies have primary responsibility for detecting and investigating foodborne disease outbreaks and state agency staff provide technical assistance and support to localities. In major or widespread outbreaks, state staff can engage in more active roles in investigation and response. In three of the states, foodborne disease outbreak activities are run by the state: in Mississippi and South Carolina through state regional offices and, in Rhode Island, directly by state agencies. In the remaining four states, outbreak activities comprise a mix of state and local leadership. The division of responsibilities between state and local health agencies primarily reflects the health agency structural relationships among the different levels of government. These structural relationships also are represented in state statutes, which can have detailed provisions addressing the respective powers and duties of state and local health departments.

Although state health agencies frequently have statutorily defined relationships to local health departments—or at least important operational contacts with local governments—state agriculture agencies do not have similar extensive statutory or operational ties with local governments. Although state agriculture agencies might have regional offices and laboratories within a state to assist local governments, businesses, growers, and the general public, the legal mandate and practice to work through local governments are not the same as they are for health agencies. When agriculture agencies are charged with administering food safety laws, they do have legal and operational interactions with local governments through the local health agency.

Administrative Structures and Underlying Authorities

Ultimately, the variations in how states structure their implementation of food safety and foodborne disease outbreak activities might, or might not, reflect the underlying legal authorities that direct and allow agencies to take action. Thus, an agriculture agency might be responsible for administering laws that are located within the health title of a state's statutes. This seeming incongruence can reflect changes in government organizational structures or responsibilities that might not have been likewise reflected in the organization of statutes and regulations. However, they also could result in differences in the ways laws are administered.

Legal Authorities

A broad scope of legal authorities was reviewed to identify the range of powers and duties related to foodborne disease surveillance and response (Box 1). As will be discussed in-depth in the following sections, these various types of legal authorities have been grouped into the following categories for this report:

Box 1

Scope of Legal Authorities Reviewed

- General state and local government authorities to protect public health
- General government authorities granted to state and local agencies and/or agency officials (e.g., health, agriculture, environment, animal health, and others, as indicated by the state)
- Foodborne illness surveillance, investigation, control, and reporting
- Communicable disease reporting, investigation, and control
- Animal communicable disease reporting, investigation, and control
- Food and food safety authorities regarding food items and food establishments
- Public records, privacy, and confidentiality
- Interjurisdictional cooperation and agreements

- **General Governmental Laws.** This group of laws includes general governmental provisions that apply to any agency or person, such as public records and confidentiality laws.
- **General Public Health Laws.** These laws empower the health agency and other agencies, as well as specific officials (e.g., state health agency director), to take action to prevent and respond to public health threats.
- **Communicable Disease Laws.** These laws define the surveillance and control measures for a range of communicable diseases and conditions, not just for foodborne or enteric diseases.
- **Food and Food Safety Laws.** These laws govern the production, distribution, storage, sale, and service of various foods in different types of establishments.

General findings about each of these types of legal authorities are discussed below. Analyses and findings related to how the legal authorities correlate to specific outbreak functions are discussed in the Key Outbreak Functions section below.

Laws Exclusively Related to Foodborne Disease Outbreak Surveillance and Response

Review of the various types of legal authorities showed that none of the 12 states have comprehensive or unified statutes or regulations that expressly address foodborne disease detection and outbreak response in the same way that states have developed pathogen-specific or disease-specific statutory schemes for issues such as tuberculosis and HIV/AIDS. Instead, the 12 states rely on a mix of laws to accomplish key foodborne disease outbreak functions. In all 12 profiled states, the legal authorities to conduct foodborne disease outbreak detection and response activities are distributed across the statutes and regulations outlined in Box 1. This collection of statutes, regulations, and even policies and guidances, provides a patchwork of authorities and procedures that might or might not be sufficient for the surveillance and response needs of any given foodborne disease outbreak.

In one respect, using an array of laws to address foodborne disease events makes sense given the multifaceted nature of these outbreaks. With the complexity and sheer volume of the global food system, identifying the disease agent, the food “vehicle” through which the agent was delivered, and the number of persons sickened and identifying the source of the contamination, such as a farm, processing facility, retail food store, restaurant, or food worker, and then controlling the outbreak are tremendous undertakings that require a broad range of legal and nonlegal (e.g., agency policies, and guidances) tools.

<p>Box 2</p> <p>Elements of Comprehensive Foodborne Disease Surveillance and Response Authority</p> <p>The CIFOR Menu of Legal Options document provides policy makers with a list of the key legal authorities needed for comprehensive foodborne disease outbreak detection and response activities and drafting options for adding to or amending their jurisdictions’ legal authorities.</p>
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However, reliance on laws that might not be designed or well suited for foodborne disease detection, investigation, control, and outbreak reporting can limit or delay the public health response to an outbreak. As will be discussed below, explicit legal authority to conduct epidemiologic and laboratory surveillance and investigations of foodborne disease outbreaks, and the authority to share information and data among entities within states and in other states, is uneven in the profiled states. Comparatively more laws address potential control measures, and these laws are common across the 12 states. Yet, even with control measures, the laws might not have been originally designed to address a foodborne disease outbreak. For instance, certain control measures may be authorized only when violations are found during routine food safety inspections. Having to assemble legal

authorities to support foodborne disease outbreak response can delay response activities and be a source of uncertainty for public health practitioners charged with detecting, investigating, and controlling outbreaks.

General Government and General Public Health Laws

This group of laws includes general government provisions that apply to any agency or person including public records and confidentiality laws discussed in the Outbreak Investigation section below. General public health laws authorize and proscribe the powers and duties of an agency and authorize government action to identify and mitigate public health hazards. Threats to food safety and foodborne disease outbreaks are specifically or generally included in the type of “public health hazard” covered by these general laws. All 12 states profiled have general laws that either expressly mention foodborne disease outbreaks or broadly include outbreaks of infectious diseases as events justifying application of the state’s legal authorities. In some of these states, nuisance laws may be construed to include foodborne disease outbreaks, therefore permitting state or local health agencies to address the outbreak under this authority.

Laws directed to specific state agencies establish the powers and duties for the agency. In the states profiled, authority was granted to a variety of different actors (i.e., the agency, the agency director, or the board governing the agency), and the powers and duties authorized varied in type and extent. As expected, state public health/health agencies, directors or boards are the entities most frequently granted specific and general powers related to foodborne disease events, food safety, and communicable diseases. Agriculture agencies, directors, or boards also commonly have a broad grant of authority to protect public health, especially as it relates to the safety of the food supply and guarding against contagious animal diseases and conditions.

Local agencies and actors can be granted specific powers to protect public health in state law. Local governments derive all their powers through state laws, whereas states are granted broad powers through the Tenth Amendment to the U.S. Constitution and through powers granted by state legislatures. Thus, the powers of a locality depend on the authorities granted to it by the state. In some of the 12 states, local powers and duties related to protecting the public health, identifying and mitigating communicable diseases, and preventing foodborne disease outbreaks were specifically granted to a locality or a local health agency or entity in the state’s statute. In some of the states profiled, more than one type of local health agency structure is authorized. These include city, county, and district health agencies. As noted in the State Profiles section above, the types and amount of public health authorities granted to a local jurisdiction also relate to the type of structural relationship between the state health agency and local health agencies (i.e., centralized, decentralized, shared/mixed), which relationship may be defined in state law.

Communicable Disease Laws

Communicable disease laws specifically relate to the identification, reporting, and control of infectious diseases and conditions. For this report, this category includes laws addressing the identification, reporting, and control of infectious diseases in animals, with emphasis on enteric diseases and conditions (acquired when a pathogen enters the body through the mouth and intestinal tract) that are transmissible from animals to humans.

All 12 states profiled have specific statutes and regulations related to the identification, reporting, and control of communicable diseases and conditions. Specific foodborne and enteric pathogens are included in all 12 states’ lists of notifiable conditions, which include some or all of the nationally notifiable conditions developed by CSTE and CDC.¹

¹ Available through the CSTE website, <http://www.cste.org/resource/resmgr/PDFs/CSTENotifiableConditionListA.pdf> (accessed February 16, 2013).

Again, as noted above, none of the 12 states have a unified set of statutes or regulations that expressly addresses foodborne disease surveillance and response in the same way that states have developed pathogen-specific or disease-specific statutory schemes, such as for tuberculosis and HIV/AIDS.

Food and Food Safety Laws

This group of laws includes statutes and regulations that address the production, distribution, storage, sale, and service of food. The states profiled have many similar authorities but also have some unique aspects related to foodborne diseases or food safety. Several types of food and food safety laws emerged through this review, which are classified in this report as follows:

- **Food Laws.** These types of laws govern the safety of food as it is produced, manufactured, processed, packaged, transported and stored. These laws can be seen as a state's analog to the Federal Food, Drug and Cosmetic Act (FD&C Act).²
- **Food Establishment Sanitary Statutes.** State statutes that govern the sale of food through establishments like restaurants, retail food stores, wholesale food operations, and mobile food service vehicles. These statutes can contain some of the FDA model Food Code.
- **Food Code Regulations.** A state may adopt some or most provisions of the FDA's Food Code into the state's regulations and other state-specific modifications to the Food Code.³ These regulations may be in lieu of or supplemental to food establishment sanitary statutes described above.
- **Product-specific Laws.** State statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.

States may have similarities among their food and food safety laws stemming from either required or desired conformity with federal laws or model laws or language that states have adopted in whole or in part. Thus, all 12 states profiled have one or more statute that contain language the same as or similar to the Federal Food, Drug and Cosmetic Act, as well as regulations that adopt portions of one of the versions of the FDA Food Code with state-specific modifications. Additionally, retail food establishment and food establishment sanitary statutes can reflect similar language and concepts to those contained in the FDA Food Code regulation; states may adopt statutes in addition to the regulatory code language to provide legislative authority for the state's food code regulation.

Key Outbreak Functions

In its publication, *Guidelines for Foodborne Disease Outbreak Response*,⁴ CIFOR identified key foodborne disease surveillance and outbreak response functions that every jurisdiction should have either the internal capacity to undertake or access to personnel and resources to accomplish these functions (Box 3). These functions have been adapted for this project as

- Outbreak Detection
- Outbreak Investigation
- Outbreak Control

² Codified at 21 U.S.C. § 301 et seq.

³ The Food Code and information about states' adoption of the Code are available on the U.S. FDA's website, www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/default.htm (accessed October 21, 2012).

⁴ Available at <http://www.cifor.us/projgl.cfm> (accessed October 21, 2012).

- Outbreak Documentation

This section discusses and analyzes the legal authorities in the profiled states that support their ability to accomplish the four key outbreak functions. Again, in keeping with the scope of this project, the data in this section address only the food safety functions related to foodborne disease events—outbreak detection, investigation, control, and postevent reporting; it does not cover ongoing inspections, licensing and regulation, or ongoing food safety education and communication functions. However, as will be discussed, some authorities to undertake key functions for foodborne disease outbreak investigation and control may be located in statutes and regulations that are primarily licensing laws. The data for Part 1 were developed from the state-specific legal authorities tables in Part 2 of this report.

Outbreak Detection

The outbreak detection function comprises the processes and channels through which local, state, or federal public health officials recognize a suspected foodborne disease outbreak. Outbreak detection methods include laboratory surveillance, illness complaints, and syndromic surveillance.

The discussion in this section focuses on two elements within the outbreak detection function: surveillance and disease reporting requirements. Issues related to accessing records and confidentiality requirements are discussed in detail in the *Outbreak Investigation* later in this document.

Detecting Intentional Contamination

The methods for detecting an unannounced foodborne disease event arising from an act of intentional contamination are the same as those for detecting a “regular” (i.e., unintentional contamination) foodborne disease outbreak. The legal authorities to conduct outbreak detection activities are, at least initially, the same, regardless of the intentionality of the contamination. Once intentional contamination is suspected or announced by the perpetrator(s), additional state criminal, antiterrorism, and emergency response laws most likely will become available that enhance or control the course of the outbreak investigation and response going forward. Although the review of laws covering intentional contamination is beyond the scope of the current project, public health officials should be aware of how an act of intentional contamination can change the legal landscape in their state.

Surveillance

Surveillance is used to identify cases and clusters of possible foodborne disease across a variety of food types and at all points in the food system, from production to ingestion.⁵ Surveillance for foodborne disease outbreaks is conducted by monitoring public complaints of foodborne diseases; through laboratory-based surveillance for enteric disease agents; and, theoretically, through syndromic surveillance (gathering data on nonspecific health indicators).⁶ Epidemiologic methods used to confirm foodborne disease outbreaks include investigating public illness complaints and demonstrating links between laboratory-detected cases of

Box 3

Elements of Key Outbreak Functions Researched and Analyzed

Outbreak Detection

- Surveillance
- Disease and Condition Reporting Requirements

Outbreak Investigation

- Authority and Processes for Investigating an Outbreak
- Access to Records and Privacy Considerations in Outbreak Investigation Activities

Outbreak Control

- Authority to Control an Outbreak
- Communication Requirements during an Outbreak

Outbreak Documentation

- Post-event Reporting
- General Reporting Requirements

⁵ CIFOR, *Guidelines for Foodborne Disease Outbreak Response* (2009) at p. 82.

⁶ Syndromic surveillance for foodborne illness has not been shown to be effective. CIFOR *Guidelines* at p. 99.

enteric illness. A number of federal foodborne disease outbreak surveillance and complaint monitoring systems have been developed to assist state health agencies in rapidly detecting outbreaks, identifying foodborne pathogens, facilitating sharing of information about outbreaks, and collecting data about outbreak patterns and exposures over time (Box 4).

An explicit grant of authority or mandate to use epidemiologic and laboratory findings to identify foodborne disease events was not common among the states profiled. State legislatures most frequently directed and authorized the state public health agency to identify and control communicable diseases without specifying the types of practices or methods that should be employed. In many of the states profiled, however, the reportable disease statute specified the types of information, procedures, and deadlines for reporting.

Ultimately, although terms such as “surveillance” and “epidemiology” were not frequently used in the text of laws, the activities and requirements contained in the laws describe fundamental public health surveillance activities.

Disease and Condition Reporting Requirements

All 12 states profiled for this project—and all of the other states—have laws requiring certain persons and entities to report communicable diseases and conditions that the state has specified. All states have adopted most of the conditions contained in the list of nationally notifiable conditions, which is annually reviewed and published by CSTE and CDC; however, many states have not adopted all of the nationally notifiable conditions. In addition to this list, states might add other diseases and conditions that must be reported. Some of the states profiled include specific conditions that must be reported in the text of the statute, whereas others define the reportable conditions in their regulations. Foodborne pathogens and enteric diseases are included in all states’ lists of reportable conditions.

Persons Required to Report

Reportable conditions laws also can specify the persons and entities required to report. All 12 states profiled required physicians and laboratories to report. Other persons and entities, such as dentists, nurses, hospitals, and coroners, also typically are included in the group required to report. State food safety and food establishments statutes and regulations require owners or persons in charge of food establishments to

Box 4

Federal Foodborne Illness-Related Monitoring Systems

FDOSS (Foodborne Disease Outbreak Surveillance System):

CDC collects reports of foodborne disease outbreaks caused by enteric bacterial, viral, parasitic, and chemical agents. State, local, and territorial public health agencies report these outbreaks to FDOSS through the National Outbreak Reporting System (NORS). NORS, launched in 2009, is a Web-based platform designed to support reporting to CDC by state and territorial public health agencies of enteric disease outbreaks transmitted through food, water, person-to-person contact, or direct contact with animals. (NORS was called the electronic Foodborne Outbreak Reporting System [eFORS] during 1998–2008.)

PulseNet: An international surveillance network comprising national, state, and local public health and food-regulatory agency laboratories that conduct standardized molecular subtyping of foodborne disease pathogens (i.e., DNA fingerprinting) and maintain centrally accessible databases of patterns. PulseNet also functions as a communication hub for laboratories involved in food and foodborne disease monitoring.

U.S. Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) Consumer Complaint Monitoring System (CCMS):

An electronic database for capturing consumer complaints. USDA/FSIS has used this database to record, triage, and track complaints about FSIS-regulated meat, poultry, and egg products. CCMS helps to identify and trace adulterated product in commerce and allows the agency to respond and mitigate possible food-safety hazards.

National Voluntary Environmental Assessment Information System (NVEAIS):

NVEAIS is a new system that will be used to identify factors that can be routinely monitored to prevent or reduce the risk for foodborne illness outbreaks. Information collected through NVEAIS will be used to establish a detailed characterization of food vehicles and monitor food vehicle trends; identify and monitor contributing factors and their environmental antecedents and; provide a basis for hypothesis generation regarding factors that may support foodborne outbreaks. NVEAIS will provide food safety programs and the food industry with information to guide the planning, implementation, and evaluation of foodborne illness prevention activities.

report incidents in which food employees have transmitted foodborne disease or in whom a food-transmissible infectious disease or condition has been diagnosed or is suspected.

Timeframe for Reporting

The timeframe for reporting the various reportable conditions is also specified in either statute or regulation in the 12 states. States generally have a two-tier system of reporting deadlines: immediate/within 24 hours and from 3 to 7 days. Foodborne pathogens and enteric diseases appear in both tiers of the states' lists.

Information to be Reported

The type of information and the format for reporting specified infectious diseases and conditions also were commonly listed in regulations, although some states included the information to be reported in their statutes as well. Basic information, such as patient name and address and contacts, is required for all reportable conditions, in addition to the suspected or confirmed disease.

Submission of Isolates

Submission of isolates (samples of the foodborne pathogen) to state public health laboratories from clinical laboratories is also an important component in foodborne disease surveillance and investigations. In some of the states profiled, submission of isolates was specifically required by statute or by regulation. In Minnesota, for example, medical laboratories must submit to the state public health laboratory all clinical materials [isolates or specimens] specified upon a positive laboratory finding for the disease or condition, or upon request of the commissioner in relation to a case or suspected case reported under the state's communicable disease laws.⁷

Cluster and Outbreak Reporting Requirements

A number of the profiled states also require that suspected clusters or outbreaks of unexplained diseases be reported to public health officials. In Rhode Island, the state's communicable disease regulations require reporting of outbreaks or clusters of infectious and noninfectious diseases and include foodborne disease as examples of the types of outbreaks that should be reported.⁸

Communicable Diseases in Animals

All 12 states profiled also have legal requirements mandating that certain persons or entities report confirmed or suspected cases of specified communicable diseases in animals. Included in this list are enteric zoonoses and other diseases or conditions that are transmissible from animals to humans. In all 12 states, either the state department of agriculture or the state animal health agency is responsible for receiving and acting on the reports. Persons most frequently required to report communicable diseases in animals are owners and veterinarians. In some of the 12 states, explicit directions are included for cases in which a communicable animal disease is a danger to humans. In these instances, persons required to report the animal disease or the department of agriculture/animal health are required to also report the condition to state or local public health officials.

Outbreak Investigation

The outbreak investigation function is the process of determining the disease agent, the food "vehicle" (or other vehicle, such as water or animal contact), the number and distribution of ill persons, and the mechanism and underlying cause of the contamination. Investigation processes at the local and state levels include data collection through interviews, record reviews, laboratory testing, and environmental

⁷ Minnesota Rules §4605.7030.

⁸ Rhode Island, *Rules and Regulations Pertaining to Communicable, Environmental, and Occupational Diseases* (R23-10-DIS).

assessments, followed by extensive analysis of these data. Follow-up data collection and analysis are often needed.

Research on state legal authorities related to outbreak investigation concentrated on two elements: (1) powers and processes for investigating an outbreak and (2) access to records and privacy considerations.

Authority and Processes for Investigating an Outbreak

All 12 states profiled have some type of authority and mandate to investigate health hazards; however, the degree of specificity and the extent to which specific authorities are laid out in either statute or regulation vary. Many states have statutes that grant health and other agencies general powers and duties to protect public health or control communicable diseases. Communicable disease laws and food and food safety laws reviewed have more specific grants of authority that permit health or other agencies to conduct investigations.

In addition to communicable disease laws, some states have specific legal authorities that grant the power to conduct other types of health investigations. In Texas, for example, state statutes authorize the conduct of epidemiologic or toxicologic investigations of illnesses, conditions, and exposures that are or might be a public health threat.⁹ Texas law gives designated officials in the Department of State Health Services (DSHS) conducting these investigations the same authority to conduct epidemiologic or toxicologic investigations as in communicable and noncommunicable disease investigations. The information provided during an epidemiologic or toxicologic investigation is deemed confidential and not subject to disclosure as public information under the state's open records laws. Persons providing information during an investigation are not liable for providing information to DSHS.

Again, many of the inspection and investigative authorities reviewed arise in statutes and regulations intended for licensing and ongoing inspections of food production operations or food establishments. This fact may limit the circumstances in which, and the extent to which, the authority to inspect or investigate is allowed depending on how a state interprets its laws.

Required Investigative Methods or Organization

The states profiled generally have some statutory or regulatory provisions authorizing various investigative methods or processes during the investigation of a public health threat or foodborne disease outbreak. Specific investigative measures authorized or mandated by law can include the persons to be interviewed, the types of records to be reviewed, as well as sampling, testing, examination, creating a photographic or other visual record, and other investigation methods.

Investigative Measures Authorized

Several types of investigative measures are expressly authorized in the communicable diseases or food and food safety laws of the 12 states. Much of the similarity in authorized measures occurs because states have adopted language the same as or similar to federal laws and regulations.

- **Access to Premises and Vehicles.** Food and food safety laws in all 12 states contain one or more provisions that specifically permit state or local agency personnel to enter and inspect premises and vehicles that are covered under a specific law (e.g., retail food establishments). Inspections are permitted primarily during normal business hours or at reasonable business hours. The states also have some type of legal authority to access and inspect premises as needed during an emergency or to investigate an imminent public health threat.

⁹ Texas Health and Safety Code §161.0211.

- **Examination, Testing and Sampling.** All 12 states are authorized in their food and food safety laws to take samples of food and environmental samples from food establishments for testing. These laws also permit the examination and testing of persons known or suspected to be infected with a food-transmissible disease. State communicable disease laws also permit the examination and testing of individuals.

Administrative and Judicial Processes

Although communicable disease and food and food safety laws may not mandate the types of investigative methods or organization structures to be employed during an event, these laws do contain express provisions governing the rights of persons and entities during the conduct of an outbreak investigation. Some of the states profiled allow persons being examined to have their own physicians present and to receive copies of examination and laboratory test results. Some of the states expressly permit persons to refuse examination and testing as a matter of religious belief. Where testing and examination are refused, state law allows agencies to require the person infected or suspected of being infected with a communicable disease to be isolated or quarantined. The imposition of such control measures is accompanied by substantial administrative and judicial processes (see below).

Access to Records and Privacy Considerations

The ability of public health officials to access records such as medical records, laboratory test results, and sanitary inspection results, is fundamental to their ability to detect, investigate, and respond to foodborne disease outbreaks. Public health officials need access to records, such as medical records and laboratory test results, to identify infected persons and implicated foods and to craft appropriate control measures.

Concerns about confidentiality and privacy can cast doubt over the ability of public health officials to access records, as well as how much and what types of information they can disclose while communicating with the public and others about the foodborne disease outbreak. These concerns are multiplied when the issue of sharing information across state lines arises.

The 12 states profiled have statutory or regulatory language to determine the type, amount, and manner in which public health officials can or must release information while investigating and responding to a communicable disease outbreak.

State Open Records Laws

All 12 states profiled have open records laws, which specify the types of records public agencies must disclose and which types of records are exempt from disclosure. States also have specific provisions in other statutes relating to records access, disclosure, and confidentiality. The results of routine food sanitation and food establishment inspection reports generally are considered public documents and, depending on the jurisdiction, can or must be made publically available, frequently through state and local health agency websites.

Exceptions to Open Records Laws

Personally identifiable information and medical records typically are excluded from the definition of a public record and must be kept confidential. Information about trade secrets and other proprietary information about a food operation or a food establishment likewise is excluded from the definitions of public records or otherwise made unavailable to the public. Materials that are predecisional (i.e., notes, preliminary finding of an investigation) typically are not considered public records. As noted above, final reports and orders are considered public documents.

Access to Data for Public Health Investigations

Some state open records laws and other statutes reviewed for this project include explicit exceptions or express authority to allow state or local officials investigating disease outbreaks and other public health

hazards to access records that might otherwise be considered private, confidential or unavailable. In South Carolina, for example, state laws specifically grants the department of health full access to medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as may be necessary to carry out the department's disease investigations.¹⁰

Sharing and Release of Data during Public Health Investigations

Some of the states have express statutes that specify the conditions under which public health officials may release or share information obtained during communicable disease or other public health investigations. In Oregon, for example, the Oregon Health Authority or local public health administrators are specifically empowered by statute to release information obtained during an investigation of a reportable disease or a disease outbreak to other authorized state, local, or federal officials, health-care practitioners, law enforcement personnel, and the exposed person or other persons potentially exposed, among others.¹¹ This type of provision provides clear authorization and guidance for the release and sharing of information during a public health investigation.

Others among the states profiled, however, do not have express authority for public health officials to share information during an outbreak but instead have general authorities for state or local agencies to share information among governments. The statutes and regulations that provide these general government authorities might not explicitly address sharing information across state lines as is necessarily required in multistate outbreaks.

All 12 states profiled have general legal authority to enter into interjurisdictional agreements or contracts, although the scope of authorized parties to an agreement and the process for entering into an agreement varies. Some permit state agencies to enter into agreements with agencies in other states or even with agencies in other countries.

Outbreak Control

The outbreak control function involves identifying and implementing measures to arrest and mitigate the foodborne disease event. Control measures include recalling, embargoing, or destroying hazardous or suspected foods and excluding or restricting infected food personnel.

Research on state legal authorities related to outbreak control activities concentrated on two elements: (1) authorities to respond to and control an outbreak and (2) communication requirements during an outbreak.

Authority to Control an Outbreak

Just as the authority and mandate to investigate an outbreak varies among the states profiled, the degree of specificity and the extent to which specific control measures are authorized to respond to communicable disease outbreaks in general and foodborne disease outbreaks in particular also vary. Taken together, the collection of laws and regulations related to control measures is generally more robust and explicit than is the body of laws and regulations addressing disease surveillance authorities. This is due in part to the greater number of laws and regulations that contain specific control measures. In larger part, however, control measures tend to be more explicitly defined because they involve personal and property rights and the conditions under which these rights may be altered or denied during a communicable disease or foodborne disease outbreak.

Required Control Methods or Organization

¹⁰ South Carolina Code Annotated. §44-1-110.

¹¹ Oregon Revised Statutes §433.008.

The 12 states authorize agencies to undertake response and control measures generally and identify a number of specific measures when responding to communicable disease outbreaks and unsanitary conditions and other violations of food and food safety laws. States do not have statutory or regulatory provisions that require certain response methods or organizational structures be used during a foodborne disease outbreak response.

Control Measures: Persons

Food and food safety laws and communicable disease laws in all 12 states profiled authorize several measures to control persons infected with, suspected of having, or exposed to a communicable disease.

- **Food Employee Restrictions.** All 12 states profiled authorize the imposition of restrictions on a food establishment employee. These measures can be implemented without notice and hearing requirements.
- **Exclusion of a Food Employee.** Food establishment employees can be excluded from the food establishment while they are infected with, or during the incubation period for, food-transmissible diseases and other infectious diseases or conditions specified by state law. These measures can be implemented without notice and hearing requirements. The exclusion measure generally can be lifted upon certification by a physician that the employee is no longer infected or contagious.
- **Quarantine, Isolation, and Other Restrictions on Persons.** All 12 states profiled have the legal authority to impose quarantine, isolation, and other restrictions on persons infected with, suspected of being infected with, or exposed to a communicable disease. However, the use of quarantine or isolation as a control measure in a foodborne disease outbreak is rare. When invoked, the imposition of isolation, quarantine, or other measures designed to restrict the movements of persons requires considerable legal due process protections (see discussion below).

Control Measures: Products and Animals

Implementing measures to limit access to infected, contaminated, or implicated food products is a primary tool used in responding to and controlling foodborne disease outbreaks. All 12 profiled states have statutory or regulatory authority to implement one or more of the following control measures. Food and food safety laws are the primary sources for these authorities.

Recall. State food and food safety laws permit health or agriculture officials to recall foods that are found to be adulterated within the meaning of the law. One state profiled, Texas, authorizes the state's health commissioner to recall products covered under the state's food, drug and cosmetics act.¹²

- **Embargo and Quarantine.** Health and agriculture officials are legally authorized in food and food safety laws to embargo and quarantine food products within their agencies' regulatory purview. Livestock and other animals may be subject to quarantine measures imposed by agricultural and animal health officials, such as state veterinarians. State laws generally give owners of products and animals that are embargoed or quarantined due process protections, such as notice, hearings, and the right to appeal an agency's control measure.
- **Confiscation and Destruction.** All 12 profiled states have the legal authority in their food and food safety laws to order the confiscation or destruction of food, animals, and tangible personal property that is determined to be infected, contaminated, or implicated in an outbreak. Again, owners are entitled to due process rights and, in some cases, to compensation for certain destroyed property.

¹² Texas Health and Safety Code §431.0495.

Control Measures: Premises

Public health officials in all 12 profiled states have authority to impose control measures on premises found to be unsanitary or harbors for infection, contamination, or other threats to public health. These authorities are generally found in food and food safety laws, but some states' communicable disease laws also authorize these or similar control measures. General state and local nuisance laws also may permit control measures on premises. All 12 states have statutory or regulatory authority to implement one or more of the following control measures:

- **Posted and Public Notices.** Health officials are authorized to post and publish notices informing the public about health hazards at a food establishment or other premises in which food is produced, sold, or otherwise handled.
- **Decontamination.** Health and agricultural officials can order the decontamination of premises and any equipment or tangible property that have been determined to be infected or otherwise contaminated.
- **Suspension of License and Closure.** Food establishments and other premises involved in the production or sale of food can be temporarily or permanently closed by a public health agency or officer upon a showing that the facility constitutes a danger to public health. Closure can be effectuated by the suspension or revocation of a food facility's permit or license. The food establishment may opt to voluntarily close the facility.

Administrative and Judicial Processes

The communicable disease laws and food and food safety laws reviewed each include some level of process and review for persons or entities affected by a control measure. All 12 states profiled required some type of written notice either before or contemporaneous with the institution of control measures. Persons and entities affected by the control measures are given the right to a hearing or to appeal the order instituting control measures. Administrative appeal rights and judicial appeals are countenanced in all the states profiled.

All 12 states, however, also have provisions granting exceptions to the notice and review process in the case of controlling a current or imminent public health hazard. These provisions permit the public health or other agency to take immediate action while still requiring some type of administrative or review process while the control measures are in place.

Communication Requirements During an Outbreak

Both formal and informal communication mechanisms are crucial in identifying and disseminating public health messages about foodborne disease outbreaks. Required communications are specified in all 12 states profiled. Several categories of communication requirements emerged from the project research and have been discussed in detail in prior sections.

Reporting and Notice Requirements

These types of required communications include mandated notice and reporting of communicable diseases and conditions to public health officials from parties such as physicians, food establishment owners or persons in charge, and veterinarians.

Notices to Other Agencies and Government Bodies

Most of the states profiled have mandates to make selected notifications to other agencies about communicable disease outbreaks. Notifications occur, for example, where communicable animal diseases are a risk to human health; state agriculture agency or animal health agency personnel are legally required to inform public health officials about the outbreak.

Public Notices

Legal authorities or mandates to post public notices or otherwise inform the public about foodborne disease events are found primarily in communicable disease and food and food safety laws. All 12 states had general authorities permitting or requiring public notice about communicable disease events and food safety events.

Outbreak Documentation

In the aftermath of a foodborne disease outbreak, follow-up activities include documenting information about the event and response, creating and disseminating after-action reports, and beginning enforcement actions as needed. This report focuses on follow-up communication and reporting. Other activities in the aftermath of an outbreak, such as the imposition and enforcement of administrative, civil, and criminal penalties, were not included in the scope of the current review.

Laws in the profiled states contain explicit requirements that public health agencies and other involved parties create summary reports of communicable disease outbreaks and require them to file reports with specified officials (e.g., governor, legislature, state board of health) either directly after an event or annually. State health agencies may also require local or district health agencies to report outbreaks to the state.

State agencies reviewed also have a general requirement to present an annual report to the governor or the state legislature. Although these annual reports typically mandate inclusion of budgetary and performance indicators, agencies have used this format to summarize or highlight activities related to foodborne disease outbreaks.

Summary of Observations and Conclusions

What emerges from the analysis of the profiled states' laws is a view into the variety of legal authorities that are or potentially could be used to conduct foodborne disease surveillance and response activities. The patchwork of general government authorities, general public health authorities, communicable disease laws, and food product and food safety laws can be used to fashion a response to foodborne disease events.

This review demonstrates that foodborne disease surveillance and response is among one of the fundamental government duties to protect the public's health. Thus, the legal authority permitting action in this area primarily comprises general public health and communicable disease laws.

Laws governing the safety of food products and food establishments also provide important authorities that allow for the detection and control of conditions causing foodborne disease. However, many of the inspection and investigative authorities arise in statutes and regulations intended for licensing and ongoing inspections of food production operations or food establishments. This fact may limit the circumstances in which and the extent to which the authority to inspect or investigate is allowed depending on how a state interprets its laws.

None of the 12 states reviewed have a comprehensive statute or regulation that explicitly addresses foodborne disease surveillance or outbreak response authorities in the same way that states have developed

pathogen-specific or disease-specific statutory schemes as they have for such issues as tuberculosis or HIV/AIDS.

The “patchwork approach” also results in powers and duties for foodborne disease surveillance and response that are distributed across multiple agencies, actors, and level of government. These circumstances permit governments to approach foodborne disease detection and response from a variety of perspectives, thereby increasing the tools and mechanisms available to identify and control outbreaks. However, this approach also necessitates great coordination and collaboration among agencies and personnel.

The patchwork approach also can lead to uncertainties about the extent of public health practitioners’ legal authorities under a particular statute or regulation and hinder their response to an outbreak. Public health practitioners involved in foodborne disease surveillance and response activities need to understand the broad range of legal authorities that can potentially support their activities and examine how the authorities discussed in this report are defined in their states.

Part 1 Appendix: Glossary

Note: The definitions given are valid as they are used in this publication, but different definitions may be used in other contexts. Many of the definitions used in the glossary are the same as those in Appendix 1 of the CIFOR Guidelines for Foodborne Disease Outbreak Response.

Administrative/Judicial Process: The rights of a person or business to reasonable opportunity to be informed about, comment on, and challenge a government's action.

Adulterated: A legal term meaning failure of a food product to meet federal or state standards. Adulteration usually refers to noncompliance with health or safety standards as determined in the United States by the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

After-action Report: A report prepared to analyze an organization's response to a specific event.

Case: A countable instance in the population or study group of a particular disease, health disorder, or condition under investigation.

Case Definition: Standardized criteria used to decide whether a particular disease or health-related condition in a person should be included as a case in an outbreak investigation. The case definition specifies clinical criteria and limitations on time, place, and person.

Cluster: An unusual aggregation of cases grouped in time or space. The term is commonly used in pathogen-specific surveillance, when multiple persons with infections caused by similar microbial strains are identified by a public health laboratory. The purpose of identifying a cluster is to trigger further investigations to determine whether cases are epidemiologically linked and therefore may represent an outbreak. The number of cases needed to form a cluster cannot be absolutely defined; cluster definition can vary by type of agent, novelty of the subtype, season, and resources available for further investigation.

Contributing Factor: A food safety practice and behavior that most likely contributed to a foodborne disease outbreak.

Documentation: Written materials that create an official record.

Embargo: An order issued by a permit-issuing official or his/her designated representative at a state or local agency that prevents food from being used, sold, donated, discarded, repackaged or otherwise disposed of until the order is lifted by the permit-issuing official, his/her designated representative, or court of competent jurisdiction.

Enteric Illness: Illness of the intestinal track caused by food or waterborne bacteria, viruses or contaminants that enter the body through ingestion.

Exclusion: Preventing a food worker who is sick or suspected of being sick from handling food or from attending work at a food establishment.

Food Code: A reference guide published by FDA. The guide instructs retail outlets, such as restaurants and grocery stores, and institutions, such as nursing homes, how to prevent foodborne disease. It consists of a model code adopted to varying degrees by nearly 3,000 state, local, and tribal jurisdictions as the legal basis for their food inspection program for safeguarding public health. It ensures that food is safe and unadulterated (free from impurities) and honestly presented to the consumer. It also provides references and public health reasons and explanations for code provisions, guidelines, and sample forms. FDA first published the Food Code in 1993 and revises it every 4 years.

Food Establishment: An operation that (1) stores, prepares, packages, serves, or vends food directly to the consumer or otherwise provides food for human consumption, such as a restaurant; satellite or catered food location; catering

operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; institution or food bank; and (2) relinquishes possession of food directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders or delivery service that is provided by common carriers.

Food Safety: The procedures ensuring that the growing, processing, manufacturing, transporting, storing, preparing, and serving of food render food fit for human consumption. Food safety procedures include voluntary measures and regulatory directives from governmental agencies, as well as surveillance for foodborne disease outbreaks and response activities.

Food Safety Regulatory Agency: Government agencies at the local, state, or federal level that are granted regulatory oversight of some aspect of the food industry. The goal of food-regulatory agencies is to ensure the public's food supply is safe from pathogenic microbes, chemicals, or other hazardous substances.

Foodborne Disease: Any disease caused by ingestion of contaminated food. Although some agents are more likely than others to be transmitted by food, identification of foodborne, waterborne, person-to-person, or animal-to-person transmission requires investigation. Furthermore, multiple modes of transmission may be involved in any single outbreak.

Foodborne Disease Surveillance: Surveillance of diseases or conditions that might be foodborne. Thus, all diseases of enteric origin may be tracked by this mechanism, including norovirus infection (which involves substantial person-to-person transmission), listeriosis (which may have a diarrheal stage but generally is detected by blood culture), or botulism (which presents as neurologic disease).

Imminent Hazard: An important threat or danger to health that exists when evidence is sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on (1) the number of potential injuries and (2) the nature, severity, and duration of the anticipated injury.

Impound: To take possession of or to seize and hold in the custody of the law.

Interjurisdictional: Activities between two or more different levels of government (e.g., federal, state, local, tribal) or between two or more governments (e.g., state to state; state to tribal).

Isolate: The pure strain of a virus or bacterium that is separated from a sample.

Isolation: Process in which a person or animal that is known to be ill from a contagious disease is kept away from others.

Jurisdiction: A government entity with the legal authority to interpret and apply the law. Also refers to the limits or territory within which that authority may be exercised.

Legal Authority: Statutes, regulations, ordinances, orders, or policies that authorize or prohibit governments or other specified actors to engage in the actions identified.

Multijurisdictional: Requiring the resources of more than one local, state, territorial, tribal, or federal public health or food-regulatory agency to detect, investigate, or control. A multijurisdictional investigation may involve a foodborne disease outbreak or the distribution or recall of a contaminated food product.

Outbreak: Two or more cases of a similar illness shown by an investigation to result from a common exposure, such as ingestion of a common food. An outbreak is a cluster with a clear association among cases, with or without a recognized common source or known disease agent. Single cases of certain rare and serious conditions, such as gastrointestinal anthrax, botulism, or cholera, elicit an outbreak-like response.

Quarantine: Process in which a person, animal, food product, or building that may have been exposed to a contagious disease agent is kept apart from others to prevent disease spread.

Recall: A voluntary or mandatory action of removing a product from retail or distribution. The action is conducted by a manufacturer or distributor to protect the public from products that may cause health problems or possible death.

Regulations: Rules developed by executive branch agencies. Executive branch agencies are authorized by the legislative branch (e.g., Congress, state legislatures) to develop regulations to implement the laws and statutes passed by the legislative body. Regulations are developed by local, state, and federal agencies and international bodies (e.g., World Health Organization).

Reportable Conditions (Notifiable Diseases): The list of diseases based on state laws or regulations that health-care providers (e.g., physicians and their medical staff, laboratories, and hospitals) should report to local or state health agencies. The list of notifiable diseases and legal obligation for reporting differs from state to state. States can report notifiable diseases to CDC, which maintains a list of nationally notifiable diseases, but compliance is voluntary. CDC reports selected diseases to the World Health Organization in compliance with International Health Regulations.

Statutes: Written laws passed by a local, state, or federal legislative body. Statutes are contrasted with regulations (which are made by executive branch agencies) and case law (which are decisions made by judges in civil and criminal cases).

Surveillance: The systematic collection, analysis, interpretation, and dissemination of data for public health action.

Syndromic Surveillance: The process of using individual and population health indicators that are available before confirmed diagnoses or laboratory confirmation to identify outbreaks or health events and monitor the health status of a community.

Zoonoses: Diseases or conditions that can be passed from animals to humans.

PART 2 | STATE LEGAL ANALYSIS SUMMARY TABLES

Part 2 of this document contains tables that summarize the legal and programmatic analyses for each of the 12 states profiled in this project. Please see the relevant state supplement documents for detailed summaries of the legal authorities and agency roles in food safety and foodborne disease response.

Overview of State Tables

The following data are presented in tabular form to allow for quick reference of the types of legal authorities available in a state. The types of legal authorities reviewed are classified broadly as

- **General Governmental Laws.** This group of laws includes general governmental provisions that apply to any agency or person, such as public records and confidentiality laws.
- **General Public Health Laws.** These laws empower the health agency and other agencies, as well as specific officials (e.g., state health agency director), to take action to prevent and respond to public health threats.
- **Communicable Disease Laws.** These laws define the surveillance and control measures for a range of communicable diseases and conditions, not just for foodborne or enteric diseases.
- **Food and Food Safety Laws.** These laws govern the production, distribution, storage, sale, and serving of various foods in different types of establishments.

The key functions analyzed in this project are

- **Outbreak Detection.** Identifying individual cases or clusters of foodborne disease through disease surveillance systems and activities.
- **Outbreak Investigation.** Determining the specific foodborne disease agent, the contaminated food, the number and distribution of ill persons, and the process by which the contamination occurred.
- **Outbreak Control.** Identifying and implementing measures to mitigate or stop the foodborne disease event.
- **Outbreak Documentation.** Creating a report or other documentation of the foodborne disease event to record information about the specifics of the outbreak, identify lessons learned, and take enforcement action as needed.

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The report does not cover ongoing inspections, licensing and regulation, or ongoing food safety education and communication functions, which also are discussed in the *CIFOR Guidelines*. These functions are all vital components in a state's overall food safety system, and each has relevant legal authorities and requirements associated with it.

Because a state may rely on a specific type of legal authority (e.g., general authority of the state health board to protect and mitigate public health hazards) to support their activities in more than one functional area

(e.g., outbreak detection, outbreak investigation), legal authorities may apply to more than one outbreak function.

Data Review and Important Notices

The data contained in the state tables was reviewed between July and August 2012 and reflects the programmatic activities and legal authorities as of that time. Subsequent changes in programs and legal authorities may alter the information and analysis from what is presented here. The information presented may only reflect selected portions of the statutes and rules relevant to food safety, infectious diseases, and governmental agency authority and are not intended to be exhaustive of all relevant legal authorities in the state. Descriptive subheadings in the tables are intended to help readers review and classify the information presented; they are not necessarily included in the underlying statute or regulation being described. Where possible, the data in the state tables in Part 2 have been reviewed by one or more state agency personnel in that state to confirm overall completeness and general accuracy of the information. However, their review does not represent an official interpretation of the state's law or necessarily agree with the analysis of the state's authorities presented here or the overall conclusions in the report. **Finally, the information and conclusions presented in this document are not to be considered legal advice and are intended for informational purposes only.**

ALABAMA

Profile of Alabama Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Alabama Department of Public Health (ADPH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Shared/Mixed • Infectious Disease/Food Responsibilities: ADPH is responsible for monitoring communicable, zoonotic, and environmentally-related human diseases. ADPH is also responsible for the safety of food sold at retail in Alabama, and of food, other than red meat and poultry, processed in Alabama. • Website: www.adph.org
<i>Agriculture Agency</i>	<p>Alabama Department of Agriculture and Industries (DAI)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: The Department is responsible for, among other things, animal health and food safety, including permitting food sales establishments for certain types of foods (baby food, infant formula, meat, or dairy products) and inspecting for misbranded or adulterated products. • Website: www.agi.alabama.gov
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • Alabama has adopted the 2005 Food Code
<i>Population</i>	4,779,736 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. The legal interpretations herein do not represent the interpretations of the Alabama Department of Public Health and other state agencies or staff.**

Overview of Alabama Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Alabama Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Alabama General Government Laws

General Governmental Authorities

Powers of Municipalities – Alabama Code §11-47-131 authorizes all municipalities, in addition to other powers in the Code, to create and enforce ordinances to prevent the introduction of contagious diseases, establish quarantine, and insure sanitary conditions. Municipalities are further authorized to provide a system of compulsory vaccination to prevent the introduction or spread of contagious diseases. (Ala. Code §11-47-132) Alabama Code §11-47-136 specifically empowers municipalities to prohibit the sale of impure food and to provide inspections to implement the prohibition. Alabama Code §11-47-137 authorizes municipalities to regulate to a limited extent food markets and marketing of food products. Municipalities are further empowered to inspect food operations including dairy, fruits, vegetables and meats. Section §11-47-138 empowers municipalities to regulate slaughterhouses and the sale of fresh meats within its jurisdiction. Alabama Code §11-47-139 authorizes "[a]ll municipalities of this state may inspect dairies, milk, meats and other food products for other municipalities and may make contracts and agreements with such other municipalities with reference to payment or compensation for such services, and the governing bodies of such municipalities may apportion the costs of such inspections or agree upon such terms as they deem proper."

Access Records And Privacy

Access to Records – Alabama law allows an agency discretion in releasing information pursuant to the Alabama Open Records Act when disclosure is detrimental to the best interests of the public. Alabama Code §36-12-40 permits every citizen to "...inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." Section 36-12-40 exempts disclosure of certain records from schools, libraries and for records relating to critical infrastructure.

Interjurisdictional Agreements

County Interjurisdictional Agreements – Alabama Code §11-1-10 authorizes counties to enter into contracts, leases, compacts and other types of agreements with other counties in and out of the state, state agencies, and the federal government for the promotion or development deemed for the public interest.

Agency Reporting Requirements

See specific reporting requirements contained elsewhere in the tables.

Overview of Alabama General Public Health Laws

State Health Agency

Alabama Department of Public Health – The Department of Public Health is governed by the State Board of Health and the State Committee of Public Health and managed by the State Health Officer: "For the purposes of this title, the phrase "State Health Department" shall mean the State Board of Health or the State Committee of Public Health, when acting for the State Board of Health." (Ala. Code §22-1-1) Alabama law designates the State Board of Health as an advisory board to the state in all medical matters, matters of sanitation, and public health. The Medical Association is the State Board of Health. (Ala. Code §22-2-1) The jurisdiction of the board of health includes, but is not limited to, investigating and preventing disease, inspecting facilities for insanitary conditions, supervising county boards of health, advising on public health, promulgating regulations, and otherwise enforcing public health laws. (Ala. Code §22-2-2) The board is required to submit an annual report to the governor. (Ala. Code §22-2-3) The board is also required to make annual reports and provide other information as requested to the legislature. (Ala. Code §22-2-7) Alabama law also creates a state committee of public health, which meets monthly and is authorized to act on behalf of the State Board of Health. (Ala. Code §22-2-4 to §22-2-6) The committee is required to make annual reports and provide other information as requested to the legislature. (Ala. Code §22-2-7) The State Health Officer is a licensed physician elected by the State Committee on Public Health and is the executive officer of the Department of Public Health. (Ala. Code §22-2-8) The State Health Officer is empowered to act on behalf of the State Committee of Public Health when the committee is not in session and must

Overview of Alabama General Public Health Laws

report actions to the committee at its meetings. (Ala. Code §22-2-8) The State Health Officer is also directed to supervise county boards of health and keep county boards, the governor and legislature apprised of diseases threatening the state and control measures that are taken. (Ala. Code §22-2-8)

General Authorities of the State Health Agency, Board and Director – Alabama Code §22-10-1 identifies items, conditions and acts, among other things, that are declared to be public nuisances per se, menacing to public health and unlawful, including but not limited to insanitary premises, unwholesome foods, and any other items declared a nuisance by the State Board of Health. The county board of health and the county health officer are authorized to abate nuisances in any way provided by law, including through the use of lawsuits. (Ala. Code §22-10-2) Under some circumstances, state law authorizes the destruction of property without compensation if that property is deemed a public nuisance and cannot be abated. (Ala. Code §22-10-3) Alabama Code §22-1-8 states that “[a]ny person who violates any of the health or quarantine laws, except those for which a special penalty is prescribed, shall be guilty of a misdemeanor.” Section 22-2-14 imposes a penalty for violating State Board of Health rules.

Local Health Agencies

Local Health Authorities – Counties and municipal corporations (cities, etc.) in Alabama have explicit health powers in statute. If there are conflicts between local and state laws, state laws prevail. (Ala. Code §22-1-2)

County Health Boards – Alabama law establishes a system of county health boards, which are the primary mechanism for administering public health services and regulation in the state. County health boards are constituted by county medical societies and are under the general control of the State Board of Health. (Ala. Code §22-3-1) State law expressly prohibits the creation of municipal boards of health and the appointment of municipal health officers; all public health work in the state is within the control of the county and state boards of health. (Ala. Code §22-1-3) However, the statutes governing county health powers are not construed to “amend or repeal any state quarantine law or any local public health or quarantine law applying to a county” or to “repeal any local law regulating nuisances to the public health.” (Ala. Code §22-1-9) It is the duty of the county boards of health in their respective counties and subject to the supervision and control of the State Board of Health to, among other things, investigate and control diseases, enforce quarantine, and investigate and control nuisances and other unsanitary conditions. (Ala. Code §22-3-2) If an order of the state or county boards of health, or their officers, is refused, then the county health or quarantine officer is permitted to seek a judicial order and enforcement of the order to remove or abate insanitary conditions, sources of infection, or afflicted persons. (Ala. Code §22-1-7) Alabama Code §22-3-2 permits the county commissions in two or more counties to create a district health department and appoint a full-time health officer subject to approval by the state committee of public health.

County Health Officers – County health officers are elected by the county board of health and are subject to the approval of the State Committee of Public Health. (Ala. Code §22-3-2) County health officers have jurisdiction over their counties including all incorporated municipalities within that county. (Ala. Code §22-3-2) The county health officer, “under the direction of the State Health Officer and the county board of health, [has] sole direction of all sanitary and public health work within the county, including incorporated municipalities.” (Ala. Code §22-3-4) The duties of the county health officer include, but are not limited to abating unsanitary conditions, investigating and controlling diseases, collecting reports of notifiable diseases, and inspecting the sanitary conditions in public buildings. (Ala. Code §22-3-5) County health officers are tasked with specific duties related to food safety and sanitation, including but not limited to educating persons and establishments about food safety (Ala. Code §22-3-5)

Sanitary Officers and County Quarantine Officers – In counties without a county health officer, the State Committee of Public Health can appoint a county quarantine officer, who is a licensed physician, on the recommendation of the county board of health. The county quarantine officer works under the supervision and control of the State Health Officer and county board of health and performs “all the duties in connection with the isolation, quarantine and control of cases of infectious and contagious diseases that are required of full-time county health officers.” (Ala. Code §22-3-8) Alabama Code §22-3-9 permits the State Board of Health to appoint sanitary officers in counties without health officers or where local health authorities need assistance or fail to act.

State Agriculture Agency

Alabama Department of Agriculture and Industries – The Department of Agriculture and Industries is overseen by the State Board of Agriculture and Industries and is managed by the Commissioner of Agriculture and Industries. The Commissioner of Agriculture and Industries is a constitutional officer who is elected by statewide election. The commissioner is the chief executive officer of the Department of Agriculture and Industries. (Ala. Code §2-2-1) The commissioner’s duties focus on executing the agricultural and industrial policies of the State Board of Agriculture and Industries. (Ala. Code §2-2-8) The commissioner is also empowered to call on other state agencies to assist in the execution of the state’s agricultural laws. (Ala. Code §2-2-8) The commissioner is empowered to enforce relevant provisions of the Alabama Code and to promulgate rules and regulations necessary to implement the state’s laws. (Ala. Code §2-2-16) The State Board of Agriculture and Industries is tasked with providing direction and oversight for the commissioner. (Ala. Code §2-3-4) The board is authorized to appoint the state veterinarian who is responsible for animal health, among other things. (Ala. Code §2-4-1)

Overview of Alabama General Public Health Laws

General Authorities of the State Agriculture Agency, Board and Director – Alabama Code §2-1-12 authorizes the Commissioner of Agriculture and Industries to collect information about agricultural operations and other subjects regulated by the department. The commissioner is authorized to enter premises, inspect premises and items, and secure samples for testing. (Ala. Code §2-2-37) The commissioner can authorize the analysis and testing of products and articles to determine if they meet statutory and regulatory requirements. (Ala Code §2-2-33). If the samples are found to be noncompliant, the commissioner can certify noncompliance to a district attorney for prosecution. (Ala. Code §2-2-32) Alabama Code §2-2-6 authorizes the commissioner to inspect records and examine witnesses. (Ala. Code §2-2-6) The commissioner, members of the board or agency employees or agents are permitted to disclose information in official reports or court proceedings, but are otherwise prohibited from disclosing private information and would be guilty of a misdemeanor and disqualified from acting in an official agency capacity for such a disclosure. (Ala. Code §2-2-6) The commissioner and the department are authorized to conduct diagnostic laboratory tests on swine and poultry to diagnose infectious and contagious diseases. (Ala Code §2-15-210, §2-16-20) The department is also authorized to maintain a pesticide residue laboratory to, among other things, “analyze raw and processed agricultural products and other food products, fish, game and other wildlife to detect the presence of any harmful drug residues for the protection of public health”. (Ala Code §2-27-33) The commissioner is authorized to suspend by written order the sale of a product or article that “does not comply with the requirements of law or rules and regulations under authority of law as to ingredients, substance, analysis, marking or labeling, weight or measure” until the product complies with legal requirements. (Ala. Code §2-2-30) If the product does not comply with legal requirements, the commissioner may proceed with an order for the disposition of the property. (Ala. Code §2-2-30) The owner of the product may request a court hearing. (Ala. Code §2-2-30) Anyone found moving products or otherwise violating the commissioner’s suspension order is subject to penalties. (Ala. Code §2-2-30) Alabama Code §2-2-31 authorizes the commissioner to seize and condemn adulterated, misbranded or substandard articles through a court ordered writ of attachment for condemnation; owners of seized property can seek a court health to challenge the writ. Alabama Code §2-1-7 authorizes the commissioner, with the approval of the board, to submit annual reports to the governor and to publish other materials for the general public as needed to implement and enforce the state’s laws.

Overview of Alabama Communicable Disease Laws

Communicable Disease Laws

Alabama Notifiable Diseases and Conditions – Alabama Code §22-11A-1 authorizes the State Board of Health to designate diseases and health conditions that are notifiable. Persons with notifiable diseases are directed to obey the rules of county and state health officials. (Ala. Code §22-11A-7) Alabama Code §22-11A-2 identifies the persons responsible to report diseases. The statute requires, among others, physicians and other health care providers, laboratories and schools to report cases or suspected cases of notifiable diseases and health conditions. (Ala. Code §22-11A-2) The State Board of Health specifies the information to be reported and the manner of reporting. (Ala. Code §22-11A-2) The information reported is confidential and is not subject to disclosure except if authorized by the patient or to compel compliance with public health laws. (Ala. Code §22-11A-2) Summaries and statistical reports that do not contain personally identifiable information are permitted. (Ala. Code §22-11A-2) Person who report information as required by law are immune from civil or criminal liability. (Ala. Code §22-11A-2) Alabama Code §22-11A-4 directs laboratories, physicians and other health care providers to make their records available to the State Health Officer or designee when a patient is suspected of having a notifiable disease. Alabama Code §22-11A-23 specifies that any person who the state or county health officer has reason to believe has been exposed to any of the notifiable diseases shall be tested. Code §22-11A-5 permits the State Board of Health to take charge the investigation or control of an epidemic when in the public welfare. County health officers are directed to investigate complaints of notifiable diseases among persons who are not from the jurisdiction and, if appropriate, have the afflicted person moved to an appropriate place for care of the disease. (Ala. Code §22-11A-8) Section §22-11A-38 permits the State Committee of Public Health to establish exceptions to the confidentiality provisions of the notifiable disease statutes and create rules governing the notification of third parties. (Ala. Code §22-11A-38) “No physician, employee of the health department, hospitals, other health care facilities or organizations, funeral homes or any employee thereof shall incur any civil or criminal liability for revealing or failing to reveal confidential information within the approved rules. This subsection is intended to extend immunity from liability to acts which could constitute a breach of physician/patient privilege but for the protections of this subsection.” (Ala. Code §22-11A-38) Third parties who receive notification of a contagious condition of an individual are required to keep the information confidential. (Ala. Code §22-11A-38) Persons who violate the law or rules are guilty of a misdemeanor. (Ala. Code §22-11A-38) Section 22-11A-3 empowers the state or county health officer to isolate or quarantine persons afflicted with a notifiable disease, as provided by law. Alabama Code §22-11A-24 authorizes the county or State Health Officer to seek a judicial order for compulsory testing, treatment or quarantine of persons with notifiable diseases who refuse to comply with disease control measures. Alabama Code §22-11A-25 to §22-11A-36 specifies the judicial process for seeking, instituting, and challenging a petition for commitment.

Quarantine Laws – Alabama Code §22-12-4 empowers the Governor or the State Board of Health to proclaim a quarantine. The state and localities are tasked with enforcing quarantines. (Ala. Code §22-12-1) The Alabama Code specifies that the “quarantine authority of the state shall be paramount to that of any county, city or town therein.” (Ala. Code §22-12-2) A county may also proclaim quarantine within its jurisdiction subject to the State Board of Health. (Ala. Code §22-12-12) Local quarantines are to be enforced by local officials. (Ala. Code §22-12-13) Local quarantines must be reported to the State Health Officer. (Ala. Code §22-12-17) Alabama Code §22-12-6 authorizes the State Health Officer or

Overview of Alabama Communicable Disease Laws

designee to enter places to investigate the need for quarantine or to establish quarantine if disease is likely to enter the state.

Communicable Diseases In Animals

Communicable Diseases in Animals – Alabama Administrative Code 80-3-6-.04 empowers the State Veterinarian to exercise the powers of the Commissioner of Agriculture and Industries regarding state livestock sanitary laws and the control of communicable animal diseases. Veterinarians in the state are required to report cases of communicable animal diseases to the State Veterinarian. (Ala. Admin. Code 80-3-6-.07) The State Veterinarian is required to investigate suspected outbreaks of communicable diseases in animals. (Ala. Admin. Code 80-3-6-.05) Alabama Code §2-15-151 authorizes the control of communicable diseases in animals when deemed appropriate by the State Board of Agriculture and Industries.

Overview of Alabama Food and Food Safety Laws

Food Laws

Alabama Safe Foods Act – The Alabama Safe Foods Act of 2000 governs the sale of food, drugs, and cosmetics in the state. The purpose of the act is, in part, to “prevent the manufacture, possession, sale, or delivery of out-of-date Class A foods and adulterated or misbranded food and drugs.” (Ala. Code §20-1-21) The Board of Agriculture and Industries is given the “power and authority and it shall be its duty to fix the standards of purity for all food and drug products which shall be, so far as practical, in accordance with the standards promulgated by the federal government through its duly authorized agents.” (Ala. Code §20-1-21) The board is also authorized to adopt rules and regulations to implement and enforce the act. (Ala. Code §20-1-2) The act makes it illegal to manufacture, sell or otherwise distribute food that is hazardous, misbranded or potentially hazardous. (Ala. Code §20-1-27) Persons found in violation of the act are subject to penalties. (Ala. Code §20-1-5, §20-1-34) Code §20-1-3 authorizes the commissioner and agents to enter and inspect premises and items, and to take samples. Items determined to be in violation of the act are subject to suspension from sale, seizure, and condemnation. (Ala Code §20-1-4) The department is authorized to suspend or revoke a food safety permits. (Ala Code §20-1-33)

Retail Food and Food Establishments Laws

Food Establishments - Alabama Code §22-20-5 authorizes the State Committee on Public Health to adopt regulations for establishments handling food and providing public accommodations. Specifically the regulations are for “all establishments, and their immediate surroundings, in which foods or beverages intended for sale for human consumption are made, prepared, processed, displayed for sale in an unpackaged state or served.” (Ala. Code §22-20-5) The Code also authorizes the creation of regulations governing “exhibition-ground food concessions, poultry slaughterhouses and animal slaughterhouses, and their surroundings;” however, this authority does not include “the authority to conduct meat and poultry slaughter and processing inspections and other inspections conducted by the Department of Agriculture and Industries. (Ala. Code §22-20-5) County health officers, who are authorized representatives of the State Health Officer, are to be given copies of the rules. County boards of health and municipal corporations are not restricted from adopting more stringent emergency regulations. (Ala. Code §22-20-5) Establishments must have a permit to operate from the health officer; the health officer is authorized to suspend or revoke a permit after notice for flagrant or continuous violations. (Ala. Code §22-20-5) Health officers are authorized to enter, inspect, and score establishments and then publicize the score. (Ala. Code §22-20-5) Code §22-20-5 authorizes the State Health Officer to enforce food establishment regulations in counties without health officers or if the county is unable to enforce the rules. The health officer is authorized to seek an injunction to suspend operations at an establishment if it is necessary to protect public health. (Ala. Code §22-20-5)

Common Drinking Cups - Alabama Code §22-20-1 states that “[i]t shall be unlawful to provide for use, or permit the use of, a common drinking cup or a common towel in any hotel, restaurant, railroad car, railroad station or other place frequented by the public.”

Food Establishments Regulations

Alabama Food Establishment Sanitation Rules (Ala. Admin. Code 420-3-22) – (Note: Alabama’s adoption of the Food Code is based on the 2005 FDA Food Code with modifications.) Alabama Administrative Code 420-3-22.02 grants the health officer or the state epidemiologist plenary authority to impose additional requirements to protect against health hazards related to employee health. Alabama Administrative Code 420-3-22-.08(10) empowers the health officer to enter and inspect premises and examine records. Alabama Administrative Code 420-3-22-.08(6) authorizes the health officer to suspend or revoke permits.

2005 Food Code – When the health officer “has reasonable cause to believe” that a food employee or conditional employee has possibly transmitted disease or may be infected with a food transmissible communicable disease or acute respiratory infection, Section 8-501.10 permits the health officer to investigate foodborne outbreaks by obtaining medical information, conducting examinations and taking samples. Section 8-402.11 permits the health officer, at reasonable times, to inspect food establishment’s premises and access records to determine compliance with the food code. If, after notification of the health officer’s authority to inspect a food establishment, the establishment continues to refuse the

Overview of Alabama Food and Food Safety Laws

inspector access, the health officer is directed to provide details of the inspection refusal in an inspection report form (8-402.30) and is authorized to issue (or apply for issuance) of an inspection order to gain access to the food establishment. (8-402.40) Except as provided elsewhere in the code, the health officer is directed to “treat the inspection report as a public document and shall make it available for disclosure...” (8-403.50) A permit holder is required to immediately “discontinue operations and notify the health officer if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.” (8-404.11(A)) The permit holder must obtain approval for the health officer before resuming operations. (8-404.12) Section 2-201.11 requires that food employees and conditional employees report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. (2-201.11(A)) The person in charge is responsible for excluding or restricting food employees or conditional employees with certain conditions or symptoms specified in the regulation. (2-201.12) Employees must satisfy condition-specific criteria to demonstrate the condition or infection has ceased. (2-201.13) For conditions not specifically addressed in the regulation, the health officer is authorized to, “[i]f necessary to protect against public health hazards or nuisances,...impose specific requirements in addition to the requirements contained in this code that are authorized by law.” (8-102.10(A)) If the health officer determines after investigation that a food employee or conditional employee is infected, Section 8-501.20 authorizes the health officer to issue an order either restricting or excluding the employee or closing the food establishment. The health officer may issue such an order “without prior warning, notice of a hearing, or a hearing” if the order states the reasons for the order, the evidence necessary to show the reasons for the order have been eliminated, and provides information about the right to appeal the order. (8-501.30) The health officer shall end the restriction, exclusion or closure order if the employee or establishment meets the condition-specific criteria established elsewhere in the code to show the condition or infection has ceased. (8-501.40)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***

COLORADO

Profile of Colorado Agencies Involved in Food Safety and Foodborne Disease Response

<i>Health Agency</i>	<p>Colorado Department of Public Health and Environment</p> <ul style="list-style-type: none"> • Structure: The Colorado Department of Public Health and Environment (CDPHE) is an independent agency; it is not part of a larger umbrella health agency. It is one of only a few states that has a joint health and environmental protection agency. • State-Local Relationship: Colorado has a shared or mixed system of providing public health services. State law recognizes county and district public health agency structures. • Infectious Disease/Food Responsibilities: CDPHE is responsible for assisting local health departments in conducting epidemiological investigations of infectious diseases and foodborne illness and administering and enforcing retail and wholesale food laws. • Website: www.cdphe.state.co.us
<i>Agriculture Agency</i>	<p>Colorado Department of Agriculture</p> <ul style="list-style-type: none"> • Structure: The Colorado Department of Agriculture (CDA) is an independent agency. • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: CDA is authorized to, among other things, perform regulatory and inspection services on specified products and livestock, and to enforce state laws and regulations relating to the inspection and licensing of specified agricultural operations, and the control of contagious and infectious livestock disease. • Website: www.colorado.gov/ag
<i>Animal Health Agency</i>	<ul style="list-style-type: none"> • Animal health activities are conducted by the Colorado Department of Agriculture
<i>Environment Agency</i>	<p>Colorado Department of Public Health and Environment</p> <ul style="list-style-type: none"> • Colorado does not have a separate state environmental protection agency. The Colorado Department of Public Health and Environment is a combined health and environmental protection agency. (Please see entries for “Health Agency” above.) • Website: www.cdphe.state.co.us
<i>Federal Food Code</i>	<ul style="list-style-type: none"> • Colorado has adopted the 2001 version of the FDA Food Code. The state is updating its food code rules in 2011.
<i>Population</i>	5,029,196 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Colorado Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Colorado Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Colorado General Government Laws

General Governmental Authorities

Authorities of Counties – Section 30-11-101(2) of the Colorado Revised Statutes states that “[c]ounties have the authority to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues as otherwise prescribed by law.” The powers of the county are to be exercised by the board of county commissioners for that county. (CRS §30-11-103).

Authorities of Municipalities – Colorado municipalities are empowered to “make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such municipality and the inhabitants thereof not inconsistent with the laws of this state.” (CRS §31-15-103). Municipalities are also empowered with police powers to, among other things, “do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.” (CRS §31-15-401) Municipalities are authorized to define conditions constituting a nuisance and abate those nuisances. (CRS §31-15-401)

Access to Records And Privacy

Colorado Open Records Act – The Colorado Open Records Act (CORA) declares that “...all public records shall be open for inspection by any person at reasonable times, except as provided in this [statute] or as otherwise specifically provided by law.” (CRS §24-72-201) Certain records are exempt from disclosure under the state's open records laws including, but not limited to, records made during an investigation, medical data on individual persons, and veterinary medical data of privately owned animals in the care of a veterinarian. (CRS §24-72-204) Records made subject to an investigation are exempt from public disclosure under CORA unless the disclosure is necessary to protect public health, safety or welfare, however, “[n]othing in this subparagraph...prohibits an agency from disclosing information or materials during an open investigation if it is in the interest of public health, welfare, or safety.” (CRS §24-72-204)

State Department Privacy Policies – Colorado Revised Statutes §24-72-502 requires each governmental entity to create a privacy policy to protect personally identifiable information, however, “personally identifiable information shall not include information collected in furtherance of any regulatory, investigative, or criminal justice purpose, information collected in furtherance of litigation in which the state is a party, or information that is required to be collected pursuant to any state or federal statute or regulation.” (CRS §24-72-501) (See *Colorado Department of Public Health and Environment Policy Manual Part 15.27, Privacy and Security*)

Interjurisdictional Issues

Interjurisdictional Cooperation – Local governments are authorized in CRS §29-1-203 to cooperate or contact with other governments to provide any function or service that each of the individual governmental units is authorized to undertake. Colorado Revised Statute §29-1-401 broadly authorizes “[t]wo or more of the political subdivisions of the state” to form and maintain associations for the purposes of promoting through investigation, discussion, and cooperative effort interests and welfare of the several political subdivisions of the state of Colorado and to promote a closer relation between the several political subdivisions of the state.” Colorado Revised Statute §25-1-506 authorizes the creation of district public health agencies for the purpose of providing or arranging for the provision of services necessary to carry out the public health laws and rules, and whose jurisdiction extends to all unincorporated areas and municipal corporations within the territorial limits of the counties comprising the district. In addition, memoranda of understanding exist between counties that allow these activities.

Agency Reporting Requirements

Agencies to Share Information – CRS §24-2-108 requires state departments to share information with other state departments.

Overview of Colorado General Public Health Laws

State Health Agency

Colorado Department of Public Health and Environment, Executive Director and Board of Health – CDPHE is authorized to enforce the state's laws relating to public health and the environment. (CRS §25-1-102) CRS §25-1.5-101 establishes, in part, the powers and duties of department; these include the authority to: close theaters, schools, and other public places, and to forbid gatherings of people when necessary to protect the public health; require the reporting of morbidity and mortality information; establish, maintain, and approve chemical, bacteriological, and biological laboratories, and to conduct such laboratory investigations as it may deem necessary or proper for the protection of the public health; and disseminate public health information. CRS §25-1.5-104 specifies CDPHE's powers and duties relating to food. The department is authorized, among other things: to impound, condemn and destroy foods found to be unfit for human consumption; to promulgate and enforce rules regarding dairy processing; and to establish and enforce sanitary standards for operations providing meat and animal products for sale. The executive director is designated as the head of the Department of Public Health and Environment. (CRS §24-1-119) The Colorado State Board of Health is charged with, among other things, determining general policies for the department, advising the executive director of CDPHE, issuing orders, and adopting rules. (CRS §25-1-108) The board is also given a number of specific powers and duties related to public health, including: "...(a) to establish, by rule, the core public health services that each county and district public health agency must provide or arrange for...; (b) to establish, by rule, the minimum quality standards for public health services; (c) to establish, by rule, the minimum qualifications for county and district public health directors and medical officers; (d) to ensure the development and implementation of a comprehensive, statewide public health improvement plan; (e) to review all county and district public health agency public health plans..." (CRS §25-1-503)

State Public Health Plan – Colorado law requires that CDPHE develop a "comprehensive, statewide public health improvement plan...that assesses and sets priorities for the public health system" every five years. (CRS §25-1-504) The statute defines a "public health system" to mean "state, county, and district public health agencies and other persons and organizations that provide public health services or promote public health." (CRS §25-1-502) Local health agencies are required to develop their own public health plans consistent with the state plan.

Local Health Agencies

Local Health Agencies – The Colorado legislature recognized the importance of local public health agencies and the shared role of local and state public health agencies, as well as public and private sector partners in creating a public health system for the state. (CRS §25-1-501) Each county is directed to "establish or be part of a local public health agency organized under a local board of health with a public health director and other staff necessary to provide public health services." (CRS §25-1-501)

County/District Public Health Agencies – Counties are authorized to create and maintain county public health agencies or to participate in a district public health agency. (CRS §25-1-506) A district public health agency is comprised of two or more contiguous counties. Colorado law mandates that "[a]n agency shall consist of a county or district board of health, a public health director, and all other personnel employed or retained..." (CRS §25-1-506) The duties of county health agencies include, but are not limited to: administering and enforcing the laws pertaining to public health; investigating and controlling the causes of epidemic or communicable diseases and conditions affecting public health; and controlling nuisances. (CRS §25-1-506) A county board(s) of commissioners appoints the members of the county or district boards of health. (CRS §25-1-508) In instances in which the county or district board of health is unable or unwilling to "efficiently or promptly abate a nuisance or prevent the introduction or spread of a contagious or infectious disease, the county or district board or agency shall notify the state department and request assistance to take measures that will abate the nuisance or prevent the introduction or spread of disease." (CRS §25-1-510) Colorado law specifies that the director of each county or district public health agency shall be the public health director for that agency. (CRS §25-1-509) The public health director is charged with administering and enforcing the state's public health laws, rules and orders, and the orders of the county or district board of health. In the event of a public health emergency, "the agency shall issue orders and adopt rules consistent with the laws and rules of the state as the public health director may deem necessary for the proper exercise of the powers and duties vested in or imposed upon the agency or county or district board." (CRS §25-1-509)

Municipal Boards of Health – CRS §25-1-507 authorizes "the mayor and council of each incorporated town or city, whether incorporated under general statutes or special charter in this state, may establish a municipal public health agency and appoint a municipal board of health." If a municipal board of health is named, then "the municipal board of health shall have all the powers and responsibilities and perform all the duties of a county or district board of health...within the limits of the respective city or town of which they are the officers." (CRS §25-1-507) Similarly, CRS §31-15-201 grants the governing bodies of municipalities the authority to, among other things, "appoint a board of health and prescribe its powers and duties."

Local Public Health Plans – CRS §25-1-505 requires that each county or district public health agency prepare a county or district public health plan examining local health risks, local public health system capacity, and strategies for implementing the plan, including coordinating with CDPHE. (CRS §25-1-505)

Overview of Colorado General Public Health Laws

State Agriculture Agency

Colorado Department of Agriculture – The Department of Agriculture is authorized to, among other things, perform regulatory and inspection services on specified products and livestock, and to enforce state laws and regulations relating to the inspection and licensing of specified agricultural operations, and the control of contagious and infectious livestock diseases. (CRS §24-1-123, §35-1-104) The Commissioner of Agriculture is identified as the chief administrative officer of the Department of Agriculture and granted control and management of its functions, subject only to the powers and duties of the commission as prescribed in this article. (CRS §24-1-123, §35-1-107) The Colorado State Agricultural Commission is appointed empowered to, among other things, review and approve the department's budget request and any rules proposed by the department. (CRS §35-1-106)

Overview of Colorado Communicable Disease Laws

Communicable Disease Law

Communicable Diseases – Colorado Revised Statute §25-1.5-102 invests CDPHE with several powers and duties related to epidemic and communicable diseases, including, but not limited to, investigating and controlling “the causes of epidemic and communicable diseases affecting the public health.” (CRS §25-1.5-102) The State Board of Health is authorized to require that persons report certain conditions and diseases and CDPHE personnel are granted access to medical records for conducting investigations. (CRS §25-1.5-102) The state board of health “has the authority to require reporting, without patient consent, of occurrences of those diseases and conditions by any person having knowledge of such to the state department of public health and environment and county, district, and municipal public health agencies, within their respective jurisdictions.” (CRS §25-1-122(1)) The statute further directs: “Any required reports shall contain the name, address, age, sex, diagnosis, and such other relevant information as the board determines is necessary to protect the public health. The board shall set the manner, time period, and form in which such reports are to be made. The board may limit reporting for a specific disease or condition to a particular region or community or for a limited period of time.” (CRS §25-1-122(1)) The statute specifies that “[a]ny report or disclosure made in good faith [under this section] shall not constitute libel or slander or a violation of any right of privacy or privileged communication.” (CRS §25-1-122(3))

Communicable Diseases – Access to Records – Confidentiality, Exceptions – Colorado Revised Statute §25-1.5-102 authorizes CDPHE to investigate and control “the causes of epidemic and communicable diseases affecting the public health” (CRS §25-1.5-102) Local public health agencies are granted the same authority pursuant to CRS §25-1-506(3)(b)(V). State and local public health agency staff who are investigating communicable diseases and conditions reported, may, “...without patient consent, inspect, have access to, and obtain information from pertinent patient medical, coroner, and laboratory records in the custody of all medical practitioners, veterinarians, coroners, institutions, hospitals, agencies, laboratories, and clinics, whether public or private, which are relevant and necessary to the investigation.” (CRS §25-1-122(2)) Information provided and reviewed during the course of a public health investigation are confidential. (CRS §25-1-122(4)) The law further provides that “[s]uch reports and records shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except including where release of medical and epidemiological information can be made without identifying specific persons or where release of the information is necessary to treat, control, investigate or prevent diseases and conditions dangerous to public health. (CRS §25-1-122(4)) Additionally, “[a]ny officer or employee or agent of the state department of public health and environment or a county, district, or municipal public health agency who violates this section by releasing or making public confidential public health reports or records or by otherwise breaching the confidentiality requirements of subsection (4) or (5) of this section commits a class 1 misdemeanor and...” (CRS §25-1-122(6))

Communicable Diseases – Control Measures – CDPHE and local public health agencies are authorized to “abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health.” (CRS §25-1.5-102, §25-1-506(3)(b)(VIII)) CDPHE and local public health agencies are authorized to, among other things, “establish, maintain, and enforce isolation and quarantine, and...to exercise such physical control over property and the persons of the people within this state as the department may find necessary for the protection of the public health.” (CRS §25-1.5-102, §25-1-506(3)(b)(VI))

Communicable Diseases In Animals

Animal Communicable Diseases – Livestock Health – The Livestock Health Act addresses the diagnosis, control, and eradication of livestock diseases. (CRS §35-50-102) The commissioner of agriculture is expressly empowered to undertake surveillance, inspection, diagnostic, control and abatement activities to prevent and control the spread of disease among livestock. (CRS §35-50-105) Veterinarians, laboratories and other persons who know or have reason to believe that any livestock is infected with a reportable disease identified by the commissioner of agriculture are required to immediately make a report of the disease to the state veterinarian. (CRS §35-50-108) Section 35-50-107 authorizes the commissioner of agriculture or designee to “conduct surveillance or otherwise inspect the suspected livestock” if the commissioner reasonably suspect that the livestock are infected or may have been exposed to an infectious or contagious disease.

Animal Communicable Diseases – Records and Confidentiality – Information obtained by the commissioner under the Colorado Livestock Health Act and the rules promulgated

Overview of Colorado Communicable Disease Laws

under it, and “the results of surveillance and investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until the matter is dismissed without further action or until a quarantine is issued.” (CRS §35-50-120) Similarly, CRS §35-57.9-103 authorizes the commissioner to deny access to information about, among other things, livestock disease and injury “on the grounds that disclosure would be contrary to the public interest.” The act permits the commissioner to inspect and test livestock when the commissioner becomes aware that an infectious or contagious disease exists among livestock in the state. (CRS §35-50-109) The act also authorizes the commissioner to “quarantine any specific livestock, premises, county, district, or section of the state for the purpose of preventing the spread of an infectious or contagious disease among the livestock within the state...” (CRS §35-50-111) The commissioner is further authorized to order the destruction of livestock when the state veterinarian reports that there exists an outbreak of contagious or infectious disease among livestock that will endanger the livestock of the state. (CRS §35-50-113)

Overview of Colorado Food and Food Safety Laws

Food Laws

Colorado Pure Food and Drug Act - Colorado’s Pure Food and Drug Act governs the state’s regulation of food, drugs, devices, and cosmetics. (CRS §25-5-401 to §25-5-426) It is the state’s analog to the Federal Food, Drug, and Cosmetic Act. The Colorado law addresses adulterated or misbranded food, drugs, devices, or cosmetics. Representatives of the department are required to have “free access at all reasonable hours” to inspect and review records for operations in which foods are, among other things, manufactured, or processed to determine if any provisions of the law are being violated and to take samples. (CRS §25-5-421) Inspectors must give the owner or person in charge a copy of any inspection report and, if the inspector took any samples, he must give the owner or person in charge a receipt for the sample and, if found to be contaminated, a copy of the analysis. (CRS §25-5-421) Section 25-5-422 authorizes the department to publish reports “summarizing all judgments, decrees, and court orders which have been rendered under [the law], including the nature of the charge and its disposition” and to disseminate “any information regarding food, drugs, devices, and cosmetics that the department deems necessary in the interest of public health and the protection of the consumer against fraud.” The statute also explicitly states: “[n]othing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.” (CRS §25-5-422)

Colorado Pure Food and Drug Act – Control Measures – Section 25-5-406 of the Colorado Pure Food and Drug Act authorizes the department or its agent to tag and embargo food found or suspected to be adulterated or misbranded. The embargoed items cannot be removed or disposed of by sale or otherwise without permission by the department or a court if proceedings have begun. (CRS §25-5-406(1)) If the department or its agent finds any unsanitary food or premises that may be deleterious to health, it may be declared a nuisance and destroyed by the department or agent. (CRS §25-5-406(4)) CRS §25-5-408 gives the department discretion in issuing warnings for violations if it will adequately serve public interest. Section 25-5-404 of the law authorizes CDPHE to seek a court injunction to temporarily or permanently enjoin a person from violating the law’s provisions. If after investigating the department finds that any class of food may have been contaminated with a microorganism that may be injurious to health and that “injurious nature cannot be adequately determined after the articles have entered commerce”, the department is authorized to promulgate rules for issuing permits to “manufacturers, processors, or packers of that class of food in the locality” to which conditions necessary to protect public health are attached. (CRS §25-5-412(1)) The statute also addresses conditions under which the permit may be suspended and reinstated. (CRS §25-5-412(2)) Designees of the department must be given access to premises which are the subject of the temporary permit to determine if the conditions of the permit are being met; failure to grant access is grounds for suspension of the permit. (CRS §25-5-412(3))

Retail Food and Food Establishments Laws

Food Establishment Sanitary Laws – Colorado law requires that premises and vehicles in which food is produced, sold, contained, etc., cannot be kept or permitted to remain in an unclean, unhealthful, or unsanitary condition (CRS §25-4-101) Section 25-4-109 authorizes CDPHE to enter and inspect premises used for the production, sale, etc., of food. Refusal to admit department personnel is deemed a violation of the law. CRS §25-4-108 prohibits work by diseased persons: “It is unlawful for any employer to permit any person who works in food preparation and is affected with any contagious or infectious disease that is spread by food to work, or for any person so affected to work, in any capacity in which there is a likelihood that the employee would contaminate food or food-contact surfaces with pathogenic organisms or transmit disease to other persons.” If any premises, machinery, vehicles are maintained in a way that violates the state’s food sanitary law, then they can be declared a nuisance. (CRS §25-4-106, §25-4-111) The department can issue an abatement order to correct or eliminate any conditions giving rise to a violation of the law.

Colorado Retail Food Store Sanitation Act – Colorado’s Retail Food Store Sanitation Act governs the “sanitary protection of bulk foods and the sanitary maintenance of equipment used to display and dispense bulk foods.” (CRS §25-4-1301) The act addresses requirements for the sale of bulk foods, including labeling, bulk food protection, display and dispensing, surfaces and materials, and sanitation. (CRS §25-4-1301 to §25-4-1314) CDPHE is authorized to promulgate rules and regulations to implement the Act. (CRS §25-4-1313)

Overview of Colorado Food and Food Safety Laws

Colorado Food Protection Act - Colorado's Food Protection Act is intended to, among other things, "establish minimum standards and rules for retail food establishments in Colorado and to provide authority for the uniform statewide administration, implementation, interpretation, and enforcement of such minimum standards and rules." (CRS §25-4-1601) Section 25-4-1604 authorizes CDPHE to set standards, promulgate rules, license, inspect, and enforce the Food Protection Act. The rules CDPHE adopt may "include provisions for the initial and periodic medical examination by the department or other competent medical authority of all employees of retail food establishments and shall include provisions specifying and regulating the places and conditions under which food shall be prepared for consumption, a uniform code of sanitary rules, and such other rules as the department deems necessary." (CRS §25-4-1604) CDPHE is further authorized to delegate its powers and duties under the act to county or district public health agencies upon the request of those local agencies. (CRS §25-4-1604) Colorado Revised Statutes §25-4-1609 authorizes CDPHE to take disciplinary actions for violations of the act by suspending or revoking a certificate of license. The regulations implementing the act are located at 6 CCR 1010-2 (Colorado Retail Food Establishments), the state's adoption of the FDA Food Code.

Food Establishments Regulations

Colorado Wholesale Food Regulations – Colorado's regulations governing wholesale food establishments are codified at 6 CCR 1010-21. These regulations incorporate, by reference, the requirements of 21 C.F.R. 110.3 – 110.93 *Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food* (1998).

Colorado Retail Food Establishments Regulations – (NOTE: Colorado's current adoption of the FDA Code is the 2001 version. The state has proposed rulemaking to update its rules to the 2009 Food Code.) Colorado's regulations governing retail food establishments are codified at 6 CCR 1010-2. Section 11-202 authorizes agents of the department to enter "any retail food establishment during business hours and at other times during which activity is evident to determine compliance with these rules and regulations", including being examining documents. Section 11-203 notes that a "completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law." When the department has reasonable cause to suspect the possibility of disease transmission from any retail food establishment employee, it may secure a morbidity history of the suspected employee or make any other investigation as necessary and shall take appropriate action including restriction or exclusion of the employee or closing of the food establishment. (6 CCR 1010-2-11-501)

Food Code – Control Measures – Colorado's Retail Food Establishment regulations prohibit employees who are infected with a food-transmissible communicable disease, who may be a carrier of such a disease, have infected wounds or boils, or an acute respiratory infection from working in a retail food establishment in a capacity where they may transmit disease to another person. (6 CCR 1010-2-2-201) It is the responsibility of the employee to report to the person in charge when the employee is or may be infected with a food-transmissible disease or condition. (6 CCR 1010-2-2-202). The person in charge must exclude an employee from a retail food establishment if the employee is diagnosed with an infection where there is a likelihood of the employee contaminating others (6 CCR 1010-2-2-203). The person in charge may remove an exclusion with CDPHE's approval. (6 CCR 1010-2-2-204). CDPHE is authorized to embargo and condemn food that it finds probable cause to believe is in violation of the state's food code regulations. (6 CCR 1010-2-11-301) The department can request that the establishment voluntarily condemn and destroy the suspected food. (6 CCR 1010-2-11-302) If the establishment refuses to voluntarily condemn and destroy the suspected food, the department may embargo the food. (6 CCR 1010-2-11-303) The department can release the embargo pursuant to section 11-304 of the state's food code. The department is permitted to condemn food: "[s]hould the food be found to be not sound or contaminated with filth and a voluntary destruction cannot be obtained, the department shall petition the court of jurisdiction for seizure and disposition of the food." (6 CCR 1010-2-11-305) Section 11-105 authorizes the department or its agents to close a food establishment without suspension of its permit to protect public health.

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. **These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.**

IDAHO

Profile of Idaho Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Idaho Department of Health and Welfare, Division of Public Health (DPH)</p> <ul style="list-style-type: none"> • Structure: Part of a larger umbrella agency • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: DPH is responsible for conducting foodborne disease surveillance and outbreak response activities in concert with local health districts and other state agencies as necessary. Within the DHW, the Bureau of Communicable Disease Prevention and Control, and the Bureau of Laboratories each have statutorily and regulatorily mandated authorities and responsibilities for detecting, mitigating, and preventing foodborne disease outbreaks. • Website: www.healthandwelfare.idaho.gov.
<i>Agriculture Agency</i>	<p>Idaho State Department of Agriculture (ISDA)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: ISDA protects Idaho's crops and livestock from the introduction and spread of pests and transmittable diseases, provides the state's agricultural industry with a system for marketing of agricultural commodities, and protects consumers from contaminated products or fraudulent marketing practices. • Website: www.agri.state.id.us
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • Idaho has adopted the 2001 Food Code with state-specific modifications
<i>Population</i>	1,567,582 (2010 Census)

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Overview of Idaho Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Idaho Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Idaho General Government Laws

General Governmental Authorities

Nuisances – Idaho Code §52-101 defines a “nuisance” as “[a]nything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.” A “public nuisance” is “...one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” (Idaho Code §52-102) The Code authorizes actions for nuisance: “Anything which is injurious to health or morals, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action...” (Idaho Code §52-111) A public nuisance can be abated by any public body or officer authorized by law to do so. (Idaho Code §52-205)

Regulatory Authority – Idaho Code §39-1603 and §56-1005 grant authority to the Board of Health and Welfare to adopt rules protecting the health of the people of Idaho. Idaho Code §39-906 empowers the Director of Health and Welfare to administer rules adopted by the Board of Health and Welfare. Idaho Code §56-1003 gives the Director the authority to adopt rules protecting the health of the people of Idaho and to recommend rules to the Board of Health and Welfare. (See General Public Health Laws table below for more detail on these authorities.)

Access to Records And Privacy

Access to Public Records – Idaho Code §9-338 requires that public records be open for inspection unless otherwise exempted from disclosure. A “public record” includes, but is not limited to, “...any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.” (Idaho Code §9-337) Idaho law exempts a number of types of records from public disclosure. Idaho Code §9-340A exempts records that are exempt from disclosure by federal or state law. Certain personal and health records are exempt from disclosure including, but not limited to medical records and the identity of persons with reportable conditions. (Idaho Code §9-340C) Trade secrets and other proprietary business information is also exempt. (Idaho Code §9-340D)

Interjurisdictional Issues

Delegation of Authority – Interjurisdictional Exchange of Information

The Idaho Administrative Code authorizes health districts and state agencies to exchange information. (IDAPA 16.02.10:000) The Director of Health and Welfare is authorized to delegate his or her powers to health districts: “The Director has the authority to delegate to the Health Districts any of the powers and duties created by these rules under Section 39-414(2), Idaho Code. Any delegation authority will be in writing and signed by the both the Director and the Health District Board.” (IDAPA 16.02.10:023)

Agency Reporting Requirements

See specific reporting requirements contained elsewhere in the tables.

Overview of Idaho General Public Health Laws

State Health Agency

Idaho Department of Health and Welfare, Division of Public Health (DPH) – The Idaho Department of Health and Welfare is created by Idaho Code §56-1002. The Code authorizes the creation of “substate administrative regions. (Idaho Code §56-1002. Idaho Code §56-1003 empowers the Director of the Department of Health and Welfare to, among

Overview of Idaho General Public Health Laws

other things, issue rules, supervise and administer health and other programs, enforce laws and rules, and coordinate with other government agencies. Idaho Code §56-1004 further authorizes the director to exercise powers to administer and supervise the department of health and welfare. Idaho Code §56-1005 authorizes the board of health and welfare to, among other things, approve rules, regulations and standard, conduct hearings and investigations, issue subpoenas and orders, and administer oaths.

General Authorities of the State Health Agency, Board and Director – Idaho Code §56-1009 authorizes the director to conduct investigations into alleged violations of the state's laws. The director is specifically empowered to conduct ongoing surveillance and periodic inspections of actual or potential health hazards, including by entering and inspecting premises. (Idaho Code §56-1009) The Code specifies that searches must be lawfully done, including by warrant in the absence of consent or exigent circumstances like a public health emergency. (Idaho Code §56-1009) If a violation is found, the director is authorized to take corrective action or other control measures provided appropriate notice and hearing requirements are satisfied. (Idaho Code §56-1009) The Code further empowers the state attorney general or a prosecutor to seek a judicial injunction to immediately stop emergency or hazardous conditions. (Idaho Code §56-1009) Idaho Code §56-1003 authorizes the Director of Health and Welfare to order and enforce isolation and quarantine to protect against naturally occurring or man-made infectious, chemical or biological agents. The Code also addresses judicial review of isolation and quarantine orders and penalties for violating these orders. (Idaho Code §56-1003)

State Health Districts

State Health Districts – Idaho Code §39-408 creates seven (7) health districts each comprised of multiple counties. Idaho Code §39-401 clarifies that health districts in the state are not individual state agencies. Idaho Code §39-409 creates district health departments overseen by a district board of health. The district health departments are tasked with providing public health services such as, but not limited to, education, environmental health and physical health. (Idaho Code §39-409) The Code further specifies that "[e]ach district shall have a doctor of medicine licensed in Idaho as a staff member or as a regular consultant." (Idaho Code §39-409) Idaho Code §39-413 authorizes the district health director to, among other things, proscribe regulations, to administer oaths, manage the operations of the health district. Idaho Code §39-414 empowers district boards of health to, among other things, administer and enforce state laws, preserve and protect public health, and cooperate with state health and environmental agencies. District boards of health are granted the same duties and powers regarding quarantine within the district as the state. (Idaho Code §39-415) Idaho Code §39-417 empowers the district board to conduct hearings, administer oaths and subpoena witnesses regarding violations of public health laws within the district. Idaho Code §39-420 authorizes district health boards to commence civil actions to enforce public health laws, including actions to abate nuisances to control unsanitary, infectious and hazardous conditions.

Local Health Authorities

Local Boards of Health – Idaho Code §50-304 authorizes cities to establish boards of health and empowers them to pass ordinances, prevent the introduction of contagious diseases and make and enforce quarantine laws for the jurisdiction.

General Local Health Authorities – Nuisances – Idaho Code §50-334 authorizes cities to define what constitutes a nuisance in the jurisdictions and to prevent and abate these nuisances.

State Agriculture Agency

Idaho State Department of Agriculture (ISDA) – The Idaho State Department of Agriculture (ISDA) is created by Idaho Code §22-101. The Director of the Department of Agriculture is appointed by the governor and must be a "person who is qualified by training, knowledge and demonstrated ability or experience in agricultural pursuits and their management." Idaho Code §22-103 authorizes the Department of Agriculture to, among other things, create standards for grading farm products, investigate the practices for producing human food, inspect property and items to eradicate nuisances, protect animal health; prevent diseases communicable to humans from food, and administer oaths, issue permits, subpoenas and orders. Idaho Code §22-106 authorizes the department to seek judicial injunctions to prevent or restrain violations of law. If the director proposes a rule that is broader in scope or more stringent than federal law or regulations or proposes to regulate something not regulated by the federal government, the director must state how the proposed rule differs from federal requirements and provide peer reviewed and other data to support the proposed state rule. (Idaho Code §22-101A) Idaho does not have a state board of agriculture. It has a number of boards, commissions and councils; committees, associations and organizations; and authorities related to specific products or agricultural industries in the state that advise the department. Idaho Code §25-210 empowers state veterinarians and inspectors to inspect premises and vehicles, restrict the movement of animals or vehicles, and destroy infected animals to prevent or mitigate communicable diseases in animals in the state

Overview of Idaho Communicable Disease Laws

Communicable Diseases

Overview of Idaho Communicable Disease Laws

Communicable Diseases – Idaho’s requirements for reporting and controlling communicable diseases are contained in the state’s reportable disease regulations. (IDAPA 16.02.10:000) These rules contain the official requirements governing the reporting, control, and prevention of reportable diseases and conditions and requirements to prevent transmission of health hazards from dead human bodies. The purpose of these rules is to identify, control, and prevent the transmission of reportable diseases and conditions within Idaho. Persons required to report reportable diseases and conditions include physicians, hospital and health care facility administrators, laboratory directors, school administrators, food establishment persons in charge. (IDAPA 16.02.10:020) In addition to licensed physicians, reports must also be made by physician assistants, certified nurse practitioners, registered nurses, school health nurses, infection surveillance staff, public health officials, and coroners. (IDAPA 16.02.10:020) Reportable diseases and conditions must be reported to the Department or a health district by those persons required under Section 020 of the reportable disease rules. (IDAPA 16.02.10:050) The rule includes a table identifying reportable and restrictable diseases and conditions, the timeframe for reporting, and the person or facility required to report. (IDAPA 16.02.10:050) The Idaho Administrative Code contains requirements governing the exchange of information about reportable diseases and conditions between health districts and the Department of Health and Welfare. The Department of Health and Welfare is further required to notify the Idaho Department of Agriculture of any suspected or identified animal related diseases as specified in the rules. (IDAPA 16.02.10:030)

Communicable Diseases in Animals

Animal Communicable Diseases – Idaho Code §22-103 authorizes the Department of Agriculture to, among other things, protect animal health and prevent diseases communicable to humans from food. Idaho Code §25-211 requires veterinarians, laboratorians to report specified diseases and conditions to the division of animal industries in the department of agriculture. Idaho Code §25-212 further specifies reportable diseases that constitute an emergency.

Overview of Idaho Food and Food Safety Laws

Food Laws

Idaho Food, Drug And Cosmetic Act – The Idaho Food, Drug And Cosmetic Act governs the production and sale of food, drugs and cosmetics in the state. (Idaho Code §37-113) The act prohibits, among other things, the adulteration or misbranding of food, the manufacturing, sale, deliver or offering of adulterated or misbranded food, and preventing the inspection and sampling of food. (Idaho Code §37-115) The state Board of Health and Welfare is authorized to promulgate regulations that conform to federal law to the extent possible. (Idaho Code §37-132) Idaho Code § 37-133 empowers the director or agent to access premises or vehicles to inspect and take samples. The Director of Health and Welfare or agency representative must leave a copy of any report of unsanitary conditions or substances with the owner or person in charge. (Idaho Code §37-133) If the director or agent takes a sample, he must leave a receipt for the samples with and give a copy of any analysis of the samples to the owner or person in charge. (Idaho Code §37-133) Idaho Code §37-134 authorizes the Director of Health and Welfare to publish reports summarizing enforcement activities under the act and any other information of interest to public health.

Food Law – Control Measures –When the Director of Health and Welfare finds a class of food contaminated with microorganisms, the director can prescribe regulations governing the issuance of special permits for the production of the affected class of food, naming any special requirements to protect public health. (Idaho Code §37-124) The director can suspend permits issued under this provision if the permit requirements are not met; permit holders can seek reinstatement of a special permit. (Idaho Code §37-124) Inspectors must be given access to inspect premises; denial of access is grounds for suspension of the special permit. (Idaho Code §37-124) Idaho Code §37-118 empowers the Director of Health and Welfare or agent to embargo food found to be adulterated or misbranded. The director can seek a court order to condemn embargoed items if they are found to be adulterated or misbranded. (Idaho Code §37-118) A court can order destruction of adulterated or misbranded items. (Idaho Code §37-118) The director is further authorized to declare any premises or item found to be unsound, unsafe or hazardous to health a nuisance and condemn or destroy them. (Idaho Code §37-118) The act also contains provisions governing notice and hearing rights to challenge embargo and seizure of items. Idaho Code §37-116 authorizes the director to seek judicial injunctions to restrain a person for violating laws. The act permits the director to issue written warnings or notices for minor violations when in the public interest. (Idaho Code §37-120)

Retail Food and Food Establishments Laws

Idaho Food Establishment Act – The purpose of the Idaho Food Establishment Act is to establish standards for regulating food establishments and to protect the public health of consumers. (Idaho Code §39-1601) The Board of Health and Welfare is empowered to, among other things, create food sanitation standards for food establishments, issue permits, review plans, and conduct inspection, embargo and food destruction activities. (Idaho Code §39-1603) Idaho Code §39-1605 authorizes regulatory authorities (the Director of Health and Welfare or district health personnel) to conduct unannounced inspections of food establishments that are not subject to other state or federal food safety inspections. The application for or possession of a food establishment permit constitutes consent to be inspected. (Idaho Code §39-1605) Inspectors are authorized to examine food and take samples. (Idaho Code §39-1605) Inspectors are required to give food establishments a copy of the inspection report. (Idaho Code §39-1605)

Overview of Idaho Food and Food Safety Laws

Food Establishments Regulations

Idaho Food Code (IDAPA 16.02.19) – (NOTE: Idaho has adopted the 2001 Food Code with state-specific modifications.) In addition or amendment to the provisions of the 2001 FDA Food Code, Idaho has adopted state-specific modifications. Idaho defines “regulatory authority” as “the [Department of Health and Welfare] or its designee is the regulatory authority authorized to enforce compliance of these rules. (a) The Department is responsible for preparing the rules, rules amendments, standards, policy statements, operational procedures, program assessments and guidelines. (b) The seven (7) Public Health Districts and the Bureau of Facility Standards have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules.” (IDAPA 16.02.19.15)

Idaho Food Code – Employee Health – IDAPA 16.02.19.220 requires the person in charge of a food establishment to notify the regulatory authority of employees infected with or suspected of having a reportable disease.

Idaho Food Code – Control Measures – License Revocation – IDAPA 16.02.19.860 authorizes the regulatory authority to revoke the license of a food establishment: “The regulatory authority may revoke the license issued to a food establishment when the license holder fails to comply with these rules or the operation is a substantial hazard to public health.”

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. **These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.**

INDIANA

Profile of Indiana Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Indiana State Department of Health (ISDH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Decentralized • Infectious Disease/Food Responsibilities: ISDH is responsible for, among other things, surveillance and control of communicable diseases and food safety and food defense activities, including conducting routine inspections, investigating foodborne illness complaints, and responding to other food emergency incidents. • Website: www.in.gov/isdh
<i>Agriculture Agency</i>	<p>Indiana State Department of Agriculture (ISDA)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: ISDA is responsible for advocating and promoting the food, fuel and fiber sectors and enhancing stewardship of natural resources on agricultural lands. • Website: www.in.gov/isda
<i>Animal Health Agency</i>	<p>Indiana State Board of Animal Health (BOAH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: The BOAH is responsible for preventing and suppressing contagious and infectious diseases among livestock in the state. • Website: www.in.gov/boah
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • Indiana's retail food establishment rules are based on the 2001 Food Code.
<i>Population</i>	6,483,802 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Indiana Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Indiana Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Indiana General Government Laws

General Governmental Authorities

See specific governmental authorities contained elsewhere in the tables.

Access to Records

Access to Public Records – Indiana Code 5-14-3-1 establishes the state's policy of allowing public access to government records: "...[I]t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." A "public record" is defined as "...any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics." (IC 5-14-3-2) Indiana Code 5-14-3-4 identifies certain types of records that are exempt from disclosure under the state's public records laws unless disclosure is specifically required by state or federal laws or ordered by a court; the exemptions include, but are not limited to trade secrets and patient medical records. Certain public records may be made exempt from disclosure at the discretion of a public agency. (IC 5-14-3-4)

Privacy Laws

Fair Information Practices – Indiana Code 4-1-6-8 affirms that all persons are entitled to access to information regarding the affairs of government consistent with the protection of individual privacy; the state oversight committee on public records is authorized to grant privacy restrictions on the access to information.

Interjurisdictional Issues

Interlocal Cooperation – Localities in the state are authorized to enter into agreements and contracts with other governmental entities. (IC 36-1-7-2, 36-1-7-3) Indiana's laws on interlocal cooperation apply to: "(1) The state. (2) All political subdivisions. (3) All state agencies. (4) Any of the following created by state law: (A) Public instrumentalities. (B) Public corporate bodies. (5) Another state to the extent authorized by the law of that state. (6) Political subdivisions of states other than Indiana, to the extent authorized by laws of the other states. (7) Agencies of the federal government, to the extent authorized by federal laws." (IC 36-1-7-1) Indiana Code 36-1-7-4 requires the attorney general to approve agreements that involve agreements with governmental entities outside of the state. Indiana Code 36-1-7-5 requires that interlocal agreements that involve services or facilities with state agencies be approved by the involved state officer or state department. Agreements must be recorded with the county recorder of the involved locality. (IC 36-1-7-6)

Agency Reporting Requirements

See specific reporting requirements contained elsewhere in the tables.

Overview of Indiana General Public Health Laws

State Health Agency

Indiana State Department of Health (ISDH) – The Indiana State Department of Health is designated as the "...superior health department of the state, to which all other health boards are subordinate." (IC 16-19-1-1, 16-19-1-2) The department is tasked with supervising the health of Indiana's citizens. (IC 16-19-3-1) The state health commissioner is

Overview of Indiana General Public Health Laws

appointed by the governor and must be a licensed physician. (IC 16-19-4-2) The commissioner is designated as the secretary and executive officer of the executive board of the state department of health. (IC 16-19-4-1) The executive board of the state department of health is a board appointed by the governor to advise ISDH in addition to any other statutory duties assigned to it. (IC 16-19-2-1, IC 16-19-2-5) The executive board is the final authority for any matter concerning ISDH: "The executive board, or an appeals panel if designated by statute, is the ultimate authority under IC 4-21.5 for any matter concerning the state department." (IC 16-19-2-4) Indiana Code 16-19-3-2 authorizes ISDH to establish branch offices. Indiana Code 16-19-3-12 empowers the ISDH to enforce state rules within the jurisdiction of a local health authority if a public health emergency exists or if the locality fails or refuses to enforce rules related to dangerous infectious disease. (IC 16-19-3-12)

General State Health Agency Authorities – Indiana Code 16-19-3-4 authorizes the executive board to adopt rules to protect and improve the public health in the state on issues including, but not limited to nuisances dangerous to public health, the prevention and control of disease, and the safety of food and food establishments. Indiana Code 16-19-3-4.3 authorizes the executive board to grant variances from rules regarding food handling or food establishments. Indiana Code 16-19-3-7 authorizes ISDH to conduct sanitary inspections of public buildings and to inspect private property for infectious disease upon due notice. Indiana Code 16-19-3-9 authorizes the ISDH to establish quarantine for the prevention and suppression of disease. The department is further empowered to order the closure of schools, churches and public gatherings to prevent and stop epidemics. (IC 16-19-3-10) ISDH is also empowered to issue orders condemning or abating disease causing conditions. (IC 16-19-3-11) Indiana Code IC 16-19-3-18 authorizes ISDH to seek judicial injunctions or proceedings to enforce compliance with final orders. The state health data center is authorized to collect, among other things, data about the health of the state's citizens. (IC 16-19-10-4) The code specifies the elements of data that are considered confidential and those that can be made public. (IC 16-19-10-6, IC 16-19-10-7) Indiana Code 16-19-10-7 specifically addresses the conditions under which medical and epidemiological information may be disclosed. Personally identifiable data from medical or epidemiological information may be released if the person consents to its release or if ordered in an administrative or judicial proceeding (IC 16-19-10-7) The code also authorizes the state health data center to support Indiana's counterterrorism programs by collecting data about symptoms and outbreaks, among other things. (IC 16-19-10-8) Indiana Code 16-19-3-25 permits the release of ISDH inspection reports after a specified waiting period, unless they must be released earlier to protect against public health threats and other conditions.

Local Health Agencies

Local Health Departments – Local health departments operate as agencies of the local governments. (IC 16-20-1-2) Local health boards are authorized to oversee the policy and administrative operations of local health agencies. (IC 16-20-1-4 - IC 16-20-1-9) A local board of health may contract with ISDH, other localities or private entities to provide health services within the jurisdiction. (IC 16-20-1-8) Local health officers and local boards of health are vested with powers and duties. (IC 16-20-1-1) Local health officers are empowered to enforce laws and rules. (IC 16-20-1-19) Health officers also have authority to seek judicial actions for injunctions, orders and other enforcement mechanisms. (IC 16-20-1-26) Indiana Code 16-20-2-2 authorizes each county executive to establish a local health department based on size. Local health boards are authorized to appoint local health officers who are licensed physicians. (IC 16-20-2-16)

Local Health Authorities – Indiana Code 16-20-1-21 empowers local boards of health with state legal authorities to control communicable diseases and to make sanitary and health inspections. Indiana Code 16-20-1-22 specifically authorizes local health officers to make sanitary inspections of public buildings. Local public health officers are authorized to access, inspect, and sample private property for compliance with public health laws and prevention of disease at any reasonable time. (IC 16-20-1-23) A local health officer or designee must obtain consent of the property owner to enter except if the local health officer has a court order, an imminent threat exists, or the inspection area is a public place or in plain view. (IC 16-20-1-23) The code also prohibits local health officers with an interest from inspecting premises. If the premises cannot otherwise be inspected, the county health officer shall inspect the premises. (IC 16-20-1-23) Indiana Code 16-20-1-25 authorizes local health officers to receive complaints about unlawful conditions, verify complaints, and order abatement of the unlawful conditions. Local health officers can seek a judicial injunction to enforce an abatement order if a person refuses to comply with an order. (IC 16-20-1-25) Indiana Code 16-20-1-24 empowers local health officers to order the closure of schools, churches and public gatherings if necessary to prevent or control epidemics. Indiana Code 16-20-1-7 directs local boards of health to publish annual reports of the financial and operational statistics of the health department for the proceeding year. Indiana Code 16-20-1-12 requires local health departments to make reports to ISDH as required by ISDH's rule.

Multiple County Health Agencies

Multiple County Health Agencies – Indiana Code 16-20-3-1 permits two or more adjacent counties to establish a multiple county health department if the state approves and if the participating counties agree. The county executives of the counties participating in the multiple county health department may establish a board for the joint health department. (IC 16-20-3-2) Indiana Code 16-20-3-9 authorizes a multiple county board of health to appoint a licensed physician as the health officer.

City Health Departments

City Health Departments – Indiana law defines "second class cities" as cities with a population between 35,000 to 599,999. (IC 36-4-1-1) Indiana Code 16-20-4-5 authorizes second class cities to establish full-time city health departments, except in counties of a certain population. Indiana Code 16-20-4-13 empowers "...[a] board of health that manages a city

Overview of Indiana General Public Health Laws

health department under this chapter [with] the powers and duties prescribed for all health boards.” The board of a city health department is authorized to appoint a health officer. (IC 16-20-4-20) A county or multiple county health board does not have jurisdiction in a city with a full-time health department. (IC 16-20-4-4) Indiana Code 16-20-4-18 vests city health departments with state legal authorities to control communicable diseases and to make sanitary and health inspections. City health departments are empowered to investigate contagious diseases, adopt control measures to stop contagious disease, and make sanitary and health inspections. (IC 16-20-4-19) Indiana Code 16-20-4-17 requires city health departments to publish annual reports of the financial and operational statistics of the health department from the proceeding year.

State Agriculture Agency

Indiana State Department of Agriculture (ISDA) - The Indiana State Department of Agriculture advocates for agriculture in the state, promotes economic opportunity for the food, fuel and fiber sectors, and enhances the stewardship of natural resources on agricultural lands. (IC 15-11-2-1, <http://www.in.gov/isda/2335.htm>) The director of ISDA is named the chief executive and administrative officer of the department. (IC 15-11-2-2) The department is tasked with providing administrative and staff support for various boards and agricultural industries and sectors, including, but not limited to produce, dairy, livestock, grains, trade and biomass. (IC 15-11-2-3) The department is authorized to adopt rules to carry out its legal duties. (IC 15-11-2-5) Indiana Code 15-11-3-5 empowers the ISDA director to “...establish a board to advise the department in the implementation of the department's duties.”

Indiana Board of Animal Health (BOAH)

Board of Animal Health – The Indiana Board of Animal Health was established to supervise the prevention, control and eradication of animal diseases and the production of products derived from animals to protect animal health. (IC 15-17-3-1, IC 15-17-3-11) Indiana Code 15-17-3-12 grants the board “...all powers necessary to fulfill the board's duties under this article.” Indiana Code 15-17-3-13 grants the board additional powers and duties including, but not limited to: quarantining of animals and objects; developing plans for preventing, detecting, controlling and eradicating animal diseases; controlling the movement of animals; entering into agreements with other jurisdictions; and regulating the production of products derived from animals to control health hazards to animals and humans. The board is authorized to issue subpoenas and administer oaths. (IC 15-17-3-16, 15-17-3-17) The board is authorized to adopt rules necessary to discharge its duties. (IC 15-17-3-21). The board is further empowered to accept all or parts of federal laws and to cooperate with federal authorities in enforcing state or federal laws. (IC 15-17-3-19) The BOAH is authorized to delegate its duties to the state veterinarian, except as they relate to holding hearings, adopting rules, and supervising the state veterinarian. (IC 15-17-3-14) Indiana Code 15-17-3-15 authorizes the board or its agent to enter public or private property to make sanitary inspections. The board or its agent is empowered to seize, quarantine, treat or destroy animals or objects that violate the laws or may be infected with or exposed to disease. (IC 15-17-3-15) Indiana Code 15-17-3-18 empowers the board to require that licensees and permittees submit annual, periodic or special reports or written answers to questions.

Overview of Indiana Communicable Disease Laws

Communicable Disease Laws

Communicable Diseases - Indiana Code 16-41-2-1 authorizes ISDH to adopt rules to define and classify communicable and other dangerous diseases, and to establish reporting, monitoring and control measures for communicable diseases. The regulations promulgated under this statute are located at 410 IAC 1-2.3. Indiana Code 16-41-1-1 affirms that the state's communicable disease laws are “...not intended to interfere with the right of an individual to select any mode of treatment, including reliance upon spiritual means through prayer alone for healing.” Indiana Code 16-41-2-2 requires physicians, hospital administrators, and medical laboratories to report specified information to the local or state health officer. The physician-patient privilege is waived for information reported about communicable diseases to a local or state health officer. (IC 16-41-2-4) A person who reports a communicable disease in good faith is not liable in civil, administrative, disciplinary or criminal actions. (IC 16-41-2-6) However, a person who knowingly makes a false report is liable for actual and punitive civil damages to the person falsely reported. (IC 16-41-2-7) A person required to report who fails to do so is guilty of a class A infraction. (IC 16-41-2-8) Indiana Code 16-41-8-1 protects the release of medical or epidemiological information involving a communicable disease except where the information is not personally identifiable, a person consents to the release of their information, or the release is necessary to enforce laws or protect the health or life of an individual. Information may be released to the individual or their authorized representative, among others. (IC 16-41-8-1) An individual may also voluntarily disclose information about the individual's communicable disease. (IC 16-41-8-1) A person who knowingly discloses or fails to protect classified medical or epidemiologic information is subject to penalty. (IC 16-41-8-1) A public employee who knowingly discloses or fails to protect classified medical and epidemiological information is subject to discharge or disciplinary action. (IC 16-41-8-1) Indiana Code 16-41-5 authorizes ISDH or its agents to enter, inspect, and investigate private properties for health threats. Indiana Code 16-41-5-2 authorizes health officers to investigate the environmental conditions surrounding carriers of communicable diseases. The state health commissioner or his or her agent is authorized to request informed consent to be examined from a person to prevent the transmission of a disease to others. (IC 16-41-6-2) If a person refuses to be examined, a court may compel examination upon a showing of clear and convincing evidence of a present health threat. (IC 16-41-6-2) ISDH is authorized to promulgate rules regarding the compilation of data collected under the state's communicable disease reporting requirements. (IC 16-41-3-1) Indiana Code 16-41-3-2 further charges ISDH with tabulating case reports, determining prevalence and distribution of diseases, disseminating information, and developing methods for near real-time analysis of data.

Overview of Indiana Communicable Disease Laws

Quarantine and Isolation Laws

Quarantine and Isolation Laws – In addition to seeking an order for isolation or quarantine, the public health authority is authorized to, among other things, distribute information to the public about social distancing and self-isolation practices, request information from the public, and close schools, churches and public gatherings. (IC 16-41-9-1.6) Indiana Code 16-41-9-1.5 authorizes a public health authority to seek a court order to isolate or quarantine an individual if they have been infected with or exposed to a dangerous communicable disease or outbreak and can cause infection to others. An individual who is the subject of such a petition is entitled to notice and an opportunity to be heard. (IC 16-41-9-1.5) If the public health authority proves the facts in the petition by clear and convincing evidence, the court may grant the isolation or quarantine order, which must be implemented using the least restrictive means necessary to protect the public. (IC 16-41-9-1.5) The court can appoint an attorney to represent an indigent individual. (IC 16-41-9-1.5) The code specifies that children whose sole parent or guardian is placed in isolation or quarantine may be placed with a relative or friend. (IC 16-41-9-1.5) State and local law enforcement agencies are directed to cooperate with the public health authority in enforcing an order of isolation or quarantine. (IC 16-41-9-1.5) A person who knowingly violates a condition of isolation or quarantine commits a class A misdemeanor. (IC 16-41-9-1.5) ISDH is directed to create rules implementing the state's quarantine and isolation laws. (IC 16-41-9-1.5) Indiana Code 16-41-9-1.5 also authorizes the public health authority to seek a court order to impose isolation and quarantine on an individual in emergency and exigent circumstances.

Communicable Diseases in Animals

Communicable Disease in Animals – Indiana Code 15-17-10-1 requires owners, veterinarians, or caretakers to report dangerous or diseased animals to the state veterinarian or a local health officer within a specified time. Indiana Code 15-17-10-3 permits the state veterinarian or agent to examine animals and objects suspected of being dangerous or diseased. Indiana Code 15-17-10-4 empowers agents of the USDA to inspect, test, quarantine and condemn animals in the state. Indiana Code 15-17-10-5 authorizes the governor to issue a proclamation prohibiting the movement of animals if necessary to protect the health of citizens or animals in the state. Indiana Code 15-17-10-8 empowers the BOAH or its agents to condemn animals or objects infected with or exposed to specified diseases which the BOAH determines are hazards to animals or humans. The Board is empowered to issue emergency rules and orders to facilitate the prevention and control of diseases or pests that present a health hazard to animals or humans. The state veterinarian is also authorized to issue emergency orders. (IC 15-17-10-9) Indiana Code 15-17-10-11 allows the BOAH to declare an animal health emergency.

Overview of Indiana Food and Food Safety Laws

Food Laws

Uniform Food, Drug, and Cosmetic Act – The Indiana Uniform Food, Drug, and Cosmetic Act is intended to protect the public's health from food, drugs, devices and cosmetics. (IC 16-42-1-1) The act makes it illegal to, among other things, adulterate or misbrand food and other products, and to produce or sell adulterated and misbranded items. (IC 16-42-1-16) The state act authorizes the state health commissioner to enforce the law unless otherwise specified. Indiana Code 16-42-1-1.1 empowers the state veterinarian to act in place of the health commissioner and the board of animal health to act in place of ISDH when impounding or disposing of adulterated or misbranded products under the state's poultry, livestock and dairy laws. ISDH is authorized to adopt federal regulations to preserve uniformity with the Federal FD&CA as well as other proposed regulations subject to notice and hearing requirements. (IC 16-42-1-2, IC 16-42-1-3) Indiana Code 16-42-1-13 empowers the health commissioner or agents to inspect factories, warehouses, vehicles, and materials. Indiana Code 16-42-1-10 authorizes ISDH to enter and investigate premises and examine food, among other things, and to take samples. The state food law authorizes ISDH or its agents access to and copying of records showing the movement of food in commerce. (IC 16-42-1-12) For the purposes of administering the state's food law, the health commissioner or agency is authorized to inspect pertinent records of an administrative agency. (IC 16-42-1-11) Indiana Code IC 16-42-1-16 empowers the state health commissioner or agent to seek a temporary or permanent injunction to restrain a violation of the state's food laws. The act further authorizes the state health commissioner or agent to issue written notices or warnings for minor violations if it will serve the public interest. (IC 16-42-1-33) Indiana Code 16-42-1-18 empowers an authorized agent of ISDH to embargo food or other products believed to be adulterated or misbranded so as to be dangerous. ISDH or its agent may seek a court order of condemnation to destroy embargoed items. (IC 16-42-1-19) The court must order the seizure of the embargoed items pending the outcome of the condemnation petition; if no one challenges the petition, the court may order the destruction of the embargoed products. (IC 16-42-1-20) The state act contains provisions governing the right of persons to notice and the opportunity to legally challenge the public health authority's actions. (See for example IC 16-42-1-21 to IC 16-42-1-32) Indiana Code 16-42-2-6 authorizes the health commissioner or agent to condemn or destroy food found to be contaminated or unsound. Indiana Code 16-42-1-14 authorizes ISDH to periodically publish reports summarizing all enforcement actions under the state's food laws. ISDH is further permitted to disseminate information regarding food and other items that pose an imminent danger to public health as well as information illustrating the results of the department's activities. (IC 16-42-1-15)

Retail Food And Food Establishments Laws

Food Service Inspections – Local health departments can undertake inspections of food service operations using forms prepared by ISDH. (IC 16-20-8-9) Indiana Code 16-20-8-5

Overview of Indiana Food and Food Safety Laws

grants food service establishments the opportunity to review an inspection report and submit a written response to the local health department. Indiana Code 16-20-8-6 permits the review of inspection reports and responses under the state's open records law. If no written response is received, the inspection report of a food service establishment may be available immediately after the expiration of the period of time stated in IC 16-20-8-5 under the state's open records law. (IC 16-20-8-7) Indiana Code 16-20-8-8 allows for inspection and copying of a checklist, narrative report and related public records if the local health department takes actions such as ordering closure of the establishment or if there is an imminent danger to public health.

Food Establishment Sanitary Requirements – Indiana Code 16-42-5-6 establishes that “[a] food establishment must meet the following conditions: (1) Be adequately lighted, heated, drained, and ventilated. (2) Be supplied with uncontaminated running water. (3) Have adequate sanitary facilities.” ISDH is authorized to make rules specifying the minimum sanitary standards for food establishments. (IC 16-42-5-5) The ISDH may grant a variance from the state's rules governing food handling machinery or food establishment sanitary standards. (IC 16-42-5-5.2) Indiana Code 16-42-5-19 mandates that “[a] person who has a communicable or infectious disease may not work in a food establishment in any capacity in which epidemiological evidence indicates the person may spread the disease.” ISDH is empowered to enter and inspect food establishments. (IC 16-42-5-23) ISDH is directed to provide local health officers with guidelines concerning food handling and food establishments so there is uniform enforcement of state laws and rules throughout the state. (IC 16-42-5-24) Indiana Code 16-42-5-25 authorizes local health officials to prosecute violations of the state's food safety laws or to report the violation to ISDH for an order to abate the violation or a notice of violation.

Food Handlers – Indiana Code 16-42-5.2-6 requires that “...at least one (1) food handler at a food establishment must be a certified food handler.” Food handlers are required to undergo foodborne illness prevention training that meets requirements established by the ISDH. (IC 16-42-5.2-7) All food establishments must have at least one certified food handler responsible for all periods the establishment is operating, but that person need not be present during all hours of operation. (IC 16-42-5.2-8) Indiana Code 16-42-5.2-13 directs the executive board of the state health department to adopt rules for administering and enforcing the provisions of this law. Localities may not impose their own requirements on food handlers. (IC 16-42-5.2-1) Regulations governing food handlers are located at 410 IAC 7-22.

Food Establishments Regulations

Retail Food Establishment Sanitary Requirements – (Note: Indiana's retail food establishment rules are based on the 2001 Food Code.) The purpose of the state's retail food establishment sanitary rules is to protect the public health and to uniformly apply its standards. (410 IAC 7-24-106) A “regulatory authority” is defined as “the local, state, or federal enforcement body or authorized representative having jurisdiction over a retail food establishment.” (410 IAC 7-24-75) The regulatory authority is empowered to adopt specific temporary measures to protect against public health hazards or nuisances. (410 IAC 7-24-116) Food employees or conditional employees are required to report to the person in charge any health conditions or activities that affect foodborne disease transmission related to specified symptoms or illnesses. (410 IAC 7-24-120) The person in charge is required to exclude or place restrictions on an employee with specified symptoms such as vomiting, or who is infected with a specified agent. (410 IAC 7-24-121) The person in charge may remove restrictions if the employee is free of symptoms and provides written medical documentation, or remove an exclusion if, depending on the nature of the agent, there are no symptoms, the employee provides medical clearance, and/or the regulatory authority permits it. (410 IAC 7-24-122) The regulatory authority is empowered to restrict or exclude food employees or to close an establishment based on the findings of an investigation. (410 IAC 7-24-125) The rules contain specific conditions upon which the regulatory authority shall release a food employee from restriction or exclusion. (410 IAC 7-24-127) The regulatory authority is authorized to obtain a confidential personal medical history of food employees suspected of transmitting a foodborne illness and to examine and take samples from the employee as necessary. (410 IAC 7-24-124) The regulatory authority is authorized to access, inspect and investigate premises at reasonable times after due notice and to collect food samples. (410 IAC 7-24-108) The owner or operator of a retail food establishment must cease operations immediately and immediately notify the regulatory authority if a imminent health hazard exists. (410 IAC 7-24-109)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.

MASSACHUSETTS

Profile of Massachusetts Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Massachusetts Department of Public Health (DPH)</p> <ul style="list-style-type: none"> • Structure: Operates under the Executive Office of Health and Human Services (EOHHS) • State-Local Relationship: Decentralized • Infectious Disease/Food Responsibilities: DPH has a broad grant of authority to protect public health by investigating and preventing disease and by promulgating rules on a range of public health duties, including disease investigation, food safety and foodborne outbreak activities. • Website: www.mass.gov/eohhs/gov/departments/dph
<i>Agriculture Agency</i>	<p>Massachusetts Department of Agricultural Resources (MDAR)</p> <ul style="list-style-type: none"> • Structure: Operates under the Executive Office of Energy and Environmental Affairs (EOEEA) • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MDAR mission is to ensure the long-term viability of agriculture in Massachusetts, including supporting, regulating and enhancing the Commonwealth's agricultural community to promote economically and environmentally sound food safety and animal health measures. • Website: www.mass.gov/agr
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • 1999 Food Code currently in place; currently working towards rulemaking to update to 2009 Food Code
<i>Population</i>	6,547,629 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Massachusetts Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Massachusetts Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Massachusetts General Government Laws

Access to Records And Privacy

Public Records – Massachusetts General Laws Chapter 66, §10 requires the inspection and examination of public records at reasonable times and without delay. “Public records” are defined as “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose...” (MGL c.4, §7, cl.26) The regulations adopted under the public records statutes are located at 950 CMR 32.00. The following materials or data, among others, are exempted from the definition of “public records”: “specifically or by necessary implication exempted from disclosure by statute;”... “personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;”... “inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;” and “...investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest...” (MGL c.4, §7, cl.26)

Fair Information Practices Act – The Fair Information Practices Act (FIPA) directs state departments and other public entities specified in the law to develop rules governing how they collect, use, share, and protect personal information. (MGL c.66A) Regulations adopted under FIPA are located at 940 CMR 11.00. The Department of Public Health's FIPA policies are contained in the Department of Public Health Confidentiality Policy (2008) and Procedures (2009).

Interjurisdictional Issues

Municipal Agreements – Joint Operation of Public Activities – Municipalities are authorized to contract or enter into agreements with other governmental units to jointly perform services and activities. (MGL c.40, §4A) A “governmental unit” is defined as “...a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.” (MGL c.40, §4A)

Public Safety Mutual Aid Agreements – MGL Chapter 40, §4J authorizes the creation of a “statewide public safety mutual aid agreement to create a framework for the provision of mutual aid assistance among the parties to the agreement in the case of a public safety incident” that municipalities can join. Assistance provided includes, but is not limited to, fire service, law enforcement, emergency medical services, public health, health, and medical services. (MGL c.40, §4J(b)) A “public safety incident” is defined as “an event, emergency or natural or man-made disaster, that threatens or causes harm to public health, safety or welfare and that exceeds, or reasonably may be expected to exceed, the response or recovery capabilities of a governmental unit including, but not limited to, a technological hazard, planned event, civil unrest, health-related event and an emergency, act of terrorism and training and exercise that tests and simulates the ability to manage, respond to or recover from any such event.” (MGL c.40, §4J(a))

Agency Reporting Requirements

Agency Annual Reports - MGL Chapter 30, §32 directs state departments required to make annual reports to deposit them with the secretary of state. The contents of the report are to include a summary of the department's work during the prior fiscal year and recommendations for the coming fiscal year. Department heads are authorized to make recommendations for legislative action in annual reports submitted in even-numbered years and file them with the clerk of the house of representatives. (MGL c.30, §33)

Overview of Massachusetts General Public Health Laws

Overview of Massachusetts General Public Health Laws

State Health Agency

Massachusetts Department of Public Health – MDPH is overseen by the commissioner of public health and a public health council. (MGL c.17, §1) DPH is an agency located within the Executive Office of Health And Human Services. (MGL c.6A, §16) The department is authorized to, among other things, investigate diseases and epidemics, and the adulteration of food and drugs, disseminate recommendations, and conduct sanitary investigations. (MGL c.111, §5) The commissioner is appointed by the secretary of health and human services, with the approval of the governor. (MGL c.17, §2) The commissioner is empowered to “administer the laws relative to health and sanitation and the regulations of the department, and shall prepare rules and regulations for the consideration of the council.” (MGL c.111, §2) The commissioner is required to submit an annual report with recommendations regarding health legislation to the public health council. (MGL c.111, §2) MGL Chapter 17, §7A authorizes the commissioner of public health to designate certain physicians and dentists employed by the department as public health officers upon the approval of the secretary of health and human services; there can be not more than ten public health officers in the department at any one time. MGL Chapter 17, §7 authorizes the commissioner, with the approval of the public health council, to appoint a district health officer for each health district identified in Chapter 111, §4. The public health council advises the commissioner and performs other duties as required by law (MGL c.17, §3) The public health council is authorized to “make and promulgate rules and regulations, take evidence in appeals, consider plans and appointments required by law, hold hearings, and discharge other duties required by law; but it shall have no administrative or executive functions.” (MGL c.111, §3)

General State Health Agency Authorities – MGL Chapter 111, §9 authorizes the commissioner to appoint inspectors, analysts and chemists to support the performance of duties relative to food and drugs. The department of public health is authorized to provide laboratory services for the division of animal health in the department of agriculture. (MGL c.111, §15) The department must “report to the director of animal health all cases brought to its attention where barns, stables or other enclosures, in which neat cattle, other ruminants or swine are kept, are in an unsanitary condition.” (MGL c.111, §16) MGL Chapter 111, §24 authorizes the department to publish part of its annual report to the legislature and other material for general public distribution to promote public health, as well as publish a manual on laws for public health boards. (MGL c.111, §24) The department is further authorized to allow scientific studies to reduce disease and death in the state. (MGL c.111, §24A)

State Health Districts

Health Districts – MGL Chapter 111, §4 authorizes the commissioner to create up to eight health districts. Health district officers are empowered to “act as the representative of the commissioner, and under his direction shall secure the enforcement within his district of the laws and regulations relating to public health. He shall have the powers and perform the duties set forth in this chapter, and, under the direction of the commissioner, shall perform such other duties as he may prescribe.” (MGL c.111, §4) MGL Chapter 111, §18 directs health district officers to become informed about sanitary conditions and other influences to public health affecting the district, to learn the prevalence of diseases in the district, and consult with state and local health officials. MGL Chapter 111, §19 directs the district health officer to send annual and periodic reports to the department of public health and to forward written recommendations from local authorities on to the department.

Local Health Agencies

Local Boards of Health, Commissioners, Departments – MGL Chapter 111, §26 authorizes local boards of health and specifies the number and qualifications of members. MGL Chapter 111, §26A allows certain types of cities and towns to create a health department to replace the local board of health and appoint a commissioner of health and advisory council of health. In cities with a mayoral form of government, the mayor may appoint a full time commissioner of health with approval from the city council, and in towns, appointment of the commissioner of health is by the board of selectmen, if authorized by a vote of the town. (MGL c.111, §26B) Two or more municipalities can jointly hire a health officer. (MGL c.111, §27A) A local commissioner of health is authorized to “make rules and regulations for the department of health, its officers, agents and assistants.” (MGL c.111, §26E) Similarly, local boards of health can make rules. (MGL c.111, §31) Agents of local health boards may report violations of public health laws. (MGL c.111, §30) Local boards of health must send weekly reports of deaths and reportable diseases to the department of public health. (MGL c.111, §29) MGL Chapter 111, §28 directs city health boards to submit annual reports to the city council.

Inspector of Health - MGL Chapter 41, §102 authorizes a town board of health composed of selectmen to “appoint an inspector of health, who shall assist the selectmen in the performance of their duties as such board.” In towns with five thousand or more inhabitants that have accepted this section, the board of health can appoint “a full-time inspector of health who shall devote his time to the enforcement of the laws and regulations related to public health and such other duties as may be assigned by said board.” (MGL c.41, §102B) In towns not exceeding 3,000 in population which have accepted this section by vote in town meeting, “the selectmen may appoint the school physician to be inspector of health” (MGL c.41, §102A)

Regional Health Districts – MGL c.111, §27B permits two or more municipalities, upon approval from each health board or city council/mayor, and by vote of a town at an annual town meeting, to form a regional health district consisting of a regional board of health, director and staff. Towns and cities can join an existing regional health districts. (MGL c.111, §27B) Regional health districts have the powers and duties of the member localities and are empowered to adopt regulations. (MGL c.111, §27B)

Overview of Massachusetts General Public Health Laws

State Agriculture Agency

Massachusetts Department of Agricultural Resources (MDAR) – The Massachusetts Department of Agricultural Resources is authorized to operate under the supervision and control of a board of food and agriculture, which members are appointed by the governor. (MGL c.20, §1) The commissioner of agriculture is appointed by the secretary of environmental affairs with approval of the governor. (MGL c.20, §1) MDAR operates within the Executive Office of Energy and Environmental Affairs (EOEEA). (MGL c.21A, §§1, 2, 7) The MDAR is authorized to, among other things, “[e]xecute and carry into effect the laws relative to dairy products,...and the production, storage, marketing and distribution of agricultural products.” (MGL c.128, §2) MDAR is required to make annual reports about its activities: “The department shall make an annual report, including the number of agents, assistants and scientific experts employed in the various divisions together with their expenses and disbursements, of all investigations made by the department of all cases prosecuted with the results thereof, and any other information advantageous to the public and agricultural industry.” (MGL c.128, §5)

Overview of Massachusetts Communicable Disease Laws

Communicable Disease Laws

Communicable Disease Statutes – Reporting, Investigation – Coordination – MGL Chapter 111, §7 authorizes the department to make investigations into contagious diseases, investigate prevention measures, and consult with local authorities. The department is further directed to coordinate with local health boards and require reporting of diseases declared to be dangerous to public health. (MGL C.111, §7) Massachusetts regulations governing reportable diseases, surveillance, and isolation and quarantine requirements are located at 105 CMR 300.000. Reporting of foodborne illness is specifically covered in 105 CMR 300.131 and 300.132. MGL Chapter 111, §6 authorizes the department of public health to require clinical laboratories to report infectious diseases if necessary to protect public health; data reported to the department is confidential.

Local Health Boards – Communicable Diseases – Reporting, Notices – MGL Chapter 111, §104 authorizes localities to use all possible care to prevent spread of infections and issue public notices about infected places. MGL Chapter 111, §111 requires physicians to give immediate written notice of a person with a known or suspected disease dangerous to public health. Local boards of health must give notices to other boards of health if the patient is from, visited or contracted it in another locality. (MGL c.111, §111) MGL Chapter 111, §109 requires householders to give notice of infections with diseases dangerous to public health. Local boards must give notice of diseases dangerous to public health to the department of public health within 24 hours. (MGL c.111, §112) Local boards must also keep records of notices of diseases. (MGL c.111, §113)

Local Health Boards – Communicable Diseases – Control Measures – MGL Chapter 111, §95 addresses local boards of health activities during infectious disease outbreaks. Magistrates can issue warrants to remove persons infected with diseases dangerous to public health. (MGL c.111, §96) Current judicial authority and practice in the state requires health authorities to seek warrants from a superior court. (Correspondence from MDPH.) No locality can transport an infected person without the approval of the recipient locality, unless the destination is a hospital. (MGL c.111, §96A) However, sections 95 and 96 (regarding removal of patients from their homes) only apply to people living in boarding houses or hotels, or when two or more families live in the same dwelling, or where in the opinion of the board of health, the patient cannot be properly isolated. (MGL c.111, §97) MGL Chapter 111, §98 authorizes local boards of health to grant “permits for the removal of any nuisance, infected articles or sick person within the limits of their towns.” Boards are authorized to seek warrants to secure infected articles. (MGL Chapter 111, §99) Local boards can also use houses or stores to keep infected articles. (MGL Chapter 111, §100) The General Laws also address entry, payment and compensation for articles and premises. (See MGL Chapter 111, §§101-103) MGL Chapter 111, §106 authorizes local boards of health to employ persons to examine travelers from infected places outside the state and restrict them if necessary. Boards of health are granted additional powers over nuisances in MGL c.111, §122.

Communicable Diseases in Animals

Local Health Boards – Communicable Diseases in Animals – Reporting – Massachusetts General Laws Chapter 129, §28 requires local boards of health, their agents or any person with knowledge of an existing or suspected contagious disease in animals to report it to the director of animal health in the department of agricultural resources or to an inspector for the town.

Overview of Massachusetts Food and Food Safety Laws

Food Laws

Food Law – Massachusetts General Laws Chapter 94, §§186 et seq. contain provisions related to the adulteration and misbranding of food, drugs and cosmetics. The department of

Overview of Massachusetts Food and Food Safety Laws

public health is authorized to adopt and enforce rules, regulations and standards to implement provisions related to food, drugs and cosmetics consistent with federal law; local boards of health may enforce rules related to food. (MGL c.94, §192) MGL c.94, §188 authorizes the agents of the department of public health or local boards of health to collect samples or purchase products to sample. Analyses of samples are to be conducted under the supervision of DPH or the local board of health. (MGL c.94, §189) If a sample is found to be adulterated or misbranded, but does not require an immediate formal complaint by the commissioner of public health, the party supplying the sample will be given notice and a copy of the analysis. (MGL c.94, §189) The notified party can enter a request for administrative hearing. (MGL c.94, §189) If the administrative hearing determines there is adulteration or misbranding, the commissioner may file a formal complaint in a court with jurisdiction. (MGL c.94, §189) In cases involving food, local boards of health may take the same actions as the commissioner of public health. (MGL c.94, §189) MGL c.94, §189A authorizes the commissioner public health to tag, embargo, and detain food, drugs, cosmetics or devices that are or are suspected of being adulterated or misbranded. Items found by a court to be adulterated or misbranded can be destroyed. (MGL c.94, §189A)

Retail Food and Food Establishments Laws

Food Establishment Laws – MGL Chapter 94, §305A makes it illegal for any one to manufacture, serve or prepare food in an unsanitary manner or facility. The commissioner of public health is authorized to “promulgate and adopt such rules and regulations as he may deem necessary for the enforcement of this section.” (MGL c.94, §305A) MGL Chapter 94, §305B authorizes the commissioner of public health to require persons handling food to submit to an examination by the department or the local board of health if the commissioner believes it is necessary to protect public health. The examination is to be made by a physician licensed in Massachusetts and permits the taking of samples; the subject’s personal physician may be present at the examination. (MGL c.94, §305B) MGL Chapter 94, §305B makes it illegal for a person in charge at a food establishment to knowingly require or allow a person found to be a carrier or who has not been examined to handle food.

State Sanitary Code - The department of public health is authorized to adopt a state sanitary code that addresses, among other things, sanitation standards for food service establishments. (MGL c.111, §127A) Local boards of health can also adopt sanitary rules that do not conflict with state law or the sanitary code. (MGL c.111, §127A) Local boards of health are to enforce the state sanitary code, but the department of public health can enforce the code in a locality if the local board of health fails to do so. (MGL c.111, §127A)

Use of Common Drinking Cups - MGL Chapter 111, §8 makes it illegal to use common drinking cups in public places and facilities designated by the department of public health.

Food Establishments Regulations

Massachusetts State Sanitary Code Chapter X--Minimum Sanitation Standards For Food Establishments (105 CMR 590.000) – (NOTE: Chapter X of the Massachusetts Sanitary Code adopts some provisions of the 1999 Food Code, and contains additional state requirements for food establishments. The state is currently working towards updating its rules to the 2009 Food Code.)

Food Code– Reporting, Inspections, Records – Food Code 2-201.11 directs permit holders to “require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified [by the state].” Massachusetts lists the illnesses to be reported at 105 CMR 590.003(C). The person in charge is required to report the information to the FC-regulatory authority. (105 CMR 590.003(G); Food Code 2-201.15) Local boards of health are required to immediately notify the department of public health of confirmed or suspected foodborne disease outbreaks within 24 hours and to keep the department updated until an investigation is completed. (105 CMR 590.017(A)) Food Code 8-404.11 requires permit holders to cease operations immediately and notify the department of public health of an imminent health hazard. (105 CMR 590.013(D)) Food Code 8-402.11 authorizes the inspection of premises without prior notice and access to records.

Food Code – Control Measures – 105 CMR 590.003(D) requires the person in charge to (1) “[e]xclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified under 105CMR 590.003(C)(1) through (4); (2) [e]xcept as specified under 105 CMR 590.003(D)(3) or (4), restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is...(a) Suffering from a symptom specified under FC 2-201.11(B), or (b) Not experiencing a symptom of acute gastroenteritis specified under FC 2-201.11(B)(1) but is diagnosed with an infectious agent specified under 105 CMR 590.003(C)(5) through (14).” 105 CMR 590.003(D) also addresses excluding or restricting employees if they are jaundiced or the population served is a highly susceptible population. 105 CMR 590.016 authorizes a board of health to examine, sample, embargo and destroy adulterated or misbranded food. 105 CMR 590.014 authorizes the suspension and revocation of permits and the process accompanying them. A board of health is authorized to suspend a permit without prior notice if the operations are hazardous to public health. 105 CMR 590.014(A) The rules also specify the conditions and procedures for suspending a permit with notice (105 CMR 590.014(B)) and for revoking a permit with notice (105 CMR 590.014(C)).

Overview of Massachusetts Food and Food Safety Laws

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, grain, milk and dairy products, eggs and other agricultural products. **These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.**

MICHIGAN

Profile of Michigan Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Michigan Department of Community Health (MCDH)</p> <ul style="list-style-type: none"> • Structure: Part of a larger umbrella agency • State-Local Relationship: Decentralized • Infectious Disease/Food Responsibilities: MCDH is responsible for the surveillance, prevention and control of communicable diseases in the state, including enteric and zoonotic diseases. • Website: www.michigan.gov/mdch
<i>Agriculture Agency</i>	<p>Michigan Department of Agriculture & Rural Development (MDARD)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MDARD is responsible for all aspects of food promotion and regulation in the state, including licensing and inspecting of all food establishments, inspecting food products and animals. • Website: www.michigan.gov/mdard
<i>FDA Food Code</i>	2009 Food Code adopted as of October 1, 2012
<i>Population</i>	9,883,640 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Michigan Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. Please see the *Michigan Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.

Overview of Michigan General Government Laws

General Governmental Authorities

Laws for the Protection and Promotion of Public Health – The Michigan State Constitution includes a provision on Public Health and General Welfare: “The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.” (Mich. State Constitution (1963) Article IV, Section 51)

Access To Records And Privacy

Freedom of Information Act - The Michigan Freedom of Information Act states that “all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act.” (MCL §15.231) A “public record” is defined as “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created (MCL §15.232) A “public body” includes state and local agencies. (MCL §15.232) State agencies are required to provide final orders, promulgated rules, and written statements interpreting laws.(MCL §15.241) Michigan Consolidated Laws §15.243 specifies the types of records that are exempt from disclosure under the state's Freedom of Information Act, including, but not limited to, information of a personal nature, investigation records for law enforcement, medical records, and records preliminary to an agency's decision.

Interjurisdictional Issues

See specific interjurisdictional authorities contained elsewhere in the tables.

Agency Reporting Requirements

Reports to the Legislature – Under the state's Annual Appropriations Act, the legislature can require multiple reports from state agencies, which can change every year with the budget line items. (Correspondence from MDCH) (See also specific agency reporting requirements contained elsewhere in the tables.)

Overview of Michigan General Public Health Laws

State Health Agency

Michigan Department of Community Health (MDCH) and Director – The Michigan Department of Community Health has authority under MCL §333.2201, which created the department of public health (now MDCH) and the director. The department is directed to “continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and agencies and health services delivery systems; and regulation of health care facilities and agencies and health services delivery systems to the extent provided by law.” (MCL §333.2221) Specifically, the department is authorized to among other things: “[h]ave general supervision of the interests of the health and life of the people of this state”; “[i]mplement and enforce laws for which responsibility is vested in the department”; “[c]ollect and utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health”; and “[m]ake investigations and inquiries as to [t]he causes of disease and especially of epidemics, [t]he causes of morbidity and mortality, and [t]he causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.” (MCL §333.2221) The director of community health is appointed by the governor and must be qualified in the field of health administration. (MCL §333.2202) If the director is not a physician, then the director must appoint a physician to be the chief medical executive. (MCL §333.2202)

General Health Agency Authorities – The department is authorized to enter into agreements and contracts in furtherance of its duties. (MCL §333.2226) The department is

Overview of Michigan General Public Health Laws

generally authorized to promulgate “rules necessary or appropriate to implement and carry out the duties or functions vested by law in the department.” (MCL §333.2233) MDCH is also specifically authorized, among other things, to promulgate rules to protect public health and prevent the spread of disease: “The department may...[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” (MCL §333.2226) MCL §333.2241 authorizes the department to inspect and investigate persons, premises and other items and events. (MCL §333.2241, §333.2243) Local law enforcement officers are authorized to enforce warrants for inspection and investigations by the department or local health departments. (MCL §333.2245, §333.2246) The department is further authorized to seek injunctive relief to prevent or control any action or condition that the department believes adversely affects public health. (MCL §333.2255) MCL §333.2231 directs the department to submit periodic reports of its activities to the governor and the legislature, and requires state officials and persons doing business in the state to provide the department with information relating to public health on request.

General Health Agency Authorities – Control Measures – MCL §333.2251 authorizes the department to inform individuals that an imminent danger to health or life exists and to order them to avoid, correct or remove the imminent danger. An “imminent danger” is defined as “a condition or practice exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” (MCL §333.2251) If a person fails to comply with the department’s order, the department can petition the court for an order restraining or correcting the imminent danger. (MCL §333.2251) If the director determines that conditions constitute a menace to public health, then the director may use any applicable state or local laws or rules to address the condition. (MCL §333.2251) The law also authorizes the director to promulgate emergency rules to schedule or reschedule a controlled substance upon the notification of other departments if it can prevent or control the imminent danger. (MCL §333.2251) The director can issue emergency orders prohibiting gatherings in the event of an epidemic and ensuring the continuation of essential public health services. (MCL §333.2253) If the epidemic involves avian influenza or another disease spread by contact with animals, the department of agriculture is directed to cooperate with MDCH’s response. (MCL §333.2253)

State Promotion and Coordination of Local Health Services – Michigan Consolidated Laws §333.2224 directs the department to promote a system of local health services in the state and to develop systems to effectively integrate public health services and coordinate with nonpublic health services statewide.

Local Health Agencies

Local Health Departments – Local health departments are tasked with preventing disease and promoting public health. (MCL §333.2433) Local health departments are empowered to undertake the following activities, among other things: “Implement and enforce laws for which responsibility is vested in the local health department; [u]tilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health; and [m]ake investigations and inquiries as to [t]he causes of disease and especially of epidemics, [t]he causes of morbidity and mortality, and [t]he causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.” (MCL §333.2433) Local health departments are also authorized to adopt regulations to protect public health and prevent disease. (MCL §333.2435) However, the regulations must be “at least as stringent as the standard established by state law applicable to the same or similar subject matter;” “[r]egulations of a local health department supersede inconsistent or conflicting local ordinances.” (MCL §333.2441) MDCH is authorized to exercise any power vested in a local health department where the local health department does not meet the statutory requirements for them. (MCL §333.2437) MCL §333.2428 governs the appointment, qualifications, powers and duties of local health officers. The local health officer is empowered to “...act as the administrative officer of the board of health and local health department and may take actions and make determinations necessary or appropriate to carry out the local health department’s functions under this part or functions delegated under this part and to protect the public health and prevent disease.” (MCL §333.2428)

District Health Department and Board of Health – MCL §333.2415 authorizes the creation of district health departments in two or more counties or in counties and cities of a certain size. (MCL §333.2415) A city can opt to create a city health department, join a district health department, or elect to have the county in which it is located serve as the local health department for the city.

General Authorities of the Local Health Agency, Board and Director

Local Health Agency Authorities – MCL §333.2235 authorizes MDCH to permit local health departments to exercise certain functions of the department if not prohibited by law. Local health departments will not exercise powers or functions of MDCH if the locality does not have the staff, administrative or technical capacity or a legal constraint precludes the assignment. (MCL §333.2235) If a unit of MDCH provides services directly to a local area, the department must provide summary reports of the services to the local health officer. (MCL §333.2235) MCL §333.2446 empowers local health departments to inspect and investigate persons, premises and other items. A local health officer is authorized to seek injunctive relief to prevent or control any action or condition that the health officer believes adversely affects public health. (MCL §333.2446) Local health departments are authorized to enter into agreements and contracts in furtherance of their duties. (MCL §333.2435)

Local Health Agency Authorities – Control Measures – Local health departments are authorized to issue orders to correct or avoid conditions violating health laws or which are

Overview of Michigan General Public Health Laws

nuisances or unsanitary conditions. (MCL §333.2455) Local health departments may enforce orders issued to control nuisances and unsanitary conditions through warrants, levies, and judicial order. (MCL §333.2455) MCL §333.2451 further authorizes local health departments to inform individuals that an imminent danger to health or life exists and to order them to avoid, correct or remove the imminent danger. An “imminent danger” is defined as “a condition or practice exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” (MCL §333.2451) If a person fails to comply with the department’s order, the local health department can petition the court for an order restraining or correcting the imminent danger. (MCL §333.2451) A local health officer can issue emergency orders prohibiting gatherings in the event of an epidemic and ensuring the continuation of essential public health services. (MCL §333.2453) A local health officer or the department is authorized to “provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238.” (MCL §333.2453)

State Agriculture Agency

Michigan Department of Agriculture and Rural Development – The Michigan Department of Agriculture and Rural Development (MDARD) is vested with the powers and tasked with performing the duties conferred on it by law. (MCL §285.1) The department is tasked with, among other things, promoting agriculture and protecting food safety and animal health. The director of MDARD is appointed by the Commission of Agriculture and Rural Development: “The commission shall appoint and employ a director of agriculture who shall continue in office at the pleasure of the commission...” (MCL §285.1) The Commission of Agriculture and Rural Development is “a bipartisan commission...which shall be composed of 5 members appointed by the governor, subject to confirmation by the senate” and vested with the “general administration of said powers and duties”. (MCL §285.1)

Overview of Michigan Communicable Disease Laws

Communicable Disease Laws

Communicable Diseases – MCL §333.5111 authorizes MDCH to identify communicable diseases. A “communicable disease” is defined as “...an illness due to a specific infectious agent or its toxic products that results from transmission of that infectious agent or its products from a reservoir to a susceptible host, directly as from an infected individual or animal, or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.” (MCL §333.5101) A “serious communicable disease” is defined as “a communicable disease or infection that is designated as serious by the department pursuant to this part. Serious communicable disease or infection includes, but is not limited to, HIV infection, acquired immunodeficiency syndrome, venereal disease, and tuberculosis.” (MCL §333.5101) The department is authorized to adopt rules that, among other things, specify the persons required to report, the methods of reporting, and procedures for preventing, investigating and controlling diseases. (MCL §333.5111) MCL §333.5113 does not permit medical treatment, testing, or examinations that violate personal religious beliefs, but it still requires compliance with provisions regarding sanitation and reporting of diseases. MDCH may establish minimum procedures and standards for control and elimination of communicable diseases and serious communicable diseases and infections. (MCL §333.5115) The rules governing communicable diseases are located at Michigan Administrative Code Rules 325.171 – 325.199.

Hazardous Communicable Diseases – MCL §333.5203 authorizes MDCH or local health officer to issue a warning notice to persons determined to be a carrier and a threat to others which requires the person to cooperate with prevention and control measures. A “carrier” is defined as “an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.” (MCL §333.5201) A “health threat to others” is defined as “an individual who is a carrier [who] has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection.” (MCL §333.5201) The warning notice for the carriers “may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person’s status as a carrier.” (MCL §333.5203) The warning notice must be in writing, but may be an oral statement in urgent circumstances followed by a written notice. If the carrier does not adhere to the measures specified in the warning notice, the department or local health officer may seek judicial enforcement. (MCL §333.5203) The carrier is entitled to notice and a hearing, except in cases of emergency, before a judicial action. (MCL §333.5203) In emergency situations, the department or local health officer may seek a judicial order to transport for emergency care or to a treatment facility and temporarily detain a person who is a carrier and a health threat, subject to a post-detainment hearing. (MCL §333.5207)

Communicable Diseases in Animals

Animal Industries Act – The Animal Industries Act is “...intended to protect the health, safety, and welfare of humans and animals, to be consistent with applicable federal and state laws, and shall be so construed.” (MCL §287.701) MCL §287.709 establishes the requirements for reporting specified diseases or contaminations in animals to the director of the department of agriculture and rural development. “Reportable disease” is defined as “an animal disease on the current reportable animal disease list maintained by the state veterinarian that poses a serious threat to the livestock industry, public health, or human food chain.” (MCL §287.706) The director is empowered to enter premises where “animals, animal products, or animal feeds are suspected of being contaminated with an infectious or contagious disease, or a disease caused by a toxic substance and seize or impound the

Overview of Michigan Communicable Disease Laws

animal products or feed located on the premises.” (MCL §287.709) MCL §287.709 further specifies that identifiable medical or epidemiological information gathered during an investigation is exempt from disclosure under the state freedom of information act, unless publication is necessary to protect public or animal health.

Overview of Michigan Food and Food Safety Laws

Food Laws

Michigan Food Law – (NOTE: Recent amendments to the Michigan Food Law became effective on October 1, 2012; this table reflects the amended statutory language.) The Michigan Food Law governs the “...manufacture, production, processing, packing, exposure, offer, possession, and holding of any food for sale; and the sale, dispensing and giving of food, serving, and the supplying of food in the conduct of any food establishment.” (MCL §289.1101, §289.1103) The law makes it illegal to, among other things, “adulterate or misbrand food” or “[m]anufacture, sell, deliver, hold, or offer for sale adulterated or misbranded food.” (MCL §289.5101) The food law adopts by reference, among other things, the 2009 FDA Model Food Code with some modifications. (MCL §280.1107, §289.6101) MCL §289.2103 creates a retail food advisory board to advise MDARD on the implementation of the act and promulgation of rules. The Department of Agriculture and Rural Development (MDRAD) and the director of agriculture and rural development are vested with the powers and duties of the Michigan Food Law. (MCL §289.1107, §289.1121) The director is authorized to, among other things, the authority to delegate enforcement and administration to local health departments, conduct investigations, and promulgate rules to implement and enforce the act. (MCL §289.2101) The director is empowered to inspect food establishments, examine records and take samples. (MCL §289.2111) Documents marked by the food establishment as containing trade secrets must be protected by the director as confidential. (MCL §289.2111) MCL §289.6147 directs food establishments to immediately report disasters to MDARD and cease operations immediately. MDARD is directed to submit annual reports to the governor and legislature summarizing judgments and orders under the food law. (MCL §289.2117) The department is permitted to disseminate information to protect public health and illustrate the results of its investigations. (MCL §289.2117)

Food Law – Control Measures – MCL §289.2105 authorizes the director of agriculture and rural development to seize food found to violate the food law without a warrant. The director is authorized to tag and embargo food found or suspected of being adulterated or misbrand so as to be dangerous to public health. (MCL §289.2105) The director can initiate judicial action to condemn and destroy food determined to be adulterated or misbranded. (MCL §289.2105) MCL §289.2107 authorizes the director to declare adulterated food as nuisance and order it to be condemned or destroyed. A food establishment can request the supervision of the director in sorting food to be destroyed. (MCL §289.2107) MCL §289.2109 permits the director to immediate destruction of seized food that cannot be stored without risk to public health. MCL §289.2113 authorizes the director to order the immediate cessation of operations at a food establishment if it is a hazard to public health. Closed food establishments cannot resume operation until the director determines the condition causing the hazard no longer exists. (MCL §289.2113) The license holder can request an administrative hearing on the order of cessation. (MCL §289.2113) MCL §289.5111 authorizes the department to seek temporary or permanent injunctions to restrain any violations under the food law or regulations. The food law permits the department to issue written notices or warnings for minor violations if it serves the public interest. (MCL §289.5105)

Food Law – Interjurisdictional Agreements – The Michigan Food Law authorizes MDARD to enter into interjurisdictional agreements to provide and accept food safety assistance: “The department may enter into agreements with other states and the federal government to provide and accept food safety assistance, including the training of personnel. Any employee of the department assigned to food safety duties or training programs outside this state shall be considered to be working inside this state for purposes of compensation and any other employee benefits.” (MCL §289.2132)

Food Law – Local Health Departments – State Delegation, Consultation, Review – MCL §289.3105 authorizes MDARD to “delegate the authority and responsibility for the enforcement of the requirements pertaining to food service establishments contained in this act and rules to local health departments meeting the program criteria provided for in this act and rules.” The director is empowered to delegate enforcement at specified types of food establishments to certified health departments. (MCL §289.3107) A “certified health department” is defined as “a county, district, or city health department that meets the criteria for certification of health departments established by this act and that is authorized by the director to enforce this act for retail groceries, food processors, or fair concessions.” (MCL §289.3103) MCL §289.3109 further authorizes the director to appoint local health departments as agents for administering and implementing the act and its regulations. MDARD is authorized to promulgate rules governing food service programs in local health departments. (MCL §289.2119) The department is empowered to provide consultation and training to local health departments delegated food service responsibilities. (MCL §289.2119) MDARD is further authorized to conduct periodic reviews of local health department food service programs. (MCL §289.2119) MCL §289.3137 directs certified health departments to provide annual reports to MDARD and authorizes the state department to review and evaluate certified health departments.

Food Law – Local Health Departments – Investigations – Foodborne Diseases – MCL §289.2115 authorizes the director to investigate suspected disease transmission by a food establishment employee. MCL §289.3129 directs local health departments to investigate suspected foodborne diseases associated with food service establishments and report it

Overview of Michigan Food and Food Safety Laws

findings to MDARD. For other types of food establishments, local health departments must inform MDARD about the investigation. (MCL §289.3129) A “foodborne disease outbreak” is defined as “an incident where any of the following occur: (i) Two or more persons, not of the same household, have ingested a common food and have a similar disease or similar symptoms or excrete the same pathogens, and there is a time, place, or person association between these persons. (ii) There is a single case of suspected botulism, mushroom poisoning, paralytic shellfish poisoning, or other rare disease. (iii) There is a case of a disease or poisoning that can be definitely related to ingestion of a food.” (MCL §289.3103) Local health departments are directed to implement communication systems with agencies and other entities to facilitate foodborne illness outbreak investigations. (MCL §289.3131) Information gathered during the investigation that is not exempt from disclosure under the state FOIA should be shared with the establishment owner and others to avoid reoccurrences. (MCL §289.3131)

Retail Food And Food Establishments Laws

Michigan Food Law – The Michigan Food Law discussed above includes provisions related to retail and other food establishments.

Food Establishments Regulations

Michigan Food Code – (NOTE: Michigan adopted the 2009 Food Code as of October 1, 2012.) Section 2-201.11 requires that food employees and conditional employees report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. (2-201.11(A)) The person in charge must report to the regulatory if the employee or conditional employee exhibit specified symptoms. 2-201.11(B)) The person in charge is responsible for excluding or restricting food employees or conditional employees with certain conditions or symptoms specified in the regulation. (2-201.12) Employees must satisfy condition-specific criteria to demonstrate the condition or infection has ceased. (2-201.13) When the regulatory authority “has reasonable cause to believe” that a food employee or conditional employee has possibly transmitted disease or may be infected with a food transmissible communicable disease or acute respiratory infection, Section 8-501.10 permits the regulatory authority to investigate foodborne outbreaks by obtaining medical information, conducting examinations and taking samples. Section 8-402.11 permits regulatory authority personnel, at reasonable times, to inspect food establishment’s premises and access records to determine compliance with the food code. If, after notification of the authority to inspect a food establishment, the establishment continues to refuse the inspector access, the regulatory authority is directed to provide details of the inspection refusal in an inspection report form (8-402.30) and is authorized to issue (or apply for issuance) of an inspection order to gain access to the food establishment. (8-402.40) Except as provided elsewhere in the Code, the regulatory authority is directed to “treat the inspection report as a public document and shall make it available for disclosure...” (8-403.50) A permit holder is required to immediately “discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.” (8-404.11(A)) The permit holder must obtain approval for the Department of Health before resuming operations. (8-404.12) If the regulatory authority determines after investigation that a food employee or conditional employee is infected, Section 8-501.20 authorizes the regulatory authority to issue an order either restricting or excluding the employee or closing the food establishment. The regulatory authority may issue such an order “without prior warning, notice of a hearing, or a hearing” if the order states the reasons for the order, the evidence necessary to show the reasons for the order have been eliminated, and provides information about the right to appeal the order. (8-501.30) The regulatory authority shall end the restriction, exclusion or closure order if the employee or establishment meets the condition-specific criteria established elsewhere in the code to show the condition or infection has ceased. (8-501.40)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***

MINNESOTA

Profile of Minnesota Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Minnesota Department of Health (MDH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Decentralized • Infectious Disease/Food Responsibilities: MDH has a broad grant of authority to protect public health by investigating and preventing disease and by promulgating rules on a range of public health duties, including disease investigation, food safety and foodborne outbreak activities. • Website: www.health.state.mn.us
<i>Agriculture Agency</i>	<p>Minnesota Department of Agriculture (MDA)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MDA is responsible for executing Minnesota's laws pertaining to agriculture and other laws including those governing food manufacturers, processors and packers and inspections of grocery stores. • Website: www.mda.state.mn.us
<i>Animal Health Agency</i>	<p>Minnesota Board of Animal Health (MBAH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MBAH manages voluntary and mandatory programs that focus on controlling and eradicating animal disease in Minnesota's domestic animal populations. • Website: www.bah.state.mn.us
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • 1995 Food Code currently in place; current rulemaking to update to 2009 Food Code
<i>Population</i>	5,303,925 (2010 Census)

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Overview of Minnesota Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Minnesota Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Minnesota General Government Laws

General Governmental Authorities

See specific governmental authorities contained elsewhere in the tables.

Access Records and Privacy

Minnesota Government Data Practices Act – The Minnesota Government Data Practices Act “regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities.” (§13.01) The act states that “[a]ll government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.” (§13.06) Health data is considered to be private data on individuals that cannot be disclosed except under certain circumstances. (§13.3805) Health data can be disclosed by the commissioner of health or local board of health to a data subject's physician or as necessary to locate or identify a case, carrier, or suspect case, to establish a diagnosis, to provide treatment, to identify persons at risk of illness, or to conduct an epidemiologic investigation”; the commissioner can also authorize disclosure of health data as necessary to identify cases, etc. as described above. (§13.3805) The act further specifies that data received by the MN Department of Agriculture from HHS, FDA and USDA FSIS that is “necessary for the purpose of carrying out the Department of Agriculture's statutory food safety regulatory and enforcement duties are classified as nonpublic data...and private data on individuals...”; however this does not preclude the department sharing data to “appropriately inform consumers of issues that could affect public health.” (§13.643) Data collected and maintained by the Board of Animal Health regarding the registration and identification of animal and premises is considered private or nonpublic data except that the “Board of Animal Health may disclose [animal and premises] data...to any person, agency, or to the public if the board determines that the access will aid in the law enforcement process or the protection of public or animal health or safety.” (§13.643)

Health Care Bill of Rights – Epidemiologic Data – Section 144.658 protects individual health data collected during an epidemiologic investigation from discovery in a legal action: “Notwithstanding any law to the contrary, health data on an individual collected by public health officials conducting an epidemiologic investigation to reduce morbidity or mortality is not subject to discovery in a legal action.” Section 144.6581 grants the commissioner of health discretion to determine whether data identifies individuals or is summary data as defined by law.

Interjurisdictional Issues

Joint Exercise of Powers by Governmental Units – Minnesota Statutes §471.59 authorizes two or more governmental units to jointly exercise powers by agreement: “Two or more governmental units, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised. The agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units.”

Agency Reporting Requirements

Biennial Agency Reporting – Section 15.063 requires departments and agencies to submit biennial reports to the legislature in even numbered years.

Overview of Minnesota General Public Health Laws

State Health Agency

Minnesota Department of Health – The Minnesota Department of Health is established “under the control and supervision of the commissioner of health who shall be appointed by the governor under the provisions of section 15.06” and who “shall be selected without regard to political affiliation but with regard to ability and experience in matters of public health.” (§144.011) The commissioner is authorized to “appoint a State Health Advisory Task Force” which members are “broadly representative of the licensed health professions and shall

Overview of Minnesota General Public Health Laws

also include public members as defined by section 214.02.” (§144.011) The state commissioner of health has general authority “as the state’s official health agency and shall be responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens.” (§144.05) Specific authorities and duties include, but are not limited to: conducting studies and investigations, collecting and analyzing health data, and identifying and describing health problems; coordinating and integrating local, state and federal programs and services affecting the public’s health; and advising the governor and legislature on matters relating to the public’s health. (§144.05)

General Authorities of the State Health Agency, Board and Director

Health Agency Authorities – Section 144.12 authorizes the commissioner to adopt rules for the preservation of public health that do not conflict with local ordinances in cities of the first class. The commissioner is empowered to control specified areas, including but not limited to: “[t]he manufacture into articles of commerce, other than food, of diseased, tainted, or decayed animal or vegetable matter”; “[t]he treatment, in hospitals and elsewhere, of persons suffering from communicable diseases, including all manner of venereal disease and infection, the disinfection and quarantine of persons and places in case of those diseases, and the reporting of sicknesses and deaths from them”; “[t]he accumulation of filthy and unwholesome matter to the injury of the public health and its removal”; and “[t]he establishment, operation and maintenance of all clinical laboratories not owned, or functioning as a component of a licensed hospital.”

Health Agency Authorities – Detection, Surveillance – Section 144.0525 states that data collect by the commissioner under certain sections may only be used for epidemiologic investigations, notification of persons exposed to health hazards as a result of employment, and surveillance of occupational health and safety. Data collected by the commissioner in conjunction with studies conducted by or sponsored by the commissioner are confidential and may only be used for medical or scientific research. (§144.053) Data shall not be admissible as evidence in a judicial action or may be otherwise disclosed except as necessary to furthering the research project. (§144.053) Persons or entities that provide information under this section are not liable for any action for damages. (§144.053)

Health Agency Authorities – Inspections, Subpoena Power; Records Privacy – Section 144.0535 authorizes that “[f]or the purposes of performing their official duties, all officers and employees of the state Department of Health shall have the right to enter any building, conveyance, or place where contagion, infection, filth, or other source or cause of preventable disease exists or is reasonably suspected.” The commissioner is authorized to issue subpoenas for persons and records as part of an investigation into a serious health threat, administer oaths, and seek judicial enforcement of subpoenas. Information related to individual medical records is considered health data under the Government Data Practices Act. (§144.054)

Health Agency Authorities-Control Measures – Persons – Quarantine, Isolation and Health Threats – The commissioner is authorized to quarantine or isolate persons for communicable diseases caused by “a living organism or virus and believed to be caused by bioterrorism or a new or novel or previously controlled or eradicated infectious agent or biological toxin that can be transmitted person to person and for which isolation or quarantine is an effective control strategy, excluding a disease that is directly transmitted as defined under section 144.4172.” (§144.419) The commissioner of health is further authorized to act with respect to “persons who pose a health threat to others or who engage in noncompliant behavior;” state actions preempt and supersede any local ordinances or rules. (§144.4171) The commissioner or local board of health may bring judicial action against a carrier of a communicable disease for “failure or refusal...to comply with a health directive” subject to notice and hearing requirement (§144.4173, §144.4176) The commissioner or local health board may also seek an ex parte temporary hold to protect the public health in an emergency. (§144.4182) A “licensed health profession or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior” may voluntarily report the information to the commissioner; the person reporting cannot be held liable making a report in good faith. (§144.4175)

Health Agency Authorities – Control Measures – Injunctions – Section 145.075 authorizes the commissioner to bring a judicial action to enjoin a violation of a statute or rule or a public health nuisance: “In addition to any other remedy provided by law, the commissioner may in the commissioner’s own name bring an action in the court of appropriate jurisdiction to enjoin any violation of a statute or rule which the commissioner is empowered to enforce or adopt, or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.”

Local Health Agencies

Local Public Health Act – The Local Public Health Act establishes local boards of health in Minnesota localities. (§145A.01, §145A.03) Specifically, the “governing body of a city or county must undertake the responsibilities of a board of health or establish a board of health and assign to it the powers and duties of a board of health”; “[a] city council may ask a county or joint powers board of health to undertake the responsibilities of a board of health for the city’s jurisdiction.” However, a “county board or city council within the jurisdiction of a community health board...is preempted from forming a board of health except as specified in section 145A.10, subdivision 2.” (§145A.03) The act further specifies that “[a] board of health may establish a health department or other administrative agency and may employ persons [as a medical consultant] as necessary to carry out its duties.” (§145A.04)

Overview of Minnesota General Public Health Laws

Community Health Boards – Community health boards created under the Local Public Health Act have “the powers and duties of a board of health prescribed in sections 145A.03, 145A.04, 145A.07, and 145A.08, as well as the general responsibility for development and maintenance of an integrated system of community health services.” (§145A.10) The commissioner is directed to “assist community health boards in the development, administration, and implementation of community health services.” (§145A.12)

General Authorities of Local Health Agencies, Directors, and Boards

State Health Commissioner Authorities Over Local Health Agencies – The state commissioner of health is empowered to “enter into an agreement with any board of health to delegate all or part of the licensing, inspection, reporting, and enforcement duties authorized under specified sections of the Minnesota Statutes. (§145A.07) The state health commissioner is authorized to appoint a local board until one is established; require that two or more health boards work together to prevent or control epidemic diseases; employ medical and other help necessary to control communicable disease if the local board fails to act; and enforce requirements of the act. (§145A.06) The commissioner is authorized to “help and advise boards of health that ask for help in developing, administering, and carrying out public health services and programs.” (§145A.06)

Local Health Agency General Authorities – A member of a local board of health or agent is authorized to “enter a building, conveyance, or place where contagion, infection, filth, or other source or cause of preventable disease exists or is reasonably suspected” to enforce public health laws. (§145A.04) The local board of health or its agent is authorized to order the owner or occupant of a property found to be a “threat to the public health such as a public health nuisance, source of filth, or cause of sickness” to remove or abate the threat within a time specified in written the notice but not longer than ten days. (§145A.04) Local boards are also authorized to “bring an action in the court of appropriate jurisdiction to enjoin a violation of statute, rule, or ordinance that the board has power to enforce, or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.” (§145A.04)

State Agriculture Agency

Minnesota Department of Agriculture – The Minnesota Department of Agriculture and the position of the commissioner of agriculture is authorized by statute at §17.01. The commissioner is authorized to, among other things enforce the state’s food laws. (§17.04) The commissioner is authorized to investigate complaints against food processors. (§17.045) The Laboratory Services Division of the Department of Agriculture provides laboratory services “in support of agency programs that protect and enhance the states’ agriculture, environment, and food chain” (§17.85) The commissioner is authorized to investigate complaints against food processors. (§17.045) The commissioner is authorized to inspect premises during regular working hours at reasonable time, request information, and issue notices in lieu of citations for minor violations related to food and specified food commodities. (§17.984) The commissioner is further authorized to “administer oaths, take and cause to be taken depositions of witnesses, and issue subpoenas, and may petition the district court in the county in which the premises is located to compel compliance with subpoenas or to permit an inspection.” (§17.984)

State Animal Health Agency

Minnesota Board of Animal Health – The Board of Animal Health is empowered to “protect the health of Minnesota domestic animals and carry out the provisions of this chapter” and “make rules necessary to protect the health of domestic animals” (§35.03) The University of Minnesota Veterinary Diagnostic Laboratory is the official laboratory for the board; the director of the Veterinary Diagnostic Laboratory must report on the laboratory’s activities quarterly. (§35.03) The board is authorized to “quarantine or kill any domestic animal infected with, or which has been exposed to, a contagious or infectious dangerous disease if it is necessary to protect the health of the domestic animals of the state.” (§35.05) Section 35.06 requires “[a] person who knows or reasonably suspects that a contagious or infectious disease exists in a domestic animal shall immediately notify the board. The board or its agent is authorized to “examine under oath all persons believed to have knowledge of the existence or threat of disease among domestic animals and, for this purpose, may take depositions and compel witnesses to attend and testify.” (§35.06) The Board and its representatives are authorized to “upon issuance of a notice of inspection, must be granted access at reasonable times to sites where the board has reason to believe a violation of this chapter is occurring or has occurred.” Additionally, “[b]efore leaving the premises inspected, the Board of Animal Health or the board’s agents must provide the owner, operator, or agent in charge with a receipt describing any samples obtained. If an analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.” (§35.90) Section 35.063 authorizes the board to “establish and maintain, at the owner’s expense, a quarantine of domestic animals imported into the state when, in its judgment, a quarantine is necessary to protect the health of Minnesota domestic animals; [t]he quarantine must specify its terms, conditions, scope, and application.” Section 35.065 states that “[i]t is unlawful for the owner or the person having the custody or control of domestic animals subject to a quarantine to remove any of them from their first location within the state after the interstate shipment or transportation is completed until they are released by authority of the board.” Minnesota law further provides for the institution of an emergency declaration for disastrous animal outbreaks that present a substantial and imminent threat to the state’s domestic animal population by establishing temporary quarantine or other restrictions on the movement of people, livestock, machinery, and other personal property; the governor can declare an emergency under this section without declaring an emergency under the state’s emergency management law. (§35.0661) The Board is authorized to “revoke, suspend, or refuse to renew a permit, license, or certification if a person violates this chapter” after board may, after written notice and hearing and issue

Overview of Minnesota General Public Health Laws

remedial action orders for violations. (§35.93) Including if “a violation of this chapter results in conditions that may have an unreasonable adverse effect on humans, domestic animals, wildlife, or the environment, the Board of Animal Health may, by order, require remedial action, including removal and proper disposal.” (§35.93)

Overview of Minnesota Communicable Disease Laws

Communicable Disease Regulations

Communicable Diseases –The following persons and facilities required to report communicable diseases under the rules include, but are not limited to: physicians, health care facilities such as hospitals, nursing homes and medical clinics, medical laboratories, and veterinarians and veterinary laboratories if the disease is common to animals and humans, among other things. (4605.7030) The rules also states that it is “the duty of any person in charge of any institution, school, child care facility or camp, or any other person having knowledge of any disease which may threaten the public health, to report immediately the name and address of any person or deceased person suspected of having the disease to the commissioner.” (4605.7070) Local boards of health that receive reports are required to immediately forward the report to the commissioner. (4605.7100) Rule 4605.7046 authorizes the use of sentinel surveillance. Rule 4605.7500 directs the commissioner to investigate reportable diseases or unusual disease occurrences.

Communicable Diseases – Conditions and Diseases to be Reported; Method of Reporting – Rule 4605.7040 specifies the diseases and infectious agents for which cases, suspected cases, carriers, and deaths must be reported either immediately by telephone or within one working day. Rule 4605.7060 requires physicians to report “cases, suspected cases, carriers, and deaths due to any infectious disease that a physician determines has been acquired outside the state and that is considered rare or unusual in Minnesota; or a public health problem in the geographic area of presumed acquisition.” Rule 4605.7090 specifies the information to be reported including, but not limited to, patient name, address, disease, symptoms, and date of onset of symptoms. Rule 4605.7030 requires medical laboratories to submit to “the Minnesota Department of Health, Public Health Laboratory, all clinical materials [isolates or specimens] specified in this chapter upon a positive laboratory finding for the disease or condition, or upon request of the commissioner in relation to a case or suspected case reported under this chapter.” The rule also requires veterinary laboratories to submit positive clinical materials for diseases common to animal and humans and easily transmissible. ((4605.7030) Rule 4605.7050 requires unusual case incidences to be reported immediately by telephone and unexplained death or unexplained critical illness in a previously healthy individual which may be caused by an infectious agent be reported within one day. The commissioner can request that medical laboratories submit test results and clinical materials for these cases or suspected cases to the state public health laboratory. (4605.7050)

Communicable Diseases – Control Methods – Rule 4605.7400 requires that “[t]he physician attending a case, suspected case, or carrier (or in the absence of a physician, the commissioner) shall make certain that isolation precautions are taken to prevent spread of disease to others.” Physicians are also required to “report immediately to the commissioner the name, address, and other pertinent information for all cases, suspected cases, and carriers who refuse to comply with prescribed isolation precautions.” (4605.7400) The commissioner is empowered to “seek injunctive relief under Minnesota Statutes, section 145.075, if the person represents a public health hazard.” (4605.7400)

Communicable Diseases – Documentation – Rule 4605.7200 requires the commissioner to “maintain records of reports of cases, suspected cases, carriers, and deaths for the disease reports...and prepare statewide summary information which shall be made available for each board of health.” Rule 4605.7300 requires that “[l]ocal boards of health operating under agreements in part 4735.0110, subpart 2, shall be forwarded copies of all disease reports and information received by the commissioner which pertain to the jurisdiction and biennial agreement between the commissioner and the board of health.”

Overview of Minnesota Food and Food Safety Laws

Food Laws

Minnesota Food Safety and Defense Task Force – The Food Safety and Defense Task Force was established to advise the commissioner of agriculture and the legislature on food issues and food safety. (§28A.21, MN Session Laws 2012 Chapter 244, Article 2, Section 7) The duties of the task force are to: “(1) coordinate educational efforts regarding food safety and defense; (2) provide advice and coordination to state agencies as requested by the agencies; (3) serve as a source of information and referral for the public, news media, and others concerned with food safety and defense; and (4) make recommendations to Congress, the legislative committees with jurisdiction over agriculture finance and policy, the legislature, and others about appropriate action to improve food safety and defense in the state.” (§28A.21)

Minnesota Food Law – The Minnesota Food Law was created to “achieve and maintain uniformity with the federal government and with other states insofar as possible, of regulation and control of the manufacture, distribution and sale of food in this state.” (§31.02) The Minnesota Food Law is the state’s analog to the Federal Food, Drug and Cosmetic Act. The act

Overview of Minnesota Food and Food Safety Laws

addresses adulterated or misbranded food in Minnesota. The commissioner is authorized to promulgate rules consistent with state and federal laws. (§31.101, §31.11) The commissioner is further charged with developing standards and definitions for food quality. (§31.10) The Food Law authorizes the commissioner of agriculture to require certification of retail food handler in established section 28A.05 [the MN Consolidated Food Licensing Law]. (§31.96) The Food Law authorizes the commissioner to periodically publish “reports summarizing all judgments, decrees, and court orders which have been rendered under the Minnesota Food Law, including the nature of the charge and the disposition thereof.” (§31.132) The commissioner is also authorized to “disseminate such substantiated information regarding food as the commissioner deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the commissioner from collecting, reporting, and illustrating the results of the investigations of the commissioner.” (§31.132)

Minnesota Food Law – Insanitary Condition Prohibited; Reporting to Contagious Persons – The Food Law expressly prohibits any person or facility from maintaining insanitary conditions (§31.161) The commissioner must give written notice of the insanitary conditions and require that the facility be put “in a clean and sanitary condition within a reasonable time to be stated in the notice, which time so stated shall in no case be less than two days, and failure to comply with such notice within the time so stated shall be deemed a violation of 31.161 to 31.17.” (§31.165) It is unlawful for a person affected with a disease that is contagious to other person or transmissible through food to work in a facility specified in the law; the commissioner of agriculture is required to report to the state commissioner of health any affected person and exclude them from work during investigation or as required by the commissioner of health. (§31.171)

Minnesota Food Law – Inspections, Reports – The commissioner and agents are authorized to inspect at “reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food in commerce” and access and copy related records. (§31.04) The agent making the inspection must give the owner, operator, or person in charge a written copy of the inspection report and a receipt for any samples taken before leaving the facility. (§31.04) If analyses of samples are conducted, the agent must give a copy to the owner, operator, or person in charge. (§31.04) The Food Law authorizes the commissioner of agriculture to inspect and sample food in transit, regardless of its origin if the food was intended to be manufactured, sold or given away in the state. (§31.08) The commission is empowered with the same authorities over food in transit as over those for foods manufactured or sold in the state. (§31.08)

Minnesota Food Law – Control Measures – The Food Law empowers the commissioner or agent to tag, embargo, and condemn food, animals or consumer commodities found to be or suspected of being adulterated or misbranded. (§31.05) The commissioner can bring an action for condemnation for items embargoed. In instances in which perishable items are found to be deleterious to public health, the commissioner can condemn and destroy the items without a cause of action. (§31.05) The commissioner and agents also have the discretion to render foods unsalable if the sale or use of which is prohibited by law. (§ 31.09) The commissioner is further empowered to embargo geographic areas included in a declared emergency and provide public notices if the commissioner finds that animals or foods are likely to be adulterated due to the emergency. (§31.05) The law permits the commissioner to issue written notices or warnings in lieu of reporting minor violations if it will serve the public interest. (§31.041). The Food Law further requires “each county attorney, or city attorney to whom the commissioner reports any violation of the Minnesota Food Law, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.” (§31.14) The Food Law also authorizes the commissioner to seek temporary or permanent judicial injunctions for violations of the act. (§31.031) If the commissioner finds that a class of food may be contaminated with microorganisms injurious to health, he or she may issue an emergency permit governing the affected class of food for as long as necessary to protect public health. (§31.131) The commissioner or agent is authorized to inspect the facilities of emergency permit holders to determine if conditions of the permit are being met. (§31.131) The commissioner can immediately suspend an emergency permit if the holder is found in violation of the permit conditions; permit holders can apply for reinstatement. (§31.131)

Retail/Wholesale Food And Food Establishment Laws

Minnesota Consolidated Food Licensing Law – The law governs the licensing of wholesale and retail food handlers involved in the production, brokering, processing, packaging, labeling, distribution or sale of food. (§28A.02) The commissioner of agriculture is authorized to delegate to local boards of health at their request the authority to conduct licensing, inspection, reporting, and enforcement duties of “retail food handlers that are grocery or convenience stores.” (§28A.075, §28A.0752) However, “retail grocery or convenience stores inspected under the state meat inspection program of chapter 31A are exempt from delegation.” (§28A.075) The law requires “[a] local board of health [to] adopt an ordinance consistent with the Minnesota Food Code, Minnesota Rules, chapter 4626, for all of its jurisdiction to regulate grocery and convenience stores and the ordinance [Food Code] must not be in conflict with standards set in law or rule.” (§28A.075) Section 28A.13 authorizes the commissioner to suspend or revoke licenses of food handlers covered by the act.

Food, Beverage, and Lodging Establishments – Section 157.16 requires an annual license for “every person, firm, or corporation engaged in the business of conducting a food and beverage service establishment, youth camp, hotel, motel, lodging establishment, public pool, or resort.” The commissioner of health is authorized to adopt rules governing these types of establishments and for the certification of food service managers. (§157.011) The law identifies the frequency of routine inspections and authorizes order for corrections of violations. (§157.20)

Overview of Minnesota Food and Food Safety Laws

Food Establishments Regulations

Minnesota Food Code (Minnesota Rules Chapter 4626) – (Note: Minnesota’s current adopt of the FDA Food Code is the 1995 version. The state is currently developing revised rules based on the 2009 Food Code.) The Minnesota Food Code “applies to food establishments licensed and inspected by the Department of Agriculture, Department of Health, or local authorities that conduct inspections of food establishments.” (4626.0017 1-103.10) The licensee must “require food employees and food employee applicants to whom a conditional offer of employment is made to report to the person in charge information about their health and activities as they relate to diseases transmissible through food.” (4626.0040 2-201.11) A food employee or applicant must report required information to the person in charge and comply with exclusions and restrictions. (4626.0055 2-201.14) Persons in charge must report specified infections, illnesses and symptoms reported by employees, applicants and customers. (4626.0060 2-201.15) A licensee is required to “notify the regulatory authority immediately if an imminent health hazard may exist because of a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, or other emergency circumstance that may endanger public health.” (4626.1795 8-404.11) A person in charge of a food establishment must exclude a food employee from a food establishment if the food employee is infected with specified pathogens or ill with specified conditions or symptom until the regulatory authority has evaluated the potential for foodborne disease transmission. (4626.0045 2-201.12) They must also be restricted if “the results of an epidemiological investigation by the commissioner of health under Minnesota Statutes, section 31.171, determines that a food employee or applicant presents a risk for transmission of foodborne disease.” (4626.0045 2-201.12) The restrictions remain in effect until the “Department of Health and the licensing regulatory authority complete an investigation of the confirmed disease outbreak and determines that there is no longer a risk of foodborne disease transmission.” (4626.0050 2-201.13) Inspections of food establishments are conducted by the Department of Agriculture and the Department of Health. (4626.1785 8-401.10) Inspections are allowed at reasonable times after due notice. (4626.1790 8-402.11) The regulatory authority is empowered to collect and analyze food samples “as often as necessary for enforcement of the Code.” (4626.1800) The regulatory authority may embargo, forbid the sale, remove or destroy food found to be, among other things, unfit for consumption. (4626.1805) The regulatory authority can “condemn and cause to be removed any food, equipment, clothing, or utensils found in a food establishment, the use of which does not comply with the Code...” (4626.1810)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, grains, milk and dairy products, and eggs. **These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.**

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Profile of Mississippi Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Mississippi State Department of Health (MSDH)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MSDH is responsible for monitoring disease in the state through disease tracking and outbreak management and regulating and inspecting restaurants, among other things. • Website: www.msdh.state.ms.us
<i>Agriculture Agency</i>	<p>Mississippi Department of Agriculture and Commerce (MDAC)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: MDAC regulates and promotes agricultural-related businesses within the state and promote Mississippi's products. • Website: www.mdac.state.ms.us
<i>Animal Health Agency</i>	<p>Mississippi Board of Animal Health (MBAH)</p> <ul style="list-style-type: none"> • Structure: MBAH is part of the Department of Agriculture and Commerce • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: The Board of Animal Health has plenary power to address all contagious and infectious diseases of animals. • Website: www.mbah.state.ms.us/index.html
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • MSDH uses the 2009 Food Code; MDAC uses the 2005 version of the Food Code.
<i>Population</i>	2,967,297 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Mississippi Legal Authorities for Food Safety & Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Mississippi Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Mississippi General Government Laws

General Governmental Authorities

See specific governmental authorities contained elsewhere in the tables.

Access to Records and Privacy

Mississippi Public Records Act – The Mississippi Public Records Act sets out the general policy of allowing public access to public records unless otherwise prohibited (§25-61-1, §25-61-2) “Public records” are defined as “all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.” (§25-61-3) The act specifies that certain types of information including, but not limited to, trades secrets and confidential commercial information is not subject to disclosure. (§25-61-9)

Interjurisdictional Issues

Interlocal Cooperation Act – The Interlocal Cooperation Act is intended to allow local government units in the state to cooperate and contract with each other to improve services. (§17-13-3) The act allows local governments to exercise their powers and responsibilities jointly with other localities, state agencies, and federal agency to the extent permitted by law. (§17-13-7) Joint local government action must be approved of by the governing authorities of the local governments. (§17-13-7) The act also permits two or more local government units to enter into written contracts to jointly provide services and facilities. (§17-13-7) Agreements must be reviewed by the state's attorney general and, if relevant, the officers of any state agency affected by the agreement. (§17-13-11)

Agency Reporting Requirements

See specific agency reporting requirements contained elsewhere in the tables.

Overview of Mississippi General Public Health Laws

State Health Agency

Mississippi State Department of Health – The Mississippi Code authorizes the Mississippi State Department of Health to “undertake such technical programs and activities as may be required for the support and operation of those programs [authorized by the board of health], including maintaining physical, chemical, bacteriological and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.” (§41-3-15) The Executive Officer of the State Department of Health has the following powers and duties, including but not limited to administering policies of the board of health; directing the administrative and technical activities of the department; recommend and conduct approved studies and investigations; and deliver annual and other reports as required by the governor and legislature. (§41-3-15) The board of health must make a written report to the Governor before each regular session of the legislature describing the sanitary conditions of the state. (§41-3-19)

Mississippi State Board of Health – The State Board of Health is comprised of members appointed with the advice and consent of the senate. (§41-3-1.1) The board is empowered to “have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.” (§41-3-15) The board is authorized to “review existing legislation pertaining to public health and to submit new legislation.” (§41-3-6) The board of health has the following powers and

Overview of Mississippi General Public Health Laws

duties, including but not limited to formulating policies, promulgating rules and regulation. (§41-3-15)

State Board of Health – Authorities – The board of health is granted authority to, among other things, make investigations and inquiries; direct and control sanitary and quarantine measures for disease control; collect data to discharge required duties; establish standards for food establishments; inspect premises to control diseases; issue subpoenas and conduct hearings; and promulgate rules and regulations. (§41-3-15) Mississippi Code §41-3-15 authorizes the state board of health to establish programs to protect public health to be administered by MSDH, including but not limited to: control of communicable and noncommunicable disease; milk sanitation; food, vector control and general sanitation; protection of drinking water; sanitation in food handling establishments open to the public; and regulation of domestic and imported fish for human consumption. The state board of health is also empowered to make rule governing sanitation of public buildings and vehicles. (§41-25-1)

Local Health Agencies

County/District Health Departments – Mississippi Code §41-3-43 authorizes each county in the state to create a county health department. The state board of health is further authorized to create public health districts of two or more counties. (§41-3-43) Once a county or district health department is created, it is put under the control of the state board of health and other local health departments in the affected jurisdictions are abolished. (§41-3-43) County or district health departments are empowered to enforce all health laws within their jurisdiction, to make investigations, and suggest control measures. (§41-3-49) These powers and duties are conducted under the supervision of the state board of health and the officer must make reports to the board about sanitary conditions in the jurisdiction. (§41-3-49)

County/District Health Officers – Mississippi Code §41-3-37 authorizes the state board of health to appoint county health officers. County health officers are empowered to administer and enforce Mississippi laws and board of health regulations in the jurisdiction, and make reports of activities to the state board and county board of supervisors. (§41-3-41) District health officers may be appointed: “The state board of health or its executive officer shall appoint for each such district created a district director, who shall be a licensed physician, well trained in public health work, who shall give his entire time to the work. The district director may serve as county health officer of any or all counties in the district.” (§41-3-43) County and district health officers are directed to keep records for reports, the public and the state board of health. (§41-3-51)

Municipal Regulation of Health – Mississippi Code §41-3-57 authorizes municipalities to enact public health laws or ordinances that do not conflict with state laws or rules: “Any municipality may pass public health laws or ordinances and enforce the collection and registration of birth, health, and mortuary statistics. However, such power shall be subject to and not inconsistent with the rules and regulations of the state board of health touching the health interests of the county in which such municipality is situated. In the absence of an explicit agreement to the contrary between the state board of health and such municipality, enforcement of municipal laws shall be the responsibility of the municipality.”

State Agriculture Agency

Department of Agriculture and Commerce – Mississippi Code §69-1-1 creates the Department of Agriculture and Commerce under the direction of the Commissioner of Agriculture and Commerce. The commissioner manages and controls the department and “who shall have competent knowledge of agriculture, mining, manufacturing, statistics and general industries, must be an experienced and practical agriculturist; and shall be elected by the people at the time and in the manner that other state officers are elected.” (§69-1-1) Mississippi Code §69-1-13 specifies the duties of the commissioner, including but not limited to developing agricultural resources and industries in the state. The commissioner is required to submit annual reports to the governor and legislature. (§69-1-15)

State Board of Animal Health

Mississippi Board of Animal Health – The Mississippi Board of Animal Health is created in Mississippi Code §69-15-2. The board is administratively located within the Agriculture and Commerce Department. It has plenary powers to address contagious and infectious diseases in animals. (§69-15-9) The board is authorized to adopt rules and regulations necessary to carry out its statutory responsibilities. (§69-15-3) The board is authorized to appoint the state veterinarian. (§69-15-7)

State Department of Marine Resources

Mississippi Department of Marine Resources – The Mississippi Commission on Marine Resources oversees the Department of Marine Resources. (§49-15-11) The commission is empowered to “exercise full authority over all marine aquatic life and to regulate any matters pertaining to seafood, including cultivated seafood, among other things...” (§49-15-15) The commissioner is specifically authorized to “regulate all seafood sanitation and processing programs” and to enter into a memorandum of understanding with the state health officer and the commissioner of agriculture to clarify implementation responsibilities, share information and coordinate the agencies’ activities. (§49-15-15)

Overview of Mississippi Communicable Disease Laws

Communicable Disease Laws

Communicable Diseases – Mississippi Code §41-23-1 directs the board of health to adopt rules defining and classifying communicable diseases, and creating reporting, monitoring and preventive procedures. (§41-23-1) Persons failing to report specified conditions face suspension of their license or a fine. (§41-23-1) MSDH is authorized to investigate and control causes of epidemic and infectious diseases, including using quarantine of persons, premises and property. (§41-23-5) The Mississippi Code permits the board of health to establish rules exempting certain third-party notifications from the state's confidentiality laws. (§41-23-1) Mississippi Code §41-23-13 authorizes the state board of health to suppress nuisances injurious to public health and cause abatement proceedings to commence. §41-23-33 authorizes the state board of health to call upon the federal government for assistance in epidemics or other health emergencies: "The State Board of Health, with the consent of the governor, when it deems it proper or necessary to do so, may call upon the government of the United States for such financial and medical aid as the necessities created by an epidemic or any other health emergency may require."

Communicable Diseases in Animals

Communicable Diseases in Animals – Mississippi Code §69-15-9 grants the board of animal health plenary power to address all contagious and infectious disease in animals and set rules and regulations to control and prevent specified diseases. (§69-15-9) Officers and agents of the state veterinarian must have consent to enter a premises or a writ authorizing the entry. (§69-15-9)

Overview of Mississippi Food and Food Safety Laws

Food Law

Food Law – The state board of health is charged with enforcing the state's laws addressing the manufacture and sale of food under the provisions of Mississippi Code Title 75, Chapter 29. (§75-29-19) Mississippi Code §75-29-5 prohibits the manufacture and sale of adulterated, misbranded or insufficiently labeled foods. The code authorizes the board to issue written notices or warnings in lieu of violations if it is in the public interest. (§75-29-31) Mississippi Code §75-29-23 grants representatives of the state board of health free access to places where foods are sold. The state board of health is further empowered to take samples for analysis. (§75-29-21) Persons who interfere with the state board of health in its duties are subject to penalties. (§75-29-25) Mississippi Code §75-29-27 authorizes agents of the state board of health to embargo foods found to be adulterated, misbranded or otherwise dangerous. Owners of the embargoed products can seek judicial action to have the embargo lifted. (§75-29-27) If a court determines the embargoed products are adulterated or misbranded, the products can be destroyed or otherwise disposed of. (§75-29-27) If an agent of the board finds food, premises or other items to be unsound or unsafe, the agent can immediately condemn or destroy the items. (§75-29-27) The regulations promulgated under this law are at Code of Miss. Rules Title 15, Subpart 75, Chapter 04 (Regulation Governing Manufacture and Sale of Food and Food Products)

Food Law – Local Inspectors – Mississippi Code §75-29-101 authorizes local boards of supervisors to appoint food inspectors. These local boards may adopt regulations governing food inspectors and food dealers. (§75-29-103) Persons who interfere with local food inspectors in their duties are subject to penalties. (§75-29-111)

Retail Food and Food Establishments Laws

Retail Food Establishments – Mississippi Code §69-1-18 authorizes the commissioner of agriculture and commerce to create regulations governing retail food establishments and to conduct sanitation inspections in those facilities. The commissioner is authorized to suspend or revoke permits of establishments found in violations of laws and rules. (§69-1-18) Mississippi Code §69-1-18 authorizes the commissioner or his agents to issue immediate orders to address dangers to public health. (§69-1-18) The code also specifies procedures for seeking administrative review of and a hearing on the commissioner's order. (§69-1-18) The regulations governing retail food establishments are located at Code of Miss. Rules Title 2, Subpart 4, Chapter 01 (Retail Food Store Sanitation) and are based on the 2005 FDA Food Code.

Food Establishments Regulations

Mississippi Food Code – (NOTE: MSDH uses the 2009 Food Code for retail food service establishments; MDAC uses the 2005 version of the Food Code in retail food stores. The following discussion applies to the retail food service establishment regulations enforced by MSDH.) The purpose of the state's food code is to establish requirements for "the design, construction, management and operation of food service establishments. It provides for plans submission and approval, issuance of permits, and collection of fees. The requirements are to safeguard the public health." (Code of Miss. Rules Title 15, Subpart 75, Chapter 02, §100) The state specifically adopts by reference the current version of the FDA Food Code: "This Regulation adopts by reference the current revision of the Food Code, Recommendations of the United States Public Health Service / Food and Drug Administration, as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration." (Code of Miss. Rules Title 15, Subpart 75, Chapter 02, §102)

Food Code –Section 2-201.11 requires that food employees and conditional employees report to the person in charge information about their health and activities as they relate to

Overview of Mississippi Food and Food Safety Laws

diseases that are transmissible through food. (2-201.11(A)) The person in charge must report to the regulatory authority if the employee or conditional employee exhibit specified symptoms. (2-201.11(B)) The person in charge is responsible for excluding or restricting food employees or conditional employees with certain conditions or symptoms specified in the regulation. (2-201.12) Employees must satisfy condition-specific criteria to demonstrate the condition or infection has ceased. (2-201.13) When the regulatory authority “has reasonable cause to believe” that a food employee or conditional employee has possibly transmitted disease or may be infected with a food transmissible communicable disease or acute respiratory infection, Section 8-501.10 permits the regulatory authority to investigate foodborne outbreaks by obtaining medical information, conducting examinations and taking samples. Section 8-402.11 permits regulatory authority personnel, at reasonable times, to inspect food establishment’s premises and access records to determine compliance with the food code. If, after notification of the authority to inspect a food establishment, the establishment continues to refuse the inspector access, the regulatory authority is directed to provide details of the inspection refusal in an inspection report form (8-402.30) and is authorized to issue (or apply for issuance) of an inspection order to gain access to the food establishment. (8-402.40) Except as provided elsewhere in the Code, the regulatory authority is directed to “treat the inspection report as a public document and shall make it available for disclosure...” (8-403.50) The state further requires posting “the current Food Permit/Inspection Record in a location in the food establishment conspicuous to consumers, as directed by the Health Authority.” (Code of Miss. Rules Title 15, Subpart 75, Chapter 02, §103.04) A permit holder is required to immediately “discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.” (8-404.11(A)) The permit holder must obtain approval for the Department of Health before resuming operations. (8-404.12) If the regulatory authority determines after investigation that a food employee or conditional employee is infected, Section 8-501.20 authorizes the regulatory authority to issue an order either restricting or excluding the employee or closing the food establishment. The regulatory authority may issue such an order “without prior warning, notice of a hearing, or a hearing” if the order states the reasons for the order, the evidence necessary to show the reasons for the order have been eliminated, and provides information about the right to appeal the order. (8-501.30) The regulatory authority shall end the restriction, exclusion or closure order if the employee or establishment meets the condition-specific criteria established elsewhere in the code to show the condition or infection has ceased. (8-501.40)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***

OREGON

Profile of Oregon Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Oregon Health Authority – Public Health Division</p> <ul style="list-style-type: none"> • Structure: The Public Health Division is part of a larger agency, the Oregon Health Authority • State-Local Relationship: Decentralized • Infectious Disease/Food Responsibilities: The Public Health Division is responsible for, among other things, surveillance and reporting of communicable diseases and foodborne illness prevention. The Acute and Communicable Disease Prevention program works with county health departments, other states and the CDC to detect, track, prevent and control the spread of infectious diseases. The Foodborne Illness Prevention program provides technical assistance, oversees field inspections and the food handler program, and coordinates rulemaking. • Website: http://public.health.oregon.gov/Pages/Home.aspx
<i>Agriculture Agency</i>	<p>Oregon Department of Agriculture (ODA)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: ODA is responsible for food safety and consumer protection, protecting the state's natural resource base, and marketing agricultural products. The Food Safety Division inspects food producers, distributors and all food establishments except restaurants. The Animal Health and Identification Division is responsible for, among other things, controlling and eradicating animal diseases, including those transmissible to humans. • Website: www.oregon.gov/ODA/Pages/index.aspx
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • The Oregon Health Authority has adopted the 2009 FDA Food Code effective September 2012. • The Department of Agriculture has adopted the 2001 version of the FDA Food Code; it is updating to the 2009 version of the code through rulemaking in 2012-2013.
<i>Population</i>	3,831,074 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Oregon Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. Please see the *Oregon Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.

Overview of Oregon General Government Laws

General Governmental Authorities

See specific governmental authorities contained elsewhere in the tables.

Access Records And Privacy

Inspection of Public Records – ORS 192.420 states that “[e]very person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.” A “public record” includes “any writing that contains information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristic” but does not include “any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer.” (ORS 192.410) ORS 192.496 exempts certain types of records from public disclosure including, but not limited to, medical records. ORS 192.502 lists other public records exempt from disclosure including, but not limited to, agency deliberative information, personal information, information submitted to a public body in confidence, and information protected by federal or state law. ORS 192.501 identifies certain public records that are conditionally exemption from public disclosure unless the public interest requires disclosure. The types of records classified as conditionally exempt from disclosure included, but are not limited to records of a public body pertaining to litigation in process or anticipated, trade secrets, and investigatory information compiled for criminal law purposes.

Interjurisdictional Agreements

Interstate Agreements – Agreements with Other States – Oregon Revised Statutes 190.420 empowers public agencies in Oregon to make agreements with public agencies in other states. A “public agency” includes: “(1) Any county, city, special district or other public corporation, commission, authority or entity organized and existing under laws of this state, or any other state, or under the city or county charter of any county or city of this or any other state; (2) Any agency of this state or any other state; and (3) Oregon Health and Science University.” (ORS 190.410) ORS 190.430 requires the attorney general to review, among other things, agreements with other states.

Local Government Intergovernmental Agreements – ORS 190.010 authorizes local governments to make intergovernmental agreements with other local governments.

Cooperation Among Agencies, Governments and Other Entities – ORS 190.110 authorizes local governments and state agencies to cooperate with other state agencies, other states, the US government and tribal governments.

Agreements with Other Nations – ORS 190.485 authorizes state agencies to enter into agreements to exercise joint authority with other nations to the extent permitted by U.S. law. A “state agency” is defined as “every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury.” (ORS 190.480) ORS 190.490 requires the attorney general to review international agreements entered into by state agencies: “Every agreement entered into under ORS 190.485 shall be submitted to the Attorney General before taking effect.”

Agency Reporting Requirements

See specific agency reporting requirements contained elsewhere in the tables.

Overview of Oregon General Public Health Laws

State Health Agency

Oregon Health Authority (OHA) – The Oregon Health Authority is the state’s health agency. The director of the Oregon Health Authority is authorized delegate his or her powers, duties and functions to officers and employees of the agency. (ORS 431.035) The Oregon Health Authority is empowered to, among other things, “[h]ave direct supervision of all

Overview of Oregon General Public Health Laws

matters relating to the preservation of life and health of the people of the state;... [m]ake sanitary surveys and investigations and inquiries respecting the causes and prevention of diseases, especially of epidemics;... [h]ave full power in the control of all communicable diseases; ... [and] publish and distribute to the public in such form as the authority determines, such information as in its judgment may be useful in carrying on the work or purposes for which the authority was established.” (ORS 431.110) It is the duty of the OHA to, among other things, “[e]nforce state health policies and rules; [h]ave the custody of all books, papers, documents and other property belonging to the State Health Commission, which may be deposited in the authority’s office; [and] [g]ive any instructions that may be necessary, and forward them to the various local public health administrators throughout the state...” (ORS 431.120) The director of the Oregon Health Authority is directed to appoint a public health director to “perform the duties and exercise authority over public health emergency matters in the state and other duties as assigned by the director.” (ORS 431.035) The director of the Oregon Health Authority is further directed to “appoint a physician licensed by the Oregon Medical Board and certified by the American Board of Preventive Medicine who shall serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the health programs within the Oregon Health Authority.” (ORS 431.045) The director of OHA may appoint the same person to be both the public health director and the public health officer. (ORS 431.035) The Oregon Public Health Advisory Board is appointed by the governor and is authorized to “[a]dvise the authority on policy matters related to public health programs; [p]rovide a review of statewide public health issues and make recommendations to the authority; [and] [p]articipate in public health policy development.” (ORS 431.195)

General Health Authorities – State and Local Enforcement of Public Health Laws – General Authority – Oregon Revised Statutes 431.150 authorizes the OHA to execute the public health laws throughout the state and to supervise all local public health administrators. The OHA is further empowered to investigate violations of law with the assistance of local public health administrators if requested. (ORS 431.150) The Oregon Revised Statutes 431.150 further authorizes local public health administrators with the enforcement of public health laws in their districts under the supervision of the OHA. ORS 431.170 permits the director of OHA to enforce public health laws in a county or district that fails or refuses to enforce them. Specific powers of the OHA and local public health administrators to enforce public health laws include, but are not limited to: the authority to enter premises, investigate violations, and issue violations, subpoenas and warrants. (ORS 431.262) State and local law enforcement officials are directed to assist in the enforcement of administrative and judicial orders. (ORS 431.262) ORS 431.155 authorizes the OHA to undertake judicial proceedings for an injunction or other order to restrain violations of statutes, rules or orders. Counties are delegated with the authority to restrain violations of public health laws. (ORS 431.157)

General Health Authorities – Choice of Physician, Religious Practice – Compliance with Sanitary Rules – The OHA and local boards may not interfere with a person’s choice of physician or religious practices for treatment, however sanitary laws and rules must be complied with. (ORS 431.180)

General Authorities – Public Health Director – Emergency Actions Authorized with Gubernatorial Approval – ORS 431.264 authorizes the public health director to take certain public health actions in emergencies with approval of the governor or designee in specific situations where the governor has not declared a public health emergency. Circumstances giving rise to this authority are a disease outbreak that requires a response by the state to bolster local response or is of statewide or national concern. (ORS 431.264) The public health director is authorized to adopt rules governing the development of emergency plans and an incident management system after consulting with local public health authorities and local public health administrators. (ORS 431.266)

Local Health Agencies

Local Public Health Authorities – ORS 431.375 authorizes the creation of county or district administered public health programs to provide basic public health services and promote public health. A county or health district is the local public health authority responsible for managing local public health services unless the locality relinquishes power to the state or contracts with a private person or agency. (ORS 431.375) ORS 431.385 requires local public health authorities to submit annual plans to the OHA for performing local public health services; if the local authority does not submit an annual plan, the OHA will become the local public health authority for that county or health district. OHA must “review and approve or disapprove each plan” and “[v]ariations to the local public health plan must be approved by the authority.” (ORS 431.385) ORS 431.416 authorizes local public health authorities or health district to, among other things to: administer and enforce rules; control and prevent diseases; data collection; and environmental health services. The rules governing local public health authorities are located at Oregon Administrative Rules 333-012-0050 to 333-012-070.

Local Boards of Health – County and District Boards – ORS 431.410 authorizes county governing bodies to establish county boards of health as well as public health advisory boards to the county boards of health. ORS 431.414 permits two or more contiguous counties to form a district health board. The governing bodies of the counties making up the district may appoint a public health advisory board to the district board of health. (ORS 431.414) District and county boards of health are authorized to be the policymaking bodies in their jurisdictions implementing the duties of local health departments. (ORS 431.415) Local health boards are empowered to adopt rules to carry out adopted policies, but which are not inconsistent or less strict than any public health law or rule of the OHA. (ORS 431.415)

Local Public Health Officers – ORS 431.418 authorizes district and county boards of health to appoint public health administrators to supervise the county or district health area. If a local public health administrator is not a physician, the administrator must employ or contract with a physician to serve the county or district. (ORS 431.418) The public health

Overview of Oregon General Public Health Laws

administrator is empowered to, among other things administer and enforce public health laws in the locality. (ORS 431.418) Public health administrators are further granted police powers related to public health: "All district and county public health administrators shall possess the powers of constables or other peace officers in all matters pertaining to the public health." (ORS 431.440)

Local Public Health Officers – Authority in Emergencies – ORS 431.530 authorizes local public health administrators to take certain actions in emergencies: "The local public health administrator may take any action which the Oregon Health Authority or its director could have taken, if an emergency endangering the public health occurs within the jurisdiction of any local public health administrator and [t]he circumstances of the emergency are such that the authority or its director cannot take action in time to meet the emergency; and [d]lay in taking action to meet the emergency will increase the hazard to public health." Local public health administrators must inform the director of OHA the nature of the emergency and actions taken. (ORS 431.530)

Conference of Local Health Officials – ORS 431.330 creates the Conference of Local Health Officials consisting of all local health officers, public health administrators and other local health personnel. The conference meets annually and as needed. The conference can submit recommendations on rules and standards governing the conference to the OHA director. (ORS 431.330) The OHA is authorized to adopt rules related to the conference upon written approval from the conference. (ORS 431.350) The rules governing the Conference of Local Health Officials are located at OAR 333-014-0040 to 333-014-0070.

State Agriculture Agency

Oregon Department of Agriculture – The Oregon Department of Agriculture is created to regulate and promote agriculture in the state. (ORS 561.010, 561.020) The specific responsibilities of the ODA include inspectional, regulatory, and development activities. (ORS 561.020) The department is empowered to make rules necessary to administer and enforce the state's laws; violations of rules are a violation of the law underlying the rules. (ORS 561.190) The Director of Agriculture is designated as the executive officer of the department of agriculture and is responsible for executing all matters of the department subject to policy direction by the state board of agriculture. (ORS 561.010) The director is appointed by the governor and subject to confirmation by the senate. (ORS 561.010) The Oregon State Board of Agriculture was created "[i]n order that there may be the closest correspondence between State Department of Agriculture policies and programs, the public interests and the resolution of practical agricultural problems of the state..." (ORS 561.372) The board is empowered to, among other things, advise ODA implementing and enforcing the agency's programs. (ORS 561.376) The board is required to submit a biennial report to the governor and legislature regarding the status of the agricultural industry in the state." (ORS 561.378)

General State Agricultural Agency Authorities –Agreements, Inspections, Documentation – ORS 561.240 authorizes the ODA to enter into contracts and agreements with other agencies, governmental units and persons to, among other things, enforce the state's agriculture laws. The ODA is authorized to conduct inspections to administer and enforce the state's laws. (ORS 561.275) ORS 561.200 makes it illegal to interfere with ODA officers, agents, and employees in the conduct of their inspection duties. ORS 561.075 authorizes the director to publish information for the public. ORS 561.315 further authorizes the department to publish the results of product test reports on, among other things, agricultural products, animals, or articles of human or animal food.

General State Agricultural Agency Authorities – Control Measures – ODA is authorized to embargo, detain or seize products upon written notice of the director delivered to the owner or holder of the products stating the grounds for the action and the right to a hearing on the notice. (ORS 561.605, 561.610) If the owner or possessor of the products does not seek a hearing, the department is authorized to destroy, salvage or otherwise dispose of the products. (ORS 561.620) A hearing is not required when the products are illegal or suspected of such or there is an agreement between the department and the owner or possessor to destroy the products. (ORS 561.625) ORS 561.279 empowers the department to issue subpoenas for investigations, audits and hearings. ODA is further authorized to seek injunctions to restrain violations of the state's agricultural laws. (ORS 561.280) ORS 561.510 authorizes the director of agriculture to declare quarantines on plants or animals that are so diseased as to be a threat to animals, plants or human health in the state. The director must hold at least one public hearing before declaring a quarantine, but if "an emergency exists and postponement of the effective date of the quarantine would result in serious prejudice to the public health, safety or welfare, or to the health, safety or welfare of the affected parties, the director may make the quarantine effective immediately as authorized by ORS 183.355 (2)(b)." (ORS 561.510) The director is authorized to promulgate rules and regulations governing quarantines. (ORS 561.540) Oregon law also authorizes the emergency declaration of quarantine by written order of the director of agriculture for a limited time period. (ORS 561.560) ORS 561.580 directs the department of agriculture to cooperate with the federal government and other states in establishing uniform quarantine for plants and animals.

Overview of Oregon Communicable Disease Laws

Communicable Disease Laws

Communicable Diseases – Reporting – Oregon Revised Statutes Chapter 433 addresses the control of diseases and conditions, among other things. ORS 433.004 directs the OHA to establish by rule the reportable disease, the persons required to report, the manner of reporting, and the authority of local and state officials to investigate reports. Persons required to report must report to local public health administrators, who then transmit reports to the OHA. (ORS 433.004) The rules governing communicable disease definitions and reporting are located at Oregon Administrative Rules 333-017-000 to 333-017-005 and 333-018-000 to 333-017-0035. OAR 333-018-0018 requires licensed laboratories to submit specified isolates to the state's public health laboratory. Persons who report information are immune from civil or criminal liability. (ORS 433.004) The OHA is also empowered to exercise disciplinary measures for failure to report.(ORS 433.004)

Communicable Diseases – Investigations, Record, Testing – The OHA and local public health administrators are authorized to investigate reportable diseases and outbreaks or epidemics using interviews, record reviews, inspection, sampling and testing. (ORS 433.004) Local public health administrators are required to conduct investigations and implement control measures. (ORS 433.006) The OHA is directed to establish by rule the manner in which information is to be requested and obtained. (ORS 433.004) ORS 433.035 authorizes the public health director or a local public health director to require a person who may have or may have been exposed to a communicable, new or uncommon disease undergo testing or medical examination. A written order must include information about the communicable disease, applicability of laboratory testing, and options if refusing testing or examination. (ORS 433.035) The public health director or local public health administrator can order prescribed medication, treatment or directly observed therapy, and infection control practices. (ORS 433.035) Health officials are also directed to use every effort to obtain voluntary compliance and used the least restrictive means necessary to minimize disease transmission. (ORS 433.035) Oregon Administrative Rules 333-019-0000 to 333-019-0005 governs the powers and responsibilities to investigate and control diseases.

Communicable Diseases – Confidentiality; Releasing Information – ORS 433.008 makes information collected while investigating a reportable disease confidential and exempt from disclosure under the state's open records laws. State or local public health officials cannot be questioned about reportable disease information except as required for enforcement of public health laws. (ORS 433.008) The OHA and local public health administrators are authorized to release information obtained during a reportable disease investigation to other government agency officials, health care providers, law enforcement officials, persons affected by or potentially exposed to communicable disease, or with information about persons potentially exposed. (ORS 433.008) The OHA or local public health administrator can release personally identifiable information to persons potentially exposed or with information about persons potentially exposed only if "...there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other individuals or to the public." (ORS 433.008) The OHA and local public health administrators are further directed to "release only the minimum amount of information necessary to carry out the purpose of the release..." (ORS 433.008) When a decision is made in good faith not to disclose information, it "shall not subject the entity or person withholding the information to any liability." (ORS 433.008) The confidentiality provisions in ORS 433.008 do not prevent the OHA or local public health administrators from releasing reports related to reportable disease investigations if they do not contain personally identifiable information.

Communicable Diseases in Animals

Communicable Diseases in Animals – The Oregon Department of Agriculture is empowered to exercise general sanitary and disease control over livestock in the state to protect people and livestock. (ORS 596.020) ORS 596.321 authorizes the department of agriculture to establish rules, among other things, governing reportable livestock diseases. ORS 596.388 authorizes the department to investigate cases of disease, including permitting agents to enter premises. The department is authorized to order and compel the treatment, quarantine, destruction and decontamination of livestock, premises or property infected or exposed to disease. (ORS 596.392) ORS 596.404 further authorizes the department to seize parts or products of slaughtered diseased livestock. ORS 596.331 makes it illegal to sell or otherwise dispose of diseased livestock, parts of quarantined livestock or unvaccinated female cattle except as permitted by law. The department can apply to a court to compel owners or persons in charge to comply with animal disease control laws. (ORS 596.416) The rules governing reportable conditions in livestock are located at Oregon Administrative Rules 603-011-0212 (Diseases Reportable by Veterinarians).

Overview of Oregon Food and Food Safety Laws

Food Law

Oregon Food Law – Jurisdiction of State Health and Agriculture Agencies – Oregon Revised Statute 616.010 assigns responsibility for administering and enforcing the state's food law to the State Department of Agriculture and the Oregon Health Authority. The agencies are directed to cooperate in their respective food safety activities. (ORS 616.015) ORS 616.020 requires the Oregon Health Authority to coordinate with and give notice to the Department of Agriculture in investigations, surveys and other inquiries. The OHA must give written notice to ODA of any contemplated surveys that affect agricultural products under ODA jurisdiction, but does not prohibit immediate action in the interest of public health. (ORS 616.020) OHA is further directed to provide ODA with a copy of the survey results and report. (ORS 616.020) ODA is empowered to take action to address public health hazards related to agricultural commodities. (ORS 616.020) ORS 616.215 makes it illegal to, among other things, adulterate or misbrand any food or manufacture, sell, deliver, hold, or offer for sale any food that is adulterated or misbranded. ORS 616.286 authorizes the ODA to inspect food and premises and investigations. Department personnel are required to provide

Overview of Oregon Food and Food Safety Laws

the owner or person in charge with a written report before leaving the premises. (ORS 616.286) If department personnel have taken samples, they must provide the owner or person in charge with a receipt for the samples and copies of the analysis showing contamination. (ORS 616.286) ORS 616.225 authorizes the department to dispose of adulterated, misbranded, unsound or unsafe food or consumer commodities. ORS 616.220 empowers the department to seek injunctions to restrain violations of the state's food laws. The department is authorized to issue written notices or warnings for minor violations. (ORS 616.310) ORS 616.295 authorizes the department to publish reports summarizing judgments and court orders under the food laws and any other information to protect public health and illustrate results of the department's investigations.

Food Sanitation and Establishment Laws

Food Sanitation and Establishment Laws – The Department of Agriculture is tasked with enforcing the state's food sanitation and food establishment laws and promulgating rules to implement these laws. (ORS 616.700) ORS 616.726 authorizes cities to regulate food establishments. The department of agriculture is also authorized to request information from local health authorities. (ORS 616.755) The department is directed to periodically determine if city ordinances meet standards and are being properly enforced. (ORS 616.726) ORS 616.745 prohibits the handling of food by persons with certain communicable diseases. ORS 616.750 permits the ODA to require the examination and testing of food handlers and require a physician's certificate stating their disease status. The law further authorizes the department to seek an injunction preventing a food handler from working if they do not provide a certificate. (ORS 616.750) ORS 616.740 empowers the department of agriculture to condemn a food establishment where insanitary conditions exist.

Food Service Establishments – ORS 624.005 authorizes OHA to issue, suspend and revoke licenses of food service establishments. ORS 624.080 requires the OHA to identify communicable diseases that can be spread by employees of food service establishments and to require reporting of infected or suspected infections in employees to the OHA. ORS 624.080 authorizes the director of OHA to exclude employees and require examination or testing of employees when disease transmission from a food service establishment is suspected. ORS 624.530 requires OHA and ODA to ensure that only one agency inspects a facility. ORS 624.070 permits the OHA director to take and examine samples of food. The OHA director is authorized to suspend, revoke or refuse to issue a license for a food service establishment that does not correct a violation. (ORS 624.073) The director can order immediate corrective action or closure of an establishment for conditions dangerous to public health. (ORS 624.073) If a food service establishment is closed, the director must have a closure notice posted on the establishment until the violation is corrected. (ORS 624.073) ORS 624.041 permits the OHA to promulgate rules governing food service establishments. ORS 624.121 authorizes the creation of the State Food Service Advisory Committee to make recommendations to the OHA and legislature about implementing the state food service establishment laws. ORS 624.495 directs the OHA to adopt rules creating a foodborne illness prevention program. The program adopted must provide for local public health authorities to implement it in their jurisdictions and for OHA to review them (ORS 624.495) OHA is further directed to consult with local health officials and restaurant associations in creating the rules for the program and before it is delegated to localities. (ORS 624.495) ORS 624.510 requires the OHA to enter into intergovernmental agreements with local public health authorities to administer and enforce food service establishment requirements. The agreement must be part of the local annual plan and be reviewed by the OHA for uniform application. (ORS 624.510) The agreements must also include provisions encouraging the creation of local public health authority food service advisory committees. (ORS 624.550)

Food Establishments Regulation

Food Sanitation Rules – (NOTE: The Oregon Health Authority has adopted the 2009 FDA Food Code effective September 2012.) Oregon's food sanitation rules include the state's recent adoption of the 2009 Food Code with minor exceptions (OAR 333-150-0000); Inspection and Licensing Procedures for Restaurants and Bed and Breakfast Facilities (OAR 333-157); Combination Food Service Facilities (OAR 333-158); Destruction of Food Unfit for Human Consumption (OAR 333-160); and Mobile Units (OAR 333-162).

Retail Food Code – (NOTE: The Department of Agriculture has adopted the 2001 version of the FDA Food Code; it is updating to the 2009 version of the code through rulemaking in 2012-2013.) OAR 603-025-0030 adopts the standards in OAR 603-025-0020 [General Standards of Food Establishment Construction and Maintenance] and the Retail Food Code referenced by the Department of Agriculture

General Standards of Food Establishment Construction and Maintenance – OAR 603-025-0020 set the standards for food establishment construction and maintenance. OAR 603-025-0020 prohibits any person known to be affected with a disease in communicable form or exhibiting symptoms or other conditions from working in areas likely to contaminate food. The operator of a food service establishment must report known or suspected food transmissible diseases in employees to the local health officer or department of agriculture. (OAR 603-025-0020)

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.

RHODE ISLAND

Profile of Agencies Involved in Food Safety and Foodborne Illness Response	
<i>Health Agency</i>	<p>Rhode Island Department of Health</p> <ul style="list-style-type: none"> • Structure: The Department of Health is part of a larger health and human services umbrella agency, the Executive Office of Health and Human Services (EOHHS). • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: The Office of Communicable Diseases is responsible for the detection, control, and prevention of communicable diseases, including monitoring reportable conditions and investigating foodborne illness outbreaks. The Office of Food is responsible for, among other things: inspecting and licensing food establishments, investigating illness complaints and foodborne disease outbreaks, and certifying food managers. • Website: www.health.ri.gov
<i>Agriculture Agency</i>	<ul style="list-style-type: none"> • Rhode Island does not have a separate state agriculture agency. Responsibility for agricultural issues is delegated to the Department of Environmental Management, Division of Agriculture. (See entry below.)
<i>Environment Agency</i>	<p>Department of Environmental Management – Division of Agriculture</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: Primary responsibility for enforcement of environmental laws, as well as agricultural promotion and regulation rests with the Department of Environmental Management. • Website: www.dem.ri.gov/programs/bnatres/agricult/index.htm
<i>Animal Health Agency</i>	<p>Department of Environmental Management – Division of Agriculture – Animal Health Unit</p> <ul style="list-style-type: none"> • Structure: DEM is an independent agency; it is not part of a larger agency. The Animal Health Unit resides within the DEM Division of Agriculture. • State-Local Relationship: DEM does not have any regional or local offices. • Infectious Disease/Food Responsibilities: Primary responsibility for animal health, including monitoring communicable animal diseases and zoonoses resides with the DEM Animal Health Unit. • Website: www.dem.ri.gov/programs/bnatres/agricult/animal.htm
<i>FDA Food Code</i>	Rhode Island has adopted the 2005 version of the FDA Food Code.
<i>Population</i>	1,052,567 (2010 U.S. Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Rhode Island Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Rhode Island Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Rhode Island General Government Laws

General Governmental Authorities

Towns and Cities – General Powers – RI General Laws §45-2-3.1 grants powers to certain towns to, among other things, expend funds “[f]or the public health, welfare, recreation, sanitation and landfill...”

Access to Records and Privacy

Access to Public Records – Public Records Defined; Exclusions – RI General Laws §38-2-1 recognizes the “... public's right to access to public records and the individual's right to dignity and privacy...”. A “public record” is defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data... or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” (§38-2-2) Individually identifiable information, including but not limited to, medical information and investigatory records of public bodies related to possible violations of statutes and regulations made before a formal notification of violation, are specifically excluded from the definition of a public record in Rhode Island. (§38-2-2(5)).

Interjurisdictional Issues

Interjurisdictional Issues – Cooperation – Rhode Island law authorizes local governments to create interlocal cooperation commissions to facilitate cooperation and provide services (§45-40-1). A “public agency” may enter into interlocal agreements with other localities, states or the federal government—subject to review and approval by the state's attorney general and state agency directors—with jurisdiction over the subject matter addressed by the interlocal agreement. (§45-40.1-4, §45-40.1-6) The statute defines “public agency” as “any political subdivision of this state, any agency of the state government or of the United States, and any political subdivision of another state.” (§45-40.1-3)

Regional Council of Local Governments – §45-43-1 authorizes two or more cities or towns to enter into an agreement with each other, or with the governing bodies of any municipalities of any other state to establish a regional council of local governments to study area governmental problems affecting health, safety, welfare, education, economic conditions, and regional development and promote cooperative action (§45-43-3(a)).

State-Local Relations Commission – The purpose of the commission is to, among other things, “strengthen and facilitate relationships between the state government, the cities and towns, the school districts, and other local governments in the state” (§45-13.1-1). The commission is to act as a forum for discussing issues of intergovernmental concern and conducting studies and reports, and engaging with public and private institutions. (§45-13.1-1, §45-13.1-4)

Commission on Interstate Cooperation – RI General Laws §42-23-1 created the Commissioner on Interstate Cooperation authorized to, among other things, “to arrange and participate in conference with officials of other states and of other units of government and to formulate proposals for cooperation between this state and other states;” ... “to carry forward the participation of this state as a member of the council of state governments;” and “... to carry on negotiations with the purpose of adopting interstate compacts with other states...”

New England Interstate Planning Compact – RI General Laws §42-39-1 authorized RI to participate in the New England Interstate Planning Compact to improve coordination, plan governmental activities, create methods for dispute resolution in the New England region. The statute also authorizes each state party to the compact to participate in “cooperative or joint planning undertakings with the federal government, any appropriate agency or agencies thereof, or with any interstate agency or agencies.”

Agency Reporting Requirements

See specific agency reporting requirements contained elsewhere in the tables.

Overview of Rhode Island General Public Health Laws

State Health Agency

Rhode Island Department of Health – The Rhode Island Department of Health is the state's public health agency. It is one of five agencies within the Executive Office of Health and Human Services (EOHHS). The department is authorized by statute at §42-6-1(l) and §42-18-1. The director of health is designated as head of the department of health. (§42-18-1) The director is also authorized to “maintain pathological, bacteriological, and chemical laboratories.” (§ 23-1-3)

General Authorities of the State Health Agency, Board and Director

Health Agency Authorities and Duties – Rhode Island law contains a broad grant of authority for the department of health to address public health issues including, but not limited to investigating the causes of disease, the prevalence of epidemics and endemics, and to ascertain the causes and means of preventing and controlling diseases or conditions detrimental to the public health, and publishing and circulating information. (§23-1-1) The department is authorized to issue and enforce regulations and orders to carry out assigned duties, to conduct investigations and hearings, and issue, suspend, and revoke licenses and permits. (§23-1-17). Specific areas the legislature authorizes the director to promulgate rules on include, but are not limited to: “reporting of any disease and the quarantine of persons affected by that disease;” ... “standards and conditions for the location, construction, and sanitary quality of all drinking water supplies;” ... “standards with respect to the maintenance and operation of food businesses;” ... “standards for immunization and testing for communicable diseases;” and “[p]rovisions requiring the reporting of inventories and sales of drugs, devices and other products potentially related to the outbreak of disease.” (§23-1-18) The statute also mandates that “[a]ll information acquired under this subsection by the department of health is confidential and not subject to public access” under the state's public records laws. (§23-1-18) §23-1-32 limits civil liability of the director and authorized agents acting in good faith in the course of official duties. Section §23-1-9 directs the director of health to make an annual report to the general assembly and provide suggestions in relation to the sanitary laws and interests of the state that the director deems important.

Health Agency Authorities and Duties Related to Agriculture and the Environment – §RI General Laws §2-1-10 authorizes the directors of environmental management and the director of health to enter premises to conduct inspections of farm products. §2-1-11 authorizes the directors of environmental management and the director of health to administer oaths, subpoena witness, and papers. Section 42-18-4 addresses cooperation between the department of health and the department of environmental management: when a threat to public health arises as a result of “a disease in the animal population under the jurisdiction of the director of environmental management, the director of environmental management must immediately notify the director of health. Upon receiving notice, the director of health is directed to assign an agent to work with the director of environmental management. Section 42-18-2 delegates to the department of health the power to inspect milk in the state, but the department of environmental management is empowered with the economic control of milk and the inspection of cattle and milk herds.

Local Health Agencies

Rhode Island does not have local health departments. All public health programs and service are coordinated at the state level.

State Environment Agency

Rhode Island does not have a separate state agriculture agency. The state's activities to regulate and promote agriculture are vested in the Department of Environmental Management, Division of Agriculture.

State Environment Agency

Department of Environmental Management - The Rhode Island Department of Environmental Management has statutory authority for, among other things, regulating and promoting agriculture in the state. (§42-17.1-1, 17.1-2) Responsibility for the department's agricultural activities is assigned by statute to the Division of Agriculture. (§42-17.1-4(3))

General Authorities of the Environmental Agency, Board and Director

Environmental Agency Authorities and Duties – RI General Laws §42-17.1-4(3) assigns authority for agriculture to the division of agriculture in the department of environmental management including, but not limited to, plant industry, farm viability, marketing and promotion, farmland ecology and protection, plant and animal health and quarantine, pesticides, mosquito abatement, pest survey and response, food policy and security. The law also specifies the division's collaborative role with the department of health regarding public health related to farm production, direct marketing of farm products, and through memorandum of agreement with the department of health or other state agencies. The director of environmental management is authorized to issue and enforce regulations and orders to carry out assigned duties, to conduct investigations and hearings, and issue, suspend, and revoke licenses. (§42-17.1-2(19)) The director is also is authorized to conduct administrative inspections, access records, and take samples and to obtain administrative warrants from a magistrate to conduct these. (§42-17.1-2(20)(ii)(C) A warrant is not required for administrative inspections involving emergency situations and in situations “presenting an imminent threat to the environment or public health, safety or welfare.” (§42-17.1-2(20)(ii)(B)(III) – (IV))

Overview of Rhode Island General Public Health Laws

Environmental Agency Authorities Related to Agriculture – RI General Laws §2-1-10 authorizes the directors of environmental management and the director of health to enter premises to conduct inspections of farm products. §2-1-11 authorizes the directors of environmental management and the director of health to administer oaths, subpoena witness, and papers. Section §2-1-6 requires that the department of environmental management prepare an annual report on agricultural issues for the state legislature, but the statute does not specify required content for the report.

Overview of Rhode Island Communicable Disease Laws

Communicable Disease Laws

Communicable Diseases – Reporting Requirements – The director of health is authorized to declare reportable diseases and conditions and to define the time within which the notification must be made, the individual by whom it is to be made, the method of reporting, and whether the case or suspected case is to be identified by name, address, and date of onset of illness.” (§23-8-1) Rhode Island regulations R23-10-DIS require the following persons or entities to report cases of reportable conditions: physicians; physician assistants, certified registered nurse practitioners, and midwives; clinical laboratories; hospitals (both inpatient and outpatient settings); all other health care facilities (e.g., organized ambulatory care facility, school-based health center, freestanding emergency care facility, home care/home nursing, etc.); and veterinarians. (Section 2.1) The rules recommend that the following persons or entities report: certified school nurse-teachers; dentists; and other entities or persons (such as college/university health centers, day care centers, etc.) (Section 2.2). In addition to reporting specified conditions, the incidents of outbreaks or clusters of unexplained illness—infectious or non-infectious—must also be reported to the department of health under Section 2.5 of R23-10-DIS. The regulation notes that outbreaks or clusters are “...identified by significant increases in the usual incidence of the disease in the same area, among the specified population, at the same season of the year...” Included in the examples of outbreaks are “...[f]oodborne poisoning: the occurrence of two (2) or more cases of a similar illness resulting from the ingestion of a common food;” and “... [w]aterborne: at least two (2) persons experiencing a similar illness after ingestion of a common water source and epidemiologic evidence that implicates water as the probable source of the illness...” (Section 2.5) R23-10-DIS Section 2.6 reaffirms that “[a]ll information concerning cases or suspected cases shall be held in confidence in accordance with the provisions of [state and federal laws and regulations].”

Communicable Diseases – Investigation – Examination of Persons – The state department of health is authorized to “make examinations of persons reasonably suspected of having a communicable disease” but a person has the right to have a physician of his or her choice and expense present at the examination. (§23-8-4.1) Persons under 18 years of age may give legal consent for “testing, examination, and/or treatment for any reportable communicable disease.” (§23-8-1.1)

Communicable Diseases – Control Measures – Persons – Quarantine, Isolation – Rhode Island General Laws §23-8-4 authorizes the state director of health to impose quarantine, isolation or other less restrictive interventions such as immunization, treatment, exclusion or other protective actions until the threat to the public health has abated on persons who are or appear to be suffering from a communicable disease. The law allows persons who are unable or unwilling for reasons of health, religion, or conscience to undergo immunization or treatment from choosing to submit to quarantine or isolation as an alternative to immunization or treatment. Orders under this section must comply with requirements for notice and hearing. RI General Laws §23-8-18 authorizes the imposition of a general quarantine over the whole or portions of the state to prevent the introduction and to restrict the spread of infectious diseases in the state. Transportation agencies must comply with quarantine measures declared by the state. (§23-8-19)

Communicable Diseases in Animals

Communicable Diseases in Animals – Authority – RI General Laws Chapter 4-4 authorizes the director of the department of environmental management to prevent and control the spread of animal diseases contagious or injurious to public health or other animals. The director of environmental management is authorized to make and enforce regulations, appoint county inspectors, investigate outbreaks, inspect premises and animals, institute quarantine of animals, condemn and destroy infected animals. (§4-4-3, §4-4-5, §4-4-20, §4-4-23) Section 4-4-3 requires that any owner of an animal, veterinarian treating an animal, or other person having knowledge that an animal is suspected of having an animal disease that is contagious or injurious to public health or to the health of other animals must report the information to the department. It is illegal to sell, use, or expose humans or animals to diseased animals, parts of the animal, or milk, and to refuse to destroy diseased animals. (§4-4-9, §4-22)

Overview of Rhode Island Food and Food Safety Laws

Food Laws

Overview of Rhode Island Food and Food Safety Laws

Rhode Island State Food, Drugs, and Cosmetics Act – RI FDCA is the state's law governing the production and sale of food, drugs and cosmetics in the state and is the analog to the federal FDCA. (§21-31-1) The director of health or the director's duly authorized agent is authorized to have access at all reasonable hours to inspect operations in which foods are, among other things, manufactured or processed to determine if any provisions of the RI FDCA are being violated and to take samples. (§21-31-21(a)) It is a violation of the RI FDCA to refuse to permit entry, inspection, or the taking of samples as allowed by law. (§21-31-3(6)) The director is authorized to embargo if "any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent (§21-31-6(a)) The act defines a food as adulterated if, among other things, "it bears or contains any poisonous or deleterious substance which may render it injurious to health," it is contaminated or otherwise unfit for food, or it has been produced in unsanitary conditions. (§21-31-10(1)) If the director finds a structure or any food articles to be "unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, it being hereby declared to be a nuisance, the director of health or the director's authorized agent shall immediately condemn or destroy it, or in any other manner render it unsalable as human food." (§21-31-6(d)) RI General Laws §21-31-4 authorizes the director of health to seek judicial injunctions for violations of the RI FDCA; however, the act states that the director can also issue written warnings for minor violations. (§21-31-8) The director is further authorized to issue permits when a class of food has been contaminated with microorganisms and circumstances in which the permits can be suspended. (§21-31-12) Section §21-31-22 of the RI FDCA authorizes the director of health to publish reports that summarize judgments, decrees, and court orders rendered under the act and to disseminate "any information regarding food, drugs, devices, and cosmetics that the director of health deems necessary in the interest of public health and the protection of the consumer against fraud."

Retail Food And Food Establishments Laws

Sanitation in Food Establishments – Chapter 21-27 of the Rhode Island General Laws on Food and Drugs addresses sanitation in food establishments. This chapter authorizes the director of health to permit and inspect food establishment in the state. The statute authorizes the director to institute control measures, including confiscation of foods and closure of establishments, in the interest of public health and for violating the state's food establishment laws and regulations.

Food Menu Misrepresentations – It is illegal to misrepresent the identity of food or food products on a menu. (§23-1-40)

Truth in Food Disclosure Law – Retail food operations are required to disclose upon request all preservatives and artificial ingredients added on the premises. (§23-62-1)

Food Establishments Regulations

Rhode Island Food Code Regulation (R231, 21-27-FOOD) – (Note: Rhode Island's Food Code is based on the 2005 FDA Food Code.) Section 2-201.11 requires that food employees and conditional employees report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. (2-201.11(A)) The person in charge is responsible for excluding or restricting food employees or conditional employees with certain conditions or symptoms specified in the regulation. (2-201.12) Employees must satisfy condition-specific criteria to demonstrate the condition or infection has ceased. (2-201.13) When the department of health "has reasonable cause to believe" that a food employee or conditional employee has possibly transmitted disease or may be infected with a food transmissible communicable disease or acute respiratory infection, §8-501.10 permits the department to investigate foodborne outbreaks by obtaining medical information, conducting examinations and taking samples.

Food Code – Imminent Hazards – A permit holder is required to immediately "discontinue operations and notify the department of health if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health." (8-404.11(A)) The permit holder must obtain approval for the department of health before resuming operations. (8-404.12)

Food Code – Inspections – §8-402.11 permits department of health personnel, at reasonable times, to inspect food establishment's premises and access records to determine compliance with the Rhode Island Food Code. If, after notification of the department's authority to inspect a food establishment, the establishment continues to refuse the inspector access, the department is directed to provide details of the inspection refusal in an inspection report form (8-402.30) and is authorized to issue (or apply for issuance) of an inspection order to gain access to the food establishment. (8-402.40) Except as provided elsewhere in the Code, the department of health is directed to "treat the inspection report as a public document and shall make it available for disclosure..." (8-403.50)

Food Code – Control Measures –Restrictions, Exclusion, Closure – If the department of health determines after investigation that a food employee or conditional employee is infected, Section 8-501.20 authorizes the department to issue an order either restricting or excluding the employee or closing the food establishment. The department may issue such an order "without prior warning, notice of a hearing, or a hearing" if the order states the reasons for the order, the evidence necessary to show the reasons for the order have been eliminated, and provides information about the right to appeal the order. (8-501.30) The department shall end the restriction, exclusion or closure order if the employee or establishment meets the condition-specific criteria established elsewhere in the Code to show the condition or infection has ceased. (8-501.40) For conditions not specifically addressed in the regulation, the department of health is authorized to, "[i]f necessary to protect against public health hazards or nuisances," ... "impose specific requirements in

Overview of Rhode Island Food and Food Safety Laws

addition to the requirements contained in this Code that are authorized by law.” (8-102.10(A))

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***

SOUTH CAROLINA

Profile of South Carolina Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>South Carolina Department of Health and Environmental Control (DHEC)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: DHEC has a broad grant of authority to protect public health by investigating and preventing disease and by promulgating rules on a range of public health duties, including disease investigation, food safety and foodborne outbreak activities. • Website: www.scdhec.gov
<i>Agriculture Agency</i>	<p>South Carolina Department of Agriculture (SCDA)</p> <ul style="list-style-type: none"> • Structure: Independent • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: SCDA is responsible for executing SC's laws pertaining to agriculture and other laws including issuing permits to food manufacturers, processors and packers. • Website: http://agriculture.sc.gov
<i>Animal Health Agency</i>	<p>Clemson University – Livestock-Poultry Health Programs (LPH)</p> <ul style="list-style-type: none"> • Structure: The LPH is part of Clemson University, a public land-grant university. • State-Local Relationship: Centralized • Infectious Disease/Food Responsibilities: LPH serves as the state's animal health authority, state meat and poultry inspection department, and veterinary diagnostic center. • Website: www.clemson.edu/public/lph
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • 1993 Food Code currently in place; current rulemaking to update to 2009 Food Code
<i>Population</i>	4,625,364 (2010 Census)

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Overview of South Carolina Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. Please see the *South Carolina Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.

Overview of South Carolina General Government Laws

General Governmental Authorities

Powers of Counties and Municipalities – Counties are authorized to enact regulations exercising powers over health, and order and to preserve health. (§4-9-25) Municipalities are authorized to enact regulations exercising powers over health and order, and to preserve health, including abating nuisances. (§5-3-30)

Access To Records And Privacy

State Freedom of Information Act – Any person “has a right to inspect or copy any public record of a public body, except as otherwise provided by [the act].” (§30-4-30(a)) “Public record” are “books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.” Records such as income tax returns, medical records, hospital medical staff reports...and other records which by law are required to be closed to the public are not considered to be made open to the public.” (§30-4-20(c))

State Privacy Laws

Family Privacy Protection Act – All agencies and other state entities must develop privacy policies related to personal information (§30-2-20). “Personal information” is “information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information...” (§30-2-30(1)) Medical information “includes, but is not limited to, blood samples and test results obtained and kept by [DHEC] pursuant to Section 44-37-30.” (§30-2-30(4))

Interjurisdictional Issues

Commission on Interstate Cooperation – The Commission on Interstate Cooperation is authorized to “encourage and arrange conferences with officials of other states and of other units of government, participate as a member of the council of state governments, both regionally and nationally, and formulate proposals for cooperation between [SC] and other states. (§1-17-50)

Agency Reporting Requirements

Annual Accountability Reports – State agencies must submit an annual accountability report to the Governor and the General Assembly that covers the agency's mission, objectives, and “performance measures that show the degree to which objectives are being met.” (§1-1-820)

Special Reports – The Governor or General Assembly can require any agency to submit special reports in the interest of public welfare. (§1-1-840)

Overview of South Carolina General Public Health Laws

State Health Agency

Department of Health and Environmental Control (DHEC) and Board – SC Code of Laws section 44-1-20 authorizes the creation of DHEC and names the South Carolina Board of Health and Environmental Control. The DHEC director shall have such authority and perform such duties as may be directed by the board. (§44-1-40)

General Authorities of the State Health Agency, Board and Director

Health Agency Authorities and Duties – DHEC is given a broad grant of authority to protect public health in the state. (§44-1-110) The agency is empowered to investigate the causes, characteristics, and means of preventing epidemics and endemic diseases, including the use of quarantine. (§44-1-110) DHEC can make and enforce reasonable regulations on a range of public health duties, including disease investigation, food safety and foodborne outbreak activities. (§44-1-140). The agency can also make orders and rules to address emergencies for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to public life and health. (§44-1-140)

Overview of South Carolina General Public Health Laws

Health Agency Authorities Related to Communicable and Epidemic Diseases – DHEC and the Board are authorized to investigate and control communicable or epidemic diseases, including quarantining persons and animals. (§44-1-80) The Board is authorized to notify the appropriate public safety authority, tribal authorities, and federal health and public safety authorities about a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to cause a public health emergency. (§44-1-80(B)(1)) However, sharing information between authorized persons about reportable illnesses, etc., is limited to information necessary for the treatment, control, investigation, and prevention of a public health emergency. (§44-1-80(B)(2)) The Board and its agents have full access to medical records and nonmedical records when necessary to investigate the causes, character, and means of preventing the spread of a qualifying health event or public health emergency; "nonmedical records" mean records of entities, including businesses, health facilities, and pharmacies, which are needed to adequately identify and locate persons believed to have been potentially exposed or known to have been infected with a contagious disease." (§44-1-80(B)(3)) The Board can issue orders under this section of the code to be enforced immediately by a public safety authority. (§44-1-80(B)(4)) (See also §44-1-110 above.)

Health Agency Access to Records – DHEC is granted "upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation" of epidemic and endemic diseases. (§44-1-110) Physicians, hospitals, health facilities or person in charge of these records is not liable for permitting the examination or review under this section. (§44-1-110) Patient-identifying information from these records and registries must be kept confidential by DHEC and it is exempt from the provisions of the state freedom of information act. (§44-1-110)

Local Health Agencies

State Health Districts, Advisory Boards, and Local Boards of Health – DHEC is authorized to divide the state into health districts and establish district advisory boards of health. District advisory boards are subject to the supervisory and advisory control of the DHEC. (§44-1-130) DHEC may direct and supervise the action of the local boards of health. (§44-1-170) The State Board can visit localities where disease is prevalent or threatened, and investigate and advise regarding measures to prevent or abate conditions. (§44-1-90) Local peace and health officers must aid DHEC and enforce all orders, including quarantine and other restrictive measures. (§44-1-100)

Municipal Boards of Health – Municipalities may establish and maintain boards of health that function under the administration and control of DHEC. (§44-3-10) Municipal regulations cannot conflict with DHEC regulations. (§44-3-10) Municipal boards of health must make reports on their activities to DHEC when requested. (§44-3-10) Municipalities can adopt regulations governing restaurants, cafes and other facilities (§45-3-10), inspect regulated facilities (§45-3-20), and deny or revoke licenses granted to such businesses when regulations are not complied with. (§45-3-30)

State Agriculture Agency

South Carolina Department of Agriculture (SCDA); Board; Commissioner – SCDA executes the state's laws pertaining to agriculture (§46-3-10) and other laws including issuing permits to food manufacturers, processors and packers. (§46-3-20) The SC Agricultural Commission (SCAC) oversees the SCDA. (§46-5-10) The Commissioner of Agriculture is elected by a statewide general election. (§46-3-40) The Commissioner's duties included, among other things, enforcing the state's regulations relating to food and drugs and other rules issued by DHEC that SCDA is expressly charged by law with enforcing. (§46-3-240) SCDA must submit annual reports to the General Assembly. (§46-3-140)

County Extension Agents – Local outreach on agricultural issues is, in part, accomplished through county extension agents. (§4-11-50)

State Preemption of Livestock and Poultry Laws – Localities may not enact ordinances, orders, or other regulations concerning the care and handling of livestock and poultry. (§47-4-160(B))

Animal Health Agency

State Livestock-Poultry Health Commission (LPHC) – The LPHC is charged with ensuring the health and safety of the livestock and poultry industries in the state. (§47-4-10) It delegates its duty to a director, who is the director of the Livestock-Poultry Division at Clemson University. (§47-4-40) LPHC is responsible for, among other things, the inspection of livestock and poultry and for establishing and receiving reports of contagious diseases among animals. The Livestock-Poultry Health Division at Clemson University is authorized to undertake certain duties related to "agriculture and agricultural affairs or investigations", including regulatory authority over livestock and fowl infected with dangerous or contagious diseases. (§46-7-10).

Overview of South Carolina Communicable Disease Laws

Contagious and Infectious Diseases Law

Communicable Diseases Reporting – SC law requires the reporting of deaths and disease from contagious or infectious diseases and from chemical or other acts of terrorism. (§44-29-10) A “health care provider, coroner, medical examiner, or any person or entity that maintains a database containing health care data must report all cases of persons who harbor any illness or health condition that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.” (§44-29-10) DHEC must designate reportable illnesses and health conditions; reports must be made in the form and manner prescribed by DHEC regulations. (§44-29-10) Pharmacists are required to report increased rates of prescriptions and OTC drug inquiries to treat diseases caused by chemical terrorism or infectious agents. (§44-29-10)

Communicable Diseases Reporting – Laboratories – SC specifies reporting requirements for laboratories in and out of the state that test for certain infectious or other diseases in SC. (§44-29-15) Clinical specimens and isolates that test positive may sent to the DHEC for further testing to determine incidence and other epidemiological information. (§44-29-15) These clinical specimens and isolates must be submitted within the time frame and in the form and manner designated by DHEC. (§44-29-15) The statute identifies penalties for laboratories failing to meet the law’s requirements. (§44-29-15)

Animal Communicable Disease Laws

Communicable Animal Diseases – Reporting – Contagious and Infectious Animal Diseases – The LPHC is authorized to promulgate rules listing communicable, contagious, or infectious diseases which must be reported to the State Veterinarian (§47-4-50). LPHC is authorized to investigate and inspect premises for suspected contagious diseases among livestock and poultry operations (§47-13-20) and to quarantine or segregate diseased animals including those that present a significant health hazard to humans or other livestock and poultry. (§47-4-70) Animal diseases caused by terrorism must be reported to the State Veterinarian; the State Veterinarian must report to DHEC any incidents which affect public health, or which create a public health emergency. (§46-7-100).

Overview of South Carolina Food and Food Safety Laws

Food Laws

South Carolina Food and Cosmetic Act – The South Carolina Food and Cosmetic Act is the state’s analog to the Federal Food, Drug and Cosmetics Act and addresses adulterated or misbranded food and cosmetics in the state. It applies to all phases of food production including the “manufacture, production, processing, packing, exposure, offer, possession, and holding”: of any food for sale and dispensing. (§39-25-20) It prohibits, among other things, “the manufacture, sale, or delivery, holding, or offering for sale of any food...that is adulterated or misbranded” and “the adulteration or misbranding of any food” (§39-25-30). The Commissioner of Agriculture/SCDA is specifically authorized to enter at reasonable times and inspect, take samples, and access records at any factory, warehouse or establishment in which food is “manufactured, processed, packaged, or held for introduction into commerce or after introduction or enter any vehicle being used to transport or hold” food in commerce. (§39-25-190) SCDA must give a report of conditions or items observed to be unsanitary and a receipt for any samples taken to the owner, operator or agent. (§39-25-190) The act permits SCDA to “perform laboratory services relating to, or having potential impact on, food safety or the compliance of food with the requirements of this chapter for any person or public agency.” (§39-25-190(3)(F)) The Commissioner/SCDA may embargo food that is determined to be adulterated or misbranded and condemn or destroy food found to be poisonous or perishable, and may designate as a nuisance any food, room, building, vehicle, or other structure that are unsound or contain any filthy, decomposed or putrid substance that may be deleterious to health or otherwise unsafe. (§39-25-60) The Commissioner is further authorized to promulgate regulations that allow for the temporary suspension of the movement of certain classes of food in commerce if they are found to be contaminated with microorganisms injurious to human health. (§39-25-115) Refusal to allow these activities is prohibited under the act. (§39-25-30(6)) Section 39-25-40 of the SC Code of Laws authorizes the issuance of injunctions by a court. However, the Commissioner is given leeway regarding reporting of minor violations if “the public interest will be adequately served in the circumstances by a suitable written notice or warning” (§39-25-80). The Commissioner is authorized to publish reports and other notices in the interest of public health. (§39-25-200)

Retail Food and Food Establishments Laws

Food Served by Churches and Charitable Organizations – State law section 44-1-300 expressly prohibits DHEC from using any funds appropriated or authorized to the department to enforce Regulation 61-25 to the extent that its enforcement would prohibit a church or charitable organization from preparing and serving food to the public on their own premises at not more than one function a month or not more than twelve functions a year.

South Carolina Bed and Breakfast Act – South Carolina law has specific standards that apply to certain food service activities in bed-and-breakfast facilities. Bed-and-breakfast operations with residential kitchens that provide a continental or full breakfast to registered guests, or tea service to registered guests only, are not required to obtain a permit to

Overview of South Carolina Food and Food Safety Laws

provide the food service (§45-4-30(A)) and DHEC regulations related to restaurants and other regulated services do not apply. (§45-4-30(B)) Bed-and-breakfast operations are instead required to comply only with the food service provisions in the Bed and Breakfast Act. (§45-4-40)

Food Establishments Regulations

Retail Food Service Establishments (Regulation 61-25) – (NOTE: SC's current adoption of the FDA Food Code is the 1993 version. In 2012, SC has a proposed rulemaking to update its rules to the 2009 Food Code.) A manager must not permit a person who has a communicable disease that can cause a foodborne disease or be transmitted by food to work in a retail food establishment if there is a likelihood of contamination or transmission of the disease. (Reg. 61-25(III)(A)) Where disease transmission by an employee is suspected, the health authority may secure a medical history and otherwise investigate; the authority can require restriction or exclusion of the employee, the closing of the establishment, medical and laboratory testing of the employee, and laboratory testing of food and environmental samples. (Reg. 61-25(III)(B)) Representatives of the health authority may enter and inspect retail food establishments and records at any reasonable time to determine compliance with this regulation. (Reg. 61-25(XIV)(I)) Representatives may also examine or sample food as often as necessary for enforcement of this regulation. Food may be condemned and destroyed after notice and an opportunity for hearing. (Reg. 61-25(XIV)(O)) The health authority may temporarily suspend food permits for repeated violations and other specified violations but must give notice of the impending suspension and an opportunity for a hearing. However, the health authority can suspend a food permit and immediately stop all food service without prior notice or hearing if the retail food establishment constitutes an imminent hazard to public health; permit holders must then receive notice and an opportunity for hearing. (Reg. 61-25(XIV)(C)) The health authority may also revoke permits after notice and hearing. (Reg. 61-25(XIV)(E)) Regulation 61-25(II)(A)(2) requires that "[i]n the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the health authority. Upon receiving notice of this occurrence, the health authority shall take whatever action that is deemed necessary to protect the public health."

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***

TEXAS

Profile of Texas Agencies Involved in Food Safety and Foodborne Disease Response	
<i>Health Agency</i>	<p>Texas Department of State Health Services (DSHS)</p> <ul style="list-style-type: none"> • Structure: DSHS is part of larger health and human services umbrella agency, the Texas Health and Human Services Commission • State-Local Relationship: Texas has shared or mixed system of providing public health services. State law recognizes several forms of local health agency structure based on the size and type of jurisdiction. DSHS provides some or all of the public health services in some local jurisdictions through the state's regional offices. • Infectious Disease/Food Responsibilities: DSHS supports local health agencies in administering that state's food laws, conducting regular permitting and inspections of food establishments, and investigating foodborne illness outbreaks. • Website: www.dshs.state.tx.us
<i>Agriculture Agency</i>	<p>Texas Department of Agriculture (TDA)</p> <ul style="list-style-type: none"> • Structure: TDA is an independent agency; it is not part of a larger agency • State-Local Relationship: TDA has regional service offices, satellite offices, laboratories and livestock export facilities to work with individuals, producers and growers. • Infectious Disease/Food Responsibilities: TDA oversees marketing, economic development and regulatory services for agricultural and consumer protection activities. TDA has jurisdiction over agricultural crops and marketing of livestock. • Website: http://texasagriculture.gov
<i>Animal Health Agency</i>	<p>Texas Animal Health Commission (TAHC)</p> <ul style="list-style-type: none"> • Structure: TAHC is an independent agency; it is not part of a larger agency • State-Local Relationship: TAHC has regional offices and laboratories to work with individuals and livestock and poultry operations. • Infectious Disease/Food Responsibilities: TAHC has legislative authority to make and enforce regulations to prevent, control, and eradicate specific infectious animal diseases which endanger livestock. • Website: www.tahc.state.tx.us
<i>Animal Feed Agency</i>	<p>Texas Feed and Fertilizer Control Service (TFFCS) – Office of the Texas State Chemist (OTSC)</p> <ul style="list-style-type: none"> • Structure: OTSC is located within the Texas Agricultural Experiment Station, which is part of the Texas A&M University System. OTSC includes two units, the Texas Feed and Fertilizer Control Service and the Agricultural Analytical Service. • State-Local Relationship: TFFCS has regional field investigators and field laboratories for measuring aflatoxin. • Infectious Disease/Food Responsibilities: TFFCS has legislative authority to make and enforce regulations to prevent and control the spread of infectious diseases in animal feed. • Website: http://otscweb.tamu.edu/
<i>FDA Food Code</i>	<ul style="list-style-type: none"> • Texas food establishment rules are based on the 2001 FDA Food Code.
<i>Population</i>	25,145,561 (2010 Census)

NOTICE: The information contained in this document was collected between July and August 2012 and reflects the legal authorities as of that time. The information may reflect only selected portions of the statutes and rules relevant to food safety, infectious diseases and agency authority and are not intended to be exhaustive of all relevant legal authorities. **This resource is for informational purposes only and is not intended to be a substitute for professional legal or other advice. This information does not represent the official position or interpretation of law of the states profiled.**

Overview of Texas Legal Authorities for Food Safety and Foodborne Disease Response

The following tables provide an overview of the legal authorities that support the state's food safety and foodborne disease response activities during a foodborne disease outbreak. **Please see the *Texas Supplement* document for detailed summaries of the legal authorities described below and overviews of agency roles in food safety and foodborne disease response.**

Overview of Texas General Government Laws

General Governmental Authorities

Local Authority to Control Nuisances – Local Government Code Chapter 217 authorizes different categories of localities (e.g., home rule, general law, etc.) to define and control nuisances within their jurisdictions.

Access To Records and Privacy

Public Information – Texas Government Code Chapter 522 governs access to public information. The policy of the state is to generally allow access to public information unless such access is expressly prohibited by law. (Government Code §552.001) The code defines “public information” as “...information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” (Government Code §552.002) The categories of information considered to be public information include, but are not limited to: “...a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108...” (Government Code §552.002) Government Code §552.101 creates an exception from disclosure for confidential information: “Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Chapter 552 contains a number of exceptions, two of which are trade secrets and agency memoranda. Trade secrets and certain commercial information are excepted from public disclosure. (Government Code §552.110) Agency memoranda not available by law are also excepted from disclosure. (Government Code §552.111)

Interjurisdictional Issues

Interlocal Cooperation Act – Government Code §791.011 empowers localities in the state to enter into agreements or contracts with another local government, localities or agencies in another state, and federally recognized Indian tribes.

International Cooperation Agreements – Government Code §792.002 authorizes state agencies and localities to enter into agreements with Mexican states, the U.S. federal government, or entities created under treaty between the U.S. and Mexico.

Agency Reporting Requirements

See specific agency reporting requirements contained elsewhere in the tables.

Overview of Texas General Public Health Laws

State Health Agency

Texas Department of State Health Services – The Department of State Health Services (DSHS) (formerly the Texas Department of Health) is the state's public health agency located within the larger Texas Health and Human Services Commissioner. The DSHS is authorized in statute Health and Safety Code §1001.002. The Health and Human Services Commission is the umbrella agency in which the Department of Health Services is located. The Commission is authorized by statute in Government Code §531.002. The executive commissioner is authorized to appoint the commissioner of DSHS with the approval of the governor. (Health and Safety Code §11.012, §1001.051; Government Code §531.0056) The commissioner is the executive head of the department. The commissioner is charged with performing “the duties assigned by the board and state law, subject to the provisions of this subtitle.” (Health and Safety Code §11.012(a), §12.021) DSHS is governed by the Texas State Health Services Council (formerly the Texas Board of Health). It was “...created to assist the commissioner in developing rules and policies for the department.” (Health and Safety Code §1001.021) The council is composed of members of the public appointed by the governor with the advice and consent of the senate. The council is specifically authorized to “...study and make recommendations to the executive commissioner and the

Overview of Texas General Public Health Laws

commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.” (Health and Safety Code §1001.021(c)) Under Texas Health and Safety Code §12.001, the council has “...general supervision and control over all matters relating to the health of the citizens” of the state.

State Health Regions – The state health services council is authorized to, among other things, “...designate geographic areas of the state as public health regions to provide public health services.” (Health and Safety Code §121.007(a)) The council is also authorized to appoint a physician to be the regional director for each public health region and who will be chief administrative officer of the region. (Health and Safety Code §121.007(b)) Further, the council or its designee can require the regional director to perform the duties of a health authority in areas in the region in which the health authority fails to perform its duties or where there is no health authority appointed. (Health and Safety Code §121.007(c)) (See local health officer section below for discussion of the “health authority” position.)

General Authorities of the State Health Agency, Board and Director

General State Health Authorities – Access to Records – Access to and Use of Information for Studies – Texas Health and Safety Code Chapter 161 addresses a number of public health programs and provisions, including those regarding access to and confidentiality of information used in studies. (See also Health and Safety Code Chapter 81, Subchapter D, Investigation and Inspection, discussed below.) Health and Safety Code §161.021 empowers certain types of entities (e.g., hospitals, nursing homes) to release information used in a study to reduce morbidity or mortality, among other things, to specific types of recipients (e.g., DSHS) Texas law designates information provided during the course of a study on health conditions and diseases as confidential and privileged information. (Health and Safety Code §161.022)

General State Health Authorities – Investigations, Inspections – Texas law gives the council on state health services broad authority to supervise and control all matters relating to the public’s health in Texas. (Health and Safety Code §12.001). These authorities include, but are not limited to, the rights to: “examine, investigate, enter, and inspect any public place or public building as the [council] determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.” (Health and Safety Code §12.001) Additionally, a “member of the [council] may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for board investigation, including the determination of nuisances and the investigation of: (1) public water supplies; (2) sanitary conditions; (3) the existence of infection; or (4) any matter that requires the board to exercise its discretionary powers and that is within the general scope of its authority...” (Health and Safety Code §12.002(a)) Health and Safety Code §12.018 empowers DSHS to make unannounced inspections.

General State Health Authorities – Epidemiologic or Toxicologic Investigations – Texas law expressly authorizes the conduct of epidemiologic or toxicologic investigations to investigate illnesses, conditions and exposures that are or may be a public health threat. (Health and Safety Code §161.0211) Texas law gives designated officials the same authority granted in communicable disease investigations in the conduct of other epidemiologic or toxicologic investigations. (Health and Safety Code §161.0212) The statute also specifies that DSHS “shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.” (Health and Safety Code §161.0211) The law further requires persons to provide “medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c) [investigation of communicable diseases].” (Health and Safety Code §161.0211) The act also provides liability protection for those providing information during an investigation. (Health and Safety Code §161.0211) Health and Safety Code §161.0213 makes information provided during an epidemiologic or toxicologic investigation confidential and not subject to disclosure as public information. (Health and Safety Code §161.0213)

General State Health Authorities – Control Measures – The statute authorizes the council on state health services to “adopt rules consistent with the purposes of this chapter” and “establish standards and procedures for the management and control of sanitation and for health protection measures.” (Health and Safety Code §341.002) Health and Safety Code §341.012 addresses the abatement of nuisance through enforcement by the local health authority and, if necessary, through judicial processes. (Health and Safety Code §341.011) Home-rule municipalities are authorized to enact more stringent ordinances relating to sanitation and health protection. (Health and Safety Code §341.081)

General State Health Authorities – Interjurisdictional Authorities – Health and Safety Code §12.071 authorizes the DSHS to “establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.”

Local Health Agencies

The Local Public Health Reorganization Act recognizes three forms of local health agencies: local health departments, local health units, and public health districts. (Health and Safety Code §121.001). Local Health Authorities are physicians appointed to oversee public health services in one or more local health agencies.

Local Health Authorities – The Local Public Health Reorganization Act defines a “health authority” as “...a physician appointed under the provisions of this chapter to administer

Overview of Texas General Public Health Laws

state and local laws relating to public health within the appointing body's jurisdiction." (Health and Safety Code §121.021) Localities that have not created some form of local health department may appoint a physician to serve as the health authority. (Health and Safety Code §121.028) The health authority is authorized to delegate authority, unless otherwise restricted by law, to "a properly qualified physician to act while the health authority is absent or incapacitated" or "to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated" (Health and Safety Code §121.029, 121.0331) The Local Public Health Reorganization Act empowers local health authorities to implement and enforce the state's public health laws, including, but not limited to, quarantining, reporting communicable diseases and other epidemic to the state, assisting the state in sanitation and disease prevention activities. (Health and Safety Code §121.024)

Local Health Departments – The governing body of a municipality or the commissioners court of a county may establish a local health department by majority vote. (Health and Safety Code §121.031) A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform. (Health and Safety Code §121.032) The code specifies that the governing body must appoint a director of the health department; if the director is a physician, he/she is designated as the health authority for the jurisdiction. (Health and Safety Code §121.033) The governing body of a municipality may create an administrative or advisory public health board and the appointment of representatives to that board. (Health and Safety Code §121.034)

Local Health Units – Health and Safety Code §121.004 recognizes a local health units as "a division of municipal or county government that provides public health services but does not provide each service required of a local health department under Section 121.032(a) or of a public health district under Section 121.043(a)."

Public Health Districts – Health and Safety Code §121.041 authorizes two or more localities to create public health districts. (Health and Safety Code §121.041) Any governmental entity, including a school district, may apply to become a member of a public health district. (Health and Safety Code §121.042) A public health district may perform any public health function that any of its members may perform unless otherwise restricted by law. (Health and Safety Code §121.043) A public health district is required to, "at a minimum, provide the services listed for a local health department." (Health and Safety Code §121.043) The members of a public health district shall appoint the director of the district who may be a physician. (Health and Safety Code §121.045)

Local Health Powers and Duties – Under Texas's Local Public Health Reorganization Act, municipal and county governments are empowered to protect public health and cooperate with other jurisdictions in accomplishing this. (Health and Safety Code §121.003) The act allows for the delegation of these powers and duties. (Health and Safety Code §121.003(c)) The act includes a mechanism for local health agencies to affiliate with DSHS. (Health and Safety Code §121.005) It authorizes DSHS to fund localities to provide essential public health services. (Health and Safety Code §121.0065) DSHS is also authorized to provide essential public health services to localities that do not receive funding for these services from DSHS. (Health and Safety Code §121.0066) Texas law also recognizes different classes of local governments based on population size, form of organization, and form of governance, and empowers them to protect public health. Counties are, depending on population size, generally authorized to expend money on public health and sanitation activities and create county health units. (Health and Safety Code §122.001–§122.003) Municipalities may have specifically stated authorities to protect against and control public health threats.

State Agricultural Agency

Texas Department of Agriculture – The Texas Department of Agriculture (TDA) is the agency authorized by the state to "execute all applicable laws relating to agriculture. (Agriculture Code §12.001) TDA is tasked by the legislature to "encourage the proper development and promotion of agriculture, horticulture, and other industries that grow, process, or produce products in this state." (Agriculture Code §12.002) TDA has regulatory jurisdiction over agricultural-related industries, but not poultry, livestock and other animals, which are regulated by the Texas Animal Health Commission (see description below). TDA is empowered to promulgate rules enforcing the state's agriculture laws. (Agriculture Code §12.016) Agriculture Code §11.001 specifies that the "Department of Agriculture is under the direction of the commissioner of agriculture, who is responsible for exercising the powers and performing the duties assigned to the department by this code or other law." By law, the "commissioner is elected for a term of four years" in general statewide elections. (Agriculture Code §11.004)

General State Agriculture Authorities – In §12.0012 of the Texas Agriculture Code, TDA is authorized to establish quarantines to protect against, among other things, potential health threats from pests or diseases. Agriculture Code §12.0011 also empowers TDA to enter into agreements with other jurisdictions. Agriculture Code §251.001 limits nuisance actions against existing agriculture operations, but does not restrict the authority of the state or locality to protect public health, safety and welfare.

State Animal Health Agency

Texas Animal Health Commission – The Texas Animal Health Commission is a body whose members are "appointed by the governor with the advice and consent of the senate". (Agriculture Code §161.021) Texas Administrative Code §59.2 identifies the powers and duties of the Animal Health Commission, among others, formulating policy for the agency,

Overview of Texas General Public Health Laws

appointing the executive director, and with identifying and controlling animal diseases in the state. Texas Administrative Code §59.2 identifies the powers and duties of the Animal Health Commission Executive Director: “The Executive Director shall administer the programs of the agency and has all powers necessary for such administration, as well as any specific duties assigned or functions delegated by the Commission. The Executive Director may delegate any authority or duty to agency personnel.”

Feed And Fertilizer Control

Texas Feed and Fertilizer Control Service – The Texas Feed and Fertilizer Control Service (TFFCS) is a unit of the Office of the Texas State Chemist (OTSC) located within the Texas Agricultural Experiment Station, which is part of the Texas A&M University System. OTSC includes two units, the Texas Feed and Fertilizer Control Service and the Agricultural Analytical Service. TFFCS has legislative authority to make and enforce regulations to prevent and control the spread of infectious diseases in animal feed. (See Agricultural Code §141.002) Agricultural Code §141.101 authorizes the TFFCS to enter regulated facilities and to take samples: “In order to determine if feed is in compliance with this Chapter, the Service is entitled to: (1) enter during regular business hours and inspect any place of business, mill, plant building, or vehicle and to open any container, bin, vat or parcel that is used in the manufacture, transportation, importation, sale, or storage of commercial feed or is suspected of containing a commercial feed; and (2) take samples from feed found during that inspection.”

Overview of Texas Communicable Disease Laws

Communicable Disease Law

Communicable Diseases – The Texas Communicable Disease Prevention and Control Act (CDPC Act) requires the state health services commission to identify reportable conditions, specifies the persons required to report, mandates agency collection of data about reportable conditions, addresses notification and testing procedures, and specifies control measures. (Health and Safety Code §81.001 et seq.) The CDPC Act directs the council to identify, classify, and mandate the reporting of specified communicable diseases and conditions. During public health disasters, the commissioner is authorized to require reporting of communicable diseases or conditions without prior rulemaking. (Health and Safety Code §81.041) CDPC Act §81.042 specifies the persons required to report, including but not limited to, physicians, dentists, other health care professionals, veterinarians, laboratorians, school officials, parents and guardians, and food establishment owners. Persons required to report who knowingly fail to make a report are guilty of a misdemeanor. (Health and Safety Code §81.049) Local health authorities are required to keep a record of reportable disease notifications made to the authority and to report these records to DSHS’s central office in the frequency required by DSHS. (Health and Safety Code §81.043) The commission is empowered to determine the method of reporting and the information to be reported. Section 81.024 of the CDPC Act requires the commission to “provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that [it] determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.”

Communicable Diseases – Access to Records and Privacy – The Texas CDPC Act makes information gathered related to confirmed or suspected cases of communicable diseases confidential and available only for use to accomplish the act’s purposes. This information is not considered to be public information and is not available except as provided in the act. (Health and Safety §81.046) The act identifies several circumstances in which medical and epidemiological information can be released, including for statistical and treatment purposes and to governmental agencies for public health and emergency response purposes. (Health and Safety §81.046) Information related to cases or suspected cases may be released to law enforcement officers during a public health emergency for the protection of the person named in the information. (Health and Safety §81.046) The Texas CDPC Act places limitations on access to information gathered under the act during judicial proceedings. (Health and Safety §81.046) The act further empowers the courts to limit disclosures of medical or epidemiological information during a court proceeding. (Health and Safety §81.046) Section 81.011 of the CDPC Act addresses DSHS’s ability to access information from the department of public safety during a declared emergency or epidemic.

Communicable Diseases – Investigation, Inspection and Testing – Section 81.061 of the CDPC Act requires DSHS to investigate causes of communicable diseases throughout the state and to identify potential control measures; local health authorities and persons are required to provide information as requested by DSHS. To accomplish the investigations required in §81.061 of the CDPC Act, DSHS may “...administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document...” and “...request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.” (Health and Safety §81.062) The statute also permits the taking of samples during an investigation and requires officials to leave corresponding samples to the person in charge. (Health and Safety §81.063) The act authorizes DSHS or local health authorities to enter and inspect “public places”—areas not used for private residential purposes—to prevent or control the spread of a communicable disease. (Health and Safety Code §81.064) State health and local health authorities are specifically granted the right to enter and have access to facilities, persons, animals or other objects that are under quarantine, isolation or other restriction. (Health and Safety Code §81.065)

Communicable Diseases – Control Measures – The Texas communicable disease law empowers the state health services commission to “...impose control measures to prevent

Overview of Texas Communicable Disease Laws

the spread of disease in the exercise of its power to protect the public health.” (Health and Safety Code §81.081) Local health authorities are authorized to administer control measures within their jurisdiction so long as they are as stringent as state requirements and have not been preempted by DSHS. (Health and Safety Code §81.082) Control measures may be imposed on individuals, animals, places or objects, and the health authority may designate health care facilities in their jurisdiction to support control measures during a public health disaster or area quarantine. (Health and Safety Code §81.082) Section 81.151 of the CDPC Act specifies the requirements for seeking a court order to manage persons or groups with communicable diseases. (Health and Safety Code §81.151) DSHS or a local health authority may file a single application for a group if there is a reasonable suspicion that “a group of five or more persons has been exposed to or infected with a communicable disease” and that “each person in the group meets the criteria of [the communicable disease control act] for court orders for the management of a person with a communicable disease.” (Health and Safety Code §81.151)

Communicable Diseases – Control Measures – Persons – The act generally requires persons, including physicians, treating individuals with communicable diseases to inform them about measures for preventing reinfection and spreading the disease and the need for continued treatment until the infection has cleared. (Health and Safety Code §81.083) An individual may be ordered in writing to implement control measures if DSHS or the local health authority believes a person is ill with or has been exposed to a communicable disease. (Health and Safety Code §81.083) Such an order remains effective until the person is no longer infected or the incubation period for the disease has passed. (Health and Safety Code §81.083) A person may be subject to court ordered disease management if the actual or suspected communicable disease presents an immediate public health threat and the individual refuses to comply with written orders or, in the case of a public health disaster, will not voluntarily comply with control measures. (Health and Safety Code §81.083) Section 81.009 of the CDPC Act specifies the conditions in which exemptions from medical treatment are permitted. (Health and Safety Code §81.009) However, “an exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).” (Health and Safety Code §81.009)

Communicable Diseases – Control Measures – Property – The act generally authorizes DSHS or a local health authority to place property in quarantine until a medical or technical analysis is made of the property to determine if it is infected or contaminated. (Health and Safety Code §81.084) The property will be returned to the person who owns or controls it if the property is found not to be infected or contaminated. (Health and Safety Code §81.084) If found to be infected or contaminated, DSHS or the health authority may by written order require the owner to implement technically feasible measures to disinfect or decontaminate the property. (Health and Safety Code §81.084) Quarantine measures will be removed and the property returned if control measures are effective. (Health and Safety Code §81.084) When control measure are ineffective or technically infeasible, DSHS or the local health authority can continue the quarantine and order the owner to destroy the property or otherwise fence or seal the property until the quarantine is removed by DSHS or a health authority. (Health and Safety Code §81.084)

Communicable Diseases – Control Measures – Control of Areas – The Texas CDPC Act addresses the application of control measures to geographical areas affected by an outbreak of a communicable disease. (Health and Safety Code §81.085) Local health authorities must consult with DSHS before implementing an area quarantine and must inform the governing body of the jurisdiction. (Health and Safety Code §81.085) Local authorities are empowered to institute additional control measure within a quarantine area. (Health and Safety Code §81.085) If a quarantine area includes an adjacent state, DSHS is authorized to enter into cooperative agreements with other states to exchange information and cooperate on control measures, among other things. (Health and Safety Code §81.085) DSHS or a local health authority is directed to use reasonable means to inform persons within the quarantine area about their rights, duties and obligations. (Health and Safety Code §81.085)

Communicable Diseases in Animals

Communicable Diseases in Animals – The Texas Animal Health Commission (TAHC) is the state agency responsible for monitoring and responding to communicable diseases in animals. The TAHC by law and by practice works in coordination with the DSHS on outbreaks of communicable diseases in animals that affect human health in some respect. Texas Agriculture Code chapter 161 addresses general disease and pest control in animals. The law specifies the conditions to be protected against and authorizes the TAHC, among other things, to establish reporting requirements for animal diseases that affect human health. Agriculture Code §161.101 specifies the persons, timing and conditions to be reported to the TAHC. Section 161.041 of the Agriculture Code specifies the diseases and conditions to be protected against and gives the TAHC authority to control disease in “livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the commission.” (Agriculture Code §161.041(a)) The TAHC’s “authority to control or eradicate an agent of transmission that is an animal species that is not subject to the jurisdiction of the commission is limited to instances when a disease that threatens livestock, exotic livestock, domestic fowl, or exotic fowl has been confirmed or is suspected to exist in that species and the commission determines that a serious threat to livestock, exotic livestock, domestic fowl, or exotic fowl exists.” (Agriculture Code §161.041(g)) The Texas Health and Safety Code §81.008 requires that the “Texas Animal Health Commission and the Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with [DSHS] to exchange information on communicable diseases in animals.”

Overview of Texas Food and Food Safety Laws

Food Laws

Texas Food, Drug, and Cosmetics Act – The Texas Food, Drug, and Cosmetics Act governs, among other things, the sale, manufacture, production, processing, and packaging (hereafter collectively referred to as “production”) of any food, drugs, devices or cosmetics in the state (hereinafter collectively referred to as “products”). (Health and Safety Code §431.001, §431.005) The act addresses the permitting, inspection and control of operations in Texas. The act makes it illegal, among other things, to adulterate or misbrand products, or produce or sell adulterated or misbranded products. (Health and Safety Code §431.021) The act is administered and enforced by the department of state health services (DSHS) and the DSHS commissioner. The health and human services commission is authorized to adopt rules for enforcing the chapter. (Health and Safety Code §431.241) The TFDCA authorizes a local health authority or its agent to access and copy records. (Health and Safety Code §431.043) Similarly, transportation carriers must give inspectors access to records. (Health and Safety Code §431.044) Section 431.042 of the TFDCA permits DSHS representatives or local health authorities to enter at reasonable times an establishment or vehicle used in the production of food and other products covered under the act to inspect, sample and label as needed inspected products to enforce the provisions of the act. (Health and Safety Code §431.042) The act exempts certain types of data from inspection, including but not limited to financial, personnel, and other business data. (Health and Safety Code §431.042) The council is authorized to exempt certain classes of persons from inspection if inspections of the class are not necessary to protect public health. (Health and Safety Code §431.042) The TFDCA prohibits a person from refusing to “permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record ... or the failure to establish or maintain any record or make any report required.” (Health and Safety Code §431.042) The act likewise prohibits the “the use, removal, or disposal of a detained or embargoed article...” (Health and Safety Code §431.042) Section 431.249 authorizes the commissioner to publish reports summarizing DSHS’s enforcement activities and otherwise disseminate information to the public about imminent hazards and examples of the agency’s investigations.

Food Law – Control Measures – Section 431.048 of the TFDCA permits the commissioner or an authorized representative to detain or embargo products that are, or suspected of being, adulterated or misbranded under the act, and permits the labeling or tagging of the violating products. The TFDCA authorizes the commissioner to order the recall of a food or other product covered by the act. (Health and Safety Code §431.0495) TFDCA permits the condemnation and destruction of products found to be adulterated, misbranded, or otherwise in violation of the act. (Health and Safety Code §431.053) The section authorizes the immediate destruction of products found to be unsanitary, unhealthy or a nuisance. (Health and Safety Code §431.053) TFDCA §431.045 authorizes the DSHS commissioner or their designee to issue emergency orders if time is of the essence in addressing a threat to public health. The TFDCA authorizes the commissioner, a designee or local health authority to seek a judicial order for a temporary restraining order if there is a continuing violation or threat of a continuing violation of the act and that the violation or potential violation poses “an immediate threat to the health and safety of the public.” (Health and Safety Code §431.047). The TFDCA contains specific provisions for issuing emergency permits for classes of food found to be contaminated with microorganisms. (Health and Safety Code §431.084) During the period in which emergency permits are issued for a class of food, a person may not distribute foods of that class without a permit. (Health and Safety Code §431.084) The emergency permitting statute also includes provisions for suspension and reinstatement of a permit if its conditions are violated. (Health and Safety Code §431.084)

Texas Food, Drug, Device, and Cosmetic Salvage Act

Texas Food, Drug, Device, and Cosmetic Salvage Act – The Texas Food, Drug, Device, and Cosmetic Salvage Act is intended to “protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics.” (Health and Safety Code §4321.002) Salvage operations are required to have a license to operate. (Health and Safety Code §4321.005) The DSHS is authorized to conduct inspections, enter into agreements, publish statistics, and establish educational programs for salvage operations. (Health and Safety Code §4321.012) Municipalities are authorized to establish stricter, but not less strict standards, than the state for salvage operations. (Health and Safety Code §4321.016) The commissioner is authorized to issue emergency orders without prior notice or hearing concerning salvaged items that pose a threat to human life or health and other control measure will result in unreasonable delay. (Health and Safety Code §4321.020)

Retail Food and Food Establishments Law

Retail Food and Food Establishments – Chapter 437 of the Texas Health and Safety Code governs the regulation of food service establishments, retail food stores, mobile food units, and roadside food vendors (hereinafter collectively “establishments”, unless otherwise specified). The statute addresses permitting, inspection and control of establishments. The provisions of the statute are primarily enforced by local governments with support from DSHS. This analysis focuses on the statute’s provisions related to public health hazards and outbreaks. The commission is authorized to adopt rules to enforce food establishment laws in areas not regulated by a county or public health district. (Health and Safety Code §437.0056) The accompanying rules for this statute are contained primarily in the Texas Food Establishment Rules (25 TAC 161 et seq), which is the state’s adoption of the FDA Food Code. Texas law designates various forms of local government units as the primary agency to administer and enforce the statute and rules governing covered food establishments. Specifically, Health and Safety Code §437.002 authorizes “[a] county or public health district [to] enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors;” however the statute expressly prohibits these units from adopting “orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.” Health and Safety Code §437.009 authorizes agents and employees of DSHS and local government units to enter and inspect food establishments to determine compliance with applicable laws and rules. Health and Safety Code §437.0095 authorizes the commissioner or agent to detain or embargo food in a food establishment if the items are found to be adulterated or misbranded under the state’s food laws. Health and Safety Code §437.014 empowers county or public health districts to deny, suspend or revoke a food service establishment permit after notice and opportunity for a hearing if the

Overview of Texas Food and Food Safety Laws

establishment is not in compliance with state and local laws. DSHS is authorized under Health and Safety Code §437.0145 to suspend the license or order the immediate closure of a food establishment in violation of prescribed standards which pose an immediate threat to health. Texas law provides options for seeking injunctions against establishments that are operating in violation of the law. (See Health and Safety Code §437.015, §437.0155)

Public Health Statutory Measures Relating to Food

Public Health Measures Relating to Food – Texas Health and Safety Code Chapter 438, titled “Public Health Measures Relating to Food,” contains a number of provisions that address issues related to food safety and sanitation issues, including unpackaged food; cleaning and sterilization of food service items; food service employees; food service programs, among others. This section analyzes the foodborne illness-related provisions regarding food service employees. Section 438.032 of the Health and Safety Code prohibits persons who are infected or who have been exposed to a disease transmissible by food from handling food. The statute further requires that an establishment that prepares food in a way that would permit “probable transmission of disease from a [food] handler to a consumer may not employ a person [who is infected with or exposed to a food-transmissible disease] to handle the food, utensils, dishes, or serving implements.” (Health and Safety Code §438.032) Health and Safety Code §438.033 mandates that a person who wants to be employed as a food handler must first receive a physical examination and medical clearance that the employee does not have a food-transmissible disease. The statute states that an employer, the state health services commission or its representative, or a local health authority can request that a current or potential employee be examined by a licensed physician and obtain a signed doctor’s certificate attesting that the employee does not have a food-transmissible disease. (Health and Safety Code §438.033)

Food Establishments Regulations

Texas Food Establishments Rules – (Note: Texas food establishment rules are based on the 2001 FDA Food Code.) The Texas Food Establishment Rules (25 TAC 161 et seq) contain detailed requirements for the safe handling and preparation of food and sanitation standards for equipment and facilities, among other things. This analysis focuses on the rules’ provisions related to public health hazards and control measures. 25 TAC §229.163 relating to management and personnel, requires that the designated person in charge of the food establishment receive reports from current and potential employees about their health status and activities related to food-transmissible diseases. (25 TAC §229.163) The rules require that a food establishment must cease operations immediately and “notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health.” (25 TAC §229.171) Food establishments that cease operations under this section must “obtain approval from the regulatory authority before resuming operations.” (25 TAC §229.171) The rules further mandate the reporting of communicable diseases as required by the state’s communicable disease reporting requirements at 25 TAC §97.2, §97.4 – §97.6. (25 TAC §229.171) The rules permit the regulatory authority to be granted access at reasonable times after due notice to conduct inspections to assure compliance with the rules and to access records and other information required to be kept pursuant to the Food Establishment Rules. (25 TAC §229.171) The Food Establishment Rules authorize a regulatory authority to “act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food...” by collecting information about their personal history of illness, requiring a medical examination and laboratory analysis of a specimen. (25 TAC §229.171(o)(1))

Texas Food Establishments Rules – Control Measures – 25 TAC §229.171 addresses compliance and enforcement issues under the Texas Food Establishment Rules. The overall purpose of the rule is to protect the public’s health and ensure that food presented to consumers is safe. (25 TAC §229.171(a)) The regulation specifies potential control measures to reduce the risk of foodborne disease transmission for the symptoms and causes of food-transmissible illnesses listed in the document. (25 TAC §229.163(d)(1)) The person in charge is directed to exclude or restrict an employee from food handling activities if they are or have recently been infected with a food-transmissible disease or are experiencing symptoms consistent with foodborne illness. (25 TAC §229.163(d)(2)) The rules state that “[b]ased on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures”, including restricting or excluding the food employee from work or closing the establishment by summary suspension of its permit. (25 TAC §229.171(o)(2)) The regulatory authority can issue an “order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order...” (25 TAC §229.171(o)(3)) The rules also specify the conditions under which the regulatory authority shall release a food employee from restriction or exclusion, including meeting the requirements of Texas Health and Safety Code §438.033 [public health measures related to food]. (25 TAC §229.171(o)(4))

Product-Specific Laws

NOTE: States have statutes and regulations governing specific agricultural products including but not limited to meat, seafood, flour, corn, rice, milk and dairy products, and eggs. ***These statutes and regulations may contain relevant legal authorities governing foodborne disease detection and outbreak response activities, but which are not included in this review.***