

LEGAL SUPPORT OF FOOD SAFETY

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Contents

- 1. Introduction
- 2. Food Safety
 - 2.1 Genetically Modified Food
 - 2.2 Irradiated Foods
- 3. Food and Color Additives
 - 3.1 GRAS exemption
- 4. Dietary Supplements
- Glossary
- Bibliography
- Biographical Sketch

Summary

The United States has dealt with problems of food safety in great detail for many years, and thus serves as a useful model for examining the various issues that may arise. The various agencies discussed all provide ongoing monitoring of the nation's food supply to ensure continual purity. This is effectuated through the use of food inspectors, microbiologists, and other food scientists working locally as well as on the federal level. The precise duties of the various local, state, and federal agencies are dictated by law.

Together these agencies strive to increase coordination and communication among the agencies, provide a guide for efficient use of resources and expertise during outbreaks resulting from contaminated food, and prepare for new and emerging threats to the US food supply. The FDA continues to strive for changes that will maximize its expertise in protecting the nation's food. As science and technology continue to advance, the FDA responds by innovating with a spirit of implementation of new regulations in harmony with technological growth.

1. Introduction

The US Food and Drug Administration (FDA), along with other federal agencies such as the United States Department of Agriculture (USDA), the Environmental Protection Agency (EPA) and the Federal Trade Commission (FTC), is assigned the duty of monitoring and governing food and food products in the United States (US). The agencies work in concert to assure that the safety and quality of food and food products consumed by the people of the US is of the highest standard.

The FDA is charged with the responsibility of assuring that food eaten is safe and wholesome, and that additives, herbs, and any type of dietary supplement are innocuous. The FDA is one of the nation's oldest consumer protection agencies, operating with about nine thousand employees to assist in its function as a surveillance agency. As a public health agency, the FDA seeks to safeguard American consumers by enforcing the 1938 Federal Food Drug and Cosmetic Act (FDCA) as well as other pertinent public health laws.

The Federal government first became involved in food regulation with the Pure Food and Drug Act of 1906. The Act proclaimed "adulterated" any food that contained any added poisonous or other deleterious ingredient that might render such article injurious to health. One of the many pitfalls of the Act was that it failed to delineate specifically what was meant by "adulterated."

The Pure Food and Drug Act of 1906 was replaced by Congress with the Federal Food, Drug and Cosmetics Act of 1938. The Act was passed partly to address the inadequacies of the 1906 Act in addition to dealing with the many proposals set forth by Congress regarding the control of food safety in light of the rapidly expanding scientific and technological advances in food processing and manufacturing.

In 1938 "food additives" were recognized as requiring additional regulation. As a result, the Food Additive Amendment of 1958 was annexed to the Federal Food Drug and Cosmetic Act to assure a procedure that would oversee the use of compounds added which were to become components of foods.

2. Food Safety

Food safety and concern continues to be an important concern in the US and elsewhere. Given the advent of "genetically modified foods," coupled with the release of "irradiated foods," new developments in food regulation have ensued. Additionally, the nation's concern regarding the incidence of food-borne and water-borne illness has promoted additional legislation.

A revision of the model food code, embracing significant changes, was introduced on February 22, 1999. These changes encompassed enhanced protections for potential risks associated with items such as eggs, juices, and sprouts; methods to be used in advising consumers of the increased risk of food-borne illness; clarification of the code provisions that prohibit bare hand contact with ready to eat food; modification of time and temperature controls for meat and pork; criteria for serving beef rare; safe handling instructions for retail meat and poultry packers; and modifications of recommendations related to oxygen packing.

Augmenting the above, several bills addressing the specific issue of food safety were introduced in Congress in 1999. The Consumer Food Safety Act of 1999 establishes a National Food Safety Program, under which food processing and importing facilities would be required to register and would be subject to random and unexpected inspections. The bill would also call for civil monetary sanctions for violators. The

National Uniform Food Safety Act, also introduced, would dictate labeling requirements for certain foods.

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United States Code sec. 348 (c) (3)(A) 1994. [The Delaney Clause.]

Biographical Sketch

Professor Diaz, a native of New Jersey, relocated to Central Florida in December 1994. She was one of the founding faculty at the School of Law. Prior to joining the full-time faculty, Professor Diaz pursued full-time law practice while teaching part-time at the law school. Professor Diaz practiced in the areas of personal injury, toxic torts, and workplace chemical exposure. Professor Diaz earned her Juris Doctor degree at Rutgers Law School, Newark, New Jersey. She was recognized for her academic achievement at Rutgers Law School by the Association of Latin American Law Students. While in law school, Professor Diaz was the recipient of the Merck Patent Scholarship award. Prior to entering law school, she received her Ph.D. in Organic Chemistry from Rutgers University. She also spent two years as a Post-Doctoral research chemist at Hoffman-LaRoche, Nutley, New Jersey, where she primarily worked on the synthesis of anti-HIV compounds. Professor Diaz teaches in the areas of Torts, Environmental Law, Toxic Torts,

and Products Liability. She is also coordinator and associate director of the Institute for Inter-American Legal Studies. Her publications focus on the FDA's role in consumer protection.

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