

Comments from Wild Farm Alliance on Subpart I—Standards Directed to Domesticated and Wild Animals in FDA’s Proposed Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

A. Produce Rule Needs to More Strongly Support Conservation Practicesⁱ

Co-management of Food Safety and Conservation

What does food safety have to do with wildlife habitat and conservation? A lot more than you might think. Stream-side vegetation, grassed filterstrips, and wetlands help keep our water supply clean by reducing the movement of pathogens, nutrients and pesticides into streams, rivers and lakes. Windbreaks and hedgerows reduce the amount of dust and other airborne contaminants blowing onto produce fields and help to keep our air clean as well. Conservation practices also serve as wildlife habitat, which can help to support beneficial insects that prey upon the pest insects, raptors that serve as on-farm rodent control and other species that help to reduce the need for toxic chemicals to control agricultural pests. These practices are part of a farm’s co-management food safety and conservation strategy, a concept described below we’d like to see FDA use:

Co-management approaches to farm management respond to site-specific conditions by integrating cultural, biological, and mechanical practices that promote ecological balance by conserving biodiversity, soil, water, air, energy, and other natural resources, while also reducing pathogen hazards associated with food production.

After the 2006 outbreak of *E. coli* O157, the RCD of Monterey County conducted a survey of produce growers on California’s Central Coast. Eighty-nine percent of respondents indicated that they actively discouraged or eliminated wildlife from produce fields in order to meet food safety requirements. More recently, The Nature Conservancy has estimated that 13% of the riverside habitat left in the Salinas Valley had been destroyed after the outbreak.

What Congress Required FDA To Do:

- Include science-based standards for “animals in the growing area” when developing new produce safety regulations, and
- Take into consideration, consistent with ensuring enforceable public health protection, conservation and environmental practice standards and policies established by federal natural resource conservation, wildlife conservation, and environmental agencies.ⁱⁱ
- Do not include any requirements that conflict with or duplicate the requirements of the national organic program.”

What’s Right with the Proposed Rule

While the preamble to the rule—the section of the rule where FDA explains its rationale for why it wrote this rule the way it did— has several positive statements about co-managing wildlife and conservation with food safety, the language needs to be added to the rule itself or it will be forgotten. In the preamble, the FDA states that “this proposed rule would not require the destruction of habitat or the clearing of farm borders.” It encourages “the application of practices that can enhance food safety, including sustainable conservation practices.” It also acknowledges that “when produce is grown in an outdoor environment, wild animals are likely to have access to production fields. The presence of animals in a production field, in and of itself, is not a significant food safety risk.”

The proposed rule itself—the section that will eventually become law—does not establish a list of “animals of concern” that farmers must seek to keep away from produce. That decision is tentative, though, and FDA may be convinced through comments to establish such a list. It is important to support FDA’s decision not to establish a list of “animals of concern” through comments because there is not enough scientific evidence to support such a list, and such a list might incentivize the removal of wildlife habitat and conservation practices.

What’s Okay in the Proposed Rule

The proposed rule discusses how crops should be monitored and harvested if wildlife enters a field. These measures are part of a risk strategy, especially in areas where wildlife are seen. If there is a reasonable probability that the produce will become contaminated due to animal intrusion, FDA requires farmers to monitor areas where produce is grown, harvested, held, or packed as needed during the growing season and immediately prior to harvest. If animal intrusion occurs, then the farmer must not harvest produce that is visibly contaminated by animal feces or urine. Evidence of animal intrusion includes observation of significant quantities of animals, animal feces, or crop destruction due to grazing. Finally, the proposed animal standards do not require documentation of monitoring to show compliance with this section of the proposed Produce Rule.

These standards cover the unintentional presence of animal feces or urine; they are separate from the proposed standards on the use of manure and other soil amendments derived from animals in crop production.

When it first released the proposed Produce Rule, FDA determined that it did not need to conduct an analysis of the environmental impact of the proposed rules. Since then, and because the proposed regulations will impact conservation and farming practices broadly, and domesticated and wild animals, water quality, and production inputs specifically, FDA has started the process of conducting an environmental impact statement (EIS).

What is Wrong with the Proposed Rule

In essence the rule lacks co-management teeth, as no one is going to pay much attention to the preamble once the proposed rule becomes law. It also conflicts with the National Organic Program requirements. IT DOES NOT:

- encourage the use of co-management conservation practices to address food safety issues
- define how co-management can work
- state that habitat should not be destroyed
- require farm personnel to be trained about co-management
- correlate with the National Organic Program requirements

If FDA fails to put teeth in the rule and articulate its disapproval of habitat destruction and its support of conservation practices, the ‘scorched-earth’ attitude towards food safety prevalent in some of the big produce growing regions of the U.S. may proliferate across the entire country. Since there are no limits set by the rule as to what buyers and their third-party auditors can include in their food-safety metrics, these entities are free to mandate the clearing of field borders and the removal of wildlife habitat, resulting in a landscape consisting of nothing but bare dirt and rows of crops. This short-sighted fixation on wildlife and their habitat, could not only undermine sound agricultural practices that allow farmers to protect the soil, water and biological resources on their land, but also undermine broad-scale conservation efforts to keep our country’s water and air free from contaminants and provide refuge for the great diversity of wildlife our country has to offer. In fact, given that the FSMA proposed rule also has strict water quality requirements for irrigation water used on produce fields, one questions the FDA’s lack of enforcement in ensuring that the very conservation practices that help promote clean water are not destroyed in the process of meeting another mandate of the rule.

The proposed rule overlooks the opportunities to ensure co-management principles are instituted. A definition of co-management is needed in the rule. It should then be referred to in the rule with regard to promoting co-management practices and training. Training of farm personnel is only currently required for hygiene; it should also be required for co-management. For instance, it is important for farm personnel to understand the difference between conservation plantings and weeds, so that food safety services provided by these plantings are conserved; or how not all wildlife are a problem-rodent-eating predators are good to be on the farm because they help to regulate rodent populations.

The proposed rule also conflicts with the National Organic Program’s (NOP) natural resource standard. Organic farmers are required to maintain or improve the natural resources of their operation, including soil, water, wetlands, woodlands, and wildlife. Because the FSMA proposed rule does not limit buyers and third-party auditors on what they can allow in food safety metrics, it will force organic farmers to choose between complying with NOP regulations or losing markets.

If You Care About Wild Animals and Conservation Issues, Send FDA Your Thoughts

Include issues above about what is wrong with the rules.

Customize your comment:

- Do you have conservation borders around growing areas and in drainages on your farm? If so, tell FDA why they are important to your operation and how you want the rule to encourage these borders.
- If FDA doesn’t change this rule, will your sustainable farming practices be impacted in order to comply with it? If yes, how?
- Will these standards influence you to build fences or other structures to keep animals out of your fields or to remove habitat?
- If you support FDA’s decision not to require certain actions – such as the establishment of a list of “animals of concern” or documentation of animal monitoring – be sure to include that in your comment!
- If you are an organic farmer, describe how to improve these rules, including how to streamline compliance with the National Organic Program regulations
- Do you see value in training your farm personnel about importance of the co-management of food safety and conservation?
- How can FDA make these standards stronger so that they support diversified farming systems and biodiversity?

Comments on Subpart I—Standards Directed to Domesticated and Wild Animals

B. Produce Rule Must Support Diversified Crop-Livestock Farming Systems and Clarify Grazingⁱⁱⁱ

In the preamble, FDA states that the “proposed rule would not prohibit the use of on-farm domesticated working animals.” This is critical because many farms that grow produce covered by the Produce Rule rely on domesticated animals, such as draft horses, to produce their crops, and many farmers graze animals in fields that are later used for produce production.

The proposed rule requires an “adequate waiting period between grazing and harvesting for covered produce....” FDA provides additional guidance on that waiting period in the preamble and states that the agency “would not expect it to be necessary for such time periods to exceed 9 months, which is the application interval we propose for use of raw manure as a soil amendment...” In addition to the significant issues with the nine-month waiting period between the application of raw manure and harvest (see other page), FDA should not imply that an “adequate” waiting period is nine months because there is no scientific basis for that assumption.

Grazing animals leave feces on the surface of the soil exposed to sunlight. This allows UV radiation and desiccation from the sunlight to reduce survival of pathogens. In fact, one study showed significantly more rapid die off of *E. coli* O157 when livestock wastes were left on the soil surface than when incorporated. More research is needed. Additionally, under most conditions, grazing animals do not leave the same amount of feces on a field as when raw manure is applied as a soil amendment. The parallel between feces dropped during grazing and raw manure applied as a fertilizer is not strong enough to argue for a similar interval and risks confusing farmers looking for guidance on what FDA means by “adequate.”

If You Care About Diversified Crop-Livestock Farming Systems, Send FDA Your Thoughts

Customize your comment:

- *Share examples that illustrate the importance of diversified crop-livestock systems and grazing in production.*

Make sure to tell FDA to remove the sentence from the preamble about the waiting period between grazing and harvesting - that the agency “would not expect it to be necessary for such time periods to exceed 9 months, which is the application interval we propose for use of raw manure as a soil amendment...”

ⁱ This section was written predominately by Wild Farm Alliance; some text came from National Sustainable Agriculture Coalition (NSAC) materials.

ⁱⁱ FDA (U.S. Food and Drug Administration). Food Safety Modernization Act. Full Text of the Law. Retrieved April 9, 2013 from <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247548.htm>

ⁱⁱⁱ This section was put together by the Wild Farm Alliance, drawing substantially from NSAC’s materials.