

As food safety rules finalized, uncertainties remain

By MATEUSZ PERKOWSKI
Capital Press

PORTLAND — Though they recently finished writing major new food safety regulations, federal regulators admittedly still don't know exactly how the system will work.

Farmers recently stumped top U.S. Food and Drug Agency officials with some of their questions during a meeting in Portland organized by the agency and several state agriculture departments.

If multiple farms draw their water from the same stream, one farmer asked, can they collectively monitor bacteria levels instead of each paying for separate tests?

How can a grower establish a baseline for bacteria levels in irrigation water, asked another, if he leases different parcels of land each year?

In each case, FDA officials said that such specific matters would be referred to the agency's recently formed Technical Assistance Network, or TAN, which will resolve complex situations faced by growers.

The total network currently consists of about 50 employees at FDA who are highly familiar with the rules implementing the Food Safety Modernization Act, a federal statute enacted in 2011, said Jenny Scott, senior adviser at the agency's Office of Food Safety.

Employees who wrote the FSMA regulations were the first to be included in TAN, and they're now training others, Scott said.

Growers can expect replies in roughly four to eight weeks, though eventually many responses will likely prove similar and allow FDA to develop a "frequently asked questions" sheet for common queries, she said. "We're seeing how it develops right now."

If farmers don't submit enough information about their situations, they'll be asked to fill in the blanks, Scott said. "Be as specific as possible because you will get a better answer."

Answers dispensed by the network will be considered the best information available to the agency, but growers should nonetheless keep track of FDA guidance in case the agency's positions change, she said.

If farmers disagree with TAN's interpretation of the rules, the agency is open for discussion, said Michael Taylor, deputy commissioner for foods and veterinary medicine. "We want to benefit from what people know," he said.

Now that rules have been finished for several key provisions of FSMA, the FDA will be in an "educate before we regulate" mode, helping farmers and other understand what's expected of them, Taylor said.

"We'll be looking to get compliance rather than find violations as our mission in life," he said.

The agency aims to be flexible with its regulations, focusing on the outcome of food safety, Taylor said.

Farmers and other regulated entities can seek "variances" and "alternatives" to the rules, as long as they provably achieve the same result in reducing risks.

Such options will need to have a scientific basis, but growers should discuss the documentation they'll need with FDA rather than try to shoot at a target that's largely undefined at this point, he said.

"It is going to be defined through practice," Taylor said.

Many produce growers are already subject to third-party audits required by buyers, so there may be a way for them to avoid duplicative efforts in complying with FSMA rules — for example, FDA accreditation for auditors, he said.

"The door is wide open for that sort of dialogue," Taylor said.

Appeals court clears salvage logging project

9th Circuit upholds previous ruling on spotted owl impacts

By MATEUSZ PERKOWSKI
Capital Press

Environmental groups have failed to convince a federal appeals court that salvage logging in Southern Oregon was approved in violation of the Endangered Species Act.

The 9th U.S. Circuit Court of Appeals has upheld a previous ruling, which found that the U.S. Fish and Wildlife Service properly considered the impact of salvage logging on the threatened northern spotted owl.

The controversy dates back to the 2013 burning of about 25,000 acres of U.S. Bureau of Land Management property as part of the Douglas Complex Fire.

The U.S. Fish and Wildlife Service decided to approve salvage logging of about 1,600 acres despite some destruction of spotted owl habitat because the project wouldn't jeopardize the overall species.

Cascadia Wildlands, Oregon Wild and the Center for Biological Diversity filed a

lawsuit seeking an injunction against the harvest, arguing that federal biologists had underestimated the number of spotted owls in the area.

Spotted owls are now less likely to respond to calls during surveys because of fear of barred owls, which are larger and more aggressive, the plaintiffs claimed.

U.S. Magistrate Judge Thomas Coffin rejected this claim last year and the 9th Circuit has now agreed with him, finding that the Fish and Wildlife Service considered this phenomenon when reviewing the salvage project as part of a "biological opinion."

The environmental groups acknowledged that the agency relied on the best available science but doubted

its conclusions, which isn't enough to reverse its approval of the project, the 9th Circuit said.

"However, Cascadia's mere disagreement with the result of the biological opinion does not mean that the Service failed to use this scientific data," the ruling said.

The 9th Circuit also rejected the allegation that the Fish and Wildlife Service ignored data that showed spotted owls expand their home range after fires.

Three forest products companies — Boise Cascade Wood Products, Rough & Ready Lumber and Swanson Group — intervened in the lawsuit as defendants because they rely on the project for logs.



Associated Press

A northern spotted owl is shown in this file photo. Several environmental groups lost an appeal to the 9th U.S. Circuit Court of Appeals over salvage logging in Oregon that they claimed would impact the owls.

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