Behind the newly proposed US food regulations

Naomi Spencer
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The federal Food and Drug Administration unveiled two proposed food safety rules on January 4, exactly two years after President Obama signed the Food Safety Modernization Act.

While the proposals have been hailed as "landmark" improvements to US food oversight, they are not likely to be implemented for yet another three years, and will provide FDA inspectors with no meaningful enforcement powers. In fact, the rules are part of the drive of the Obama administration to deregulate industries across the board, allowing corporations to police themselves.

Foodborne illness is an epidemic in the United States. The Centers for Disease Control and Prevention (CDC) estimates that one in six Americans—48 million people—are sickened by contaminated food each year. Of those, more than 128,000 are hospitalized, and 3,000 die. Experts acknowledge that these figures are underestimates, since most food poisoning cases are not reported. Major food recalls are a regular occurrence. Last year, the US had 37 produce recalls.

The FDA depends almost entirely on the self-reporting and policing of the industry. Although it is responsible for ensuring the safety of 80 percent of the American food system, the agency inspects only 6 percent of domestic food producers and 0.4 percent of importers. Companies are left largely to operate entirely in the interest of profit, at the expense of the health of consumers and their workers.

The Food Safety Modernization Act (FSMA) was drafted after a series of deadly outbreaks caused by foods, including cantaloupe, eggs, spinach and peanut butter, that were under the purview of the FDA. The outbreaks killed hundreds of people and prompted a public outcry over conditions in the food processing facilities that were inspected. Investigations revealed highly unsanitary conditions at every site, suggesting that they were not exceptional cases across the industry. Exposés in the press also made clear that the FDA was aware of the deplorable conditions for years before outbreaks were connected to the facilities responsible.

Obama signed the FSMA bill on January 4, 2011. Two years later, the *New York Times* noted, "But it took the Obama administration two years to move the rules through the regulatory agency, prompting complaints that the White House was more concerned about protecting itself from Republican criticism than about public safety." Food safety advocates sued the administration to release the rules after the original January 4, 2012 deadline was missed. The FDA sought to have the lawsuit dismissed.

The FDA summary emphasizes that the newly proposed rules "build on existing voluntary industry guidelines for food safety, which many producers, growers and others currently follow."

Under the first rule, domestic and foreign food producers will submit food safety plans to the agency that explain how they keep their facilities clean. The second rule pertains to preventing contamination from workers, water, and animals. Taken together, the rules are more than 1,200 pages long—a fact that will likely deter wide public review during the mandated 120-day comment period.

"While food producers would have latitude in determining how to execute the rules," the *New York Times* commented, "farmers would have to ensure that water used in irrigation met certain standards and food processors would need to find ways to keep fresh food that may contain bacteria from coming into contact with food that has been cooked." New safety measures might include "installing portable toilets" so that laborers did not have to urinate in the fields.

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Companies may also “post signs similar to those in restaurants that remind employees to wash their hands.”

The FDA estimates that large farm operations might incur costs up to $30,000 a year to comply, and the industry as a whole might see costs rise by $475 million. Any additional expenses are almost certain to be pushed onto consumers, who have been subjected to painful inflation over the past few years.

Perhaps most significantly, the rules do nothing to empower inspectors with the ability to initiate a mandatory recall. The FDA, along with the CDC and US Department of Agriculture (USDA), remains limited to issuing requests that companies voluntarily warn the public and recall tainted products. This relationship effectively relegates government agencies charged with protecting public health to the role of public relations liaisons for corporations.

The rules will not be formally adopted by the FDA for at least another year. Then, according to the agency, large operations will have 26 months after the final rule is published in the Federal Register to “be in compliance with most of the produce safety requirements.” Smaller farms would have a longer period to comply, “and all farms would have additional time to comply with certain requirements related to water quality.”

Unsurprisingly, the industry has signaled that it is “cautiously satisfied” with the proposals. Pamela Bailey, president of the Grocery Manufacturers Association, the representative of the nation’s largest food companies, stated that the FSMA “can serve as a role model for what can be achieved when the private and public sectors work together to achieve a common goal.”

On December 31, the USDA’s Microbiological Data Program (MDP) was shut down. This small program was responsible for conducting fully 80 percent of federal produce testing. Its closure was barely reported.

The MDP relayed its findings of pathogens in leafy greens, melons, tomatoes, and other foods to the FDA. Between 2009 and 2012, MDP testing revealed Salmonella 111 times, E. coli 84 times, and Listeria 12 times.

These monitoring efforts resulted in numerous recalls, including the Listeria-contaminated cantaloupe recall last July. The year before, a Listeria outbreak caused by cantaloupes spread to be the deadliest outbreak of foodborne illness in a century. The deaths of 33 people have been directly attributed to the tainted melons.

The produce industry had lobbied heavily for MDP’s elimination, claiming that it did not benefit public health. A January 3 report in *Food Safety News* noted that the White House singled out the program to be cut “because it does not fit within the mission of AMS [Agricultural Marketing Service, a subdivision within the USDA], which is focused on agricultural marketing.” The cut leaves the USDA with a significantly smaller capacity to test for E. coli, Salmonella, and Listeria in produce.

Regulatory agencies at the federal, state and local levels are facing the possibility of budget cuts in the coming months, rendering many regulations impossible to adequately carry out.

The so-called “sequestration” threat, temporarily stayed by the deal on the fiscal cliff, may chop 8.2 percent ($270 million) from the FDA’s budget on March 1. Most of the current budget goes toward payroll, meaning that any reduction would see the layoff of scientists and inspectors. Presently the agency relies on 1,800 inspectors to oversee the more than 156,000 domestic food facilities under the FDA, in addition to the massive pharmaceutical industry.

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