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FSIS Docket Room, (Docket #01-030N)
U.S. Department of Agriculture, Food safety and Inspection Service
Room 102, Cotton Annex
Washington, D.C., 20250-3700

01-030N 01-030N-37 David Keith Howard Upton
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We are responding to the petition filed against the January 9, 2002 enforcement date of the moisture rule. Below are the questions posed and our response to each.

Question 1: Did FSIS allow sufficient time to prepare for implementation?

We have not had enough time and the following is why.

- A. This is a two part rule, with the guide lines for the first part of the rule published after about half the implementation time had expired.
- B. After a protocol was developed and submitted, up to a fifth of the remaining time was spent waiting for a no objection letter.
- C. After the no objection letter was received, supplies had to be ordered to handle the extra micro testing.
- D. Running the experiment will take a minimum of three weeks but could take four or five weeks over holiday weeks to keep from holding samples over a weekend.
- D. A minimum of a week is required for analyzing and summarizing the data and determining the unavoidable amount of moisture to achieve food safety.
- E. The plant then has to develop a process control program to assure they are not exceeding the unavoidable moisture level they need to maintain, this will take at least a month.
- F. After all these steps are taken the plant can then begin measuring retained moisture at packaging. To do so before this point would be an exercise in futility.
- G. In order to accurately predict the amount of unavoidable moisture in a package with 95% confidence over the year, one year's worth of data collection is required to take into account seasonal differences.
- H. We have twelve months of packaging on hand that must be used.
- I. It will take three months for our packaging supplier to make and proof new plates and print new labels.
- J. Placing stickers on the packages prior to receiving new labels is not an option, it requires more labor and stick on labels are notorious for falling off, which would open the plant up to being out of compliance, and having a recall or being shut down for economic adulteration.



Question 2: Is available laboratory space sufficient or insufficient?

We do not have enough laboratory capacity plus we will have to purchase additional equipment and add personnel.

- A. This plant does not do Salmonella spp. testing so this will have to be sent out. The corporate lab estimated the time required for Salmonella testing of at least six months.
- B. This plant lab is not equipped with a drying oven, this will have to be purchased and we will have to hire and train people to perform dry matter determinations.
- C. At present we handle 36 E.Coli samples a day and with the protocol we will add 50 more E.Coli samples per day.

Question 3: Is there additional information regarding the time to produce new labels which should be considered?

Yes there is additional information to be considered.

- A. Packaging changes are at least a two phase process, making of new plates, and then printing and delivery of new labels.
- B. There is a limited amount of label making capacity.

Question 4: Would postponement be fair or unfair to anyone, and if so how?

Postponement would be most fair to everyone.

- A. By not postponing the rule would effectively shut down the poultry industry, eliminating a choice of proteins the consumer can purchase.
- B. This would drive the price of other proteins up, again affecting the consumer's budget.
- C. All of the allied industries would likewise be affected, such as trucking, advertising and government due to the tax revenue lost through the job reductions caused by shutting the industry down.

Question 5: Would postponement affect the consumers and, if so, how?

Postponement would be the fairest action to the consumer.

- A. They will be able to continue to make choices for their protein.
- B. The effect on the consumer's budget would be minimized.
- C. The consumer would be able to continue to make informed decision based on the industries past level of performance, quality and value.



Finally, the industry intends to comply with the rule and provide the consumer with retained water information. To do this, industry must have time to develop new procedures, collect and analyze data and then print packaging material as required. Industry realized that many of its products retain little to no water, deboned breast meat for example. If industry is not allowed time to collect data for labeling of all parts, but instead forced to label all items with the amount of moisture retained in whole birds, would be a huge injustice. This is because whole birds are the easiest to collect data on, but represent less than 10% of all products sold. This practice would drive some companies out of business, while economically impacting all poultry companies.

A handwritten signature in cursive script that reads "David Keith".

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A handwritten signature in cursive script that reads "Howard Upton".

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