



It's what your *family* deserves." 49

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**Response to Docket #01-030N:  
Jan. 9, 2002 enforcement date of the moisture rule.**

After reading the moisture rule several times, attending meetings and participating in numerous conference calls regarding the moisture rule, (9 CFR Parts 381 and 441) we as employees of Tyson Foods, Inc., can testify to the need for a postponement of the effective date. That is, the Agency should grant the extension requested in the petition.

Some comments made in this letter are the result of the combined perceptions of several team members at Tyson Foods that have been involved with different activities involving implementation of the moisture rule. Some of the following comments/observations are made in response to face to face conversations we have had with people from the USDA.

For example, in the original draft of the rule, naturally occurring moisture was defined as the moisture in chicken meat at the point where hocks are removed from the carcass. At the February meeting in Omaha, one of our team members had the opportunity to discuss the difficulty of gathering parts from non-eviscerated chickens. It turned out that a mistake was made by the Agency, and naturally occurring moisture was later defined as moisture associated with chicken meat prior to the final bird wash before entering the chiller. It was also clear in several conversations at the meeting in Omaha that some people at the USDA thought industry would simply get a chiller moisture and label all of their products with that moisture value. This of course is not an option for companies wishing to be competitive and stay in business.

At the same time, there was very little direction given as to how a protocol should be drafted. The Technical Regulation Committee of the National Chicken Council (NCC) and the National Turkey Federation (NTF) took it upon themselves to draft some mock protocols, which were submitted by their respective groups in May. At the end of June the Agency published a protocol format, incorporating some of the ideas presented for each species along with some new details. By this time, six of the twelve months allotted to comply with the rule had passed and not a single company had developed or submitted a protocol for review.

Although developing the protocol for unavoidable moisture may have been frustrating and conducting the experimentation somewhat grueling, these are not the time consuming activities needed to comply with the rule. After the chiller settings for achieving food safety are identified by the protocol and the unavoidable moisture determined, then and only then could one begin determining the amount of moisture retained at packaging. To begin this portion of the requirement before identifying chiller conditions would have been a waste of resources.

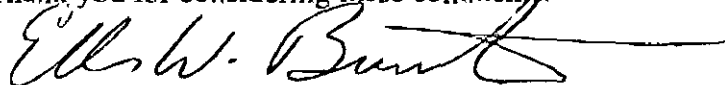
A full year's worth of data will be required to be able to determine the amount of moisture that is gained in the chilling process and retained at packaging with some level of confidence, (95%); but also not over estimate the amount of moisture too radically. This would keep one from having to change packaging labels quarterly. Technically, a full year's worth of data is not needed; all that is needed is data from the calendar quarter of the year that results in the highest retained moisture. The problem with this is we do not know which quarter that is, nor do we know if it would be the same in all our plants due to the fact they are scattered north to south, and east to west. While at some plants the Spring quarter may produce the highest moisture retention, at other plants high moisture may occur in Summer, Winter or Fall. This being the case, in reality, a full year of data collection is required.

Therefore, it is felt that in order to get a good sampling from all plants, the plants would sample every single ingredient item they produce at least once a month for a year. This would increase the confidence in estimating the moisture in the package while concomitantly reducing the chances of going out of compliance or having to change packaging again.

Once all of the data are collected they will be analyzed and grouped together by divisions so as to provide unified labeling across product types, such as fresh retail chicken. Which brings up the second lengthiest portion of complying with the protocol. At the February meeting in Omaha, a packaging industry representative outlined the steps his company had to go through to create a new label. He then stated at the end of his talk that there was only a finite amount of label making equipment. Therefore, if the industry intended to comply with the January 9, 2002 effective date, companies should start submitting new label changes in the next few months or time will run out. Unfortunately, given the confusion described above and the time required to collect the data to support a label claim, it is apparent that it is not logistically possible at this date to get packaging material designed, created and distributed in the time remaining before January 9, 2002.

In summary, to accomplish the steps to comply with the spirit of the rule, which the poultry industry intends to do, an extension on the implementation date is required. The petition asks for the implementation date to be moved to August of 2004. Although at first glance this may seem like quite a bit of time, in reality by looking at the steps addressed herein the August 2004 implementation timeline leaves little time to be not actively working towards achieving compliance.


Thank you for considering these comments.



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