

51



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**FSIS Docket Room, (Docket #01-030N)
U.S. Department of Agriculture, Food Safety and Inspection Service
Room 102, Cotton Annex
300 12th Street SW
Washington, D. C., 20250-3700**

01-030N
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Mark Avery

Response to questions posed by USDA on the petition filed by, National Chicken Council, (NCC) the National Turkey Federation, (NTF) the American Meat Institute, (AMI) and the National Foods Processors Association, (NFPA) in August 2001 regarding the January 9, 2002 enforcement date of the moisture rule

Question 1: Did FSIS allow sufficient time to prepare for implementation; why or why not?

Response 1: Not enough time.

- This was a two-part rule, with guide lines for the first part of the rule published after about half the implementation time had expired.
- After a protocol was developed and submitted, up to a fifth of the remaining time was spent waiting for a no objection letter.
- After receiving the no objection letter, supplies will have to be ordered to handle the extra micro testing.
- Running the experiment will take a minimum of three weeks but could take four to five weeks over holiday weeks to keep from holding samples over a weekend.
- Organizing the data after the final test conducted will take a week.
- A minimum of a week is required for analyzing and summarizing the data and determining the unavoidable amount of moisture to achieve food safety.
- The plant then has to develop a process control program to assure they are not exceeding the unavoidable moisture level they need to maintain for Food Safety purposes, this will take at least a month.
- After all of these steps the plant can begin measuring retained moisture at packaging. To do so before this point would be an exercise in futility.
- We must measure naturally occurring moisture and then compare that to the moisture at packaging.
- 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.

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- Some time will again be required to analyze the year's worth of data to determine the 95% confidence for retained moisture at packaging.
- Additional time for label or packaging changes will also be required as explained below in the response to question 3. 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?

Response 2: Not enough laboratory capacity plus may have to purchase additional equipment and perhaps add personnel.

- The plant doesn't do Salmonella spp. testing so this will have to be sent out. The corporate lab estimated the time required for doing the Salmonella testing of at least 6 months.
- Our plant lab is not equipped with a drying oven. This item will have to be purchased and could take some time to arrive at the plant.
- We currently handle six to seven E. coli samples a day. The additional 50 E. coli samples a day required by the protocol could result in having to hire and train additional QA personnel.

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

Response 3: Yes, there is additional information to be considered.

- Packaging changes are at least a two-phase process, the making of new plates, and then the printing and delivery of new labels.
- There is a limited amount of label making capacity, if 400 plants are requesting label changes at the same time, some plants will be behind other plants in priority or chronology.
- We have several months of packaging on hand that must be used.
- It will take three months for our packaging supplier to make and proof new plates and print new film or labels.

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

Response 4: Postponement would be most fair to everyone.

- Not postponing the rule would effectively shut down the poultry industry, eliminating a choice of proteins for the customer and driving up the price of other proteins.
- 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?

Response 5: Postponement would be the fairest action for the consumer.

- They will continue to be able to make choices for their protein.
- The effect on the consumer's budget would be minimized.
- The consumer will be able to continue to make informed decisions 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.

Sincerely,



Mark Avery
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