

L&R Agenda Item 260-3: Moisture Loss in Pasta Frequently Asked Questions

1. Why do inspectors need to consider moisture loss?

A lawful inspection must take account of moisture loss for any product where moisture loss occurs, such as pasta. Federal (and corresponding state) requirements mandate that “reasonable variations caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice” must be recognized before the jurisdiction can determine the accuracy of the net weight statement.

The U.S. Supreme Court in the case of *Jones v. Rath Packing Company* held that the Federal Food, Drug, and Cosmetic Act “permits variations from stated weight caused by gain or loss of moisture” and therefore a manufacturer of food “is not subject to enforcement action for violation of the net weight labeling requirements if the label accurately states the net weight, with allowance for the specified reasonable variations” such as moisture loss.

2. When must an inspector consider moisture loss when checking packaged pasta products?

Inspectors always must account for moisture loss for pasta because the product will always have the potential to lose moisture. Failure to account for moisture loss for hygroscopic products like pasta renders an inspection invalid. Federal and state law do not permit inspectors to issue a citation, order pasta products off-sale, or issue a civil penalty unless moisture loss has been accounted for by the inspector. This is a well-settled matter of law.

3. Why should Handbook 133 be amended to address moisture loss for pasta?

The modest amendment to Handbook 133 would provide inspectors with critical guidance to ensure that pasta product package checking is done properly and lawfully. The industry petition was brought to the Conference because inspectors have mistakenly interpreted the lack of express guidance in Handbook 133 about moisture loss in pasta to mean that they are not required to consider moisture loss for these products. Of course, that is not the case.

4. Why should the Conference create a special allowance for pasta? Will passage of this proposal open the door to a flood of similar amendments to Handbook 133?

The pasta industry is not seeking special treatment. The proposal would merely memorialize a well-established moisture loss allowance and assist inspectors in accounting for moisture loss among pasta products, as is the case for flour, dry pet food, meat, and poultry. Indeed, both NIST and FDA have proposed 3% as the appropriate gray area for pasta.

Only a finite number of products are subject to moisture loss and the vast majority of packaged foods do not gain or lose moisture. The Conference should consider proposals from other industries that are able to amass appropriate data that supports a moisture allowance gray area.

5. How does a moisture allowance work? Why should pasta manufacturers be given a 3% “break” instead of just over-packing?

Although referred to in shorthand as a “moisture allowance,” it is important to recognize that the proposal before the Conference would establish a 3% “gray area.” It is not a tolerance. If a sample is found to be less than the labeled weight but within the 3% threshold, the lot is in the “gray” or “no decision” area. This is an indication for inspectors that more information must be collected before lot compliance or noncompliance can be decided. In such situations, inspectors can elect to conduct further investigation to determine whether moisture loss is the basis for the product being short weight. This same method of inspection already exists for flour and pet food, and the modest amendment to Handbook 133 does not introduce a new concept or loophole that favors pasta products.

The Supreme Court’s ruling in *Jones v. Rath Packing Company* and subsequent legal precedent, affirms a uniform net weight compliance standard that regulates a manufacturer’s conduct at the point-of-pack. Rath Packing recognizes that in a national marketplace companies are not required (nor is it feasible) to target package weights by region and climate. Inherent in the Court’s ruling is an understanding that companies are

not required to over-pack to address moisture loss that may occur as the result of good distribution practices. The law does not sanction a requirement to target distribution regionally, nor would this approach be practicable for manufacturers to implement.

6. Is moisture loss really unavoidable for pasta? Why can't you just change your packaging to prevent moisture loss?

Pasta is hygroscopic, which means that its moisture content does not remain constant after the product is manufactured. Depending on the relative humidity of the atmosphere, pasta will frequently gain or lose moisture even when good manufacturing and distribution practices are followed. The amount of moisture loss depends upon many factors including the shape of the noodles, the packaging material, the length of time it is in distribution, the retail sales environment, and environmental conditions.

Pasta needs “breathability” throughout its life cycle in order to maintain quality because of its hygroscopic nature. Without flexible packaging, dissipating moisture would remain caught in the package. This could result in pasta that fails to cook properly or even could cause it to spoil if subject to extreme temperature changes.

7. Why is 3% an appropriate level for the gray area?

The proposed value of 3% has consistently been recognized as an appropriate gray area for pasta products. The FDA and NIST each previously recognized 3% as an appropriate level for moisture loss in pasta. Additionally, the 3% level is supported by a published study conducted by North Dakota State University, commissioned by NPA, which was conducted in 1988 following the guidelines and input from FDA and NIST. More recent company-specific data also validates the findings of the North Dakota State University study and supports the 3% threshold. (Note that some of our data suggests the need for a higher threshold.) This value also is consistent with the gray areas already established in Handbook 133 for flour and pet food, which are similar in their formulations to pasta. The North Dakota State University study and confirming industry data have been presented to the Conference for its review and consideration.