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(b) The following NIST Handbook 133 requirements are not incorporated by reference.

CHAPTER 2—BASIC TEST PROCEDURE—
GRAVIMETRIC TESTING

2.3 Basic Test Procedure—Tare Procedures—*Wet Tare*

2.3 Basic Test Procedure—Moisture Allowances—*What moisture allowance is used with wet tare when testing packages bearing a USDA seal of inspection?*

2.4 Borax

CHAPTER 3—TEST PROCEDURES—FOR
PACKAGES LABELED BY VOLUME

3.5 Mayonnaise and Salad Dressing

3.7 Pressed and Blown Glass Tumblers and Stemware

3.8 Volumetric Test Procedures for Paint, Varnish, and Lacquers—Non Aerosol

3.9 Testing Viscous Materials—Such as Caulking Compounds and Pastes

3.10 Peat Moss

3.11 Mulch and Soils Labeled by Volume

3.12 Ice Cream Novelties

3.13 Fresh Oysters Labeled by Volume

3.14 Determining the Net Contents of Compressed Gas Cylinders

3.15 Volumetric Test Procedures for Packaged Firewood with a Labeled Volume of 133 L (4 Cu Ft) or Less

3.16 Boxed Firewood

3.17 Crosshatched Firewood

3.18 Bundles and Bags of Firewood

CHAPTER 4—TEST PROCEDURES—PACKAGES
LABELED BY COUNT, LINEAR MEASURE,
AREA, THICKNESS, AND COMBINATIONS OF
QUANTITIES

4.5 Paper Plates and Sanitary Paper Products

4.6 Special Test Requirements for Packages Labeled by Linear or Square Measure (Area)

4.7 Polyethylene sheeting

4.8 Packages Labeled by Linear or Square (Area) Measure

4.9 Bailer Twine—Test Procedure for Length

4.10 Procedure for Checking the Area Measurement of Chamois Appendix C Glossary—wet tare

§ 442.3 Scale requirements for accurate weights, repairs, adjustments, and replacements after inspection.

(a) All scales used to determine the net weight of meat and poultry products sold or otherwise distributed in commerce in federally inspected meat and poultry establishments will be installed, maintained, and operated in a manner that ensures accurate weights. Such scales shall meet the applicable requirements contained in National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1999 Edition, November 1988, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited here will be published in the FEDERAL REGISTER. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The incorporation information also is available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408.

(b) All scales used to determine the net weight of meat or poultry products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act and section 5(c) of the Poultry Products Inspection Act shall be of sufficient capacity to weigh the entire unit or package.

(c) No scale will be used at a federally inspected establishment to determine the net weight of meat or poultry products unless it has been found upon test and inspection, as specified in NIST Handbook 44 to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been reinspected and retested by a USDA official, or a State or local government weights and measures official, or a State registered or licensed scale repair firm or person, and

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it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a "Retain" tag on a scale, the tag can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

§ 442.4 Testing of scales.

(a) The operator of each official establishment that weighs meat or poultry food products will cause such scales to be tested for accuracy in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and verified by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have alternative documented procedures showing that the scale has been tested for accuracy in accordance with the requirements of NIST Handbook 44.

§ 442.5 Handling of failed product.

Any lot of product that is found to be out of compliance with net weight requirements upon testing in accordance with the methods prescribed in § 442.2 of this subchapter shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section in accordance with the requirements of this part.

(b) A lot tested outside an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking will not deface, cover, or destroy any other marking or labeling required under this subchapter, and the net quantity of contents is shown with the same

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prominence as the most conspicuous feature of a label.

PART 500—RULES OF PRACTICE

Sec.

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500.4 Withholding action or suspension of inspection with prior notification.

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500.7 Refusal to grant inspection.

500.8 Procedures for rescinding or refusing approval of marks, labels, sizes, and containers.

AUTHORITY: 21 U.S.C. 451-470, 601-695; 7 U.S.C. 450, 1901-1906; 7 CFR 2.18, 2.53.

SOURCE: 64 FR 66546, Nov. 29, 1999, unless otherwise noted.

§ 500.1 Definitions.

(a) A "regulatory control action" is the retention of product, rejection of equipment or facilities, slowing or stopping of lines, or refusal to allow the processing of specifically identified product.

(b) A "withholding action" is the refusal to allow the marks of inspection to be applied to products. A withholding action may affect all product in the establishment or product produced by a particular process.

(c) A "suspension" is an interruption in the assignment of program employees to all or part of an establishment.

§ 500.2 Regulatory control action.

(a) FSIS may take a regulatory control action because of:

(1) Insanitary conditions or practices;

(2) Product adulteration or misbranding;

(3) Conditions that preclude FSIS from determining that product is not adulterated or misbranded; or

(4) Inhumane handling or slaughtering of livestock.

(b) If a regulatory control action is taken, the program employee will immediately notify the establishment orally or in writing of the action and the basis for the action.

(c) An establishment may appeal a regulatory control action, as provided in §§ 306.5 and 381.35 of this chapter.